

City of Los Altos
Loan Agreement for Public Sculpture

This Agreement is made and entered into as of (Date) , by and between the City of Los Altos, a California municipal corporation (“City”), and _____ (“Artist”).

1. PURPOSE

Artist agrees to loan to City, and City agrees to permit Artist to display, the sculpture entitled “_____” (the “Sculpture”). This is not an agreement to purchase the Sculpture.

2. EXHIBITION SITE

The exhibition site for the Sculpture will be located at _____, or such other location as to which City and Artist shall agree in writing (the “Site”).

3. TERM

The loan effective date is _____, and shall terminate on _____ (the “Termination Date”). Artist shall remove the Sculpture from the Site within thirty (30) days of the Termination Date. City, at its sole discretion, can terminate the loan and require Artist to remove the Sculpture from the Site prior to the Termination Date upon thirty (30) days prior written notice (the “Notice of Early Termination”).

4. BASE

The Sculpture shall be installed on a base that is located at the Site (the “Base”). The Base will be constructed by City. By installing the Sculpture on the Base, Artist represents and warrants to City that the Base is suitable for display of the Sculpture. City shall at all times, and without prior notice to Artist, have the right to control access to the Site and the Base, and to modify and relocate the Base and any Sculpture thereon within the Site.

5. IDENTIFICATION PLAQUE

City shall design and install an identification plaque at the Site to identify the Artist’s name, and the title and date of creation of the Sculpture (the “Plaque”).

6. INSTALLATION AND REMOVAL

Artist shall be responsible for transportation and delivery of the Sculpture to the Site, and for installation of the Sculpture on the Base.

Artist shall be responsible for removal of the Sculpture from the Site, and for transportation of the Sculpture away from the Site.

All costs and expenses of transportation, delivery, installation and removal of the Sculpture shall be borne by Artist.

City may assist Artist with installation and removal of the Sculpture by providing a minimal workforce and equipment as agreed by City and Artist. City shall not seek reimbursement from Artist for

any costs and expenses incurred by City should it decide to assist Artist with installation and removal of the Sculpture.

In all cases, Artist shall obtain City's approval of the date and time of installation and removal of the Sculpture. City shall have the right, but not the obligation, to supervise and/or assist in the installation and removal of the Sculpture.

7. MAINTENANCE

Artist shall maintain the Sculpture at Artist's cost and expense. City shall not provide reimbursement to Artist for maintenance costs.

City shall maintain the Site, the Base and the Plaque at City's cost and expense. City shall not seek reimbursement for City's maintenance costs from Artist.

In the event of defacing of, or damage to, or extraordinary wear and tear of, the Sculpture, whether by vandalism, natural disaster, exposure to the elements, or otherwise, Artist shall within four (4) weeks of written notice from City make, or cause to be made, the necessary repairs to the Sculpture. If that time is not reasonable, Artist shall make the repairs within a reasonable time as agreed to by City and Artist.

If the nature of the damage renders the Sculpture hazardous to the public, then the Sculpture must be restored to a safe condition as determined by City in its sole discretion within two (2) weeks. In the alternative, the Sculpture shall be removed from exhibition by City or Artist at the expense of Artist.

8. LIMITED GRANT OF LICENSE

Artist hereby grants to City and others it authorizes a non-exclusive, irrevocable, perpetual, worldwide, fully-paid license to make, reproduce, distribute, and publicly display and perform images of the Sculpture in any medium, now known or hereafter invented, for the "Permitted Uses." The "Permitted Uses" shall be any non-commercial or non-profit uses in City's promotional and descriptive materials of or authorized by City regarding City, City's Public Sculpture Program and/or any other event, group, entity or activity authorized or associated with City, including, without limitation, catalogues, posters, web sites, brochures, books, slides, photographs, drawing, videos, films, advertisements, articles, and the like.

9. REMOVAL BY CITY

If Artist does not remove the Sculpture within the earlier of (30) days of the Termination Date or a Notice of Early Termination, the Sculpture may be removed by City. If City removes the Sculpture, City may dispose of the Sculpture as it sees fit, including by sale or destruction of the Sculpture.

10. RISK OF LOSS AND INSURANCE

Artist shall be responsible for the Sculpture at all times, including during transportation, delivery, installation, display and removal, and will bear the risk of loss or damage to the Sculpture. City will not be liable for any accident, theft, vandalism or damage to the Sculpture from any cause.

If Artist desires, Artist may provide property insurance on the Sculpture at Artist's cost and expense. City will not provide reimbursement to Artist for this insurance.

11. HOLD HARMLESS AND INDEMNITY PROVISION

Artist shall hold harmless, indemnify and defend City, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be asserted because of injury to property or bodily or personal injury (including death) occasioned by any willful or negligent act or omissions of Artist or any of Artist's officers, agents, employees and volunteers.

12. RESERVATION OF RIGHTS

Notwithstanding any other provision of this Agreement, if City is unable or unwilling to make, or to continue to make, the Site available, or to construct the Base (due to budgetary constraints, City Council action, inadequate available staffing, natural disaster or for any other reason, or no reason), Artist shall have no right to bring action or make any claim against City as a result of such action or inaction.

13. NOTICE

Unless otherwise provided herein, all notices required hereunder shall be given by United States registered or certified mail, or other form of mail which offers proof of mailing, postage prepaid and addressed to the party at the address below:

If to City:

City of Los Altos
City Manager
One North San Antonio Road
Los Altos, CA 94022-3088

If to Artist:
(Artist Address)

14. WAIVER OF ARTIST'S RIGHT

Artist hereby waives any moral or statutory rights Artist may have to prevent anything specifically authorized by this Agreement or to demand anything not required by this Agreement and shall confirm such waivers from time to time upon request by City and others it authorizes.

15. APPLICABLE LAWS AND ATTORNEY'S FEES

This Agreement shall be interpreted and enforced pursuant to California law. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Santa Clara County, California. Should any legal action be brought by a party for breach of this Agreement, or to enforce any provision of this Agreement, the prevailing party shall be entitled reasonable attorney's fees, court costs, and other such costs as may be affixed by the court.

16. COUNTERPARTS; ENTIRETY; AMENDMENT

This Agreement may be executed in one or more counterparts which shall together constitute one Agreement. This Agreement constitutes the entire Agreement of parties and supercedes any prior written or verbal communication between the parties. This Agreement may only be amended by written Agreement signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written above.

CITY OF LOS ALTOS:

City Manager

ARTIST:

Artist

Print Name