

TEMPORARY ART EXHIBITION LOAN AGREEMENT

This Agreement is entered into by the **CITY OF SAN ANTONIO**, ("**CITY**") acting by and through its **Director** of the **Department for Culture and Creative Development**, and **NAME** ("**EXHIBITOR**") for art exhibition services, specifically the loan of **ARTWORKS**, described more specifically in Attachment A, to be displayed at **LOCATION** ("**LOCATION**") **ADDRESS** from **DATE** to **DATE**

In consideration of the terms, covenants, agreements, and duties herein contained, and other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, **CITY** and **EXHIBITOR** agree, covenant, and warrant as follows:

1. **EXHIBITOR** shall loan **ARTWORKS** for display to the public at the **LOCATION** at no charge. **EXHIBITOR** will be responsible for the transportation, delivery, and installation of **ARTWORKS** to **LOCATION**, no later than **DATE**. **EXHIBITOR** is responsible for removal of the **ARTWORKS** from **LOCATION** within seven (7) days after the closing date of the exhibition.
2. **CITY** acknowledges that the acquisition of the Artwork will benefit **CITY** in its goal to develop a permanent collection of local artworks that will increase public awareness and support for local artists by displaying their artwork in City Hall and other City facilities. **CITY** may seek to acquire the selected artwork as part of **CITY's** Portable Artworks Collection in accordance with the terms of the Art Acquisition Agreement in Attachment B for the price set forth in this Temporary Art Exhibition Loan Agreement. **EXHIBITOR** may not sell the **ARTWORKS** to any other party during the term of this Agreement without the written consent of **CITY**.
3. **EXHIBITOR** acknowledges that the **CITY** will not store the **ARTWORKS**. If **EXHIBITOR** fails to pick up the **ARTWORKS** as scheduled, **CITY** may place **ARTWORKS** in storage at the sole risk and expense of the **EXHIBITOR**.
4. In the event **EXHIBITOR** cannot complete the aforementioned services, then **EXHIBITOR** shall inform **CITY** in writing upon determining that **EXHIBITOR** lacks such ability, whereupon this Agreement shall terminate and **CITY** shall have no further obligation under this Agreement.
5. **CITY** reserves the right to remove and/or cover the **ARTWORKS** anytime during the Exhibit period if the space becomes obligated for another service. **CITY** shall promptly notify **EXHIBITOR** of the necessity of removal or relocation of the **ARTWORKS**, and make a good faith effort to accommodate **EXHIBITOR's** preferences in such event. **CITY** shall be responsible for all costs associated with such temporary removal.
6. **EXHIBITOR** warrants that items exhibited do not violate any local, state, or federal laws. **EXHIBITOR** warrants and represents to the City of San Antonio that **EXHIBITOR** created the **ARTWORKS** and owns all intellectual property rights in the **ARTWORKS**, or is the

legal owner of the **ARTWORKS** and has the legal right to convey certain rights to the **CITY**.

7. Prior to the date of installation, **EXHIBITOR** shall provide **CITY** with written information about the **ARTWORKS** to be used in press releases and exhibition signage including credit lines and biographies.
8. **EXHIBITOR** grants **CITY** a nonexclusive, royalty-free, perpetual license to photograph, film, and videotape any or all of the **ARTWORKS** exhibited for the purpose of publicizing or documenting the Exhibit or any other non-commercial purpose. **CITY** shall provide a credit line for **EXHIBITOR** whenever exercising this license.
9. **EXHIBITOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY** and the elected officials, employees, officers, directors, volunteers and representatives of **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, intellectual property rights infringement and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **EXHIBITOR's** activities under this Agreement, including any acts or omissions of **EXHIBITOR**, any agent, officer, director, representative, employee, **EXHIBITOR** or subcontractor of **EXHIBITOR**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT EXHIBITOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **EXHIBITOR** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **EXHIBITOR** known to **EXHIBITOR** related to or arising out of **EXHIBITOR's** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **EXHIBITOR's** cost. **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **EXHIBITOR** of any of its obligations under this paragraph.

10. **CITY** maintains a program of property insurance which protects the fine art owned by the City and fine art loaned to **CITY** while in the custody and control of **CITY**. Pursuant to the terms and conditions of this insurance program, **CITY** will protect the

condition and value of **ARTWORKS** loaned to **CITY** while on display in conformance with this Agreement. **CITY** will not be responsible for damage or loss of any nature or due to any cause of loss during transportation to, installation in, or removal from any **CITY** location.

11. **CITY** will refer all inquiries regarding purchase of **ARTWORKS** exhibited to the **EXHIBITOR** with contact information provided by **EXHIBITOR** in Attachment "A." **CITY** shall not be or act as sales agent for **EXHIBITOR** for any **ARTWORKS** sold during the exhibition. **EXHIBITOR** shall transfer any **ARTWORKS** purchased during the exhibition to the buyer at the end of the exhibition.
12. This Agreement does not create an employer-employee relationship between **EXHIBITOR** and **CITY**, or any other relationship whatsoever, except for the relationship of space provider and **EXHIBITOR**. All services rendered hereunder by the **EXHIBITOR** shall be supplied as an independent contractor, and in no event shall the **EXHIBITOR** be or act as agent, partner, employee, tenant, licensee or joint venture or as any other representative whatsoever of **CITY**.
13. **CONFLICT OF INTEREST.** **EXHIBITOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, **EXHIBITOR** warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **EXHIBITOR** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with the **CITY's** Ethics Code.

14. **NON-DISCRIMINATION.** As a party to this Agreement, **EXHIBITOR** understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

Agreed to this the DAY day of MONTH / YEAR.

ART EXHIBITOR: (NAME)

EXHIBITOR

CITY OF SAN ANTONIO, a Texas municipal corporation

NAME
POSITION
DEPARTMENT (CITY)

Attachment "A"

Exhibitor/Lender – DESCRIPTION OF ARTWORKS

Date: _____

Name: _____

Address: _____

City / State / Zip: _____

Phone: _____

Email: _____

D.B.A. Name (if applicable): _____

ARTWORKS on loan to the **CITY OF SAN ANTONIO** for temporary display at **LOCATION**
(**"LOCATION"**) **ADDRESS** from **DATE** to **DATE**.

Credit Line: (example: courtesy of the artist)

List of Works

TITLE/DATE:

MEDIUM:

DIMENSIONS:

VALUE:

TITLE/DATE:

MEDIUM:

DIMENSIONS:

VALUE:

TITLE/DATE:

MEDIUM:

DIMENSIONS:

VALUE:

TITLE/DATE:

MEDIUM:

DIMENSIONS:

VALUE:

Attachment "B"

ART ACQUISITION AGREEMENT

This Art Acquisition Agreement ("Agreement") is made this ____ day of _____, 20__, by and between the NAME ("Artist"), and the City of San Antonio, Texas, a Texas Municipal Corporation, acting by and through its Department for Culture and Creative Development ("City").

WITNESSETH:

WHEREAS, Artist is the owner of artwork(s) ("Artwork") described in Exhibit I; and

WHEREAS, Artist desires to sell the Artwork to City in accordance with the terms hereof; and

WHEREAS, City acknowledges that the sale of the Artwork will benefit City and desires to purchase the Artwork in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing, which is hereby deemed a contractual part hereof, and in consideration of the mutual promises, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Closing. Artist agrees to transfer to the City all of their interest in the Artwork at a closing ("Closing") on a mutually agreed upon date subsequent to the date of this Agreement, but not later than DATE. The transfer of the Artwork may require a bill of sale or other document of conveyance, should such be reasonably requested by City.

2. City agrees to pay Artist an amount not to exceed \$___ as total compensation. These funds shall be paid to Artist as follows:

Payment

3. No additional fees or expenses of Artist shall be charged by Artist nor be payable by City. Total payments to Artist cannot exceed that amount set forth in Section 2 above, without prior approval and agreement of all Parties, evidenced in writing by an amendment, which shall be subject to the approval of City Council, if required.

4. Condition of Artwork and Indemnity. City acknowledges and agrees that Artist is selling and City is purchasing the Artwork in new condition. Artist warrants that the Artwork is safely constructed and can be installed properly in accordance with all applicable laws, regulations, and City ordinances.

ARTIST covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings,

actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, intellectual property infringement and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to ARTIST'S activities under this Agreement, including any acts or omissions of ARTIST, any agent, officer, director, representative, employee, consultant or subcontractor of ARTIST, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT ARTIST AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. OWNER shall advise CITY in writing within 24 hours of any claim or demand against CITY or ARTIST known to ARTIST related to or arising out of ARTIST's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at ARTIST's cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving ARTIST of any of its obligations under this Section 4.

5. Delivery and Possession. Artist shall deliver possession of the Artwork at Closing at which time title shall pass. At such time, the Artwork shall become part of the City of San Antonio Art Collection. Further, the Parties agree that delivery, placement, and installation of the Artwork shall be at the sole cost and expense of City.

6. Copyrights. City shall have ownership and possession of the Artwork upon final payment by City, including exclusive right to display the Artwork. Artist grants City a license to make any and all reproductions or derivatives in whatever form of the Artwork for educational, public relations, arts promotional, commercial or any other purpose and such uses will not result in any additional payments to Artist. Artist retains copyrights and intellectual property and/or patents related to the Artwork, including potentially those patents, related to materials used in the fabrication of the Artwork. However, any use of the Artwork by Artist or any third party must be approved, in advance, by City except that Artist is expressly allowed to use reproductions of the Artwork self-promotion, presentation and portfolio use.

7. Moral Rights. It is the understanding of the parties hereto that by executing the Artist's Waiver of Moral Rights which is attached hereto and incorporated herein as Exhibit II, Artist has consented and agreed that upon passage of title in the Artwork to City and upon final acceptance and placement of the Artwork on City property, any removal or relocation of the Artwork, if practical and economically feasible as determined by City, in its sole discretion, will

occur in conformity with the City's Public Art Policy. City's decisions regarding removal or relocation of the Artwork are final and may occur at any time. City has the right to remove the Artwork at any time. City's removal of the Artwork may result in the Artwork's distortion, mutilation or modification. In addition, in the event that any element of the Artwork constitutes a public safety hazard, in City's sole discretion, City has the right to remove only the element posing the public safety hazard without prior written notice to Artist.

Additionally, City has the right to donate or sell the Artwork at any time. Before exercising this right, City shall give Artist 30 days from issuance of written notice to Artist to purchase the Artwork for the greater of the total price or market value, plus all costs associated with the removal of the Artwork from the site, clean-up of the site and delivery to Artist.

8. Mutual Representations. The Parties represent that they each have the full right, power, and authority to execute and deliver this Agreement and to consummate the transaction provided for herein without obtaining any further consents or approvals from, or the taking of any other actions with respect to third parties.

9. Artist's Representations. Artist covenants, represents and warrants to City that as of the date hereof and as of Closing:

(a) Artist owns good and indefeasible title to the Artwork and that there are no other sales contracts outstanding for acquisition, license or lease of the Artwork;

(b) there are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Artist, threatened that could materially adversely affect the ownership, operation, or maintenance of the Artwork or Artist's ability to perform hereunder; and

(c) Artist has exclusive copyrights in the Artwork.

10. Prior to Closing, Artist shall provide Technical and Maintenance Instructions, which shall be attached hereto and incorporated herein as Exhibit III;

11. Notices.

(a) Any notice required or permitted under this Agreement shall be given in writing and shall be effective for all purposes if hand delivered to the party designated below or if sent by (a) certified or registered United States mail, postage prepaid; or (b) by expedited delivery service, either commercial or United States Postal Service, with proof of delivery; or (c) by telecopy (provided that such telecopy is confirmed by expedited delivery service or by mail in the manner previously described), addressed as follows:

If to the ARTIST:

NAME
Address
City

If to the City:

City of San Antonio
Department for Culture and Creative Development
Attn: James Leflore, Public Art Manager
115 Plaza de Armas, Suite 102
San Antonio, Texas 78205

or to such other address and person as shall be designated from time to time by either party in a written notice to the other in the manner provided for in this paragraph. The notice shall be deemed to have been given at the time of delivery if hand delivered, or in the case of registered or certified mail, three (3) business days after deposit in the United States mail, or if by expedited delivery, upon first attempted delivery on a business day. A party receiving notice that does not comply with the technical requirements for notice under this paragraph may elect to waive any deficiencies and treat the notice as having been properly given.

IN WITNESS WHEREOF, the parties have executed this Agreement, in duplicate originals, as of the date first above written.

CITY OF SAN ANTONIO, TEXAS
a Texas Municipal Corporation

Felix Padron
Director, Department for Culture and Creative Development

ARTIST

NAME

Approved as to Form:

City Attorney

Exhibit I
Description of Artwork

Exhibit II
Waiver of Moral Rights

WHEREAS, Artist created Artwork and sold Artwork to the City of San Antonio; and

WHEREAS, the Artwork is intended to be located on City property in City facilities in San Antonio, Texas **NOW THEREFORE:**

Artist consents and agrees to the placement of the Artwork on City property in City facilities. Artist acknowledges that the incorporation and installation of the Artwork at City facilities may subject the Artwork to destruction, distortion, mutilation, or other modification if and when removed. Removal or relocation of the Artwork, if practical and economically feasible as determined by City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in the City's Public Art San Antonio Policies and Guidelines. Artist agrees that a City decision made under this paragraph regarding if, when and how to remove the Artwork is final.

Artist hereby expressly consents to both the installation into and removal from City facilities of the Artwork and thereby expressly waives his Moral Rights to the Artwork. It is agreed that if the Artwork, or any portion thereof, is removed from the Location causing it or any part thereof to be destroyed, distorted, mutilated or modified in any way, the Artwork may not thereafter be referred to as "an Artwork by the Artist".

Executed to be effective this the ___ day of _____, 20__.

ARTIST

Name

Exhibit III
Technical and Maintenance Instructions