



Town of Lyons Arts and Humanities Commission
Artist/Lender Agreement for Display of Outdoor Public Art in Lyons

This ARTIST/LENDER AGREEMENT FOR DISPLAY OF OUTDOOR PUBLIC ART IN LYONS (“Agreement”) is made and entered into this ____ day of _____ 20__, by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado 80540 (the “Town”), and _____ (the "Artist/Lender").

A. GENERAL PROVISIONS:

1. The Outdoor Public Art referenced herein includes all art pieces listed and described in **Exhibit A** and shall be referred to as “the Work.”
2. The Town has broad discretion in determining the selection, display, and installation and removal requirements for borrowed object(s). The Work has been selected for display using criteria established by the Lyons Arts and Humanities Commission (“LAHC”), and the Work and the Artist/Lender shall adhere to all guidelines, requirements, and direction established by the Town and provided to the Artist/Lender.
3. Term. The Artist/Lender shall install the Work at the installation date and time set forth in **Exhibit A** (“Installation Date”) and shall remove the Work at the removal date and time set forth in **Exhibit A** (“Removal Date”). The Work shall remain on display from the Installation Date until the Removal Date (“Display Period”) unless it is sold prior to the Removal Date pursuant to Section D below.
4. Honorarium Payment. The Town shall pay the Artist/Lender an honorarium payment for the display of the Work. The Town and the Artist/Lender shall agree upon an appropriate honorarium payment as set forth in **Exhibit A** and shall indicate the total amount agreed upon in **Exhibit A**. The Town shall pay Seven Hundred Fifty Dollars (\$750.00) per piece of art for up to six (6) pieces of art from the Artist to display on Town property. In no event shall the Town pay an honorarium payment for a single piece of artwork exceeding Seven Hundred Fifty Dollars (\$750.00). Nor shall the Town pay an honorarium payment for the display of a piece of artwork for a display period of longer than two years. If the Town and Artist/Lender agree to a display period that is longer than two years, the Artist/Lender understands and agrees that he or she shall receive no honorarium payment after the second year of display. The Town shall pay the agreed upon honorarium payment to the Artist/Lender in two installments as follows:
 - a. The first installment shall be fifty percent (50%) of the total honorarium payment, and the Town shall pay the Artist/Lender the within thirty (30) days of the Installation Date.
 - b. The second installment shall be fifty percent (50%) of the total honorarium payment, and the Town shall pay the second installment to the Artist/Lender within



thirty (30) days of the Removal Date. However, if the Work or any portion thereof is sold prior to the Removal Date and does not remain on display until the Removal Date, the Town shall pro-rate the second installment to reflect the actual time that the Work was on display. Pursuant to Section D below, if the Work is sold prior to the Removal Date and does not remain on display until the Removal Date, the Artist/Lender may replace the Work with another piece of artwork, subject to the Town's approval, to display for the remainder of the Display Period. If the Work is replaced for the remainder of the Display Period, the Artist/Lender shall be entitled to the entire amount of the second installment for the Work.

5. Responsibilities of the Town.

- a. The Town, through its LAHC Staff Liaison, will coordinate with the Artist/Lender to ensure proper installation and removal of the Work.
- b. The Town will use reasonable care when handling and displaying the Work.
- c. The Town will promptly report evidence of damage to the Work observed by the Town that occurs while the Work is on display, regardless of cause, to the Artist/Lender.
- d. The Town will not alter, repair, or restore the Work without the written authorization of the Artist/Lender.
- e. The Town may make emergency repairs to the Work and/or temporarily or permanently remove the Work when the Town, in its sole discretion, finds it necessary to do so to preserve the public health, safety and welfare.

6. Responsibilities of the Artist/Lender.

- a. The Artist/Lender represents that he or she is the legal owner of the Work and has the authority to enter into this Agreement with the Town of Lyons.
- b. The Artist/Lender is responsible for providing all necessary items and equipment for the installation, display, and removal of the Work. However, upon request by the Artist/Lender, the Artist/Lender may check out a base or column from the Town of Lyons for the display of the Work, depending on availability and suitability for use with the Work. The Artist/Lender must submit this request to the Town as provided in Subsection 6.d.ii of this Section A. If the Artist/Lender uses a base provided by the Town, the appropriate box must be checked and information included in **Exhibit A**. The Artist/Lender is responsible for returning the base in substantially the same condition as when the base was first checked out and shall reimburse the Town for the actual cost of repair or replacement necessitated by damage to the base caused by the Artist/Lender or the Work. Upon return, the Town will document any damage to the base and notify the Artist/Lender of such damage. The Artist/Lender shall reimburse the Town for the amount requested within thirty (30) days of receipt of such notice.
- c. The Artist/Lender shall ensure that the Work:



- i. Is original;
 - ii. Will remain on display at the location set forth in **Exhibit B** (“Display Location”) for the entirety of the Display Period unless the Work is sold prior to the Removal Date (see Section D below); and
 - iii. Is of sound construction using durable and sturdy materials, has no breakable or easily damaged components, presents no safety or liability concerns, has no maintenance requirements, and is wholly suitable for outdoor display for the Display Period.
 - d. In addition to the foregoing, the Artist/Lender is responsible for the following:
 - i. The integrity and workmanship of the Work, its parts, and its attachment(s) to any mounting surface;
 - ii. Communicating with the LAHC Staff Liaison at least five (5) business days prior to the Installation Date regarding any special needs or requests for the installation and/or removal of the Work so that the LAHC Staff Liaison has sufficient time to coordinate with any Town departments regarding such needs or requests for the installation and/or removal of the Work;
 - iii. Complying with direction from Town Staff and members of the LAHC during all phases of installation and removal;
 - iv. Delivering the Work to the Display Location;
 - v. Installing the Work under the supervision of the Town on the Installation Date;
 - vi. Removing the Work under the supervision of the Town on the Removal Date or otherwise in accordance with the provisions of this agreement;
 - vii. Notifying the LAHC Staff Liaison of any change in the Artist/Lender’s contact information in a timely manner;
 - viii. Providing photo(s) of and the desired placard information for the Work as provided in **Exhibit A** to this Agreement; and
 - ix. Adequately insuring the Work and naming the Town of Lyons as an additional insured on all such policies pursuant to Section F below. Neither the Town of Lyons nor the LAHC is responsible for insuring the Work.
7. Special Instructions or Conditions. Any special instructions or conditions regarding the Work that are in addition to the terms of this Agreement may be incorporated into this Agreement as an exhibit, using the form attached hereto as **Exhibit C**, as long as those instructions or conditions do not conflict with this Agreement.



B. INSTALLATION:

1. The Artist/Lender shall inform the LAHC Staff Liaison of any special needs or requests regarding installation of the Work in accordance with Section A.6.d.ii of this Agreement.
2. The Artist/Lender shall deliver the Work, which shall be ready for installation and display, to the Display Location on the Installation Date.
3. The Artist/Lender shall install the Work on the Installation Date under the supervision of the Town and shall cooperate with any directions or requirements provided by the Town.

C. REMOVAL:

1. The Artist/Lender shall inform the LAHC Staff Liaison of any special needs or requests regarding removal of the Work in accordance with Section A.6.d.ii of the Agreement.
2. The Artist/Lender shall remove the Work from the Display Location on the Removal Date under the supervision of the Town and shall cooperate with any direction or requirements provided by the Town.

D. SALE PRIOR TO REMOVAL DATE:

1. If the Artist/Lender sells the Work prior to the Removal Date, the Town shall be entitled to a payment by the Artist/Lender of ten percent (10%) of the final sale price of the Work within thirty (30) days of the date of sale as reflected on the Sale Form, attached as **Exhibit D**.
2. If the Work is sold prior to the Removal Date, the Artist/Lender shall:
 - a. Execute an amended **Exhibit A** and replace the Work with another piece that meets the criteria established by the LAHC and that will be on display for the remainder of the Display Period, within ten (10) business days of the removal of the Work; or
 - b. Leave the Work on display until the Removal Date through an agreement between the buyer of the Work and the Town; or
 - c. In the event that the Artist/Lender does not replace the Work with another piece and the buyer of the Work does not agree to leave the Work on display until the Removal Date, then the Work must be removed by the owner of the Work or his or her designee within thirty (30) days of the date of sale of the Work. If the Work is not removed within thirty (30) days of the date of sale of the Work, then the Town may put the Work into storage and charge the owner of the Work a storage fee as set forth in Section E below.
3. If the Work is sold prior to the Removal Date, the Artist/Lender and the buyer of the Work must complete the Sale Form, attached hereto as **Exhibit D**, within ten (10) days of the date of sale of the Work and provide an executed copy to the Town. In all cases, the Sale Form must be completed prior to the removal of the Work if the Work is sold prior to the Removal Date.

E. STORAGE:



1. The Town may place the Work or piece or part thereof into storage at a designated storage location on Town premises under the following circumstances:
 - a. The Artist/Lender has not removed the Work by the Removal Date and time set forth in **Exhibit A**;
 - b. Under the circumstances set forth in Subsection 2.c of Section D above;
 - c. In the event that the Work is damaged such that repairs are necessary or the Town, in its sole discretion, determines that the Work endangers the health, safety, or welfare of the public.
2. The Town shall provide written notice to the Artist/Lender that the Work has been placed in storage within three (3) days of the date the Work is placed into storage.
3. In the event that the Town puts the Work into storage pursuant to Subsection 1 of this Section E, the Artist/Lender has ten (10) business days from the date of the written notice (see Subsection 2 above) to contact the LAHC Staff Liaison and coordinate retrieval of the Work from storage and/or repair of the Work.
4. If the Artist/Lender does not pick up the Work from Town storage or repair and return the Work to the Display Location within ten (10) days of the Removal Date, then the Town shall charge the Artist/Lender a storage fee. If the Work is put into storage under the circumstances set forth in Subsection 2.c of Section D, then the storage fee shall be charged to the owner of the Work beginning on the date storage of the Work begins. The storage fee shall be twenty-five dollars (\$25.00) per month. The Town may pro-rate the monthly storage fee based on the actual time that the Work is stored by the Town.

F. INSURANCE:

1. The Artist/Lender is solely responsible for adequately and appropriately insuring the Work during the Display Period. The Town is not responsible for providing any insurance for the Work. The Town is not responsible for any loss or damage to the Work during the Display Period or while the Work is in the possession of the Town.
2. All policies of insurance for the Work shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Artist/Lender; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Work. The Artist/Lender shall not be an insured party for any Town-obtained insurance policy or coverage.
3. Prior to the Installation Date, the Artist/Lender shall submit to the Town certificates of insurance for all insurance policies for the Work. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section F shall be indicated on each certificate of insurance. Certificates of insurance shall reference the title of the Work as identified in **Exhibit A**. The Town may request and the Artist/Lender shall provide within three (3) business days of such request a current certified copy of any policy of insurance and any



endorsement of such policy. The Town may, at its election, prohibit the installation of the Work until the requested insurance policies are received and found to be in accordance with this Section F.

4. The signing of this Agreement by the Town does not constitute endorsement or verification of the Artist/Lender's stated value of the Work.
5. The Town shall not be responsible for any error or deficiency in the information furnished to the Artist/Lender's insurer or any lapse in coverage by the Artist/Lender's insurer.

G. INDEMNIFICATION:

1. In consideration for being permitted to display the Work on the premises of the Town, the Artist/Lender agrees to indemnify and hold harmless the Town, its officers, employees, insurers, volunteers, and elected officials, from and against all liability, claims, and demands, which are incurred, made, or brought by any person or entity, on account of damage, loss, or injury, including without limitation claims arising from loss of or damage to the Work or other property, bodily injury, personal injury, sickness, disease, death, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Work or its display on Town premises, whether any such liability, claims, and demands result from the act, omission, negligence, or other fault on the part of the Town, its officers, employees, insurers, volunteers, and elected officials, or from any other cause whatsoever.
2. By executing this Agreement, the Artist/Lender understands and acknowledges that the display of the Work on Town premises may involve risks of damage, loss, or injury to the items, that the Town assumes no responsibility, has and exercises no control over, and undertakes no duty of care, of any nature in connection with the Work or its display on Town premises. The Artist/Lender further understands and agrees that the Artist/Lender shall at all times be and remain solely responsible for maintaining appropriate liability insurance, property insurance, and/or other appropriate insurance coverages in connection with the Work and its display on the premises of the Town, and the Artist/Lender further expressly agrees to and does assume any and all such responsibility, control, and duty of care for the Work.
3. In addition, in consideration for being permitted to display the Work on Town premises, the Artist/Lender hereby expressly exempts and releases the Town, its officers, employees, insurers, volunteers, and elected officials, from and against all liability, claims, and demands, on account of injury, loss, or damage to the Work, or in connection with the display of the Work on Town premises, including without limitation claims arising from loss of or damage to the Work or other property, bodily injury, personal injury, sickness, disease, or death, that the Artist/Lender may incur as a result of the display of the items on Town premises, whether any such liability, claims, and demands result from the act, omission, negligence, or other fault on the part of the Town, its officers, or its employees, or from any other cause whatsoever.

H. DAMAGE TO TOWN PROPERTY:

1. Damage to Town Property. The Artist/Lender understands and acknowledges that the Display Location for the Work is a public space, and therefore the Artist/Lender shall take all steps necessary to prevent injury to vegetation, wildlife, historic structures, or other structures and objects and shall be responsible to the Town for any damage to Town property caused by



Artist/Lender or the Work. The Artist/Lender shall preserve and maintain the Display Location in substantially the same condition as that existing prior to the display of the Work. In the event of any damages to the Display Location or any other Town property caused by the Artist/Lender or the Work during the Display Period, the Artist/Lender shall pay for the actual cost of repair, replacement, or remedy of such damage. In the event of such damage, the Town shall send the Artist/Lender an invoice via certified mail detailing the costs of the damage, and the Artist/Lender's failure to pay such costs within thirty (30) days of receipt of such invoice shall constitute breach of this Agreement.

2. Clean Up. The Artist/Lender, under the supervision of the Town, shall restore the Display Location to substantially the same condition as that existing prior to the display of the Work and shall remove all items and equipment used in conjunction with the display of the Work within five (5) days of the Removal Date.

I. REPRODUCTION AND CREDIT:

1. Unless otherwise notified in writing by the Artist/Lender, and subject to copyright restrictions, the Artist/Lender agrees and acknowledges that the Town may photograph and distribute images of the Work for publicity, editorial, and educational purposes.
2. Unless otherwise agreed to in writing, the Town will give credit to the Artist/Lender in any publications created by the Town that depict or describe the Work.
3. The Artist/Lender and Town agree and acknowledge that the Work may be photographed by the general public.

J. MISCELLANEOUS

1. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.
2. Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Artist/Lender and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the Town and the Artist/Lender.
3. Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
4. Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement and attached hereto shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
5. No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for,



the display of the Work shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Board of Trustees or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

6. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.
7. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Subsection J.7 shall not authorize assignment.
8. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent of the Artist/Lender. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
9. Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Lyons, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
10. Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Boulder County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.



11. Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

12. Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Artist/Lender without the express written consent of the Town. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Town through the authorizing agent executing this Agreement. No assignment shall release the Artist/Lender from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

13. Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect that in no event shall this Agreement be interpreted as establishing an employment relationship between the Town and Artist/Lender. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the Town on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the Town.

14. Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

15. Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient. Any notice required or permitted by this Agreement may be sent by electronic mail, read receipt requested, to the email addresses included below.

If to the Town :

If to Artist/Lender:

LAHC Staff Liaison Lyons Town Hall PO Box 49 432 5th Ave, Lyons, CO 80540 ahodgson@townoflyons.com	Artist/Lender Name Artist/Lender Address Artist/Lender Email
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16. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town of Lyons and the Artist/Lender and bind the Parties respectively.



For the Artist/Lender:

By:* _____ Date _____

Printed Name: _____

By signing above, the Artist/Lender understands and acknowledges the stated agreements outlined in this **Artist/Lender Agreement for Display of Outdoor Public Art in Lyons; that the display of the Work on the Town of Lyons premises may involve risks of damage, loss, or injury to the items, that the Town of Lyons assumes no responsibility, has and exercises no control over, and undertakes no duty of care of any nature, in connection with the Work on the Town of Lyons premises.*

For the Town of Lyons:

By: _____ **Date:** _____

Victoria Simonsen, Town Administrator

By: _____ **Date:** _____

LAHC Authorized Representative

Printed Name: _____



EXHIBIT A
Artwork Honorarium and Display Period

Artist / Lender Printed Name(s): _____

Mailing Address: _____ Physical Address: _____

Email: _____ Website: _____ Phone: _____ Cell Phone: _____

Title of Work	Brief Description	Agreed Duration of Display	Agreed Honorarium (Initial)
		Installation Date: __/__/__ to Removal Date: __/__/__	____ Two Years \$750 \$375 upon Install \$375 upon Removal ____ Other (Exhibit C)
Second Piece		Installation Date: __/__/__ to Removal Date: __/__/__	____ Two Years \$750 \$375 upon Install \$375 upon Removal ____ Other (Exhibit C)
Third Piece		Installation Date: __/__/__ to Removal Date: __/__/__	____ Two Years \$750 \$375 upon Install \$375 upon Removal ____ Other (Exhibit C)
Fourth Piece		Installation Date: __/__/__ to Removal Date: __/__/__	____ Two Years \$750 \$375 upon Install \$375 upon Removal ____ Other (Exhibit C)

By signing below I acknowledge that I am in agreement with the information entered above:

Artist / Lender Signature(s): _____ Date: __/__/__



EXHIBIT A - CONTINUED
For Reference Only: Descriptions of Honorarium Options

HONORARIUM OPTIONS	Description (Subject to the terms set forth in Section A.4 of the Agreement)	Agreed Honorarium
Two (2) Years	First installment made within 30 days of the Installation Date; second installment made within 30 days of the Removal Date.	\$750
Legacy	Artist / Lender decides to <i>permanently</i> donate work to the Town of Lyons for display without honorarium payment in exchange for special Legacy Plaque designation, as set forth in Exhibit C.	\$0



EXHIBIT A - CONTINUED

Artwork Information

- Check this box if the Artist/Lender is checking out a base/column from the Town
 Number of bases/columns checked out _____
 Description of condition of base/column when checked out (to be completed by Town staff): _____

Title of Work	Artist(s)/Lender	Medium	Dimensions	Weight	Estimated Value by Artist/Lender (may not reflect final sale price; see Section D of the Agreement if sold prior to Removal Date)

By signing below I acknowledge that I am in agreement with the information entered above:

Artist / Lender Signature(s): _____ Date: __/__/____



EXHIBIT A - CONTINUED

Photos of the Artwork



EXHIBIT B
Map of Display Location *

**Placement of work is subject to change due to construction, road work, access, public safety concerns, etc.*

EXHIBIT C

Special Instructions/Conditions for the Display of the Work