

CITY OF OVERLAND PARK, KANSAS

AGREEMENT BETWEEN

CITY OF OVERLAND PARK, KANSAS AND THE ARTS AND RECREATION
FOUNDATION OF OVERLAND PARK, INC.

FOR THE DONATION OF 11 PIECES OF SCULPTURE AND TO PROVIDE FOR THE
INSTALLATION OF THE FIRST PHASE OF THE INTERNATIONAL SCULPTURE
GARDEN AT THE OVERLAND PARK ARBORETUM & BOTANICAL GARDENS

THIS AGREEMENT is made and entered into this _____ day of _____, 2011,
by and between the City of Overland Park, Kansas (the "City"), and the Arts and Recreation
Foundation of Overland Park, Inc. (the "Foundation").

WITNESSETH:

WHEREAS, the Foundation has accepted the donation of 11 pieces of Chinese sculpture
from Kwan Wu (the "Sculptures") and the shipping costs to get the Sculptures to the Overland
Park Arboretum and Botanical Gardens; and

WHEREAS, the City and the Foundation have agreed to cooperate with respect to the
temporary installation of the Sculptures on the grounds of the Overland Park Arboretum &
Botanical Gardens, with the City providing the labor for the installation and the Foundation
providing all other remaining installation costs.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the
parties hereto agree as follows:

ARTICLE I. RESPONSIBILITIES OF THE FOUNDATION

- A. The Foundation shall be responsible for accepting the donation of the Sculptures
from Kwan Wu.
- B. The Foundation shall provide all installation funding for materials and services
related to the installation of the Sculptures.
- C. The Foundation shall accept shipment of the Sculptures, and shall bear all costs and
all other responsibilities for the transportation and delivery of the Sculptures to the
Arboretum (expected to arrive at the Arboretum in September or October).
- D. The Foundation shall comply with and bear all responsibilities to comply with any
applicable international, federal or state law, ordinance or regulation concerning the
transportation of the Sculptures, and shall indemnify and hold the City harmless
from the same.

- E. The Foundation acknowledges and agrees that once the Sculptures are installed, they will become the property of the City.
- F. The Foundation shall host a dedication of the International Sculpture Garden on November 5, 2011 (or any other date mutually agreed upon by the parties).
- G. The Foundation accepts this as the first phase of a sculpture garden that ultimately will reside on what is currently known as Kemper Farm and contain approximately 100 sculptures, many of them of monumental size.
- H. The Foundation acknowledges and agrees that artists from a number of countries will be represented in the final garden.

ARTICLE II. RESPONSIBILITIES OF THE CITY

- A. The City shall be responsible for providing the labor for the installation of the Sculptures.
- B. The City shall establish a project oversight committee composed of the Director of Parks Services, the Arts Coordinator, and the Foundation.
- C. The City shall be responsible for the maintenance of the Sculptures upon completion of installation.
- D. The City accepts this as the first phase of a sculpture garden that ultimately will reside on what is currently known as Kemper Farm and contain approximately 100 sculptures, many of them of monumental size.

ARTICLE III. GENERAL PROVISIONS

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. It is understood and agreed between the parties that there shall be no waiver or modification of the Agreement unless such waiver or modification is first reduced to writing and signed by all parties hereto.
- B. All notifications to the Foundation shall be sent to the Executive Director, P.O. Box 26392, Overland Park, KS 66225, unless different notification information shall be given to the City in writing. All notifications to the City shall be sent to the Director of Parks Services, City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212, unless different information is given to the Foundation in writing.
- C. Either party may terminate this Agreement if: it becomes apparent during the planning process that there will be additional costs above what is outlined in this Agreement; or if during the planning process any issues arise that are not acceptable or would make the project undesirable.
- D. Except as otherwise provided herein, neither party shall be obligated to perform, and neither party shall be deemed to be in default of its performance, if prevented by an occurrence outside of its reasonable control (a "force majeure"), including but not limited to: (a) a fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation; or (c) labor dispute which

results in a strike or work stoppage affecting the project described in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by an authorized representative the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By _____
Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney

THE ARTS AND RECREATION FOUNDATION
OF OVERLAND PARK, INC.

By _____
Russell Simmons, President