

AGREEMENT FOR THE RIGHT OF ENTRY TO PUBLICLY DISPLAY ARTWORK

This Agreement is made and entered into on this ____ day of _____, 20__, by and between the City of Cupertino, California, a municipal corporation (hereinafter "Cupertino") and _____, (hereinafter "Exhibitor") whose address is _____.

RECITALS

- A. Cupertino wishes to enhance the aesthetics of the City of Cupertino by providing artworks to be displayed publicly for enjoyment by the citizens, residents, and visitors to Cupertino.
- B. Cupertino is the owner of the certain real property described herein below within the city of Cupertino (the "Display Site").
- C. Exhibitor wishes to loan artwork to Cupertino for public display.

NOW, THEREFORE, in consideration of the foregoing promises and mutual covenants hereinafter set forth and other valuable consideration, the parties agree as follows:

1. Display Site: Cupertino grants to Exhibitor permission to enter city property described as _____ for the purpose of displaying the Artwork.
2. Term of Loan of Artwork: The public display of the Artwork shall commence on or after _____, 20__, and shall terminate on _____, 20__. No extensions of this time shall be given without a written agreement between the parties to that effect. Cupertino, may, at its sole option, require the removal of the Artwork at a date prior to the termination date as set forth herein. In the event that Cupertino does require an earlier removal of the Artwork, Cupertino shall give at least thirty (30) days notice thereof, except for immediate removal under the "Commercial Sale of Art in City Facilities" policy if it is determined that the subject material is offensive.
3. Maintenance of Artwork: The Artwork shall be maintained by Exhibitor at all times in a safe, neat, and good physical condition. Cupertino shall be the sole judge of the quality of maintenance. If Cupertino is not satisfied with the maintenance by the Exhibitor, Exhibitor, upon receipt of written notice submitted by Cupertino through its City Manager which states in general terms the manner of required maintenance, shall promptly perform the required maintenance.

4. Removal of Artwork: Upon the expiration or sooner termination of this Agreement, Exhibitor, at its sole cost and expense, agrees to immediately remove the Artwork from the Display Site and restore the Display Site to its original condition. If Exhibitor fails to exercise its duties under this section, Cupertino shall have the right to remove the Artwork, store it, and restore the Display Site at no cost or liability to Cupertino. Exhibitor covenants and agrees to reimburse Cupertino for any removal, storage, and/or restoration costs and expenses incurred by Cupertino.
5. Costs of Installation, and Maintenance:
 - a. All costs incurred with respect to the transportation of the Artwork both to and from the Display Site shall be borne by Exhibitor.
 - b. All costs incurred with respect to the installation of the Artwork and Display Site preparation shall be borne by Exhibitor.
 - c. All costs of maintaining the Artwork during the time of display shall be borne by Exhibitor.
 - d. All landscaping maintenance services associated with outdoor displays shall be provided by Cupertino at no cost to Exhibitor.
6. Insurance and Liability: In no event shall Cupertino be liable for any injury, damage including defacement, loss, theft or disappearance whatsoever of or to the displayed Artwork. Exhibitor agrees to indemnify, defend and hold Cupertino, its officers, agents, servants and employees harmless against any claims or suits for loss or damage to personal property and damage or injury, including death, to any person or persons, arising out of or in connection with the existence, maintenance, use, or location of the Artwork at the Display Site, whether or not caused, in whole or in part, by alleged negligence of officers, agents, servants, employees, contractors, subcontractors, licensees or invitees of Exhibitor or Cupertino. Exhibitor agrees to assume all liability and responsibility of Cupertino, its officers, agents, servants and employees for those suits and claims. Exhibitor agrees to indemnify Cupertino for any injury or damage to the Display Site, whether arising out of or in connection with any acts or omissions of Exhibitors or their officers, agents, employees, contractors, subcontractors, licensees, or invitees or caused in whole or in part by the alleged negligence of Cupertino's officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees.

7. No Agreement to Purchase or Lease: By accepting this loan of the Artwork the parties recognize that no agreement to lease or purchase the Artwork is intended. Any subsequent lease or purchase of the Artwork shall be set forth in a separate agreement and shall be subject to the Fine Arts Commission's policies for the purchase of public art.
8. Non-Assignability: No rights created in Exhibitor and for the benefit of Exhibitor under this agreement shall be assignable and any attempted assignment of this Agreement shall terminate the rights granted to Exhibitor under this Agreement, except that nothing contained herein shall be construed as a limitation on any rights under copyright laws to which the Artwork may be subject.
9. City's Right of Entry: Cupertino and its agents and employees, at all times during the installation and display of the Artwork, shall have the right to of entry and free access to the Display Site and the right to inspect all work done, labor performed and materials furnished in and about the Display Site and to inspect all aspects of the installation of the Artwork.
10. Exercise of City's Rights: Exhibitor represents and warrants that the rights granted herein may be exercised by Cupertino without violation of any law of privacy, and without infringing in any way whatsoever the rights of any person, firm or corporation.
11. Attorney's Fees: In the event that either party shall hereafter bring any action upon any default in performance of this Agreement, the prevailing party shall recover reasonable attorney's fees in addition to any other remedies which may be available.
12. Written Amendment: This Agreement shall constitute the entire Agreement between Exhibitor and Cupertino with respect to the Artwork and shall not be subject to amendment, modification, or termination, except in writing signed by the parties hereto.

WITNESS THE EXECUTION HEREOF the day and year first above written.

APPROVED AS TO FORM:
CITY OF CUPERTINO

DATE:

BY:

BY:

CITY OF CUPERTINO (print name)

EXHIBITOR (print name)