

**DONATION AGREEMENT
CITY OF FRESNO, CALIFORNIA**

This AGREEMENT is made and entered into effective on June 8th, 2023, by and between the CITY OF FRESNO, a California municipal corporation (City), and OLASUNKANMI STEPHEN FAGBULE, M.D. (Donor).

RECITALS

- A. Donor has offered to donate the item more particularly described in Paragraph 1 hereinbelow (the Donation or Donated Item) to the City for the public benefit.
- B. By this agreement, the Parties set forth the terms under which Donor will donate and the City will accept the Donation.

AGREEMENT

1. Donation. Donor hereby donates and City hereby accepts the Donation set forth hereinafter. Donor warrants the Donation is free of liens, claims, or other encumbrances, that Donor has the right to execute this Agreement and hereby relinquishes all rights, title, or interest in the following item to the City:

Clement Renzi's mural titled "A Day in the Park" consisting of approximately 288 clay tiles.
2. Location. The City shall have sole and absolute discretion regarding placement and installation of the Donated Item. Donor may request placement of the Donated Item at a particular public location within the City. In determining placement of the Donated Item, the City will consider Donor's request, in addition to the City's needs and site-specific conditions; however, the public location of the Donated item shall be selected at the City's sole discretion.
3. Installation. The Donated Item shall be installed by City forces or by forces hired by the City to perform such work. Upon installation, City shall place a name plate at the location where the Donation is installed which shall indicate that the Donation was made to the City by the Donor and include the name of the Donor as "Pastors (Drs) Steve and Kemi Fagbule".
4. Removal and Modification. The City reserves the right to remove and/or modify the Donated Item for any reason it deems appropriate, including, but not limited to, if the Donation is damaged, defective, or defaced, if it is necessary for safety, environmental or land management reasons, or if the City is unable or unwilling to maintain the Donated Item.
5. Replacement. The City will not be responsible for replacement of the Donated Item, plaque, or name plate in the event of loss due to vandalism, acts of God, or for any other reason. Donor may request to replace the Donated Item and/or plaque at Donor's expense by submitting a written request to the City.
6. Relief from Pre-Donation Financial Obligations of Donor to City. In consideration for the Donation, Donor shall have certain costs and fees incurred by him from the City waived related to the site where the Donated Item is located, at APN

445-037-132, including but not limited to the approximately \$1,500.00 municipal code violation administrative fee assessed by the City on January 30, 2023, in Case No. E22-02518, as well as any costs and expenses associated with removal, modification, and storage of the Donated Item by the City prior to the date of the donation.

7. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
8. Binding. Subject to the assignment provisions set forth hereinbelow, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.
9. Assignment. This Agreement is personal to Donor and there shall be no assignment by Donor of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Donor, its successors, or assigns, shall be null and void unless approved in writing by the City Manager or designee.
10. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
11. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
12. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.
13. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
14. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this

Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

15. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
16. Exhibits. Each exhibit and attachment referenced in this Agreement is, by reference, incorporated into and made a part of this Agreement.
17. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
18. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
19. No Third-Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
20. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Donor.

[SIGNATURE PAGE TO FOLLOW]

