

**CITY OF COSTA MESA
AGREEMENT FOR DONATION OF WORK OF ART**

THIS AGREEMENT FOR DONATION OF WORK OF ART ("Agreement") is made and entered into by and between the City of Costa Mesa, a municipal corporation ("City") and L. Carolyn McDemas, an individual ("Donor"). City and Donor may be collectively referred to herein as the "parties."

WHEREAS, the City welcomes proposals for gifts of art that will enhance the community and complement its buildings, grounds, and natural features; and

WHEREAS, Donor desires to donate to City the work of art described and/or depicted in Exhibit "A," attached hereto and incorporated herein by this reference ("Artwork"); and

WHEREAS, City and Donor desire to establish the terms and conditions under which Donor will irrevocably donate the Artwork to City and City will officially accept the donation.

NOW, THEREFORE, for and in consideration of the covenants and conditions contained herein, the parties agree as follows:

1.0 REPRESENTATIONS AND WARRANTIES OF DONOR.

- 1.1. Donor represents and warrants that Donor has title, and has the legal right to transfer title, to the Artwork covered by this Agreement.
- 1.2. Donor represents and warrants that the Artwork covered by this Agreement is an original and does not infringe on any copyright.
- 1.3. Donor represents and warrants that there are no actions, suits, material claims, legal proceedings, or any other proceedings in law, equity or otherwise affecting the Artwork that is the subject of this donation before any court or governmental entity, domestic or foreign.
- 1.4. Donor represents and warrants that there are no taxes due or owing on the Artwork.

2.0 IRREVOCABLE DONATION AND ACCEPTANCE.

2.1. Irrevocable Donation.

- a. Donor hereby irrevocably donates the Artwork to City for the cultural enrichment and beautification of the City.
- b. Donor hereby conveys to City all intellectual property rights, including copyrights, in the Artwork and hereby waives all rights under the Visual Artists Rights Act of 1990 (17 U.S.C. § 106A), as amended.
- c. Donor hereby delivers custody and control of the Artwork to City. Donor will make all arrangements and pay all expenses relating to transportation of the Artwork to the location designated by City. Donor will cause the Artwork

to be delivered to the location designated by City within thirty (30) days of execution of this Agreement. The parties shall agree to a specific date and delivery timeframe for the delivery of the Artwork.

2.2. Acceptance.

City hereby accepts the Artwork without condition and/or reservation. Upon execution of this Agreement by the parties, all rights of title and ownership will be conveyed to the City and the Artwork shall become the sole property of the City and all future decisions regarding the use and continued ownership of such property will be within the sole and unconditional discretion of the City.

3.0 TITLE AND COPYRIGHT.

- 3.1. Donor shall deliver the Artwork covered by this Agreement free and clear of any liens, claims or other encumbrances of any type. Donor shall execute all lawful documents which City shall deem necessary or desirable to fully acknowledge City's ownership interest in the Artwork.
- 3.2. City obtains all rights of the Donor, including but not limited to copyright under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et. seq.*, as amended.
- 3.3. Donor agrees that if the Artwork donated by the Donor uses any protected material, process, or procedure, Donor shall disclose such patent, trademark, or copyright in the construction drawings and technical specifications, and provide an assignment conveying all such rights to the Artwork to City.

4.0 RELEASE AND INDEMNIFICATION.

Donor agrees to indemnify and hold harmless City, its elected officials, officers, agents, employees, volunteers and/or assigns from and against any and all liability, damages, claims and demands of whatever kind and nature, either in law or in equity, which arises or may hereafter arise from the City's use or display of the Artwork or in connection with the breach or alleged breach of any representation and/or warranty made by Donor hereunder. Donor further releases, discharges, waives and relinquishes any and all claims and causes of action against the City, its elected officials, officers, agents, employees, volunteers and/or assigns, arising in connection with this Agreement or City's use or display of the Artwork.

5.0 NAMEPLATE.

Donor will provide a nameplate for the Artwork. The design and location thereof will be mutually agreed upon by Donor and City and subject to any City policies relating thereto.

6.0 PLACEMENT OF THE ARTWORK.

The parties agree that the Artwork is not specific to any site. City, in its sole discretion, shall determine where the Artwork will be located. City may remove the Artwork from the site where it has been installed at any time. If City removes the Artwork, it may, in its sole discretion, place the Artwork on other suitable City property, store the Artwork in a safe location, place the Artwork on non-City owned property, dispose of, sell, or donate the Artwork.

7.0 NOTICE.

- 7.1 The parties each agree to give the other party prompt notice, as provided for herein in this section, of any claim coming to its knowledge that in any way directly or indirectly affects the other party.
- 7.2 Any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CITY:
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Recreation Manager

IF TO DONOR:
L. Carolyn McDemas
427 East 17th Street #184
Costa Mesa, CA 92627

Copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: City Clerk

8.0 MISCELLANEOUS PROVISIONS.

- 8.1. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.
- 8.2. The covenants and obligations set forth in this Agreement shall survive the acceptance of the donation by City and shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees, and all successors in interest.
- 8.3. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, but such omissions shall not invalidate the remaining provisions of this Agreement.
- 8.4. The captions and headings provided herein are inserted only as a matter of convenience and for reference, and in no way define, limit, nor describe the scope of this Agreement, nor the intent or content of any provision contained herein.
- 8.5. No waiver of any provision of this Agreement or any breach thereof shall be construed as a continuing waiver or shall constitute a waiver of any other provision

or breach.

- 8.6. Neither Donor nor City intend to directly or indirectly benefit a third party by this Agreement. Therefore, the parties agree that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the dates written below.

DONOR


L. Carolyn McDemas

Date: 2-22-19

CITY OF COSTA MESA

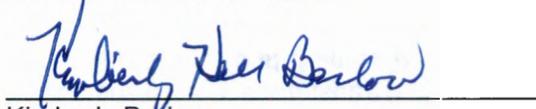

Tamara Letourneau
Acting City Manager

Date: 3/20/19

ATTEST:


Brenda Green
City Clerk

APPROVED AS TO FORM:


Kimberly Barlow
City Attorney

Date: 3/19/19

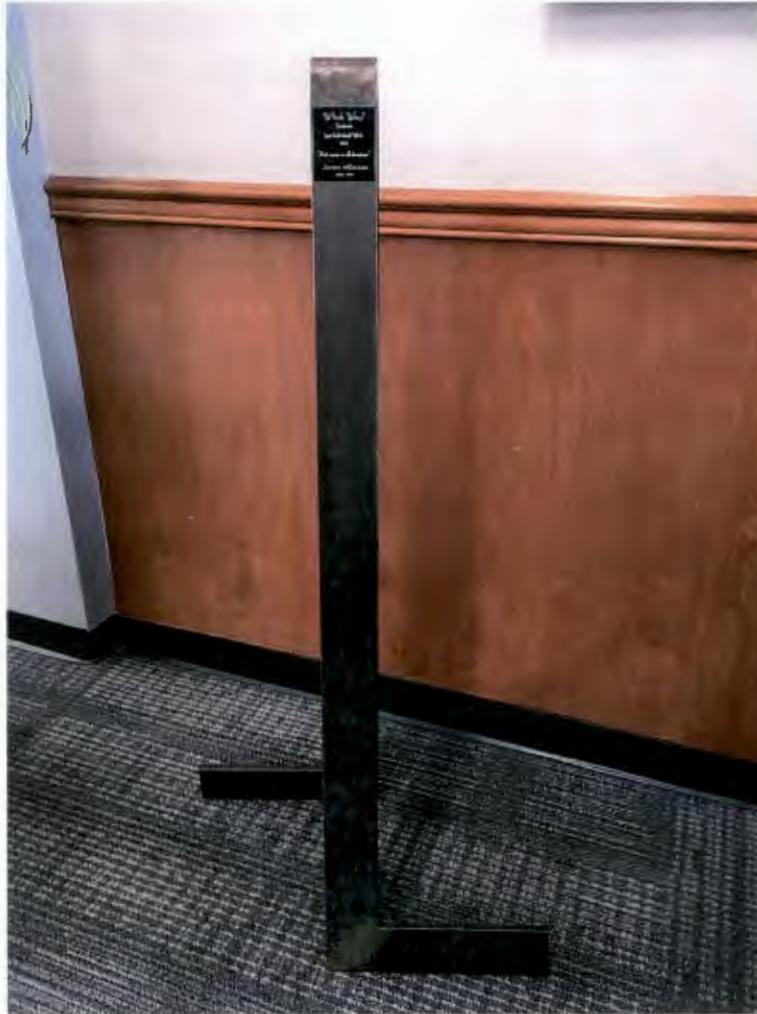
APPROVED AS TO CONTENT:


Justin Martin
Director of Parks & Community Service

Date: 3/15/19

EXHIBIT A

DESCRIPTION AND/OR DEPICTION OF WORK OF ART



Specifics: The steel sculpture is approximately 25 lbs. and 3' tall, and it's titled "Which Way."