

# **City of Brea**

# **Art in Public Places Policy**

# **Manual**

## **November 2021**

Adopted by Brea City Council November 2, 2021

Art in Public Places Program  
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Cultural Arts Division  
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## I. INTRODUCTION

Created in 1975 by City Council Resolution, Brea's Art in Public Places Program was designed to work with private developers to integrate three-dimensional sculpture throughout the community. The current Art in Public Places Ordinance No. 1050 was adopted by Brea City Council in 2001. The Art in Public Places requirement is part of City of Brea Zoning Code section 20.408.040 subsection C.4. The current the Art in Public Places Policy Manual was adopted by Brea City Council on November 2, 2021 by Resolution No. 20XX-XX.

Goals of Brea's Art in Public Places (APP) Program are:

- A. Distinguish Brea as a special place to live, work, play, and visit.
- B. Strengthen cultural awareness, creativity, and innovative thinking in the community.
- C. Integrate the vision of artists with the perspective of other design professionals into the planning and design of the urban landscape.
- D. Ensure sculptures are visually accessible to every member of the community.
- E. Provide a means to counterbalance what many consider to be the "negative" effects of development (e.g. construction noise, traffic, congestion, and pollution).
- F. Build a diverse collection of permanent outdoor sculpture by qualified artists and ensure the collection is continually maintained.

Public art is an investment in the cultural vitality and economic development of a community. Sculptures can become place-makers, landmarks, and foster culturally dynamic, economically vibrant communities. Sculpture can increase in value, increase property values, and draw visitors and tenants. Brea's Art in Public Places program provides developers a way to make a lasting and visible contribution to the community and mitigate negative impacts of development. Successful projects involve collaborations between developers, artists, public art professionals, property owners, property tenants, and the City.

We hope your experience with Brea's Art in Public Places Program is positive and the result of our collaboration is a memorable work of art. Together, we make Brea an exceptional place to live, work, and visit.

## II. CONTACTS

The sculpture requirement is overseen by the City's Community Services Department Cultural Arts Division. Certain questions, however, may be better addressed by the City's Planning or Building Division. Below is a short list of topics and contact information for your convenience:

**Art in Public Places Program, Cultural Arts Division, Community Services Department:**

Sculpture requirement; site selection; artist qualifications; APP Advisory Committee; sculpture approval process and deadlines; deposit of sculpture funds; sculpture maintenance, conservation, and replacement; APP Sculpture Collection; APP Policy clarification

Phone: 714-671-4452

**Planning Division, Community Development Department:**

Non-sculpture related development requirements; new development project lists

Phone: 714-990-7674

**Building & Safety Division, Community Development Department:**

Building permits for sculpture installation; questions about estimating and calculating the total project building valuation (to calculate the required sculpture allocation)

Phone: 714-990-7689

**Code Enforcement Division, Community Development Department:**

Notices about compliance with sculpture maintenance or replacement

Phone: 714-990-7764

### **III. ART IN PUBLIC PLACES SCULPTURE REQUIREMENT OVERVIEW**

Developers subject to the Art in Public Places (APP) requirement must select and install permanent outdoor sculpture at their project site. Development projects with a total project valuation of between \$1,500,000 and \$3,999,999 have the option of contributing sculpture allocation funds to Brea’s Art Fund in lieu of installing sculpture at the project site. Development projects with a total project building valuation of \$4,000,000 or more must install sculpture at the project site.

Sculpture applications must be approved by the City. Sculpture ownership is bound by covenant to the property in perpetuity and must be maintained by successive property owners. Alteration or removal of sculpture must be approved by the City. Modifications to properties that may impact approved sculpture may require review and approval by the City.

This Manual provides detailed policy guidelines for sculpture requirements; describes the sculpture approval process; establishes requirements for sculpture ownership, maintenance, and replacement; and outlines the process for sculpture related approvals for modifications to properties with existing APP sculpture.

### **IV. WHICH DEVELOPMENT PROJECTS ARE SUBJECT TO THE SCULPTURE REQUIREMENT?**

All development projects (exemptions below) with a total project building valuation of \$1,500,000 or more are subject to Brea’s Art in Public Places sculpture requirement. The total project building valuation (for superstructures) is calculated by Brea’s Building and Safety Manager using the International Code Council (ICC) Building Valuation Data table in effect at the time of building permit(s) issuance. Current ICC Building Valuation Data information can be found on ICC’s website.

A “development project” consists of:

- All structures included on the Uniform Application (part of Brea’s Planning Submittal Process).
- Additional plans submitted to the City within one year of issuance of the Certificate of Occupancy for previously approved projects that result in additional square footage.

Projects are subject to the edition of the APP Policy Manual in effect at the time the first building permit is issued.

Exemptions:

- Residential development projects of four or fewer dwelling units
- Places of worship

- Public facilities constructed by nonprofit organizations [501-(c)(3)] or affordable housing projects are issued an exemption on a case by case basis. Contact the City for more information.

Options for meeting the APP requirement are outlined below. For Phased and Master Planned Development Projects, please see page 8 for special requirements. See page 9 for requirements for Combining Sculpture Funds for Multi-Parcel and Multi-Year Projects.

**A. Development Projects with a Total Project Building Valuation between \$1,500,000 and \$3,999,999**

All development projects with a total project building valuation of between \$1,500,000 and \$3,999,999 are required to:

- Select, purchase, and install permanent outdoor sculpture at the project site that is visible and accessible from public streets

—OR—

- Contribute an amount equivalent to the minimum required sculpture allocation (see How Much is the Sculpture Allocation? on page 8) to Brea’s Art Fund in lieu of installing on-site sculpture

**1. Contribution to Art Fund in Lieu of On-Site Sculpture**

The option to contribute to Brea’s Art Fund in lieu of installing sculpture at the project site is available only to projects with a total project building valuation of between \$1,500,000 and \$3,999,999. Contributions to Brea’s Art Fund will fund future public art projects on public lands. For details about how to exercise this option, please see What are the Steps to Contribute Sculpture Funds in Lieu of Sculpture? on pages 29-30. For submittal deadlines that may impact your construction schedule, see How do Sculpture Approvals Factor into my Construction Schedule? on pages 10-12.

**B. Development Projects with a Total Project Building Valuation of \$4,000,000 or More**

All development projects with a total project building valuation of \$4,000,000 or more are required to select, purchase, and install permanent outdoor sculpture at the project site that is visible and accessible from public streets.

**C. Acknowledgment of Sculpture Requirement**

Developers subject to the sculpture requirement are required to sign and submit the Acknowledgement of Sculpture Requirement (page 42) with part 1 of the sculpture application.

#### **D. Phased and Master Planned Development Projects**

Any development project that will proceed in phases or with multiple developers or legal partners will require appointment of a lead developer to collaborate with the City to develop a plan to meet the sculpture requirement. Developers of these projects are urged to meet with staff as early in the development process as possible. The plan shall be submitted for review and approval prior to submittal of part 1 of the sculpture application. The plan shall include:

- Identification of a single contact for the sculpture requirement
- Project description (e.g. location(s), uses, future owners/tenants, architectural style, etc.)
- Time line for phases of construction, including a timeframe for sculpture installation
- Plans indicating the location(s) and number of sculptures

### **V. HOW MUCH IS THE SCULPTURE ALLOCATION?**

The required sculpture allocation is calculated as one percent of the total project building valuation based upon the International Code Council (ICC) Building Valuation Data table in effect at the time the building permit for each superstructure is issued. Any additional plans submitted to the City within one year of issuance of the Certificate of Occupancy that result in additional square footage for a previously approved project will increase the sculpture allocation for a project subject to the APP requirement or may trigger the APP requirement if the total project building valuation reaches \$1,500,000.

For custom home developments, the project's total building valuation will be based on an estimate of the total of the homes' market values, based on lot size and the existing housing market. The sculpture allocation will be one percent of the market value as calculated by Brea's Building and Safety Manager.

For Allowable Expenses from the Sculpture Allocation, see page 13. For Verification of Expenses, see page 14.

#### **A. Confirmation of the Sculpture Allocation**

Developers shall submit an estimate of the total project building valuation, including a breakdown of square footage by type of construction and occupancy, with part 1 of the sculpture application or with the contribution to the Art Fund (option available to projects with a total project building valuation of between \$1,500,000 and \$3,999,999 only—see Contribution to Art Fund in Lieu of On-site Sculpture on page 7), whichever is applicable. Developers may request confirmation of the total project building valuation from the Building and Safety Division following issuance of all building permits for structures for a project. The sculpture allocation can only be confirmed by the City following confirmation of the total project building valuation.

## **B. Exemptions**

For some projects, the following two exemptions may apply when calculating the sculpture allocation:

### **1. First Floor of Parking Structures**

For projects that include parking structures, the square footage of the first floor of the structure will not be included in the calculation of total building valuation used to determine the required sculpture allocation. This is intended to provide a credit for the ground level parking that would otherwise be a parking lot. Any floors with non-parking mixed use will be part of the calculation of the sculpture allocation. No exemptions shall be granted for underground parking or buildings that are combinations of office or retail and parking.

### **2. Development of Properties with Existing APP Sculpture**

For development projects valued at \$1,500,000 or more on properties with an existing sculpture in which existing buildings will be demolished and new buildings constructed, an artwork credit will be given for previously permitted square footage to account for prior installation of sculpture created under the Art in Public Places program. Credit will only be given for existing sculpture in good condition that was approved by the APP Advisory Committee. Existing sculpture must be in the condition originally intended by the artist and must meet current APP requirements. Credit will not be given for sculpture on the property that does not meet these criteria.

A new sculpture obligation is required for construction of additional square footage with a total building valuation of \$1,500,000 or more.

## **C. Combining Sculpture Funds for Multi-Parcel and Multi-Year Projects**

Should a developer whose project is on multiple parcels or which will proceed in phases wish to combine or “pool” sculpture allocation funds for a single sculpture, the developer shall collaborate with the City to develop a plan that includes all items listed under Phased and Master Planned Development Projects (page 8), as well as the following:

- A statement that addresses how reducing the number of sculptures throughout the development project will benefit future property owners as well as the community at large
- A description of how the maintenance of the sculpture will be funded, whether multiple property owners’ associations will be involved, and a plan for how the sculpture maintenance financial obligation will be fairly shared if sculpture is on a partner’s property

The plan shall be submitted by the developer(s) and approved by the City prior to submittal of part 1 of the sculpture application. The pooled sculpture allocation for these projects will be an estimate until the building valuations for structures included are confirmed following issuance of all building permits.

## **VI. HOW DO SCULPTURE APPROVALS FACTOR INTO MY CONSTRUCTION SCHEDULE?**

Described below are required sculpture approvals that should be considered when determining construction schedules for projects subject to the APP requirement. Developers are encouraged to meet with staff early in the development process to discuss options relevant to their project for satisfying the APP requirement to ensure the sculpture component proceeds in a timely manner.

For developers who will install sculpture, be aware that the sculpture application is a multi-step process (for details see [What are the Steps for the Sculpture Application and Approval Process?](#) on pages 23-28). Each part of the application requires review and approval, which can take up to 30 working days following submittal. Incomplete submittals will delay the process.

For projects with a total project building valuation of between \$1,500,000 and \$3,999,999 who opt to contribute the sculpture allocation to Brea's Art Fund in lieu of installing sculpture at the project site, deadlines also apply that should be considered when determining the construction schedule for a project. Please see below for details.

### **A. Sculpture Approvals Required Prior to Issuance of Building Permits**

No building permit shall be issued for a structure of a development project subject to the Art in Public Places requirement without satisfaction of the requirements listed below.

#### **1. For Projects Installing Sculpture at the Project Site**

- Meeting with staff (see pages 23-24 for details)
- Submittal of all required materials for Part 1: Project Overview and Artist Qualifications of the sculpture application (pages 24-25)
- Approval of Part 1: Project Overview and Artist Qualifications by the City and, in some cases, the Art in Public Places Advisory Committee

#### **2. For Projects Contributing Sculpture Allocation Funds In Lieu of Installing Sculpture**

- Submittal of Developers Acknowledgment of APP Requirement (page 42)
- Submittal of Notification to Contribute Sculpture Funds in Lieu of On-Site Sculpture Installation (see page 29 for details)

### **B. Sculpture Approvals Required within Six Months of Issuance of Building Permits**

For development projects subject to the Art in Public Places requirement, the requirements below must be satisfied within six months of issuance of building permits. Noncompliance will result in the issuance of a stop work notice and the project will be

subject to administrative penalties and civil remedies per Brea City Code, unless otherwise agreed to by the City.

**1. For Projects Installing Sculpture at the Project Site**

- Submittal of all required materials for Part 2: Sculpture Plan (pages 25-26) of the sculpture application
- Scheduling of a meeting date for review and approval of Part 2: Sculpture Plan by Art in Public Places Advisory Committee (Committee review meeting dates are set within 30 working days of submittal of a complete application).

**2. For Projects Contributing Sculpture Allocation Funds In Lieu of Installing Sculpture**

- Site Plan
- Breakdown of square footage by type of construction and occupancy
- Contribution of the confirmed sculpture allocation amount to Brea's Art Fund (see Confirmation of the Sculpture Allocation on page 8)

**C. Sculpture Approvals Required Prior to Issuance of Certificates of Occupancy**

No Certificate of Occupancy shall be issued for a development project subject to the Art in Public Places requirement without satisfaction of the requirements listed below.

**1. For Projects Installing Sculpture at the Project Site**

- Securing a building permit for approved sculpture and related components
- Installation of approved sculpture and fulfillment of all related APP requirements
- Submittal of all required materials for Part 3: Sculpture Inspection and Final Report (pages 26-27) of the sculpture application
- Sculpture inspection by the City
- City approval of Part 3: Sculpture Inspection and Final Report by the City and, in some cases, the Art in Public Places Advisory Committee

If the items above have not been satisfied, developers have the option of depositing sculpture funds in trust with the City to release a Temporary Certificate of Occupancy. Please see below for details.

**a. Issuance of Temporary Certificate of Occupancy and Depositing Sculpture Funds in Trust**

In the event all APP requirements have not been satisfied prior to application for a Certificate of Occupancy, a developer may submit a written request to deposit their sculpture allocation in trust with the City for the completion of approved sculpture. Deposit of sculpture funds by a developer shall allow the release of a Temporary Certificate of Occupancy for the project, if approved by the City.

Please be aware that requests to deposit sculpture funds to be held in trust with the City may take up to 30 working days to process prior to release of the Temporary Certificate of Occupancy.

Requests to deposit sculpture funds shall include a timeframe for satisfaction of all sculpture requirements and documentation of payments made to date. Following the deposit of sculpture funds, the developer shall submit invoices/requests for payments to artists and related contractors to the City for disbursement from sculpture funds held in trust. Requests for disbursement require approval by the developer; therefore, artists and contractors may not submit invoices directly to the City. Disbursements from funds held in trust will take 10 to 14 working days from receipt of a written request. No interest will be paid on funds held in trust.

If this option is selected, all sculpture requirements must be satisfied within one year of the date of deposit. If all requirements have not been satisfied within one year, the City shall then control the decision-making regarding the funds in trust and completion of the public art project.

This option may be subject to development fees.

## **2. For Projects Contributing Sculpture Allocation Funds In Lieu of Installing Sculpture**

- Contribution of any outstanding amount (if applicable) of the confirmed sculpture allocation amount to Brea's Art Fund

## **II. WHAT EXPENSES ARE ALLOWED FROM THE SCULPTURE ALLOCATION?**

Only expenses directly related to the design, fabrication, and installation of sculpture are permitted to be paid from the sculpture allocation. No credit will be given for the value of the sculpture should it be appraised at more than the amount paid by the owner. The appraised value of sculpture cannot be used in lieu of the contract amount paid to the artist for the commission or sale of a sculpture to meet the minimum required sculpture allocation.

### **A. Allowable Expenses from the Sculpture Allocation**

- Artist fees
- Sculpture materials
- Fabrication of the sculpture
- Transportation of the sculpture
- Base, mounting, or pedestal for the sculpture
- Structural engineering for the sculpture
- Building permits for installation of the sculpture

- Identification plaque for the sculpture
- Lighting instruments specifically lighting the sculpture
- Installation of the sculpture
- Motors or subterranean equipment directly necessary for installation of the sculpture
- Water related costs for sculpture that includes artist designed water features (restrictions apply, see page 22) not to exceed 30 percent of the sculpture allocation
- Art consultant fees (if applicable) not to exceed a maximum of 20 percent of sculpture allocation (developers may negotiate an hourly rate for an art consultant's services)
- Any fees paid to public art experts (e.g. art conservators, a qualified appraiser, etc.) required by the City or Committee (if applicable)

#### **B. Expenses Not Allowed from the Sculpture Allocation**

- Expenses to locate the artist (e.g. airfare for artist interviews, etc.)
- Architect, landscape architect, or other design professional fees
- Sculpture site preparation (e.g. grading, demolition or removal of other items/structures, running electrical to sculpture site, etc.)
- Landscaping around a sculpture
- Items around the sculpture not conceptualized, designed, and fabricated by a qualified artist, including, but not limited to:
  - Prefabricated water features
  - Ornamental or decorative items in the area around the sculpture
  - Hardscape and seating
- Utility fees associated with activating electronic or water generated sculpture
- Lighting elements not integral to the illumination of the sculpture
- Publicity, public relations, photographs, educational materials, business letterhead or logos bearing the sculpture's image
- Dedication ceremonies, including sculpture unveilings or grand openings

#### **C. Verification of Expenses**

Developers shall submit a final budget with part 3 of the sculpture application. Sculpture expenses must meet or exceed the required minimum sculpture allocation. The City may request submittal of copies of financial records in a form acceptable to the City's Financial Services Director that document allowable sculpture expenses paid from the sculpture allocation.

### **III. WHAT ARE THE REQUIREMENTS FOR SELECTING AN ARTIST?**

Developers select artists for their projects, which they may do independently or with the assistance of an art consultant. The City does not maintain a list of approved artists. Selected artists must meet the City's qualification requirements described below. Artists' past public sculpture commissions, including the contract amount paid to the artist, will be verified by the City as part of the artist approval process.

## **A. Artist Qualifications**

An artist must be recognized by critics and peers as a professional practitioner of the visual arts. To assess the qualifications of an artist the Committee will consider the following:

- Artist's body of work
- Educational background
- Formal sculpture training
- Past and current large scale (5 feet or larger) outdoor public sculpture commissions
- Sales of work
- Exhibition records
- Publications

Artists must also have experience in the following areas:

- Successfully collaborating with design teams, architects, art consultants, developers, engineers, fabricators, and landscape architects
- Meeting scheduled deadlines
- Negotiating and contracting their work responsibly
- Conceptualizing, designing, fabricating, and installing large-scale outdoor sculpture similar in scope to the proposed sculpture
- The ability to demonstrate long-term outdoor durability of selected materials

Artists shall have the experience and expertise to create site specific sculpture after consideration of contextual issues related to the development project site, including:

- Architectural style
- Future use and users of the development project
- The community
- The proposed sculpture in terms of its placement within APP Collection

### **1. Verification of Artist's Past Public Sculpture Commissions**

Artists must be able to verify the value of the proposed sculpture based on previous and current public sculpture commissions. A list of past comparable commissions or sculptures sold (e.g. similar in scope, materials, size, etc. to the proposed sculpture) shall be submitted with part 1 of the sculpture application. The list of past commissions shall document amounts paid for similar sculptures by the artist that progressively increase toward or exceed the commission amount for the proposed sculpture.

Current contact information for past commissions is required for value verification. Incomplete or inaccurate information may cause delays in the approval process. The City may request additional records documenting past commission amounts paid, including but not limited to, sales contracts, invoices, and cancelled checks. Gallery list prices or asking prices of works are not necessarily comparable.

Therefore, gallery list prices and asking prices are not acceptable for value verification of the proposed sculpture.

If the value of the proposed sculpture cannot be verified based on the information submitted, the City may choose, at its sole discretion, to have the artist's proposal and/or other completed works appraised by a qualified art appraiser. This expenditure shall be counted toward the total sculpture allocation and shall be borne by the developer. The appraised value of sculpture cannot be used in lieu of the contract amount paid to the artist for the commission or sale of a sculpture to meet the minimum required sculpture allocation. Please see What Expenses are Allowed from the Sculpture Allocation? on page 12-14 for more information.

## **2. Contracts**

Developers shall submit an unsigned copy of the contract with the artist with Part 1 of the sculpture application. Developers and artists may choose to modify their contracts following feedback received after review by the City. The final contract with the artist shall include the Comprehensive Maintenance Plan (pages 20-21). Following approval by the City, the developer shall submit a copy of the final signed contract with part 2 of the sculpture application.

## **IV. WHAT ARE THE REQUIREMENTS FOR SELECTING AN ART CONSULTANT?**

Developers have the option of hiring a qualified, experienced public art consultant to facilitate artist selection, manage the sculpture application process, manage sculpture installation, and ensure all APP requirements have been satisfied. Submittal of an art consultant's current résumé is required with part 1 of the sculpture application. Only fees paid to qualified art consultants will be allowed. Developers may negotiate an hourly rate with art consultants. Art consultant fees are not to exceed 20 percent of the sculpture allocation.

Selected art consultants must meet the following qualification requirements:

- Recognition as a professional in the field of public art by peers and other design professionals
- Educational background and training in public art
- Paid experience consulting for public art projects similar in scope to the proposed sculpture
- Expertise about public artists, installation requirements, public art approval processes, and management of the sculpture installation process
- Experience responsibly negotiating their work, the work of artists, and artist's contractors

## **V. WHAT DO I NEED TO CONSIDER WHEN SELECTING A SCULPTURE SITE?**

Every development site is different, so selecting a location for sculpture will vary based on the design, use, and other features of the project site. Developers shall determine the location for sculpture that is most appropriate for their project. There are, however, several requirements that must be satisfied when selecting the sculpture location.

### **A. Visibility**

One of the goals of the program is to ensure sculptures are visually accessible to every member of the community. Therefore, visibility to the general public is a key criterion in approval of sculpture location. The location of the sculpture is to be indicated on the project's site plan.

Sculpture is to be:

- Located outdoors at the project site
- Easily visible to both motorists and pedestrians
- Not greater than 50 feet from a public street
- Sculpture may not be placed near: signage (temporary or permanent—see details below), sign walls, bus benches, utility boxes, electrical/telephone poles, mail boxes, or items (either on or off the property) that may impede the public's view or diminish the aesthetic value of the sculpture

Exceptions will be considered by the City for large open or enclosed high-traffic public areas, such as shopping malls, which may request to place their sculpture(s) in an interior public location. Submittal of a written request for an exception to the requirement is required. The request shall be submitted with part 1 of the sculpture application and include a description of how the exception meets the spirit and intent of the program.

### **B. Signage**

Lettering, symbols, and/or signage are not permitted upon the sculpture or its foundation except as intended by the artist. Permanent or temporary signage of any type is not permissible on or within proximity of the sculpture. This includes the foreground, background, or adjacent areas of the sculpture. Signage should not distract or diminish the aesthetics of the sculpture when the public views the work from the most accessible vantage points (e.g. intersections, entryways). The Committee will review signage plans with part 1 of the sculpture application and may ask the applicant to provide alternative locations should the signage interrupt the public's view.

Exceptions for signage within proximity of sculpture for certain development projects, such as in-fill and mixed use, will be considered by the City on a case by case basis. If such an exemption is needed for the project, please contact staff as early as possible in the development process to discuss the specifics of the project. Submittal of a written

request for an exception to the requirement is required. The request shall be submitted with part 1 of the sculpture application.

**C. Landscaping**

The sculpture and base shall be well integrated with the surrounding softscape and hardscape. The artist shall collaborate with the landscape architect to develop a landscape plan suitable for the area surrounding the sculpture, as well as areas approaching the sculpture to ensure a clear view of the sculpture. Long term maintenance (e.g. avoiding trees/shrubs that attract birds that leave guano, dripping sap, present/future height impacting view of sculpture, etc.) should be considered when selecting plant material. Native and drought resistant plants are encouraged. Please contact the City’s Planning Division (page 5) for additional landscaping requirements.

The Committee will review all landscape and irrigation plans and ask the applicant to provide alternatives should the landscaping interrupt the public’s view or negatively impact the long-term maintenance of the sculpture. A landscape plan shall be included with part 2 of the sculpture application.

**D. Irrigation**

All sprinklers and irrigation devices shall be directed away from the sculpture to prevent damage. An irrigation plan shall be included with part 2 of the sculpture application.

**E. Easements/Encroachments**

The developer is responsible for ensuring the proposed sculpture site is available and appropriate for permanent installation of large-scale sculpture. Any permission needed due to Orange County Transit Authority (OCTA), County, or City easements or encroachments must be arranged prior to submittal of the proposed sculpture site with part 1 of the sculpture application.

**VI. WHAT ARE THE REQUIREMENTS FOR SCULPTURE?**

Sculptures are conceptualized and designed by qualified artists. The following requirements and related art application submittals were developed to help ensure proposed sculpture meets the goals of the program.

**A. Artistic Expression and Innovation**

Artists shall demonstrate how proposed sculpture will effectively engage the public, and invite a “second look.” Works engaging to the public are often described as thought provoking, inspiring, entertaining, clever, whimsical, powerful, reflective or symbolic. Innovation and originality are encouraged and expected. The proposed sculpture should contribute to the diversity of the existing APP Collection. Information about Brea’s APP Collection and photos of sculptures in the Collection can be found on the City’s website.

Sculptures shall be well integrated with the architecture or style of the development project. Future use and users of the project shall also be considered. Sculptures should

be appropriate in scale, material, form, and content to the social and physical environments.

The Committee takes interest in the artist's creative thought process in relationship to the specific development project. Therefore, existing works are not encouraged. The following will be considered by the Committee:

- Expressive properties (mood, feeling, message, symbolism)
- Formal properties (balance, emphasis/dominance, repetition/rhythm, unity, form/shape, texture, color)
- Relation of the proposed sculpture to the artist's body of work
- Context (response to site, architectural style, use of project, community, APP Collection)
- Artist's collaboration (when applicable) with other design professionals, the art consultant(s), the developer(s), and any resulting impact on the conceptualization and design of the proposed sculpture

## **B. Scale and Content**

Sculpture must be three-dimensional and monumental in scale (excluding base). Monumental is defined as 5 feet or larger in one dimension. Sculpture not traditionally classified as singular, discrete objects and "three-dimensional sculpture" (such as environmental artwork), are not acceptable. Below are examples of types of sculpture that would not be approved by the Committee. This list is not comprehensive, but is provided for illustrative purposes.

### **1. Examples of Unacceptable Sculpture**

- Decorative or ornamental pieces that are not conceptualized, designed, and fabricated by a qualified artist, such as: "off the shelf" decorative items, like garden sculpture; historical markers or bells; bell towers; obelisks; architectural ornamentation or enhancements; art as advertisements or commercial signage mixed with imagery; and busts or statuary memorials are generally not encouraged and will be subject to additional review criteria (see page 36, Donations of Artwork to the City).
- Mass produced reproductions or replicas of original works of art. Exceptions are signed sculptures by the original artist for reproduction (edition limit: five).
- Functional equipment, which may be considered part of an amenities package such as benches, chairs, fountains (for water feature requirements, see page 22), etc. except as conceptualized, designed, and fabricated by a qualified artist.

### **C. Materials**

Sculptures are to be constructed of durable, long-lasting materials that are able to withstand permanent outdoor display and require low levels of maintenance.

**1. Recommended materials:**

- Stainless steel
- High-grade aluminum
- Hard stone

**2. Materials needing special consideration:**

- Bronze
- Cor-ten steel
- Wood
- Soft stone (e.g. alabaster)
- Resins/Composites
- Fiberglass
- Rebar will not be acceptable for internal support of sculpture.

If applicants opt to submit a proposal for a sculpture made from materials listed as “not recommended,” the applicant must demonstrate the long-term durability and suitability for permanent outdoor display with a low level of maintenance. Other materials not listed may be considered if use in permanent outdoor sculpture can be documented and durability for permanent outdoor display can be demonstrated.

### **D. Permanence and Durability**

Artists must be able to clearly demonstrate the quality, craftsmanship, and durability of their sculpture. Substantial consideration shall be given to:

- Permanence and weathering
- Structural and surface integrity and stability
- Resistance against theft and vandalism
- The probability of excessive maintenance and repair costs

Rust proof materials must be used. Artists will be asked to provide a breakdown by percentage of metal alloys for bronzes. Thickness and grade/quality of steel works will be reviewed for rust proof durability. Artists shall ensure materials, armature, and connection points (including nuts, bolts, and other metal fixtures) that will be in contact with each other do not produce oxidation and rust. Additional documentation verifying the durability of materials may be requested as part of the approval process.

## **E. Maintenance**

Artists should consider the cost and feasibility of long-term maintenance for their sculpture and are urged to use the lowest maintenance options available. Sculpture that includes materials that require frequent upkeep or replacement will not be approved.

### **1. Comprehensive Maintenance Plan**

A Comprehensive Maintenance Plan shall be included in the Covenants, Conditions, and Restrictions (CC&R) or other legally binding covenant (see Recordation of Sculpture Ownership and Maintenance Obligation on page 21) for the project and submitted with part 2 of the sculpture application. The artist's contract shall specify the timeframe during which the artist will perform maintenance or repairs (typically one year).

The Comprehensive Maintenance Plan shall include:

- Methods of cleaning, including the type of cleaning agent(s) and tools to be used (be specific); how to apply cleaning agents, wax, or other materials; number of coats and drying time; whether the work can be performed by a general maintenance service or must be performed by a professional art conservation service
- Frequency and cost estimates (current) for short term and long-term maintenance, including labor, parts, and refinishing/repainting/repatinization, etc.
- Materials, finishes, sealants, manufacturers' parts cut sheets, brands and mixes of pigment, color samples, bolts, and other materials
- Lighting plan, lighting instrument cut sheets, wattage and type of bulb, timer cut sheets (if applicable)
- Fabricator, foundry, manufacturer, and subcontractor (as applicable) contact information, websites/email addresses, and addresses
- Sculpture designs/plans (if applicable)
- Availability and source for molds, replacement parts, motors, etc. (if applicable) and current costs
- Instructions for removal, crating, and transportation, if necessary, for short term or long-term maintenance (note: removal must be approved by the City)
- Description of vandal and theft resistance measures

Sculpture shall be cleaned on the property where the sculpture is permanently installed unless otherwise agreed upon by the City. The City prohibits removing sculpture from the site for any reason without explicit authorization (see Temporary Removal of Sculpture, page 33, and Relocation or Permanent Removal of Sculpture, pages 33-35).

Artists are urged to consider the environmental impact of the fabrication of their sculpture and the materials used and seek options with the least impact available.

## **F. Recordation of Sculpture Ownership and Maintenance Obligation**

Developers are required to file a covenant, CC&R, or other form reasonably approved by the City Attorney (as applicable to the project) binding on successors to title to the subject property. The document shall include:

- Sculpture ownership requirements (pages 30-35)
- The Comprehensive Maintenance Plan (pages 20-21)
- The source of funding for ongoing maintenance or replacement of the sculpture

A draft of the document shall be submitted with part 2 of the sculpture application. A copy of the recorded covenant or CC&R shall be submitted with part 3 of the sculpture application.

## **G. Public Liability and Safety**

Sculpture will be displayed along major public streets. Sculpture must not disrupt traffic or create unsafe conditions or distractions to motorists and pedestrians that may expose the City or property owner to liability. Consideration should be given to sharp or protruding edges that may pose a danger to pedestrians. Attention should also be given to durability and ability to withstand weight, as property owners are held responsible for repairs resulting from persons climbing, sitting, or otherwise damaging the sculpture.

## **H. Artist Warranties of Title and Originality**

The artist shall sign the Artist Warranties of Title and Originality (page 45) attesting to authorship of the sculpture, which shall be submitted with part 3 of the sculpture application.

## **I. Multiple Editions**

Sculpture that is not unique must be an edition of five or fewer. If the proposed sculpture is one of multiple editions, the applicant shall include the edition number of the piece and provide the location of all other editions. To maintain the value of the proposed work, similar editions may not be publicly displayed within a 50-mile radius of the Brea project site without approval of the Art in Public Places Advisory Committee.

## **J. Water Features and Fountains**

Water feature sculpture or sculpture requiring water, must be conceptualized and designed by an approved, qualified artist in order to be considered. The sculpture must stand on its own should the water cease to function properly. There must be a demonstrated collaboration between the artist and the water feature design company.

Water related costs, such as pump and pool construction, will be evaluated by the Committee for consideration as part of the overall sculpture allocation. Developers are welcome to exceed the minimum required sculpture allocation to construct a water feature. However, water features will not be accepted in lieu of the Art in Public Places sculpture requirement. No more than 30 percent of the total sculpture allocation may be utilized for artist designed water-related costs.

### **K. Kinetic Sculpture**

Artists must demonstrate that kinetic sculpture will move as intended. Artists shall clearly define the type, degree, and frequency of movement, as well as what to expect under a variety of conditions (e.g. the amount of wind needed for a wind sculpture, what to expect under average wind conditions in Brea, etc.). Should the sculpture cease to move, the artist must demonstrate that the sculpture will stand on its own. Input from related experts may be requested by the City and/or Committee to confirm the artist's design and selected materials will move as the artist intends.

### **L. Lighting and Electrical**

Artists are to provide a lighting plan indicating the location of lighting instruments, the type of instrument (manufacturer cut sheets), and wattage and type of bulb with part 2 of the sculpture application.

Sculpture shall be lit from dusk to dawn. Lighting and electronic elements not integral to the sculpture will not be included as part of the sculpture allocation. Review of lighting instruments and other electrical components may be required as part of the building permit process for installation of the sculpture.

Artists are urged to select energy efficient lighting instruments, bulbs, and timers.

### **M. Sculpture Base, Structural Engineering, and Building Permits**

Sculpture is to be permanently secured to the base. A licensed professional engineer must approve and certify the installation plans as structurally sound, safe, and durable. Installation plans approved by a licensed professional engineer shall be submitted with part 2 of the sculpture application. The base shall house only the sculpture, identification plaque, and lighting instruments for the sculpture. A building permit is required for the installation of all sculptures and related lighting components.

### **N. Identification Plaque**

Sculpture shall be identified by a permanent plaque approximately 8 inches x 8 inches. The artist shall designate the plaque location, which shall be permanently installed, using theft-resistant techniques, in a ground location near the sculpture or on the base and list at least the following:

- Sculpture title
- Artist's name
- Installation Year

The Committee must approve any additional plaques that may be requested.

### **O. Public Art Expert and Community Input**

For some proposed sculpture, input by third party experts (e.g. engineers, art conservators, etc.) may be requested by the City or the Committee. The Committee may also request input from the community at large. The expense for these services is to be borne by the developer and cannot be credited toward the sculpture allocation.

**P. Unveiling Plans**

The developer shall contact the City of Brea’s Cultural Arts Division regarding any unveiling or dedication ceremonies for the sculpture. An unveiling or dedication is optional. In the event the developer chooses to conduct an unveiling or dedication, City staff shall, upon request, provide the developer with an invitation list of City Council Members, Commissioners, Art in Public Places Advisory Committee members, and other appropriate guests. City staff shall work with the developer to promote press opportunities and public interest in the sculpture. The expense for these plans is to be borne by the developer and cannot be credited toward the sculpture allocation.

**VII. WHAT ARE THE STEPS FOR THE SCULPTURE APPLICATION AND APPROVAL PROCESS?**

Below are descriptions of submittals and approvals required for each step of the sculpture approval process. For the required submittals for developers of projects with a total project valuation of between \$1,500,000 and \$3,999,999 who opt to contribute sculpture allocation funds in lieu of installing sculpture at the project site, see What are the Steps to Contribute Sculpture Funds in Lieu of Sculpture? on pages 29-30.

**A. Meeting with APP Staff**

Developers shall contact Art in Public Places staff as early as possible in the development process to schedule a meeting to discuss Art in Public Places requirements, the sculpture application process, the Committee approval process, and their development project. This meeting is required prior to submittal of part 1 of the sculpture application and prior to issuance of building permits.

**B. Submittal of Sculpture Application Materials**

The sculpture application process includes submittal of a three-part application. Developers are encouraged to meet with staff to review application materials prior to formal submittal to ensure all requirements have been met. City staff reviews all materials submitted and advises the developer of any incomplete items.

Review and approval of each part of the sculpture application will take up to 30 working days. If any items are found incomplete, the review period will not begin until all outstanding items are received.

## **1. Sculpture Application Part 1: Project Overview and Artist Qualifications**

Part 1 of the application requires administrative review and approval by the City upon receipt of all required materials. Committee review and approval may be necessary for some development projects, such as phased and master planned projects or for projects with special circumstances (e.g. Requests for Exceptions to Sculpture Requirements, page 27). Approval is required prior to issuance of building permits for the project, unless otherwise agreed to by the City.

Submittal of two hardcopies of application materials is required. In the event Committee review and approval are required, nine hardcopies of the application materials will be required. The Committee review meeting will be scheduled within 30 working days of receipt of a complete application packet. For ease of use, please include a table of contents, page numbers, and titles for each section of the application materials.

### **a. Required Submittals for Part 1 of the Sculpture Application**

1. Art in Public Places Application Coversheet (appendix C, page 43)
2. Developer signed copy of Developer Acknowledgement of APP Requirement (Appendix B, page 42)
3. Description of the development project, including architectural style, use, location, architectural renderings, location indicated on a map (e.g. Google maps)
4. Site plan (to scale) indicating the proposed location of the sculpture
5. Photographs of proposed sculpture site taken from different perspectives (e.g. approaching site from major streets, ingress/egress of proposed sculpture site)
6. Signage plan for area around proposed sculpture site
7. Breakdown of square footage by type of construction and occupancy and developer's estimate of the sculpture allocation
8. Artist's current résumé
9. Completed Artist's History of Public Sculpture Commissions (page 44) (if contact information is incomplete or erroneous, the application will be returned as incomplete)
10. Photos, descriptions, and locations of past works (corresponding to Completed Artist's History of Public Sculpture Commissions; additional works of similar scope and materials may also be included)
11. Other collateral (reviews, critiques, articles) of artist's past works
12. Unsigned copy of the contract with the artist
13. Art consultant's current résumé (if applicable)

## **2. Sculpture Application Part 2: Sculpture Plan**

Developers must submit all required items for part 2 of the sculpture application and schedule the Committee review meeting within six months of issuance of building permits. Noncompliance will result in the issuance of a stop work notice

and the project will be subject to administrative penalties and civil remedies per Brea City Code, unless otherwise agreed to by the City.

Developers are encouraged to meet with staff to review application materials prior to submittal. Submittal of nine hard copies of the application materials is required. For ease of use, please include a table of contents, page numbers, and titles for each section of the application materials. Approval of part 2 of the sculpture application is required prior to issuance of the building permit for the sculpture.

**a. Required Submittals for Part 2 of the Sculpture Application**

1. A copy of the Part 1: Project Overview & Artist Qualifications (above), as approved
2. Artist Warranties of Title and Originality (page 45), signed by the artist
3. Artist's rendering of proposed sculpture
4. Maquette of proposed sculpture (if available—may be brought to presentation)
5. Rendering of proposed sculpture in situ clearly showing the sculpture in relation to the site/building, as the public at ground level would see it (additional perspectives approaching from major streets, ingresses/egresses are also helpful)
6. Distance between sculpture and public street
7. Physical description of the proposed sculpture, including dimensions, materials, finishes, and percentage breakdown of metal alloys
8. Samples of materials and finishes
9. Edition number and locations of other sculptures in the series (if applicable)
10. Artist statements addressing:
  - a. Concept/vision of the sculpture
  - b. How the proposed sculpture fits within the body of the artist's work
  - c. The context of the proposed sculpture relative to the development project site, including architectural style, future use and users of the development project; the community; and the overall APP Collection
11. Landscape plan and irrigation plan (including placement, direction, and type of sprinklers)
12. Lighting plan indicating the placement and direction of lighting
13. Lighting instrument cut sheets and type and wattage of bulbs
14. Sculpture installation plan, including armature description/materials; base description, design, materials, finishes, dimensions; and description of connection points and materials to be used for all connectors (e.g. bolts)
15. Licensed professional engineer's approval of installation plans
16. Projected Sculpture Allocation Budget
17. Signed copy of artist's contract

18. Comprehensive Maintenance Plan (pages 20-21)
19. Draft of the CC&R or other covenant (whichever is applicable) to be filed with the county describing sculpture ownership responsibilities and the maintenance funding source (see Recordation of Sculpture Ownership and Maintenance Obligation on page 21)
20. Target date for installation
21. Unveiling or dedication plans (if applicable)

### **3. Part 3: Sculpture Inspection and Final Report**

Administrative review and approval by the City of part 3 of the application is required prior to issuance of Certificates of Occupancy for projects subject to the APP requirement, unless otherwise agreed to by the City. Submittal of two hard copies of the application materials is required. Documentation of allowable sculpture allocation expenses may be requested by the City as part of the verification of expenses process (see Verification of Expenses, page 14). For some development projects, Committee review and approval may be necessary. In those cases, submittal of nine hard copies of the application materials is required.

If the sculpture has not been installed and part 3 of the sculpture application has not been submitted and approved prior to the need for the project's Certificate of Occupancy, the developer has the option of depositing their sculpture allocation in trust with the City in order to obtain a temporary Certificate of Occupancy pending satisfaction of all APP requirements (for Issuance of Temporary Certificate of Occupancy and Depositing Sculpture Funds in Trust, page 12). It may take up to 30 working days for approval of the request to deposit sculpture funds in trust to obtain a temporary Certificate of Occupancy.

#### **a. Required Submittals for Part 3 of the Sculpture Application**

1. Request for Sculpture Inspection
2. Finalized Sculpture Allocation Budget
3. Final executed copy of the CC&R or covenant (whichever is applicable) as recorded with County Recorder describing the sculpture ownership obligation, maintenance funding source, and approved Comprehensive Maintenance Plan

### **C. Art in Public Places Advisory Committee Review**

The Art in Public Places Advisory Committee is the formal body responsible for reviewing and approving proposed sculpture and ensuring Art in Public Places proposals meet program requirements. The Committee sculpture application review check-list can be found on pages 50-52. Please see pages 37-38 for a full description of the Committee and its responsibilities.

Developers, along with their art consultants (if applicable) and artists, shall present application materials and be prepared to answer questions at the Committee sculpture

application review meeting. It is important for the developer to be present at the meeting to receive the Committee's comments and suggestions should the application not be approved in full. The Committee retains the right to ask the developer, artist and/or art consultant to provide further information or demonstrate how the sculpture application meets the review criteria prior to giving their final decision. It may be necessary to reconvene the meeting at a later date to review a revised application.

### **1. Scheduling the Committee Review**

Following submittal of required application materials (see What Are the Steps for the Sculpture Application and Approval Process? pages 23-28), staff will notify the developer of the date, time, and location of the Art in Public Places Advisory Committee review meeting. Committee review and approval is required for part 2 of the sculpture application and may be required for parts 1 and 3 of the sculpture application in some circumstances, such as requests for exceptions to any APP requirements. Developers will be advised by staff of whether parts 1 and 3 will require review and approval by the Committee. The Committee shall meet within 30 working days of the date all application materials are submitted in their complete form.

### **2. Requests for Exceptions to Sculpture Requirements**

Exceptions to Art in Public Places Program requirements are rarely granted and when given, are granted for only highly compelling reasons. Developers wishing to request an exception to an APP requirement are advised to discuss this with staff as early in the project planning process as possible, as delays in the sculpture approval process may affect a project's construction timeframe (see How Do Sculpture Approvals Factor into My Construction Schedule? on pages 10-12). All such requests must be made in writing, must include documentation describing the reason for the request, and must address how the proposal still meets the spirit and intent of the Art in Public Places Program. Requests for exceptions to APP requirements shall be reviewed and approved by the City and/or Art in Public Places Advisory Committee, which can take up to 30 working days.

## **D. Notification and Follow-Up**

The developer shall be notified in writing of the Committee's decision within 14 working days of the review meeting. If the sculpture is approved, any outstanding items must be submitted prior to installation of the sculpture. If the sculpture application is not approved, the reason(s) for denial will be noted, including possible modifications or additions that could lead to approval. Should the developer and/or artist modify their sculpture application, it may be resubmitted to the Committee for reconsideration, and the Committee will reconvene to review modified sculpture application materials within 30 working days of submittal. Staff will notify the developer of the date, time, and location of the Committee review meeting.

### **1. If the Sculpture Application Is Not Approved**

If one part or all of the sculpture application is not approved, developers have the following options:

- Accept the Committee's recommendations and make the requested modifications.
- Select a different artist to create a new design and begin the sculpture application process again.
- Appeal the Committee's decision to the Cultural Arts Commission (See Appeal Process below).
- Submit a final appeal to the Brea City Council, if the Cultural Arts Commission does not approve the initial appeal (See Appeal Process below).

### **2. The Appeal Process**

The developer must file a written appeal with the Cultural Arts Commission within 14 working days of notification of the Art in Public Places Advisory Committee's decision. The City does not grant an unlimited number of appeals. All items being appealed should be addressed in the written appeal. Upon filing an appeal, the Director of Community Services shall set the hearing date and time and notify the applicant. The Cultural Arts Commission will receive the original application, written reports, and the appeal request. The Commission may affirm, reverse, or modify in whole or in part any Committee decision or requirement. Brea City Council shall only review appeals which are denied by the Cultural Arts Commission. A written appeal to the Brea City Council must be filed with the City Clerk within 14 working days of the Commission's decision. Brea City Council's decision shall be final and conclusive.

## **VIII. WHAT ARE THE STEPS FOR CONTRIBUTING SCULPTURE FUNDS IN LIEU OF INSTALLING SCULPTURE?**

The option to contribute to Brea's Art Fund in lieu of installing sculpture at the project site is available to projects with a total project building valuation of between \$1,500,000 and \$3,999,999. Funds contributed to Brea's Art Fund will be used for future public art projects on public lands. This option is voluntary and no interest will be paid on sculpture allocation funds contributed that are returned to developers for any reason. Following contribution of the total sculpture allocation amount, the APP requirement will be deemed satisfied by the City unless additional plans increasing the square footage of the project are submitted within one year of issuance of the Certificate of Occupancy (see Which Development Projects are Subject to the Sculpture Requirement on pages 6-8).

For developers of eligible development projects who wish to exercise this option, steps and relevant deadlines are described below.

### **A. Step 1: Notification to Contribute Sculpture Allocation Funds**

For eligible development projects who wish to contribute sculpture allocation funds in lieu of installing sculpture, the following items must be submitted prior to issuance of building permits, unless otherwise agreed to by the City:

1. Developer Acknowledgment of APP Requirement (page 42)
2. Notification to Contribute Sculpture Funds in Lieu of On-Site Sculpture Installation

Eligible developers must submit a written notification, signed and dated by the developer(s) of the project, signifying their wish to contribute the full amount of the required sculpture allocation for the project in lieu of installing sculpture at the project site. The notification must include a statement acknowledging that the sculpture allocation amount contributed to meet the Art in Public Places requirement for the project is subject to change should any additional plans be submitted to the City within one year of issuance of the Certificate of Occupancy that result in additional square footage for the previously approved project. The notification must also include a statement acknowledging that no interest will be paid on sculpture allocation funds returned for any reason.

### **B. Step 2: Confirmation of Sculpture Allocation Amount**

Prior to contributing the total sculpture allocation amount for a project to Brea's Art Fund, developers must confirm the total project building valuation. Requests for confirmation of the total project building valuation may be submitted following issuance of building permits for all structures of a project (see Confirmation of the Sculpture Allocation on page 8). Submittal of following items is required:

1. Site plan for the project
2. Breakdown of square footage by type of construction and occupancy for the project
3. Request to confirm the total project building valuation

### **C. Step 3: Contribution of Sculpture Funds**

The items below must be submitted within six months of issuance of building permits, unless otherwise agreed to by the City. Noncompliance will result in the issuance of a stop work notice and the project will be subject to administrative penalties and civil remedies per Brea City Code.

1. Contribution in an amount equivalent to the total sculpture allocation for the project

**D. Step 4: Contribution of Outstanding Sculpture Allocation Funds (if applicable)**

If, for any reason, the total sculpture allocation amount has not been contributed to Brea's Art Fund within six months of issuance of building permits, any outstanding amount must be contributed prior to issuance of the Certificate of Occupancy.

**IX. WHO IS RESPONSIBLE FOR SCULPTURE MAINTENANCE?**

Sculpture is installed by developers and is to remain on the property in perpetuity. Property owners and their successors in interest are legally responsible for maintaining their sculpture in the condition intended by the artist as approved by the City and are responsible for replacing the sculpture should it be damaged beyond repair, destroyed, or stolen.

The Cultural Arts Commission or its designee shall inspect each sculpture for damage or maintenance concerns. Property owners will be informed of the results of inspections, including needed maintenance or repair. Property owners will be subject to Code Enforcement action for failure to comply with the maintenance requirements of this program.

**A. Sculpture Ownership Responsibilities**

Property owners shall complete needed maintenance, restoration, repairs, etc. within 30 days of notification by the City, unless otherwise agreed to by the City. Property owners shall notify the City when needed maintenance has been completed. Staff will inspect the sculpture to ensure all APP maintenance requirements have been satisfied. Maintenance not completed within this timeframe is subject to Code Enforcement action and may delay future issuance of building permits or Certificates of Occupancy, unless otherwise agreed to by the City.

**1. Ongoing Maintenance**

Sculpture shall be maintained according to the artist's instructions provided in the Comprehensive Maintenance Plan, including, but not limited to recommended frequencies for:

- Cleaning
- Waxing
- Repainting (if applicable)
- Replacement of parts

The following conditions must be maintained at all times:

- Sculpture and base are clean and damage free
- Landscape, hardscape, signage (permanent or temporary), etc. do not interfere with or detract from the view of the sculpture
- Sprinkler spray is directed away from sculpture
- Water, electronic, and kinetic sculptures are in good working order

- Sculpture is lit according to the approved lighting plan during evening and nighttime hours
- Lighting fixtures used to illuminate sculpture are in good working condition and meet all current safety standards
- Sculpture identification plaques remain in the location designated by the artist or are replaced according to City requirements if damaged or stolen
- Sculpture shall be cleaned on the property where the sculpture is permanently installed, unless agreed upon by the City. The City prohibits removing sculpture from the site for any reason without explicit, written authorization.

**a. Funding of Maintenance**

Developers and/or property owners are required to establish and maintain a source of funding to maintain the sculpture on a routine and permanent basis. The sculpture maintenance funding source is to be described in the Covenants, Conditions, and Restrictions (CC&R) or covenant filed with the County (see Recordation of Sculpture Ownership and Maintenance Obligation, page 21).

**b. Sculpture Insurance**

Public sculpture must remain permanently installed at the site as a condition of project approval, as stated in the CC&R, or in a recordable agreement, binding on successors to title to the subject property. In the event a sculpture is damaged, destroyed, or stolen, the property owner is legally responsible for repairing or replacing the sculpture (see Replacement of Sculpture page 35). The City urges sculpture owners to insure their sculpture for the replacement value, not for the purchase price, as sculpture often increases in value over time.

**2. Repairing or Restoring Damaged Sculpture**

The property owner is responsible for repairing sculpture in the event of damage and/or vandalism. Damaged sculpture shall be repaired as closely as possible to the original approved sculpture. If repair or restoration is needed, the original artist must be given first refusal on repairs for a reasonable fee. If the original artist is not available or is unwilling to perform the required repairs for a reasonable fee, the owner shall make arrangements for repairs with a reputable art conservator or other qualified professional. Property owners are encouraged to obtain several bids from qualified professionals.

The owner shall submit, in writing, the plan to repair or restore a sculpture, which shall include a description of repairs, timeframe for repairs, and a target date for completion. Property owners shall notify the City once repairs and/or restoration are complete. Sculpture will be inspected by staff to ensure all APP requirements have been satisfied. If temporary removal of a sculpture is necessary to complete repairs or restoration, please see Temporary Removal of Sculpture, page 33, for additional requirements.

Repairs shall be completed within 60 days unless otherwise agreed to by the City. Repairs not completed within this timeframe shall be subject to Code Enforcement action and may delay issuance of future building permits, Certificates of Occupancy, or other City related approvals.

### **3. Modification of Sculpture**

Alteration of a sculpture affects the artist's rights and has serious legal consequences for property owners (see Appendix A, Visual Arts Laws for Artists and Sculpture Owners pages 39-41). Sculpture owners wishing to modify or alter a sculpture may not do so without legal written consent from the original artist describing specific changes to which the artist has agreed, who will perform the modification, and any related changes to the maintenance plan.

Any changes agreed to by the artist must be submitted for consideration and approval by the Art in Public Places Advisory Committee. Requests for modification of sculpture must be made in writing and include an explanation for the changes, the artist's consent, and a timeframe for completion. If a sculpture owner is unable to locate the artist or the artist's estate (if the artist is deceased), owners should submit an explanation of steps taken to locate the artist and/or the artist's estate, and submit this with the request for modification of the sculpture.

The City may request submittal of additional items depending upon the nature of the modification. Alteration of sculpture is only approved for the most compelling reasons. Requests for the modification of sculpture may take up to 30 working days for review and approval by the Committee.

Property owners shall notify the City once approved modifications are complete. Sculpture will be inspected by staff to ensure all APP requirements have been satisfied. Approved sculpture modifications must be complete within 60 days of approval unless otherwise agreed to by the City. Approved modifications not completed within this timeframe shall be subject to Code Enforcement action and may delay issuance of future building permits, Certificates of Occupancy, or other City related approvals.

### **4. Temporary Removal of Sculpture**

The temporary removal of a sculpture requires City approval and is only granted for compelling reasons, such as sculpture restoration or risk of damage to a sculpture due to construction on the property. Requests for temporary removal of sculpture must be made in writing and submitted for review and approval by the City, which may take up to 30 working days. The request shall include the following:

- An explanation for the request
- Plan for restoration/repairs (see Repairing or Restoring Damaged Sculpture, page 32)

- A timeframe for reinstallation, including date of removal and date for reinstallation
- A plan for safe removal and secure storage of the sculpture

If approved, sculpture must be reinstalled by the date indicated for reinstallation in the request. Sculpture owners shall notify the City when the sculpture has been reinstalled. Sculpture will then be inspected by the City to ensure all APP requirements have been met. Sculpture owners who do not reinstall their sculpture within the approved time frame will be subject to Code Enforcement action and may also delay issuance of future building permits, Certificates of Occupancy, or other City related approvals, unless otherwise agreed to by the City.

### **5. Relocation or Permanent Removal of Sculpture**

The indefinite removal of a sculpture from permanent display affects the artist's rights and has serious legal consequences for the property owner (see Appendix A, Visual Arts Rights Laws for Artists and Sculpture Owners, pages 39-41). Sculpture owners wishing to relocate or permanently remove a sculpture may not do so without legal written consent from the original artist and approval by the City. The City will not authorize permanent removal of public sculpture except under the most extenuating circumstances.

Requests must be made in writing, include the artist's written consent, and a plan with a timeframe for relocation or replacement (see Replacement of Sculpture, page 35). If a sculpture owner is unable to locate the artist or the artist's estate (if the artist is deceased), owners should submit an explanation of steps taken to locate the artist and/or the artist's estate, and submit this with the request for relocation or removal of the sculpture.

Requests for relocation or removal of sculpture must be submitted to the Art in Public Places Advisory Committee for their consideration and approval, which may take up to 30 working days. Incomplete submittals may delay the approval process.

Below is a list of items to be submitted for Committee consideration of plans for relocation or permanent removal of sculpture. As circumstances vary, the City may request submittal of additional items.

- An explanation for the request
- The artist's written consent, including the artist's approval for permanent removal or relocation to a new site and any related modifications to the sculpture or sculpture site as originally approved by the City, such as a new base, new lighting plan, landscaping, etc.
- If unable to locate the artist or the artist's estate (if deceased), an explanation of the steps taken to locate the artist and/or estate

- Plans for how the sculpture will be removed without damage and plans for secure storage of the sculpture
- Current maintenance costs, source of ongoing funding, and future maintenance costs and funding source (if applicable)
- Draft of amended CC&R or covenant to be filed with the County reflecting sculpture ownership and maintenance (see Recordation of Sculpture Ownership and Maintenance Obligation, pages 19-20) should the relocation of the sculpture result in a change in sculpture ownership and ongoing maintenance funding (if approved, final executed copy must be submitted to the City prior to reinstallation)
- Plan and time line for reinstallation
- Budget for reinstallation and unsigned copies of any relevant contracts (signed copies must be submitted to the City if approved)
- Any sculpture application items relevant to reinstallation of the sculpture in the new location (e.g. site plan, installation plans approved by a licensed professional engineer, lighting plans, landscape/irrigation plans, etc.)

If approved, relocated sculpture must be reinstalled by the date for reinstallation indicated in the request or shall be subject to Code Enforcement action. Sculpture owners shall notify the City when the sculpture has been reinstalled. Sculpture will be inspected to ensure all APP requirements have been satisfied. Sculpture owners who do not reinstall their sculpture within the approved time frame will be subject to Code Enforcement action and may delay issuance of future building permits, Certificates of Occupancy, or other City related approvals, unless otherwise agreed to by the City. If approval is given for permanent removal of sculpture, a new sculpture that meets all current APP requirements must be installed as a replacement (see Replacement of Sculpture below).

## **6. Replacement of Sculpture**

In the event the sculpture is destroyed, damaged beyond repair, stolen, or otherwise removed from the site, the property owner shall notify the City in writing as soon after the event as possible. Property owners shall replace the sculpture with a sculpture that complies with all Art in Public Places requirements in effect at the time of replacement. The property owner shall submit sculpture application materials (see What Are the Steps for the Sculpture Application and Approval Process? on pages 23-28 for more information), along with documentation that the artist or, if deceased, his or her estate, has been notified about the destruction/theft of his or her sculpture, for review and approval by the Art in Public Places Committee. Review and approval may take up to 30 working days. Incomplete application packets will delay the approval process.

The multi-step sculpture application, approval, and replacement process shall be completed within one year of sculpture removal/theft unless otherwise agreed to by the City. Property owners who do not replace approved sculpture within the 12-

month timeframe will be subject to Code Enforcement action and may delay future issuance of Building Permits, Certificates of Occupancy, or other City approvals for the property.

The minimum required allocation for the replacement sculpture can be calculated in two ways: the fair market appraisal value of the sculpture when it was in good condition prior to damage or destruction as determined by a qualified fine art appraiser or the sculpture allocation calculated when the sculpture was commissioned adjusted for inflation, as calculated by Brea's Administrative Services Director. Art insurance is highly recommended for sculpture.

## **X. MODIFICATIONS OF PROPERTIES WITH EXISTING APP SCULPTURE**

### **A. Construction on Properties with Existing Sculpture**

Because of the variety of types of construction and possible ways it may impact existing sculpture, the City urges property owners with existing sculpture on their properties to meet with staff early in the planning process. Art in Public Places staff is available to discuss sculpture requirements as they relate to your proposed project. Even smaller construction projects such as the addition of permanent signage within proximity of a sculpture may require City and/or APP Committee review and approval to ensure changes to the property meet APP requirements.

Property owners should review requirements described in this manual prior to initiating construction on their property. Depending on the nature of the changes to your property and potential impact on the sculpture, approvals by the City may be required prior to issuance of building permits or Certificates of Occupancy. At minimum, construction occurring on properties with existing sculpture would require an applicant to submit a letter to City staff explaining the impacts of construction and efforts to be taken to protect the art piece. At maximum, construction occurring on properties with existing sculpture would require applicants to submit Parts 1, 2, and/or 3 of the submittal (as outlined on pages 24-26), as determined applicable by City staff.

For development of properties with existing APP sculpture in which existing sculpture will be demolished and new construction adds square footage, see Development of Properties with Existing APP Sculpture, page 9.

### **B. Subdivisions of Properties with an Existing Sculpture**

Property owners who wish to subdivide a parcel in which an existing Art in Public Places sculpture is located must submit a plan for the sculpture ownership and maintenance to the City for review and approval prior to subdivision. The City may request additional items depending on the nature of the proposed subdivision and possible impact on the

sculpture. Some requests may require review and approval by the Art in Public Places Advisory Committee. Review and approval may take up to 30 working days.

The subdivision plan shall include the following:

- The location of the sculpture, current ownership contact information, and current sculpture maintenance funding source
- A map showing the current parcel and a map showing the proposed subdivision
- Documentation that the current sculpture owners and new proposed owners (if applicable) have approved any changes in sculpture ownership that may result from the subdivision and any changes in the sculpture maintenance funding source
- A draft of new covenant or CC&R (whichever is applicable) reflecting sculpture ownership, maintenance obligation, and funding source (see Recordation of Sculpture Ownership and Maintenance Obligation, page 21-22)
- Following approval, the property owner shall submit a copy of the recorded covenant or CC&R reflecting the addition of requirements for sculpture ownership and the artist's maintenance instructions

## **XI. DONATIONS OF ARTWORK TO THE CITY**

Individuals, businesses, and/or groups wishing to donate artwork of any style, size, or medium, with an estimated value over \$5,000 shall provide a written request setting forth their offer to the Cultural Arts Commission. The Commission shall use established review criteria to evaluate the proposed work of art, artist, and proposed location. Other considerations may include costs to the City (e.g. transportation, installation, insurance, routine maintenance, and long-term conservation) and the impact of the donation on existing art programs (e.g. number of existing donations by the same artist).

In addition to the established review criteria, donations of memorials shall be reviewed based on the following:

- Does the memorial represent broad community values?
- Does the significance of the person(s) or event being memorialized have a timeless quality and make a statement to future generations?
- Is there some specific geographic justification for the memorial being placed at the proposed location?

If the donation is an outdoor sculpture or is a proposal to create an outdoor sculpture for display on public property (e.g. Brea Civic & Cultural Center, Brea Community Center, City parks), the proposal shall first be referred to the Art in Public Places Advisory Committee, then to the Cultural Arts Commission. Proposals which are denied by the Cultural Arts Commission may be appealed to City Council. Formal gifts presented to the City Council by government contacts and sister cities shall only be reviewed according to this procedure at the sole discretion of City Council.

## **XII. BREA'S ART IN PUBLIC PLACES ADVISORY COMMITTEE**

### **A. Responsibilities**

The Art in Public Places Advisory Committee is the formal body responsible for reviewing all sculpture applications in order to ensure compliance with the Art in Public Places program criteria, as established by City Ordinance. Responsibilities include attending all public sculpture review meetings, exercising judgment that is fair and consistent with policy guidelines, advising the Cultural Arts Commission and the City Council on all public art related issues, and upholding the reputation and integrity of the Art in Public Places Program and the City of Brea. The Committee meets on an as needed basis.

The Committee consists of:

- A member of the City Cultural Arts Commission appointed by the Chair of the Cultural Arts Commission
- A member of the City Planning Commission appointed by the Chair of the Planning Commission
- A member of the Parks, Recreation and Human Services Commission appointed by the Chair of the Parks, Recreation and Human Services Commission
- Four City Council appointed representatives who have a passion for the Art in Public Places Program and are Brea residents.

### **B. General Eligibility Criteria**

- Brea Resident
- Enthusiastic commitment to the betterment of the community
- Oriented toward service to people and sensitive to their needs
- Must understand the relationship with the City Council and the Committee's role as an extension of the Council
- Able to demonstrate education, experience and commitment in the visual arts, including sculpture

### **C. Length of Term**

Each member is appointed for a term of two years, commencing with appointment at the first Commission meeting of the calendar year. Upon term expiration, the Cultural Arts Commission, Planning Commission and Parks, Recreation and Human Services Commission will appoint members to the Art in Public Places Committee, following appointment of new Commission members. Recruitment for the four member-at-large positions is posted bi-annually in alternating years and the Mayor and City Council review all applications in January for appointment and reappointment.

## Visual Arts Laws for Artists and Sculpture Owners

Several federal and state laws protect the rights of visual artists and art owners. The following is only a partial listing. For more details, the City recommends that the artist and/or owner consult a lawyer specializing in visual art and copyright laws. NOTE: The laws and codes cited in this Appendix are subject to change without prior notice.

### I. 1980 California Art Preservation Act

California Civil Code Section 987 et seq. applies to artwork sold or created after 1980. The Civil Code states that no person except the artist can deface, mutilate, alter or destroy a piece of art. "...The physical alteration, or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation and therefore have an interest in protecting their works of fine art against any alteration or destruction."

### II. Visual Artists Rights Act of 1990

The Visual Artists Rights Act of 1990 (VARA) 17 USC Sections 101, 106A, 107, 113, 301, 411, 412, 501, 506, amends copyright law providing new rights for visual artists for artworks sold or created after June 1, 1991. The rights contained in the law extend for the life of the artist. The legislation creates a uniform, national standard for protecting visual artists' rights. It provides a mechanism for the visual artist to claim authorship of a work he or she created, as well as to prevent the use of his or her name on a work he or she did not create. The bill makes clear that this right includes the right to publish a work anonymously or under a pseudonym. The artist also has a right to demand that his or her name be removed from a work in the event of a distortion, mutilation, or other modification of the work to which the artist has not consented, and is prejudicial to his or her honor or reputation. In addition, the Act provides for a legal course of action to allow an artist under specified circumstances to prevent the destruction, distortion, mutilation, or modification of a work of visual art. In any such action, the artist has the burden of establishing that the alteration of the work is harmful to his or her professional honor or reputation.

#### A. Works Covered

The Visual Artists Rights Act of 1990 is limited only to "work of visual art," defined as a painting, drawing, print, or sculpture existing in a single copy or in a limited edition of 200 copies or less. The copies of a limited edition must be signed and consecutively numbered by the artist. In the case of multiple casts, carved or fabricated sculpture, the work must be a limited edition of 200 or less, be consecutively numbered by the artist, and bear the signature or "other identifying mark" of the artist.

The destruction of a work of recognized stature by an intentional act or an act of gross negligence is a violation of the artist's right and would subject the person destroying the work to suit for damages by the artist.

This law states several exceptions to the artist's rights. First, a modification of a work that is a result of the passage of time or the inherent nature of the materials is not actionable. Second, the modification of a work that is the result of conservation or the public presentation of the work including lighting and placement is not actionable unless the modification of the work is caused by gross negligence.

If a work was created prior to the effective date, the rights under the statute apply if title to the work has not been transferred prior to the effective date.

## **B. Transfer and Waiver**

Only the artist has the rights created by VARA 1990. No rights may be transferred under this Act. Rights may be waived if the artist agrees to waive his/her rights in writing. In the case of a joint work, a waiver made by one artist waives the rights for all artists of the joint work. The transfer of ownership of a copy of a work of visual art does not constitute a waiver of rights.

## **C. State Law Preemption**

The Visual Artists Rights Act attempts to create a uniform national standard with respect to the rights of integrity and attribution. Therefore, the Act preempts or extinguishes all legal or equitable rights that are equivalent to the rights conferred by the Visual Artists Rights Act. This general rule of preemption is subject to three important exceptions. First, the Act does not preempt rights, which are not equivalent to the rights contained in the bill; for example, California's resale royalty statute would not be preempted by this Act. Second, the statutes, which extend rights beyond the life of the artist, are not preempted by this Act. Finally, this Act does not preempt a cause of action arising from undertakings commenced before the effective date of the statute.

## **D. Remedy**

Like copyright infringement, an artist who seeks to assert his or her rights under the statute may do so by filing a lawsuit in federal court. An artist may seek an injunction to claim authorship or disclaim false authorship of a work or to prevent distortion, mutilation or destruction of a work as outlined above. If the distortion, mutilation or destruction has already occurred, the artist can sue for damages. The artist can either establish the actual damage to his or her honor or reputation or claim the statutory damages of up to \$10,000. If the artist prevails in court, the judge may also order the defendant to pay the artist's attorney fees.

## **E. Removal of Visual Art from Buildings**

1. If a work of visual art has been incorporated or made part of a building in such a manner that removal of the work would cause the destruction, distortion, mutilation or other modification of that work, the rights shall not apply if the artist consented to the installation of the work in the building before the effective date of the law. In addition, these rights shall not apply if the artist and the building owner have executed

a written statement that installation of work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal.

2. If the owner of building wishes to remove a work from a building and the work can be removed without its destruction, distortion, etc., the artist's rights will apply but there are exceptions. The right will not apply if the owner has notified the artist, in writing, that he or she intends to remove the work, and the artist has failed to respond to the owner's notice that the artist must either remove the work or pay for its removal within ninety days after receiving the owner's written notice. The written notice must be sent by registered mail to the artist at his or her most recent address. If the work is removed at the artist's expense, title to that copy of the work belongs to the artist.
3. In order to give the artist the practical opportunity to remove works which have been incorporated into buildings, the Register of Copyrights has established a system or records whereby the artist of work that has been incorporated in or made part of a building can record his or her identity and current address. This system provides the artist with the opportunity to update his/her personal information. In addition, the system provides the owners of buildings with the opportunity to record evidence of their efforts to comply with the law.

#### **F. Relevant Codes**

A copy of the law can be found: Federal Code; Visual Rights Act of 1990, 17 USC Sections 101, 106A, 107, 113, 301, 411, 412, 501, 506. Materials written above were excerpted from "Congress Passes Visual Artists Rights Act," National Artists Equity, autumn 1990.

## **City of Brea Art in Public Places Program Developer Acknowledgment of APP Requirement**

The Art in Public Places (APP) program provides developers a way to make a lasting and visible contribution to the community to mitigate impacts of development. The current APP Ordinance No. 1050 was adopted by Brea City Council in 2001. The current APP Manual was adopted by City Council Resolution No. \_\_\_\_\_ on \_\_\_\_\_. The APP requirement is also found in City of Brea Zoning Code section 20.408.040 subsection C.4.

APP requirements are described in Brea’s APP Policy Manual. Projects valued at \$1,500,000 or more must allocate 1 percent of the total project building valuation (based on ICC Building Valuation Data tables in effect at the time building permits are issued) to install permanent outdoor sculpture by a qualified artist at the project site. Sculpture is to remain on the property in perpetuity, with a covenant approved by the City, executed and filed with the County of Orange Recorder binding on successors to title of the subject property, which describes sculpture ownership responsibilities, the sculpture maintenance funding source, and includes a copy of the Comprehensive Maintenance Plan provided by the artist. Projects with a total project building valuation of between \$1,500,000 and \$3,999,999 have the option of contributing to the sculpture allocation to Brea’s Art Fund. Projects with a total building valuation of \$4,000,000 million or more must install permanent on-site outdoor sculpture designed and fabricated by a qualified artist selected by the developer and approved by the City.

All requirements are described in Brea’s current APP Manual. Satisfaction of the APP requirement is a multi-step process with deadlines that should be considered when developing a construction schedule. As part of the process, developers are required to:

- A. Meet with Cultural Arts Division staff to discuss their project and the sculpture requirement and satisfy part 1 of the sculpture application or, for projects with a total building valuation between \$1.5 and \$3.99 million who opt to contribute sculpture allocation funds, submit a Notification to Contribute Sculpture Funds, prior to issuance of Building Permits for their project.
- B. Submit part 2 of the sculpture application with all required materials and schedule a Committee review date or, for projects with a total building valuation between \$1.5 and \$3.99 million who opt to contribute sculpture allocation funds, contribute the confirmed sculpture allocation amount to Brea’s Art Fund, within 6 months of issuance of building permits. Noncompliance will result in the issuance of a stop work notice.
- C. Install approved sculpture and related components, satisfy part 3 of the sculpture application, and complete the sculpture inspection requirement or, for projects with a total building valuation between \$1.5 and \$3.99 million who opt to contribute sculpture allocation funds, contribute any outstanding sculpture allocation amount to Brea’s Art Fund, prior to issuance of Certificates of Occupancy for the project.

Project Name: \_\_\_\_\_ Project Location: \_\_\_\_\_

Developer: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

Estimated Art Allocation: \_\_\_\_\_

I attest to the fact that I have read and understand, and agree to be bound by, the requirements of Brea’s Art in Public Places Program as a condition of approval of my Project.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**City of Brea Art in Public Places Program  
ART IN PUBLIC PLACES APPLICATION COVERSHEET**

Date Submitted:	
Estimated Minimum Sculpture Allocation:	Total Building Valuation:
Project Name:	
Project Location/Address:	
Developer:	Contact Person:
Address:	
Phone:	Email:
Property Owner:	
Address:	
Phone:	Email:
Art Consultant:	
Address:	
Phone:	Email:
Artist:	
Address:	
Phone:	Email:

**City of Brea Art in Public Places Program  
ARTIST'S HISTORY OF PUBLIC SCULPTURE COMMISSIONS**

Please list works similar to the proposed sculpture in order from most recent to older commissions.  
See *Verification of Artist's Past Public Sculpture Commissions* on page 13 for details. Use additional sheets if needed.

Artist Name \_\_\_\_\_ Project \_\_\_\_\_

Title	Medium	Dimensions	Purchaser, Phone Number, and Email	Location	Date of Commission	Commission Amount
Proposed work for Brea:					To be determined	

### City of Brea Art in Public Places Program Artist Warranties of Title and Originality

The City of Brea’s Art in Public Places (APP) Program provides opportunities for artists to integrate their unique perspectives permanently into the cityscape. Sculpture is to be conceptualized, designed, fabricated, and installed by qualified artists (see Artists Qualifications, pages 14-15 of Brea’s APP Policy Manual), their staff, and/or contractors. Sculpture is to be original or an edition of 5 or fewer; similar editions may not be displayed within a 50 mile radius of the project site without prior approval by the City. Sculpture requirements are described in Brea’s Art in Public Places Policy Manual, City of Brea Ordinance No. 1050, and City of Brea Zoning Code section 20.408.040 subsection C.4.

A. The Artist represents and warrants that:

The Sculpture is solely the result of the artistic effort of the Artist; and

The Artist has full and complete legal authority to create and transfer complete ownership of the Sculpture to the Developer; and

Except as otherwise disclosed in writing to the City and the Developer, the Sculpture is unique and original, or an edition of \_\_\_ of five or less, and does not infringe upon any copyright or other intellectual property right; and

No similar edition is on display within a 50 mile radius of the project site.

Artist Name: \_\_\_\_\_

Title of Sculpture: \_\_\_\_\_

Project Location: \_\_\_\_\_

Developer: \_\_\_\_\_

Artist Phone: \_\_\_\_\_

Artist Address: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that all of the above information is true and accurate, and that if found to be other than true and accurate, I may be eliminated from current and future consideration for participation in this program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**SAMPLE**

**City of Brea Art in Public Places  
Sculpture Allocation Breakdown**

Artist Design	\$ _____
Sculpture Materials	\$ _____
Sculpture Fabrication	\$ _____
Art Consultant (If applicable)	\$ _____
Transportation of Sculpture	\$ _____
Sculpture Base	\$ _____
Structural Engineering	\$ _____
Lighting/Electrical (for sculpture only)	\$ _____
Water Related Expenses (if applicable)	\$ _____
Art Appraisal (if applicable)	\$ _____
Other Expenses (please list)	
_____	_____
_____	_____
_____	_____
_____	_____
*TOTAL	\$ _____

*\*The total should equal or exceed the minimum sculpture allocation for the project.*

## SAMPLE

### City of Brea Art in Public Places CONTRACT OF SALE FOR A WORK OF ART

**[NOTE: ARTIST AND COLLECTOR MUST OBTAIN THEIR OWN LEGAL ADVICE BEFORE RELYING ON OR USING THIS FORM OF AGREEMENT]**

AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between \_\_\_\_\_ - \_\_\_\_\_ (herein referred to as the Collector) located in \_\_\_\_\_ and \_\_\_\_\_ (herein referred to as the Artist) located in \_\_\_\_\_, with respect to the sale of a sculpture (herein referred to as the Work).

WHEREAS the Artist has created the Work and has full right, title, and interest therein; and

WHEREAS, the Artist wishes to sell the Work; and

WHEREAS, the Collector has viewed the Work and wishes to purchase it.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual obligations, covenants, and conditions hereinafter set forth, and other valuable considerations, the parties hereto agree as follows:

#### **A. DESCRIPTION OF THE ARTWORK AND WARRANTY:**

[Include title, style, medium, dimensions, weight, year of creation, and any other description.]

The Artist represents and warrants that:

The Work is solely the result of the artistic effort of the Artist; and

The Artist has full and complete legal authority to create, sell and transfer complete ownership of the Work to the Collector; and

Except as otherwise disclosed in writing to the City and the Collector, the Work is unique and original, or an edition of \_\_\_ of five or less, and does not infringe upon any copyright or other intellectual property right; and

No similar edition is on display within a 50 mile radius of the project site.

## **B. SALE AND PAYMENT**

The Artist hereby agrees to sell the Work and Collector agrees to purchase the Work for a purchase price of \_\_\_\_\_. Payment shall be made in \_\_\_\_\_ installments:

- a. A deposit of \$\_\_\_\_\_ (\_\_\_\_%) upon the signing of this Agreement.
- b. A payment of \$\_\_\_\_\_ (\_\_\_\_%) upon \_\_\_\_\_.
- c. A final payment of \$\_\_\_\_\_ (\_\_\_\_%) upon delivery of the completed Work.

## **C. DELIVERY AND INSTALLATION**

[Specify location of delivery and who is responsible for shipping and installation charges.]

## **D. RISK OF LOSS AND INSURANCE**

The risk of loss or damage to the Work shall pass to Collector upon completion of installation. The provision of any insurance to cover such loss or damage shall be the responsibility of the Collector upon completion of installation.

## **E. MAINTENANCE**

The Collector agrees to abide by the Maintenance Instructions of the Artist listed below, as a condition of sale of the Work.

[Artist instructions, including methods, materials, frequency of routine cleaning, and suggested practices for occasional preservation treatments or conservation.]

## **F. NON-DESTRUCTION**

Collector will not undertake or permit any intentional destruction, damage, or modification to the Work.

## **G. RESTORATION**

Artist agrees to be responsible for repairs, not arising from intentional damage or neglect, for up to \_\_\_ year(s) (typically one year), without charge to the Collector. Collector agrees to notify Artist before any restoration is undertaken and the Artist shall have first opportunity to restore the Work, for a reasonable fee, if beyond the aforementioned time limit.

## **H. FUNDING SOURCE**

Collector agrees to establish a funding source for necessary on-going maintenance. A homeowner's association has been designated (if applicable) to fund and care for the Work on the Collector's behalf, as specified by the Artist in this Agreement.

**I. COPYRIGHT AND REPRODUCTION**

The Artist reserves all reproduction rights, including the right to claim statutory copyright, in the Work. All approved reproduction shall bear copyright notice with the Artist’s name and date. Artist agrees that he or she shall not permit more than five (5) editions of the Work to exist.

**J. MISCELLANEOUS**

The Agreement shall be binding upon the parties hereto, their heirs, successors, assigns and personal representatives. The Agreement constitutes the entire understanding between the parties; only an instrument in writing assigned by all parties can modify its terms. A waiver of any breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breeches of the same or other provisions hereof. The laws of the State of California shall govern this Agreement.

IN WITNESS WHEREOF the parties hereto have signed this Agreement as the date first set forth above.

\_\_\_\_\_
ARTIST

\_\_\_\_\_
DATE

\_\_\_\_\_
COLLECTOR

\_\_\_\_\_
DATE

**[NOTE: ART CONSULTANT AND HOA ARE NOT PARTIES TO THIS AGREEMENT]**

Sculpture Maintenance Contact (the City will contact this person for future needs)

Person Name, Title: \_\_\_\_\_

Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Art in Public Places Program

**ADVISORY COMMITTEE CHECKLIST**

Date: \_\_\_\_\_ Developer: \_\_\_\_\_

Project Name: \_\_\_\_\_ Project Location: \_\_\_\_\_

Artist: \_\_\_\_\_ Sculpture Title: \_\_\_\_\_

Committee Members: \_\_\_\_\_

Criteria	Meets Criteria	Does not Meet Criteria	Comments
<b>I. Art Consultant Qualifications</b>			
Experience with public art projects of similar scope			
<b>II. Artist Qualifications</b>			
Education/training in sculpture			
Exhibit records & collections			
Commissions/experience with large scale permanent outdoor artwork of similar scope/materials			
Verification of past commission amounts			
Copy of contract			
<b>III. Artwork Site</b>			
Clearly visible to motorists & pedestrians from a public street			
No more than 50 feet from public street			
No signage, utility boxes, landscaping, or other items limiting public view			

Criteria	Meets Criteria	Does not Meet Criteria	Comments
<b>IV. Artwork Concept/Design</b>			
Conceptualized and designed by approved artist			
Original and does not infringe upon any copyright (editions limited to 5)			
Artwork is site specific or site appropriate			
Scale: 5' or larger (excluding base)			
Considered place in the APP Collection			
<p>Proposal demonstrates how work will engage public interest (e.g. provokes discussion, intrigues, entertains, etc.)</p> <p>Is community input/survey requested?</p>			
<p>Artistic Content (for discussion only):</p> <ul style="list-style-type: none"> <li>• Expressive properties (mood, feeling, message, symbolism)</li> <li>• Formal properties (balance, emphasis, color, repetition/rhythm, unity, form/shape, texture)</li> </ul>			
<b>V. Artwork Materials/Maintenance</b>			
Comprehensive maintenance plan			
List/samples of materials, finishes, manufacturer information, fabricator information, fabrication plans			
<p>Permanent, weather, and rust resistant media, armature, and base; foundry materials breakdown by percentage</p> <p>Is art conservator or public art expert input requested?</p>			
Resistant to vandalism and graffiti			
Landscape will not pose future visibility or conservation problems			

Criteria	Meets Criteria	Does not Meet Criteria	Comments
Irrigation plan indicates water spray is directed away from sculpture			
Maintenance plan demonstrates the work is low maintenance  Is art conservator or public art expert input requested?			
Maintenance fund established			
<b>VI. Installation</b>			
Base well integrated to landscape			
Lighting plan and lighting instruments			
Sculpture identification plaque location indicated			
Installation plans approved by Licensed Professional Engineer			
Poses no liability or safety problems			
<b>VII. Forms/Contracts/Documentation</b>			
Signed Developer Acknowledgment of APP Requirement			
Signed copy of contract with artist			
Signed Artist Warranties of Title & Originality			
Signed copy of contract with art consultant (if applicable)			
Copy of recorded covenant or CC&R's			

Committee requests for input, conditions of approval, etc.:

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