

CITY OF ENCINITAS
PUBLIC ART LOAN AGREEMENT

This PUBLIC ART LOAN AGREEMENT (Agreement) made and entered into this _____ day of _____, ____ between the City of Encinitas a municipal corporation, hereinafter called the "City," [NAME OF ARTIST/ARTIST GROUP] hereinafter called the "Artist".

RECITALS:

WHEREAS, the City is the owner/operator of the property located at [ENTER LOCATION];

WHEREAS, the City has established a Public Art Policy, the purpose of which is to increase the visual and artistic quality of the City by the placement of art in public places; and

WHEREAS, Artist is the owner of a work of art entitled [ENTER NAME OF ARTWORK] hereinafter called the "Work" and desires to loan the Work to the City for placement on the property located [ENTER ADDRESS/LOCATION FOR ARTWORK] according to the terms and conditions as set forth herein; and

WHEREAS, City and Artist desire to enter into this Agreement according to the terms and conditions as more particularly set forth; and

NOW THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth, it is agreed as follows:

1. **Definitions:** The following terms shall have the meanings herein ascribed to them:

"City Manager" shall mean the City Manager of the City of Encinitas, or their designee.

"Site" shall mean that certain location on the property located at [ADDRESS LOCATION FOR ARTWORK], where the Work shall be placed, as depicted by the photograph, attached hereon as Exhibit "A", a copy of which is attached hereto and incorporated by reference herein.

"Work" shall mean the work of art described as [NAME OF ARTWORK], as depicted in Exhibit B", a copy of which is attached hereto and incorporated by reference herein. "Work" shall also include a recognition plaque.

2. **Term:** The term of this Agreement shall be two (2) years commencing on _____, unless terminated earlier as set forth herein.
3. **Responsibility/Costs:** Except as more particularly set forth herein, Artist shall be financially responsible for all costs of transportation, insurance, and maintenance. These costs shall include but are not limited to transportation of the Work to and from the Site; and performing any required periodic maintenance or repair.

City agrees to compensate Artist a fixed fee for services to be performed and furnished during the term of the Agreement in accordance with Attachment "A". Unless otherwise agreed in writing, payment terms are net thirty-days (30) from date of receipt of a non-disputed invoice or acceptance of services, whichever occurs last. The City shall endeavor to pay each invoice within Artist's payment terms and will not accept late charges.

SAMPLE AGREEMENT – DO NOT COMPLETE

4. Installation and Removal of Work: City is responsible for sculpture installation and deinstallation, including baseplates and all related permits and fees.
5. Signage: Signage for the Work shall be limited to the pre-approved signage submitted by Artist as shown in Exhibit "B".
6. Maintenance and Site Access: Artist shall be solely responsible for the maintenance of the Work and for any required repairs while it is on display. Prior to accessing the Site, the Artist shall provide a list of equipment and materials to be used on the site and obtain written permission from the City Manager or designee.
7. Liability for Damage: Artist shall be solely responsible for any and all damage or loss to the Work, which occurs during the term of this Agreement.
8. Hold Harmless: Artist shall defend, indemnify, and hold harmless City and its elected and appointed officials, officers, agents, departments, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an artist, agent, employee of the Artist or its Subcontractors and any and all third parties), expenses and liability of every kind, nature and description (including without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or related to, directly or indirectly, in whole or in part, any services performed under Agreement by Artist, and Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. Artist's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.
9. Insurance: Artist shall obtain, and during the term of Agreement maintain a general liability policy from an insurance company authorized to be in business in the State of California. The amount of general liability insurance shall not be less than one million dollars (\$1,000,000) for each occurrence. The insurance policies shall provide that the policies shall remain in full force during the life of Agreement and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to City from the insurance company. Artist shall provide a certificate of insurance with the additional insured endorsement prior to the commencement of this agreement.

Should Artist employee person(s) related to this Agreement, Artist shall comply with Workers Compensation Insurance requirements for statutory limits.
10. Default: Artist acknowledges that the terms, conditions, covenants, and requirements on its part to be kept, as set forth herein, are material inducements to City entering into this Agreement. Should Artist fail to perform any term, condition, covenant, or requirement on its part to be kept, the City Manager may declare a default by giving written notice thereof to Artist, specifying those acts or things that must occur in order to cure said default. Artist shall have such period of time, as the City Manager shall reasonably specify, in the written notice, within which to cure the default. Should the default remain, upon expiration of the time granted to cure the same, the City Manager may terminate this Agreement by written notice of termination, said notice specifying the time and date of termination.
11. Termination: This Agreement may be terminated under the following circumstances:
 - a. Artist provides City a 30-day written notice at any time prior to the expiration of the Agreement.
 - b. City provides Artist a 30-day written notice at any time prior to the expiration of the

SAMPLE AGREEMENT – DO NOT COMPLETE

Agreement.

12. Waiver: The failure of City to take any action with respect to any breach of any term, covenant or condition contained herein, or any instances of default, shall not be deemed to be a waiver of the same, and the subsequent acceptance of rent or further performance hereunder from Artist shall not be deemed a waiver of any default or breach by Artist.
13. Notices: Notices required by or related to this Agreement shall be sent by United States registered or certified mail, postage prepaid and return receipt requested. Notices to City shall be sent to:

City Manager
City of Encinitas
505 South Vulcan Avenue
Encinitas, CA 92024

Artist Name
Artist Address

14. Remedies - Cumulative: All remedies hereinbefore and hereafter conferred on City shall be deemed cumulative and no one exclusive of the other or any other remedy conferred bylaw.
15. Severability: Should any section, sentence, clause, part, or provision of this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the same shall not affect the validity of this Agreement as a whole or any part hereof other than the part declared to be invalid.
16. Entire Agreement: This Agreement represents the entire agreement between the parties. No other representations, whether oral or otherwise, shall be binding upon the parties and all other agreements or understandings are superseded and cancelled by the execution of this Agreement. This Agreement may be modified, cancelled, renewed, or extended only by written agreement of the parties.

CITY OF ENCINITAS

ARTIST/ARTIST GROUP

Pamela Antil, City Manager Date

NAME Date

APPROVED AS TO FORM

Tarquin Preziosi, City Attorney Date

ATTACHMENT “A”

COMPENSATION FOR SERVICES

The City shall pay the artist a fixed fee which shall constitute full compensation for all materials, supplies, insurance, and delivery costs to be performed and furnished in loan of the Work and any extra work by the Artist under the Agreement. Compensation shall be paid in accordance with the following payment schedule:

Description	Fee
Artist delivery to the installation site and acceptance by the City of Encinitas	\$1,000
Deinstallation by the City and retrieval by the Artist at the conclusion of the Agreement	\$1,000

The total Agreement shall not exceed \$2,000.

Unless otherwise agreed in writing, payment terms are net thirty-days (30) from date of receipt of a non-disputed invoice or acceptance of services, whichever occurs last. The City shall endeavor to pay each invoice within artist's payment terms and will not accept late charges.

EXHIBIT A

DESCRIPTION AND PHOTO OF SITE

Park Name:

Address:

Location Description:

SAMPLE

EXHIBIT B

DESCRIPTION AND NAME OF ARTWORK

ARTIST CONTACT INFORMATION:

Name:
Phone:
Email:
Address:
Website:

ARTWORK INFORMATION:

Title:
Dimensions :
Weight:
Medium:
Year Completed:
Location:
Insurance Value:
Honorarium:
Price (or NFS):

Description (400 words max):

Bio (200 words max)

Sign Information:

Images