

PUBLIC ARTWORK LOAN AGREEMENT

THIS AGREEMENT is made and entered into on _____ between the Town of Moraga (“Town”), a municipal corporation, and _____ (“Artist/Donor”).

RECITALS

WHEREAS, pursuant to Resolution ___ - 2015, the Town Council established an Art in Public Spaces Policy for the Town;

WHEREAS, the policy authorizes the Town to acquire artwork for public display through leases, loans, and donations of artwork;

WHEREAS, on November 18, 2015, the Town Council adopted Resolution No. 91 - 2015, which authorized acquisition by loan of the artwork described in this Agreement;

NOW, THEREFORE, Town and Artist/Donor agree as follows:

1. Purpose of Agreement

Artist/Donor, as the sole owner and creator of the artwork entitled “_____” (“Artwork”), hereby agrees to loan Artwork to the Town for the period of time specified in Section 2 of this Agreement. The Public Art Application prepared by Artist/Donor, which describes the Artwork and includes a photograph of the Artwork, is attached and incorporated into this Agreement as Exhibit A.

In consideration of Artist/Donor’s loan of the Artwork to Town, Town agrees to publicly display the Artwork _____(insert area for display), to credit Artist/Donor for the loan on a sign posted with the Artwork, and to insure the Artwork against loss or damage as specified in Section 6 of this Agreement. This Agreement is intended to implement and shall be interpreted in accordance with the terms of the Town of Moraga Art in Public Spaces Policy, which is attached and incorporated into this Agreement as Exhibit B.

2. Effective Date and Term of Agreement

This Agreement shall be effective on the date that it has been signed and executed by both parties. It shall remain in effect until _____, with a possible one-year extension, unless it is terminated earlier pursuant to Section 9 of this Agreement. The term of this Agreement shall be extended by one year, to _____, if the Town and Artist/Donor so agree in writing prior to _____. At the end of the term, the Town shall remove the Artwork and return it to the Donor, as provided in Section 10 of this Agreement.

3. Payments

- a. Artist/Donor shall loan the Artwork to Town for the limited term of this Agreement specified in Section 2 without the payment of compensation by the Town.
- b. Artist/Donor agrees to pay any and all costs incurred by the Town in connection with the installation, maintenance, and removal of the Artwork, as provided in this Agreement.

4. Artist/Donor’s Representations and Warranties

- a. Artist/Donor represents and warrants that Artist/Donor is the original and only creator of the Artwork.
- b. Artist/Donor represents and warrants that Artist/Donor is the sole owner of the Artwork. Artist/Donor further represents and warrants that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights, or any other rights in the Artwork or parts of the Artwork. Artist/Donor represents and warrants that Artist/Donor is the sole owner of any and all copyrights and other intellectual rights pertaining to the Artwork.
- c. Artist/Donor represents and warrants that the Artwork will not pose a danger to public property, health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.
- d. Artist/Donor represents and warrants that foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor, repairable damage and will not cause the Artwork to fall below an acceptable standard of public display;
- e. Artist/Donor represents and warrants that general routine maintenance and repair of this Artwork will maintain the Artwork within an acceptable standard of public display.
- f. Artist/Donor represents and warrants that the installation and removal of the Artwork will not unacceptably damage or alter the Artwork.
- g. Artist/Donor represents and warrants that the total value of the Artwork is \$ _____, which is less than the \$50,000 maximum value established by the Town of Moraga Art in Public Spaces Policy.

5. Intellectual Property and Publicity Rights

- a. Town’s Intellectual Property License. Artist/Donor grants to Town, and to Town’s agents,

authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Artwork:

(1) Use and Display. Town may use and display the Artwork for the term provided in Section 2.

(2) Reproduction and Distribution. Town may make and distribute, and authorize the making, display and distribution of, photographs and other two-dimensional reproductions of the Artwork. Town may use such reproductions for any Town-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, documentation of Town's Art in Public Spaces Policy, and catalogues or similar publications. Town shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the Town.

b. Third Party Infringement. The Town is not responsible for any third party infringement of any copyright to the Artwork held by Artist/Donor and is not responsible for protecting the intellectual property rights of Artist/Donor.

c. Credit. On each Town reproduction of the Artwork, the Artist/Donor shall be acknowledged, using designations provided by the Artist/Donor, to be the Artist/Donor of the Artwork.

d. Trademark. In the event that Town's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, Town shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

e. Alteration. If Town alters the Artwork without Artist/Donor's consent in a manner that is prejudicial to Artist/Donor's reputation, Artist/Donor retains the right to disclaim authorship of the Artwork.

6. Liability for Damage to Artwork and Risk of Loss

a. Town shall insure the Artwork against damage and loss through the Municipal Pooling Authority ("MPA"). If the Artwork is lost or damaged while on public display, Town's liability (including the liability of MPA) shall in no event exceed the value of the Artwork stated in Section 4 of this Agreement.

b. The risk of loss or damage to the Artwork shall be borne solely by Artist/Donor until the Town takes possession and accepts the Artwork. Once the Artwork has been removed from public display pursuant to this Agreement, the risk of loss or damage to the Artwork shall be borne solely by Artist/Donor.

7. Repair and Maintenance

a. Artist/Donor shall be responsible for all reasonably necessary maintenance and repairs of the Artwork during the term of this Agreement. "Maintenance" includes, but is not limited to, routine cleaning of the Artwork as necessary to maintain the Artwork in a condition appropriate for public display and any and all actions taken to preserve, restore, or conserve the Artwork.

b. Prior to conducting any maintenance or repairs on the Artwork, Artist/Donor shall obtain the approval of the Town. Artist/Donor shall request approval of the Town in writing, at the address provided in Section 18 of this Agreement. The Artist/Donor's request shall identify the method(s) of maintenance or repair proposed, the person(s) who will perform the repair or maintenance, and the time period in which the repair or maintenance will be performed. If the Town approves the request, it may impose conditions on that approval as necessary to protect public property, health and safety.

c. Maintenance and repairs must be performed in a manner that does not damage public property. Artist/Donor is liable to the Town for any damage to public property caused by maintenance or repair activities.

d. Town shall not be liable to Artist/Donor for any damage to Artwork caused by maintenance or repairs undertaken by Artist/Donor or by the failure to undertake any such maintenance or repairs.

8. Indemnification

Artist/Donor shall indemnify, protect, defend and hold harmless the Town and its subdivisions, officials, employees and agents from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Losses") arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of Artist/Donor and/or Artist/Donor's agents, employees, or assigns; (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right; or (c) any infringement of Artist's rights under 16 U.S.C. § 106A, 16 U.S.C. § 113, Civil Code §§ 987 *et seq*, or similar state, federal, or international law. Notwithstanding the foregoing, Artist/Donor shall have no obligation under this Section with respect to any Loss that is caused solely by the active negligence or willful misconduct of the Town and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Artist/Donor. Artist/Donor acknowledges and agrees that its obligation to defend in this Section: (i) is an immediate obligation, independent of its other obligations hereunder; (ii) applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (iii) arises at and continues after the time the Loss is tendered to Artist/Donor.

9. Termination of Agreement

a. Town's Right to Terminate Agreement Before Expiration of the Term. Prior to the expiration of the term of this Agreement set forth in Section 2, the Town may decide to remove the Artwork from public display and terminate this Agreement in accordance with the procedures established in Section 8 of the Town's Art in Public Spaces Policy, as may be amended from time to time, including without limitation, amendments to allow for consideration of removal upon request by the Town. The policy is attached and incorporated hereto in its current form as Exhibit B. Prior to the meeting of the Art in Public Spaces Committee where the removal of the Artwork is being considered, the Town shall provide written notice of the intent to remove the Artwork and terminate the Agreement to the Artist/Donor at the address listed in Section 18 of this Agreement.

b. Artist/Donor's Right to Terminate Agreement Before Expiration of the Term. Prior to the expiration of the term of this Agreement set forth in Section 2, the Artist/Donor may provide written notice of Artist/Donor's intent to terminate this Agreement to the Town, at the address listed in Section 18 of this Agreement. Upon receipt of Artist/Donor's notice of termination, the Town shall follow the procedures specified in Section 8 of the Town's Art in Public Spaces Policy, attached and incorporated hereto as Exhibit B. Artist/Donor shall be solely responsible for any and all costs incurred by the Town in connection with removal of the Artwork in the event Artist/Donor elects to terminate this Agreement prior to the expiration of the term set forth in Section 2. Artist/Donor shall pay any such costs within thirty (30) days of receiving a written invoice from the Town.

10. Installation and Removal of Artwork

The Town will have authority over the installation and removal of the Artwork. The Town and Artist/Donor have jointly developed a plan for installation and removal of the Artwork in a manner that is cost-effective as well as protective of Town property and the Artwork. That plan is attached to this Agreement as Exhibit C. Artist/Donor shall take all actions reasonably necessary to facilitate and permit implementation of the plan described in Exhibit C, including making the Artwork available on a timely basis. Artist/Donor shall also be solely responsible for any and all activities identified in Exhibit C as being the responsibility of Artist/Donor. The Town will secure funding to cover the cost of those activities described in Exhibit C that are not identified as being the responsibility of Artist/Donor.

In light of the Artist/Donor's commitment to comply with the plan described in Exhibit C and the financial commitment made by the Town Council, the Town is not anticipated to bear any costs associated with the installation and removal of the Artwork. If the Town incurs any unanticipated costs as a result of any failure by Artist/Donor to carry out obligations under this Agreement and/or the plan contained in Exhibit C, Artist/Donor shall reimburse the Town for those costs. Artist/Donor shall pay any such costs within thirty (30) days of receiving a written invoice from the Town.

If the Artwork can be removed from public display without significant damage to the Artwork or the site where the Artwork is installed, the Town shall take reasonable precautions to minimize alteration of the Artwork during removal. If the Artwork cannot be removed from public display without alteration of the Artwork (e.g., it is incorporated into a building), Artist waives any and all such claims, and any rights granted under the Visual Artists Rights Act, the California Art Preservation Act, or similar law, against the Town, its agents, officers and employees, for alteration of the Artwork.

11. Choice of Law & Venue

This Agreement shall be governed by the laws of California. The venue for all litigation or other disputes relative to this Agreement shall be the Superior Court for the County of Contra Costa.

12. Captions

Section headings are for reference only and shall not be used to interpret this Agreement.

13. Severability

If any provision hereof is found to be invalid or unenforceable, such finding shall not affect the validity of any other provision hereof; and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties.

14. No Waiver

Any failure to enforce any right or to require performance of any provision of this Agreement shall not be considered a waiver of such right or performance.

15. Entire Agreement

This Agreement, including the attached and incorporated exhibits, contains the entire agreement between the parties, and supersedes all other oral or written provisions.

16. Provisions that Survive Termination of this Agreement

Sections 4, 5, 6, 8, 10, and 11 shall survive the termination of this Agreement or the expiration of the term of this Agreement.

17. Modifications and Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by authorized representatives of each of the parties hereto.

18. Notices

a. Unless otherwise indicated in this Agreement, all written communications sent by the parties may be made by U.S. Mail, e-mail, or fax, and shall be addressed as follows:

Town of Moraga
Director of Parks and Recreation
2100 Donald Drive
Moraga, CA 94556
Fax: (925) 376-2034

Artist Name
Street Address
Town, State
() ____ - ____

b. Artist/Donor shall provide written notice to Town of any change in address, or change in ownership of the Artwork, within thirty (30) days of such change.

19. Binding Effect

a. The provisions, covenants, and conditions in this Agreement shall inure to and bind the parties, their legal heirs, representatives, successors, and assigns.

b. If Artist/Donor transfers ownership of the Artwork during the term of this Agreement, all rights and obligations of Artist/Donor under this Agreement shall be transferred to the successor owner of the Artwork, and said successor owner shall be bound by this Agreement.

20. Enforcement

In the event of litigation between the parties arising out of this Agreement, the prevailing party shall recover its costs of litigation, including attorney’s fees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their signatures affixed below.

Town of Moraga

Artist/Donor

Robert Priebe
Town Manager

Artist Name
Artist/Donor Signature

Attest:

Marty C. McInturf
Town Clerk

Approved as to form:

Karen Murphy
Assistant Town Attorney

EXHIBIT A
Public Art Application

EXHIBIT B
Town of Moraga Art in Public Spaces Policy

EXHIBIT C
Plan for Installation and Removal of Artwork

Exhibit C: Plan for Installation and Removal of Artwork

Installation and deaccession (removal) of the Artwork _____ by Artist/Donor _____, which will be on loan to the Town of Moraga will require the participation and cooperation of the Artist/Donor and the Town as follows:

	Responsible Party (check appropriate column)	
	Artist/Donor	Town
1. Transport to site from current location	()	()
2. Transport back from site to original location	()	()
3. Preparation of anchoring or support	()	()
4. Placement of anchoring or support	()	()
5. Removal of anchoring or support	()	()
6. Movement of Artwork from transport vehicle to display site	()	()
7. Movement of Artwork from display site to transport vehicle	()	()
8. Other related costs for installation (specified below)	()	()
9. Other related costs for deaccession (specified below)	()	()

Note: Those items identified as being the responsibility of the Town shall be arranged by the Town and the costs covered under the provisions of the Agreement. Those items identified as being the responsibility of the Artist/Donor shall be arranged by the Artist/Donor, in cooperation with the Town and its schedule, at no cost to the Town. In accordance with the Agreement, any costs that result from Artist/Donor’s deviations from the responsibilities and schedules identified in this plan shall be borne by the Artist/Donor.

Schedule for Installation and Deaccession:

Installation (check all that apply)

- The Artist/Donor will make the Artwork available for pick up at _____ (address) by the transporter retained by the Town beginning at _____ (date/time).
- The Artist/Donor will be at the display site to assist with installation at _____ (date/time).
- The Artist/Donor will arrange in advance with the Town for a date and time to install the Artwork.

- The Artist/Donor will ensure that the Artwork is ready for display no later than _____ (date).

Deaccession (check all that apply)

- The Artist/Donor will arrange in advance with the Town for a date and time to remove the Artwork at the end of the loan term.
- At the end of the loan term, on the date and time arranged in advance by the Town, the Artist/Donor will be present at the display site to assist with de-installation.
- The Artist/Donor will be available to receive the Artwork from transporter at _____ (address) on the date and time arranged in advance by the Town.

The Artist/Donor understands and acknowledges that the Artwork will be part of a public art display involving multiple pieces donated by numerous artists. In order to limit the installation and deaccession costs associated with this display the Town has, to the greatest extent possible, arranged for the participating artists to undertake as much of the installation and deaccession work as possible, at no cost to the Town. In addition, installation and deaccession of all of the artwork in the display will proceed in a coordinated manner designed to limit associated labor and equipment costs. The Artist/Donor understands and acknowledges that they will need to cooperate and comply with the schedule and activities for installation and de-installation of the artwork established by the Town.

NOTES AND ADDITIONAL SPECIFICATIONS