

Gift Policy: Works of Art for Public Display

JPAB Policy # 310
Approved: 7/1997
Last Revised: 5/2022
Five-year Review Schedule: 9/2024

The Library Joint Powers Authority Board encourages members of the public, including local artists, to donate works of art to the Library System for public display. Although the Library System does not acquire or collect works of art, the Joint Powers Board believes that the display of art contributes substantially to the cultural enrichment of public library users.

For this reason, the Library System conducts changing exhibits at several Branches, and will accept donations of works of art for display purposes, with the understanding that it has neither the staff resources nor storage facilities to ensure permanent preservation of any item.

The Director of Libraries will develop an Art Committee consisting of themselves, two members of library staff, one City Art Commissioner, one County Art Commissioner, an architect and two members of the Friends of the Santa Cruz Libraries.

All donors of works of art shall be required to sign the attached *Gift Agreement-Works of Art*.

Donors wishing to present works of art to the Library System are asked to write a letter to the Santa Cruz Library Art Committee describing the proposed gift, naming the Branch where they wish it to be located, and suggesting any appropriate place where it might be displayed. Donors may wish to consult with Library Staff prior to making the proposal. The Art Committee will make decisions regarding the appropriateness of accepting gifts of works of art for public display.

The Art Committee will make recommendations on whether to accept the art donation. This recommendation will go to the Library Advisory Committee for approval. If the LAC also approves, they will bring their recommendation to the LJPB for final approval.

The Art Committee will place the proposed gift on the Agenda of the next regularly scheduled Joint Powers Authority Board meeting. The Board will accept or reject proposed gifts on the basis of the following criteria:

1. Staff recommendation as to the artistic appropriateness of the work for public display, and the suitability of the proposed display site or an alternative.
2. The donor's or artist's signed agreement to the terms of the attached *Gift Agreement--Works of Art*, which contains, but is not limited to, the following stipulations:

That the value of the work of art shall be supplied by the donor and stated in the agreement. It is understood that appraisals by staff have no legal standing, and that if the donor wishes a professional appraisal she/he must seek one at her/his own expense.

That the donor is the legal owner of the work of art and has the authority to donate the work of art to the Library.

That, having accepted a work of art, the Library will, to the best of its ability, determine the best length of time in which to display the work.

That as a material part of the consideration provided by the donor, if the donor is the artist of the work of art or created the work of art, the donor agrees to waive any and all rights the donor may have with respect to the work of art pursuant to the federal Visual Artists Rights Act of 1990, the California Art Preservation Act, and any other local, state, federal or international laws that convey any type of moral right protecting the integrity of works of art. If the donor is not the artist of the work of art, the donor shall obtain from the artist of the work of art a signed waiver in a form approved by the Library whereby the artist waives any and all rights discussed herein.

The Library is free to move, store, sell, or dispose of the work of art as it sees fit and as conditions require.

That, in the event that a decision is made to sell the work, the donor shall have the right of first refusal to purchase back the work at the current market price. This right shall not, however, devolve upon the donor's heirs or legatees.

3. In determining whether to include a work of art in the Library's art collection, the Library shall consider the resources required for maintenance, preservation, protection and appropriate display of the works of art. This could include the provision of funds to cover the cost of ongoing maintenance of the work if needed. The donor will work with Library Art Committee to determine what is appropriate for the specific situation, with the Library having the sole discretion for making the final decisions.



Adopted by the Santa Cruz City County Library System [citizen] Board on October 7, 1985;
Adopted by the Library Oversight Committee on November 3, 1988; confirmed by the Library
Joint Powers Authority Board in July 1997.

GIFT AGREEMENT FOR WORKS OF ART

This Agreement is entered into as of _____ (the “Effective Date”), by and between the Library Joint Powers Authority Board of the Santa Cruz City County Library System (hereinafter the “Library”) and _____ (hereinafter “Donor”) (collectively referred to as the “Parties”).

Section 1. Artwork Donation/Gift

The Library, meeting in regular session on [date], adopted a resolution accepting with gratitude from the Donor the below described work(s) of art (hereinafter the “Artwork”) for public display, in accordance with the Library’s published Gift Policy: Works of Art for Public Display.

The Donor hereby irrevocably donates and conveys title to the Artwork to the Library. The donation shall be effective as of the Effective Date.

DONOR: [list full name(s), address, phone number]

ARTIST (if not the Donor): [List full name, address, phone number]

ITEM DESCRIPTION: [Title, media, size, framing, signature.]

Attach photograph

VALUE OF ARTWORK:

Section 2. Display and Maintenance Preferences.

NOTES: Describe special display preferences or the like.

Example: Painting will bear a plaque with the following message:

“Gift of Mr. and Mrs. John Smith in memory of Judge J. M. Smith”

The Artwork is accepted with the following preferences and/or conditions:

[list conditions imposed by JPB or by donor]

Section 3. Transportation of Artwork.

The Donor shall be responsible for transportation and delivery of the Artwork to the Library for installation. All other costs associated with installation the Artwork will be incurred by the Library.

Section 4. Waiver of Rights to Work of Art.

As a material part of the consideration provided by Donor under the terms of this Agreement, if Donor is the artist of the Artwork or created the Artwork, Donor agrees to waive any and all rights Donor may have with respect to the Artwork pursuant to the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. section 106A, Cal. Civil Code section 987 et seq., or any other type of moral right protecting the integrity of works of art. The provisions of this paragraph shall apply to modify any of Donors' respective rights of attribution and integrity as set out in the Visual Artists Rights Act, 17 U.S.C §§ 106A and 113(d) ("VARA"), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 ("CAPA"), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the Library, its officers, officials, employees and agents.

If Donor is not the artist of the Artwork, or if any of the laws or regulations discussed above conveyed any rights of the same nature as discussed above to another individual, the Donor shall obtain from that individual or the artist of the Artwork a signed waiver in a form approved by the Library whereby the artist waives any and all rights discussed in this section.

Donor specifically agrees that the Library has the absolute right to change, modify, destroy, remove, relocate, transport, repair, or restore portions or all of the Artwork.

Section 5. Authority to Donate the Artwork

Donor warrants and represents that Donor is the sole and legal owner of the Artwork and is authorized to donate the Artwork to the Library. Donor agrees to defend and indemnify the Library from any and all liability, claims, demands, actions, damages, judgments and costs (including attorneys' fees) in any way related to the ownership of the Artwork.

Section 6. Modifications or Removal of Artwork.

The Library has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Artwork in whole or in part, in Library's sole discretion, without prior notice to the Donor.

The Library is not required to replace the Artwork if it is stolen or damaged.

If the Library decides to sell the Artwork, the Donor shall have the right of first refusal to purchase back the Artwork at the then current market price. This right shall not, however, devolve upon the Donor's heirs or legatees.

Section 7. Indemnification and Release.

The Donor agrees to indemnify, defend, and hold harmless the Library and its officials, officers, employees, volunteers, and agents to the fullest extent permitted by law, from any and all liability, claims, demands, actions, damages, judgments and costs (including attorneys' fees) caused by or resulting from the negligence, recklessness, or willful misconduct of Donor, or Donor's agents or representatives, in any way related to the Artwork and/or this Agreement, except for any liability caused by the sole negligence or willful misconduct of the Library.

Section 8. Copyright.

The Donor represents to the Library that, to the best of Donor's knowledge, the Artwork is free of encumbrances and does not utilize any protected patent, trademark or copyright unless proper permission and all releases and other necessary documents were obtained. Donor agrees to indemnify, defend, and hold harmless the Library and its officials, officers, employees, volunteers, and agents from any and all liability, claims, demands, actions, damages, judgments, and costs (including attorneys' fees) arising out of a claim of infringement, actual or alleged, direct or contributory, of any intellectual property rights in any way related to the Artwork. This provision shall survive termination or expiration of this Agreement.

Section 9. General Provisions.

1. Complete Agreement. This Agreement is the full and complete integration of the Parties' agreement with respect to the matters addressed herein, and this Agreement supersedes any previous written or oral agreements between the Parties with respect to the matters addressed herein.
2. Governing Law. This Agreement shall be governed by and interpreted in accordance with California law.

3. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.
4. Contract Interpretation. Each party acknowledges that it has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
5. Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile or other copy of a party's signature shall be accepted and valid as an original.
6. Warranty of Authority. The signatories to this Agreement warrant and represent that each is authorized to execute this Agreement and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first herein above set forth.

Signature of Donor

Director of Libraries

Date

Date

Execute two copies of this form: one for the donor and one for the Library