RESOLUTION NO. 2020-07

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF FOUNTAIN HILLS, ARIZONA, ADOPTING THE TOWN OF FOUNTAIN HILLS PUBLIC ART MASTER PLAN

RECITALS:

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town") acknowledge the important cultural and beautification role of public art within the Town; and

WHEREAS, the Town has taken several steps to manage the promotion and acquisition of public art within the Town and to create design guidelines establishing minimum standards for public art in commercial, industrial, and multi-family residential projects; and

WHEREAS, the Town desires to adopt a "Town of Fountain Hills Public Art Master Plan" to provide a cohesive document regarding public art within the Town.

ENACTMENTS:

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town, through its Mayor and Council, hereby approves the Town of Fountain Hills Public Art Master Plan in substantially the form attached hereto as Exhibit A.

SECTION 3. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the First Amendment and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Fountain Hills, Maricopa County, Arizona, this 3rd day of March, 2020.

FOR THE TOWN OF FOUNTAIN HILLS:

Ginny Dickey, Mayor

ATTESTED TO:

Elizabeth A. Burke, Town Clerk

REVIEWED BY:

Grady E. Miller, Town Manager

APPROVED AS TO FORM:

Aaron D. Arnson, Town Attorney

EXHIBIT A
TO
RESOLUTION NO. 2020-07

[TOWN OF FOUNTAIN HILLS PUBLIC ART MASTER PLAN]

See following pages.

Town of Fountain Hills Public Art Master Plan

I. INTRODUCTION & BACKGROUND

History of Public Art

Public art has long played an important role in expressing the identity of a culture. In many cases, public art is the legacy by which we remember an ancient culture. Public art has been a part of the American landscape since Colonial times, but it wasn't until the middle of the 20th century that comprehensive public art programs emerged.

After the establishment of the National Endowment for the Arts in 1965, the field of public art underwent significant change. As more and more cities adopted "percent for art" ordinances, public art has evolved from a process that placed large-scale versions of studio sculpture in unrelated spaces into the broader understanding that art may take various forms, including being routinely integrated into the surroundings it is placed in, often becoming part of building or structure itself.

In cities like Seattle, Philadelphia, Los Angeles, Miami and others, artists working in the public realm became more involved in the design of public spaces by working closely with architects, landscape architects and engineers. The result was the use of art to shape a new public space, not just to enhance an existing one. In Seattle, Phoenix and Scottsdale, the art went one step further; it has become an integral part of civic infrastructure including, bridges, waste treatment plants, freeways, parks, sports complexes and other projects.

Funding for contemporary public art has come in large part from three sources: (i) "percent for art" ordinances, (ii) funding through local, state and federal grant programs and (iii) corporate sponsorships and private donations from individuals and foundations.

History of Art in Fountain Hills

In October 1994, the Town of Fountain Hills (the "Town") and the Fountain Hills Civic Association (the "Civic Association") commissioned a community cultural assessment, sponsored by the Arizona Commission on the Arts (the "1994 Cultural Assessment"). Nearly 50 citizens participated in either the open forum or in the surveys collected. The community's strengths and challenges were discussed, and four key issues were identified:

- The need for a cultural center facility with performance, gallery and meeting space.
- A need for an arts council to provide leadership for cultural growth.
- A need to involve the arts in community design and planning.
- A need for youth services including after school and summer programs.

Through the 1994 Cultural Assessment, a clear need for a Public Art Committee was recognized. The Fountain Hills Arts Council (the "Arts Council") bylaws were formally adopted in March 1995.

On September 4, 1997, the Town Council adopted Resolution No. 1997-44 designating the Arts Council, then a committee of the Civic Association, as the official representative of the Town in all matters dealing with the promotion of public arts within the Town of Fountain Hills. Shortly thereafter, the Arts Council established the Fountain Hills Public Art Committee (the "PAC") to administer its public art program. On November 20, 2003, the Town Council adopted Resolution No. 2003-70 confirming this appointment and adopting an official Master Plan for the acquisition of public art.

Through various corporate reorganizations, the Arts Council became the Fountain Hills Cultural Council and thereafter merged with the Civic Association to become the Fountain Hills Cultural and Civic Association, a 501(c)(3) non-profit corporation ("FHCCA"). The PAC continues as a committee of FHCCA, and since 2000, the PAC has adopted an aggressive policy of public art acquisition.

On December 7, 2006, the Town Council adopted Ordinance 06-23, creating the Town's Commercial/Multi-Family Architectural Design Review Guidelines (the "Design Guidelines"). Section 19.05(I) of the Design Guidelines established the minimum standards for including a public art element in all commercial, industrial and multi-family residential projects (the "Public Art Requirement") providing for either (i) the installation of exterior public art valued at equal to or greater than 1% of the cost of building construction and associated site work and signage of a new or redeveloped commercial, industrial, or large multi-family residential construction project or (ii) a donation to the Fountain Hills Public Art Fund in an amount equal to or greater than 1% of the cost of building construction and associated site work and signage. The funds raised through this process will be referred to hereafter as the "Percent for Public Art" funds. Public Art Fund Development Guidelines were adopted by the Town Council in January, 2007 to set forth the process for implementing the Public Art Requirement. The Fountain Hills Public Art Fund is the fund held by the Town for the purchase or installation of public art (the "Fountain Hills Public Art Fund").

II. PUBLIC ART PROGRAM GENERAL STANDARDS

Mission: The mission of the Public Art Collection is to promote a rich, diverse and stimulating cultural environment that enriches the lives of the town's residents and visitors, and further establishes the town's identity. The Fountain Hills Cultural and Civic Association (FHCCA) is committed to acquiring works of art for the Art Collection of the highest aesthetic standards reflective of diverse social, aesthetic and cultural perspectives. The Town Council intends that all public art in the corporate limits of the Town shall be selected and approved according to the Public Art Acquisition process.

This document establishes policies and procedures for the acquisition, placement, care and management of works of art for the public art collection of the Town of Fountain Hills, whether acquired through a Gift or Bequest. It shall be the policy of the PAC to accept unique, one of a kind works of art with the noted exception of prints, photographs or a desirable high-quality limited edition work of art by a renowned artist.

GOALS OF THE COLLECTION:

1. Artwork acquired and maintained within the collection should reflect the highest aesthetic standards. Objects accepted into the collection must be of known authorship and be accepted based on their value as works of art.

2. The Town's collection should be diverse in its representation of artists and artistic styles.

3. Artwork acquired and accepted into the collection should be appropriate in scale, media and context with its intended location, and be relevant within the cultural, historical, social/political and environmental context of the area surrounding the Town of Fountain Hills.

DEFINITIONS:

Fountain Hills Cultural and Civic Association ("FHCCA"): The FHCCA is the 501(c)(3) Charitable organization representing the PAC.

Public Art Committee: The Public Art Committee ("PAC") is a member organization of the Fountain Hills Cultural and Civic Association ("FHCCA"). The PAC is made up members of the FHCCA, Town staff member(s) and when deemed necessary, arts professionals. The committee generally meets monthly and is responsible for reviewing potential art donations and making recommendations to the Town.

Acquisition: The formal process used to accept an artwork into the Civic Art Collection and the recording of an item as a Collection Object.

Aesthetics: Artistic merit of the work of art, including consideration of its artistic, social, cultural and/or historical significance.

Appraisal: A professional, certified evaluation of an artwork, i.e. its authenticity, condition and provenance, to determine its monetary value.

Artist: Individual artist or team of individual artists whose body of work and professional activities demonstrate serious ongoing commitment to the fine arts, through a record of exhibitions, public commissions, sale of works and educational attainment.

Artwork or Work of Art: For the purpose of these guidelines, Artwork, or Work of Art, is defined as a work in any media that is the result of the unique creative expression of an artist.

Conservation: See "Preservation." For the purposes of this document, the terms "conservation" and "preservation" are used interchangeably.

Decommission: The formal process of removing acquired objects permanently from the Art Collection.

Donation: An artwork or a series of artworks gifted to the Town for long-term public display with intent to transfer title of ownership to the Town.

Maintenance: Maintenance shall mean a minimally invasive, routine and regularly scheduled activity that may involve the removal of superficial dirt or debris build-up on the surface of the artwork or the cleaning and repair of non-art support material such as a pedestal or plaque. For the purposes of this document, this definition shall apply generally whenever "maintenance" of artwork is referenced.

Maintenance Endowment Calculation: A Maintenance Endowment Calculation adequate to ensure the continued care of gifts of art shall be maintained by the Town of Fountain Hills. An endowment is required for all outdoor artworks and may be required for indoor artworks in order to maintain the gift in a condition satisfactory to the donor, the PAC and the Town. Scale, material, location, value of the work and potential for vandalism will be considered in determining the maintenance endowment.

Monuments: Structures, sculpture or other objects erected to commemorate a person or an event.

Percent for Public Art: Developers of any new professional office, lodging projects, retail, service, commercial, wholesale, transportation, industrial developments, re-developments or expansion projects and multi-family projects with five or more dwelling units within the Town of Fountain Hills are required to provide public artwork.

Plaque: For the purpose of this document "plaque" refers to identification signage affixed on or near an artwork that identifies the title, artist, media, date, attribution and other pertinent information. Organizations strive for uniformity in plaque design and text content.

Preservation: Preservation shall mean the protection of cultural property through activities that minimize chemical and physical deterioration and damage, and that prevent loss of informational content. The primary goal of preservation is to prolong the existence of cultural property, and should be undertaken or overseen by a professional conservator. For the purposes of this document, the terms preservation and conservation are used interchangeably, and the definition above shall apply generally whenever "conservation" or "preservation" is used.

Proposal: The Artist's design proposal for a project that typically includes drawings and/or models illustrating the project and how it will fit into the site, project description and budget, typically

requested from a limited number of finalists as a means of providing the basis for final artist selection.

Provenance: The history of an artwork and its creation and ownership, which is used to help establish its authenticity. Documents used for provenance include sales receipts, auction and exhibition catalogs, gallery labels, letters from the artist, and statements from people who knew the artist or the circumstances of the creation of the artwork.

Public Art Collection: The Public Art Collection is comprised of artworks that have been acquired by the PAC on behalf of the Town.

Public Art Fund: The Public Art Fund is made up of the funds set aside by the Town of Fountain Hills to acquire and maintain the Public Art Collection. This fund is comprised of monies collected through the Percent for Public Art, through donation from private or corporate donors, the Maintenance Endowment Calculation and monies gained through grants. The Public Art Fund amount shall be noted within the annual budget of the Town of Fountain Hills.

III. PUBLIC ART ACQUISITION PROCESS

Public art is acquired through four primary methods:

1. As the result of a gift or loan whereby the Town becomes a beneficiary

2. As a result of the Percent for Public Art Contribution

3. By the active procurement of a specific work of art or the selection of an artist for a specific project

4. Temporary or Traveling Art Exhibitions

IV. ARTWORK DONATION PROCEDURES

When an artwork is offered to the Town for donation, such donations are reviewed by entities that may include but are not limited to the PAC, FHCCA and Town staff. No work of art shall be acquired into the Collection, unless such work of art shall first have been submitted to and approved by the above mentioned entities. Artwork must meet the Artwork Review Criteria. Neither the PAC, the FHCCA nor the Town will establish the artwork value, nor furnish documentation regarding the artwork value to the Donor.

Step 1: The prospective donor submits a completed Artwork Donation Application with required attachments to the PAC. Developers, required to meet the Percent for Public Art 1% obligation, will submit an application with the Planning and Zoning Department. The proposal shall include information about the artist, written description of the artwork (size, materials, date created, etc.), condition report, appraisal and photograph or drawing of the artwork, and proposed site, if any. Artwork to be donated will only be accepted with restrictions in very limited circumstances. For all artwork located on public property, the Town of Fountain Hills receives full title to the artwork and has the ability to sell or transfer the title to individuals or entities.

Step 2: The PAC reviews the application and gift documents and decides if the gift meets the Art Acquisition Criteria. If necessary, the prospective donor may be invited to give a presentation about the donation to Town staff, the PAC and others to clarify the artwork provenance and appraisal, and the intent of the gift. The PAC may seek the advice of a professional art conservator or other qualified arts professional to review the proposal and provide recommendations regarding authenticity and the long-term care of the artwork.

Step 3: The PAC will make the recommendation to accept, accept with modifications or decline the gift. If the gift is accepted with modifications, the donor has the option to resubmit at a later date. If the gift is accepted by the PAC, it is then referred to the FHCCA Board and Town Council for review and acceptance. The donor may again be called upon to discuss the donation with the Town Council. The PAC may not recommend gifts that require extraordinary maintenance expense or are deemed unsafe.

Step 4: Once the artwork donation has been accepted, the Town and the Donor enter into an agreement regarding the terms of acceptance based upon the requirements of the Art Acquisition Criteria.

In general, donations shall be accepted without restrictions or conditions. All accepted donations will be subject to the Town’s Art Acquisitions Criteria and Decommissioning Policy. All artworks acquired by the Town shall be covered under the Town’s public art insurance policy for the stated value.

V. ART ACQUISITION CRITERIA

Public art is defined as the work of a visual artist located in a publicly accessible space. Public art includes, but is not limited to, paintings, murals, statues, stained glass, fiber art, relief or other sculpture, fountains, arches and other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, landscape art, and crafts, both decorative and utilitarian. Public art may be temporary or permanent in nature.

Public art projects may also include visual or landscape artists serving on design and development teams to identify opportunities and approaches for incorporating artwork aesthetic concepts into Town building and visible public improvement projects. Regardless of the method of acquisition, certain fundamental criteria will be universally applied to any work of art under consideration.

Aesthetics

1. Artistic merit of the work of art, including its artistic, social, and/or historical significance, as evidenced by the Artwork Donation Application (which includes a written description and drawings and/or maquette if the artwork is proposed and not fabricated)

2. Professional artist's qualifications, as evidenced by the Artwork Donation Application (which includes images of past work, resume, references, and published reviews)

3. Compatibility of the work of art within the context of the proposed site

4. Warranty of originality (in the case of a pre-existing artwork; only original works or limited editions and high aesthetic value shall be considered)

5. Provenance

Site

6. Appropriateness to the proposed site with respect to its immediate and general physical environment (district, neighborhood) and audience

7. Proposed works of art must be compatible in scale, material, form, and content with their surroundings. Attention shall be given to the social context of the work and the manner in which it may interact or contribute to the use of the site.

8. Ecological and/or environmental impact

9. Accessibility to the public, including persons with disabilities

10. Text components (e.g., signage or plaque)

Site Criteria: Prior to selecting a site for an artwork, whether purchased or commissioned, the PAC and Town staff shall take into consideration the following factors:

11. Visibility and prominence of the artwork site

12. Public accessibility of the artwork and ADA Compliance

13. Public Safety

14. Interior and exterior traffic patterns

15. Relationship of proposed artwork to existing or future architectural features, natural features, other artworks, and urban design

16. Function of the facility

17. Facility users and surrounding community and interaction of users and community members with proposed artwork

18. Future development plans for area

19. Overall program goal or concept

20. Landscape design

21. Relationship of proposed artwork to existing art works within the site vicinity

22. Environmental impact

23. Social context of artwork (intended use of the work, if any)

24. The PAC and Town of Fountain Hills shall approve the artwork location before acquisition

Installation

25. Site requirements for installation (Electricity, lighting, water, or other requirements)

26. Method of installation

27. Documents: Utility connections, site modifications, structural reinforcements or other engineering requirements or site modifications should be described in the gift proposal and reflected in the construction plans and specifications. The donor/sponsor is responsible for providing and submitting engineering and architectural plans, as required according to the Building Code or as requested by the Commission. Such plans must be prepared, signed and stamped by the appropriate design professional licensed in the state of Arizona.

28. Storage requirements, if needed

29. Safety standards (Town Risk Management review)

Maintenance

30. Structural integrity (demonstrated through documentation)

31. Review of Fabrication and Installation Method: Works of art that are accepted from maquettes or drawings will be subject to PAC review throughout fabrication and installation.

Specific plans for site design, installation, maintenance and protection will be submitted for approvals. The completed artwork may not deviate in any way from the proposal approved by the PAC.

32. Durability of materials and method of fabrication

33. Susceptibility of the artwork to accidental damage, theft, and/or vandalism and security needs

34. Ability or capacity to provide necessary routine maintenance

Maintenance Endowment Calculation Contribution

35. All costs associated with fabrication and installation, including site preparation, long-term preservation, illumination, plaque, and unveiling/dedication event, if any

36. For all works of art located on Town property or donated to the Town, the Donor will contribute 5% of the total value of the artwork or $5000 (whichever is less) to the Town's Public Art Fund. Obtaining an appraisal prior to execution of the agreement is the responsibility of the Donor, unless otherwise agreed upon by Town and Donor.

37. Statement of value of artwork by a certified appraiser for insurance purposes

38. No artwork will be placed or acquired before all financial obligations are met by the Donor

Liability

39. Susceptibility of the artwork both to normal wear and to vandalism

40. Potential risk to the public

41. Public access, in general, as well as compliance with ADA requirements

42. Special insurance requirements (some extremely valuable artworks need additional insurance)

Timeliness

43. Allowance of sufficient time for normal review process

44. Timely and appropriate response to the PAC and Town staff requests for additional materials or information

Memorial Gifts: Memorial gifts will be judged to the following additional criteria:

45. The person so honored shall have been deceased for a minimum of two years. Events shall have taken place at least two years prior to consideration of a proposed memorial gift.

46. Represents broad community values

47. The memorial has timeless qualities that will be meaningful to future generations

48. The location under consideration is an appropriate setting for the memorial; in general, there should be some specific geographic justification for the memorial being located in a specific site

Acceptable Art: Acceptable forms of art ("Acceptable Art") shall include but are not necessarily limited to, the following:

49. All forms of limited edition or one-of-a-kind original creations of visual art created by an artist

50. Project features and enhancements which are unique and produced by a professional artist such as benches and fountains

51. Murals or mosaics covering walls

52. Professional artist sculptures which can be freestanding, wall-supported or suspended and made of durable materials suitable to the site and the climate

53. Other suitable artworks as presented in a catalogue and previously approved by the PAC

Not Acceptable Art: The following, non-exclusive list describes those items not considered Acceptable Art:

54. Business logos or art that incorporates a logo for the primary purpose of advertising a business

55. Directional elements such as supergraphics, signage or color coding except where these elements are integral parts of the original works of art

56. Mass-produced art objects, such as fountains, statuary objects, or playground equipment

57. Decorative ornamental or functional elements created by the project

58. Landscape architecture or gardening except for elements designed by the artist as an integral part of the work of art

59. Electrical, water or mechanical service for activation of the works of art

60. Art exhibitions and educational activities

61. Security and publicity concerning works of art

62. Standard landscape or hardscape elements that would normally be associated with the project

VI. PERCENT FOR PUBLIC ART REQUIREMENT FOR DEVELOPMENT

A. Basic Requirements

1. Developers of any new professional office, lodging projects, retail, service, commercial, wholesale, transportation, industrial developments, re-developments or expansion projects and multi-family projects with five or more dwelling units within the Town of Fountain Hills are required to provide public artwork. The Percent for Public Art contribution shall equal:

- 1% of Total Construction Cost for projects of $1 million or less;
- ¾% of Total Construction Cost for projects with a value between $1 million and $10 million; or
- ½% of Total Construction Cost for projects with a Total Construction Cost over $10 million.

As an alternative to providing public art, developers may make a donation to the Fountain Hills Public Art Fund in an amount equal to the above calculation. If requested, the PAC and Town staff will work with the developer to identify an appropriate use of the contribution that will benefit both the developer and the Town.

2. Developers are not required to make a contribution to the Maintenance Endowment Calculation for any artwork located on private property. If the artwork is to be located on public property, the Maintenance Endowment Calculation will apply.

3. The public art requirement must be met prior to the issuance of a Certificate of Occupancy. Applicants choosing to purchase a piece of art are required to submit a Donation Application and comply with the Art Acquisition Criteria. The art contribution should be approved by Town staff and PAC as being in compliance with the ordinance.

4. Artwork selected by the developer to go on site must be integrated with the project, be located on an exterior of the structure or the building site, be visible to the public at all times and be accessible for at least 40 hours per week. The location of the artwork should be in an outdoor location to allow unrestricted visibility by the public 24 hours per day.

5. A plaque will be placed that will identify the art and the artist.

B. Total Construction Cost Calculation

Total Construction Cost, as used in the Calculation for Percent for Public Art, includes hard costs of construction, site work and signage costs.

C. Eligible Costs for Calculating the Contribution

The following costs may be included in the calculation of the developer's required art investment.

1. Professional artist's budget, including artist fees, materials, assistants' labor costs, insurance, permits, taxes, business, legal expenses and operating costs.
2. Fabrication and installation of the artwork, including base and/or foundation if necessary.
3. Site preparation for artwork.
4. Structures enabling the artist to display the artwork.
5. Documentation of the artwork.
6. Acknowledgment plaque identifying the artist, artwork and development, per Town format.

D. Responsibility After Installation

1. Art located on the developer's property will remain the developer's property, subject to a covenant on the part of the developer that the piece will remain in public view. It will be the developer's and subsequent property owner's responsibility to insure and maintain the piece of art. The insured value must equal the appraised value. Developer will be cognizant of the federal Visual Artists Rights Act, which prevents the distortion or modification of an artwork without the artist's permission.

2. If any changes are considered by the property owner for the previously approved artwork located on site, an application for consideration of change must be submitted to the PAC. All submitted changes are subject to full review by the PAC and Town Council.

3. Art located on Town-owned property shall become the property of the Town. The artwork location will be reviewed by the Town's Facilities Division and other staff to ensure compliance with American with Disabilities Act (ADA), and to minimize conflicts with public utilities in Town rights-of-way. The Town will insure and maintain all pieces on Town-owned property.

VII. ACQUIRING ART THROUGH ARTISTS SELECTION OR PURCHASE

The PAC will identify potential art projects or art purchase opportunities. Any recommendation to the PAC regarding the acquisition of a piece of art shall identify the potential source of funds for such acquisition. Such source of funds may include the funds deposited in the Fountain Hills Public Art Fund.

1. The PAC will decide which projects or purchases will be recommended to the Town Council as required in the Artwork Donation Process. The Town Council will have the final decision, acting in its sole discretion, to determine (i) which projects or purchases will be undertaken and (ii) if the recommendation includes the use of funds from the Fountain Hills Public Art Fund, whether the use of such funds is appropriate.

2. If the Town Council approves moving forward with a project or purchase, the PAC will assume the role of an independent selection panel. The PAC will choose the most appropriate method for a given project or purchase from among the following options:

    a. Open Competition. This method offers opportunities in which any professional artist is eligible to enter. A Project Profile, an announcement with information about the project, will be circulated, requesting artist proposals for review by the selection panel.

    b. Invitational or Limited Competition. This two-staged competition calls for artists to submit qualifications (documentation of past work) for the selection panel's consideration, instead of a proposal. The panel selects three to five artists to visit the site and develop detailed proposals or to participate in an interview process. The artists may be paid for their proposals and site visits based on a percentage of the project budget. The panel then reconvenes to select an artist and/or proposal.

    c. Direct Selection and Nominations. In this method, the panel selects one artist on the basis of documentation of past work. The pool of work reviewed can be solicited through a call-to-artists or by using an existing artist slide bank. The artist is selected by the PAC and a recommendation is presented to the FHCCA and Town Council for approval. PAC will then negotiate a contract for the development of a proposal.

    d. Direct Purchase. A method that results in the purchase of already completed artworks, based upon the PAC's recommendations.

3. Upon Town Council approval of any public art project or purchase, the PAC will contact the selected artist or artist's agent. The PAC will prepare an invoice or contract between the FHCCA and the artist covering the entire scope of work to be performed, and specifying all fees to be paid, including, those for any travel expenses, shipping and/or installation charges. If the Fountain Hills Public Art Fund is to be used for all or a portion of the acquisition cost, the aforementioned invoice or contract shall be entered into between the Town and the artist, and the Town Attorney shall prepare the invoice or contract with input from the PAC as to the appropriate scope of work to be performed, fees to be paid, travel expenses to be reimbursed and shipping and/or installation charges to be paid. If both the Fountain Hills Public Art Fund and FHCCA funds are to be used for acquisition and/or installation, the FHCCA shall contribute its portion to the Town prior to the date the Town is required to pay the final invoice.

4. Working in cooperation with appropriate Town staff and/or commissions, the PAC will assume responsibility for project management: overseeing the purchase, shipment and installation of selected art work, or the design, fabrication and installation of a commissioned project.

5. According to the payment schedule stipulated in the contract, the PAC will be responsible for paying all project fees in a timely fashion, except for those installation fees agreed to be covered by the Town through a separate agreement.

6. Upon completion of the purchase or project, the PAC will arrange a public dedication and formal transfer of ownership to the Town.

VIII. TEMPORARY OR TRAVELING EXHIBITIONS

From time to time, the PAC may make arrangements for temporary works of art to be displayed in select locations. These Temporary or Travelling Exhibitions may be installed to celebrate a current cultural, social or civic event, or may represent art that is available on a temporary basis that can bring a new, thoughtful perspective to the Fountain Hills Public Art Collection.

Considerations for selection of a Temporary or Travelling Exhibition might include:

1. Costs: Costs associated with these Temporary Exhibits may be either borne by private donors or the Public Art Fund. In the event there might be costs to be borne by the Town of Fountain Hills from the Public Art Fund, the PAC shall make a request for funds in advance of any commitments to display the work. These costs might include but may not be limited to honorariums paid to artists, installation costs, maintenance, lighting, plaque costs or insurance costs.

2. Selection: The Selection Criteria shall be similar to those outlined in **Article VII** *Acquiring Art Through Artists Selection or Purchase.*

3. Additional Criteria in a Call to Artists for the purpose of the temporary status might include:

    a. Length of time to be displayed.

    b. Whether or not the artwork may be sold during the exhibition or as a function of the exhibition. In such event, the work will be required to remain on site during the full length of the exhibition.

    c. Manner in which the artist may advertise or promote themselves or the work.

    d. Requirement for insurance to be carried by the artist.

    e. Requirement of the Artist to be present for installation, de-installation and Dedication of the Exhibition.

    f. An appropriate disclaimer created by legal counsel of the Town of Fountain Hills pertaining to the Artists release of liability for damage or destruction while on display.

IX. GIFT AND SALE OF ARTWORKS

The Gift and Sale of Art Program is established to allow the public to donate works of art to the Town of Fountain Hills that may or will be sold for the benefit of Public Art Fund. When the PAC determines that it would be advantageous to the Town, a gifted work of art may be acquired and sold.

1. Sale at Public Auction: A work of art under the jurisdiction of the Town may be sold at public auction to the highest and best bidder and the PAC may contract with a licensed auctioneer for the purpose of conducting the sale or sales. The contract shall specify the compensation to be paid for the auctioneer's services and set forth the terms and conditions under which the sale or sales are to be conducted. Each such contract shall be approved by the Purchaser.

2. Private Sale: If the work is offered at public auction and no bids are received, or if the bids are rejected, the PAC may determine that the work may be sold on terms more advantageous to the Town.

3. Proceeds from Sale of Artwork: All proceeds from any sale or auction, shall be credited to the Public Art Fund, and the monies contributed to the fund from the sale of a work of art under the jurisdiction of the Town shall be expended exclusively for the purpose of acquiring or maintaining works of art in the Collection.

4. Objects may not be given or sold privately to Town employees, officers, members of the Commission, or to their representatives or family.

Other Considerations: If, for any reason, the Town of Fountain Hills finds it necessary to pursue plans that would modify, remove, destroy or in any way alter an artwork, and the PAC approves such action, then the PAC shall make a reasonable effort to notify the artist by registered mail of the Town's intent and outline possible options, which include, but are not limited to the following:

1. Transfer of Title to the Artist: The artist will be given the first option of having the title to the artwork transferred to him/her. If the artist elects to pursue title transfer, he/she is responsible for the object's removal and all associated costs.

2. Disclaim Authorship: In the case where the Town contemplates action which would compromise the integrity of the artwork, the artist shall be given the opportunity to disclaim authorship and request that his/her name not be used in connection with the given work.

Alteration, Modification or Destruction: If alteration, modification, or destruction of an artwork protected under the Visual Artists Rights Act of 1990 is contemplated, the PAC must secure a written waiver of the artist's rights under this section. In the case of an emergency removal that may result in destruction or irreparable damage, the Town will act in accordance with the advice of the Town Attorney.

Relocation of Public Display: If the Town decides that an artwork must be removed from its original site, and if its condition is such that it could be re-installed, the PAC and Town will attempt to identify another appropriate site. If the artwork was designed for a specific site, the PAC and Town will attempt to relocate the work to a new site consistent with the artist's intention. If

possible, the artist's assistance will be requested to help make this determination.

The Town and PAC reserve the right to relocate or remove any artwork at any time. The final decision regarding the placement of artwork will rest with the Town and PAC.

X. DECOMMISSIONING POLICY

Conditions: A work of art may be considered for removal from public display and/or decommissioning if one or more of the following conditions apply:

1. The work does not fit within the PAC mission, goals, or guidelines for the Art Collection.

2. The work presents a threat to public safety.

3. Condition or security of the work cannot be guaranteed, or the Town cannot properly care for or store the work.

4. The work requires excessive or unreasonable maintenance or has faults in design or workmanship.

5. The condition of the work requires restoration in gross excess of its aesthetic value or is in such a deteriorated state that restoration would prove either unfeasible, impractical or misleading.

6. No suitable site for the work is available, or significant changes in the use or character of design of the site affect the integrity of the work.

7. The work is fraudulent or not authentic.

8. The work is rarely or never displayed.

9. Significant adverse public reaction over an extended period of time (5 years or more).

10. The work is judged to have little or no aesthetic and/or historical or cultural value.

11. The work is duplicative in a large holding of work of that type or of that artist.

Process: The following process shall be followed for works being considered for decommissioning:

Absence of Restrictions: Before disposing of any objects from the collections, reasonable efforts shall be made to ascertain that the PAC and the Town are legally free to do so. Where restrictions are found to apply, the PAC shall comply with the following:

Mandatory restrictions shall be observed unless deviation from their terms is authorized by a court of competent jurisdiction.

Objects to which restrictions apply should not be disposed of until reasonable efforts are made to comply with the restrictive conditions. If practical and reasonable to do so, considering the value of the objects in question, the PAC should notify the donor if it intends to dispose of such objects within ten years of receiving the gift. If there is any question as to the intent or force of restrictions, the PAC shall, through Town staff, seek the advice of the Town Attorney.

Independent Appraisal or other documentation of the value of the artwork: Prior to disposition of any object having a value of $10,000 or more, PAC and/or Town staff should obtain an independent professional appraisal, or an estimate of the value of the work based on recent documentation of gallery and auction sales.

Related Professional Opinions: In cases of where decommissioning or removal is recommended due to deterioration, threat to public safety, ongoing controversy, or lack of artistic quality, it is recommended that the PAC seek the opinions of independent professionals qualified to comment on the concern prompting review (conservators, engineers, architects, critics, safety experts etc.).

PAC Hearing and Resolution: The recommendation to decommission a work of art will be considered at a regular or special meeting of the PAC. The Town must approve by Resolution the PAC's recommendation that a work of art under its jurisdiction should be decommissioned through sale or exchange.

Provisions for Emergency Removal: In the event that the structural integrity or condition of an artwork is such that, in the opinion of the PAC or Town staff, the artwork presents an eminent threat to public safety, the Town may authorize its immediate removal, without the artist's consent, by declaring a State of Emergency, and have the work placed in temporary storage. The artist and the PAC must be notified of this action within 30 days. The PAC will then consider options for disposition: repair, reinstallation, maintenance provisions or decommissioning. In the event that the artwork cannot be removed without being altered, modified, or destroyed, and if the Artist's Agreement with the Town has not waived his/her rights under the 1990 Visual Artists' Protection Act, the Town must attempt to gain such written permission before proceeding. In the event that this cannot be accomplished before action is required in order to protect the public health and safety, the Town shall proceed according to the advice of the Town Attorney.

Adequate Records: An adequate record of the conditions and circumstances under which objects are decommissioned and disposed of should be made and retained as part of the Collections Management records.

ARTWORK DONATION APPLICATION

Use this form to submit proposals for permanent artwork donations or short-term or long-term loans. Thank you for your interest in donating artwork to the Town of Fountain Hills, Arizona.

Please direct any questions, and complete and submit this application to:

Name:_____

Address: _____ Phone: _____

Email Address: _____

Please attach additional sheets. The Town reserves the right to request additional information in order to process a donation proposal.

DONOR			
Name(s)			
Organization (if applicable): (*Please check one*: ___ Individual(s) ___ Corporation ___ Not-for-Profit ___Other (specify: _____)			
Address			
City	**State**	**Zip Code**	**Country**
Phone	**Fax**	**Email**	
(*Please check one*): _____ Donation of artwork to be commissioned _____ Donation of existing artwork _____Donation for Development Percent for Public Art (Please go to Percent for Development Option)			
Conflict of Interest: Disclose whether the donor has any active contracts with the Town or is involved in any stage of negotiations for a Town contract.			

ARTIST			
Name		**Alias** (If applicable)	
Nationality		**Birth Date**	**Death Date** (If applicable)
Address			
City	**State**	**Zip Code**	**Country**
Phone	**Fax**	**Email**	
Website			

Artist Representation/Gallery Name (If applicable)			
Artist Representation/Gallery Address			
City	**State**	**Zip Code**	**Country**
Phone	**Fax**	**Email**	
Website			
For donations of commissioned artwork, please explain the method used in the selection of the artist.			

ARTWORK	
Title	
Artwork type (e.g., painting, print, drawing, sculpture)	**Medium: include all materials**
Description of Artwork	
Creation Date	**Dimensions and Weight**
Anticipated Life Expectancy of the Artwork	
Finishes applied to surface	
Construction technique(s)	
If this artwork is part of a series or group, what is the total number in the series or group?	
If this artwork is part of an edition, what is the edition number of this piece, and the total edition size?	
Describe frame, if any.	**Describe base or pedestal, if any.**

Describe any accompanying accessories
Current location of artwork
Proposed site for placement (if applicable)
For memorials, describe the person or event to be commemorated, and explain why this person or event deserves special recognition.

ARTWORK HISTORY

Provenance/Past Owners: List all past owners and period of ownership for each. A separate page can be submitted.
Exhibition History: List the exhibition history including exhibition titles, venues and dates for each.
Publications and References: List all publications about and references to the artwork.

COPYRIGHT OWNERSHIP

Name of current copyright owner		**Title**	
Address			
City	**State**	**Zip Code**	**Country**
Phone	**Fax**	**Email**	
If the donor is the current copyright owner, does the donor intend to transfer the copyright to the Town of Fountain Hills should the donation be accepted by the Town?			

ARTWORK VALUATION (per appraisal)

Fair Market Value $
How was this fair market value determined and by whom?
CONDITION
Describe the current condition of the artwork noting any existing breaks, tears, scratches, abrasions, paint losses, or other insecurities or defects in the artwork.
If the artwork has been conserved, describe the conservation treatment and name of conservator.
Provide recommendations for routine maintenance of artwork. Indicate whether these recommendations were provided by a conservator.
(Optional) Provide recommendations for security, installation, transportation and/or storage.
For donations of commissioned artwork, please outline the installation plan.
OTHER REQUIRED MATERIALS
Please submit the following materials along with this completed form. **Artist's résumé and bio** **Digital, color images of past artwork by artist** **For commissioned artwork, color renderings or maquettes of proposed artwork** **Maps or images of proposed site for artwork** **Itemized list of any costs to be borne by the Town for transportation, installation, exhibition, operation,** **maintenance, conservation, and/or security** **For commissioned artwork, an itemized budget for design, fabrication, and installation** **For commissioned artwork, a timeline for design, fabrication, and installation**

- **Exhibition catalogs, publications and/or references, if available**
- **Formal, written appraisal for any artwork with a fair market value of $10,000 or more**
- **Condition report, if available**
- **Conservator's report, if applicable**
- **Proof of authenticity, if available**
- **Any other information relevant to the artwork**

DEVELOPMENT PERCENT FOR PUBLIC ART
(_____)

Development

Description

Total Project Cost as Determined by Town Staff

$_____

Total Calculated Percent Requirement as Determined by Town Staff

1% of Total Project Cost for projects of $1 million or less;

¾% of Total Project Cost for projects with a value between $1 million and $10 million; or

½% of Total Project Cost for projects with a Total Construction Cost over $10 million.

$_____

(*Please check one*):

_____Developer chooses to make donation to Public Art Fund
Amount Received $ _____Payment Type_____

_____Developer chooses to meet percent requirement with on-site art installation (please fill out Artwork Donation Application and reference the Town of Fountain Hills Public Art Master Plan.)

_____Developer chooses to donate an artwork to the Town of Fountain Hills (please fill out Artwork Donation Application and reference the Town of Fountain Hills Public Art Master Plan.)

DONOR'S AUTHORIZATION TO INITIATE A DONATION REVIEW	
Authorized signature	**Title**
Print name	**Date**
STAFF ONLY	
Received by	**Date**