



## AGENDA REPORT

**Meeting Date:** September 17, 2007  
**Item Number:** F-11  
**To:** Honorable Mayor & City Council  
**From:** Brad Meyerowitz, Recreation Services Manager  
**Subject:** AGREEMENT BY AND AMONG THE CITY OF BEVERLY HILLS AND PAUL AMIR, PRIVATE COLLECTOR, FOR THE LOAN OF FOUR SCULPTURES TO BE DISPLAYED ON THE CITY HALL WEST LAWN  
**Attachments:** 1. Agreement

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### **RECOMMENDATION**

Staff and the Fine Art Commission recommend the approval of the Agreement with Paul Amir, private collector, for the loan of four sculptures to be displayed on the west lawn of City Hall.

### **INTRODUCTION**

At the August 7, 2007 Study Session, City Council gave unanimous consent to the proposed loan of four sculptures from Paul Amir, a longtime resident of Beverly Hills. The sculptures are outdoor pieces and are currently part of his private collection.

### **DISCUSSION**

It was requested by City Council that the loan, if possible, be extended to 12 months from the proposed 6 month time period. Staff contacted Mr. Amir and due to prior commitments, the sculptures must be removed by the end of March, 2008. Upon approval of the Agreement, the sculptures will be installed on the west lawn of City Hall. A reception to honor the Amir's for their graciousness will be scheduled for October/November, 2007.

### **FISCAL IMPACT**

Funding for the loan and reception will come from the Public Art/Fine Art Commission General Fund budget. It is estimated that costs for the installation of the artwork and for a reception will not exceed \$7,000.

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Finance Approval

Steve Miller  
Approved By

9/10/2007

AGREEMENT BY AND AMONG THE CITY OF BEVERLY HILLS AND PAUL AMIR, PRIVATE COLLECTOR, FOR THE LOAN OF FOUR SCULPTURES TO BE DISPLAYED ON THE CITY HALL WEST LAWN

THIS AGREEMENT ("Agreement") is made by and among the City of Beverly Hills, a municipal corporation ("City"), and Paul Amir, private collector ("Collector"), with reference to the following facts:

RECITALS

A. Collector desires to loan to City four (4) sculptures (the "Art Works"), as further depicted in Attachment 1.

B. City desires to borrow the Art Works from Collector and to exhibit the Art Works on the grass of the City Hall West Lawn.

Now therefore, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Loan. Collector agrees to lend the Art Works to City, and City agrees to borrow the Art Works from Collector, for the purpose of exhibiting the Art Works on the grass of the City Hall West Lawn. The City will determine the appropriate aesthetic placement for the Art Works on the City Hall West Lawn. This placement will take into consideration engineering conditions for the placement of the Art Works due to their weight and size and the location of the existing pad. The existing pad will accommodate one of the Art Works and the remaining Art Works will be positioned around this pad as directed by a subcommittee of the City's Fine Arts Commission. Nothing in this paragraph prevents the City from removal of the Art Works as set forth in Section 5 and Section 8 of this Agreement.

2. Term. The term of the loan of the Art Works shall commence upon execution of this Agreement by Collector, and end six (6) months from the date the Art Works are installed at the Site and in no event later than March 31, 2008. This Agreement may be terminated for breach upon written notice. Notwithstanding, the breaching party shall be provided an opportunity to cure the breach. If the breach is not cured within fifteen days, or the time period for cure has not been mutually extended, the non-breaching party may terminate the Agreement effective upon delivery of written notice. Upon termination, the Collector shall remove the Art Works as set forth in this Agreement.

3. Transportation, Delivery, Installation and Removal

(a) Collector certifies that the Art Works are in such condition as to withstand ordinary strains of transportation, delivery, and handling.

(b) Collector shall coordinate the transportation, delivery, installation and removal of the Art Works with the City. City shall have no liability to Collector for damage to the Art Works which results from the transportation, delivery, installation and removal of the Art Works to and from the Site.

(c) Any equipment and vehicles required to be utilized in the transportation, delivery, installation or removal of the Art Works shall be determined by City.

(d) City shall cause the Art Works to be delivered, installed and removed. Collector shall be responsible for all costs incurred in the transportation, delivery, installation and removal of the Art Works, including any costs to repair City property damaged by the delivery, installation and removal of the Art Works except as described in paragraph e. of this subsection.

4. Exhibition. City shall prepare the Site for display of the Art Works, install the Art Works at the Site and shall be responsible for all costs incurred in connection with the site preparation, installation and display of the Art Works.

5. Care, Preservation.

(a) City shall give the Art Works loaned the same care as it does comparable Art Works loaned by other artists and/or galleries. It is understood, however, that the Art Works shall be displayed out of doors (in close proximity to a busy thoroughfare) and shall be exposed to extremes of rain, wind, heat, sun, humidity and other features of weather, as well as dirt, pollution, insects, birds and other animals, and the possibility of theft, vandalism and malicious mischief. To this end, Collector hereby releases and holds City harmless from any liability for damage to or loss of the Art Works, and City shall not be responsible for the preservation and safekeeping of the Art Works, nor shall City have any liability for theft, loss or damage to the Art Works. City shall provide, however, as part of its regular Police Department patrols of the areas in which the Art Works are located, monitoring of the Art Works. However, no specific personnel or patrol car will be assigned to monitor and secure the Art Works. City will provide the same level of safekeeping of the Art Works as it would its own property.

(b) In the event of any damage to the Art Works which require immediate repair or removal of the Art Works in order to prevent injury to persons or property, City shall at its own cost either immediately repair or remove the Art Works following receipt of notification from City of the need for such repair or removal. In the event Collector fails to perform the repairs or removal within a reasonable time, or if the damage to the Art Works is such that immediate action is required in order to prevent injury to persons or property, City is authorized to remove the Art Works. However, City is not authorized to repair any Art Work if removal is sufficient to prevent injury to persons or property. Temporary repair is only permitted in an emergency situation when removal of the Art Work would cause or accelerate any injury to persons or property.

(c) The City shall act in good faith and make all reasonable attempts to notify Collector and afford Collector the opportunity to make repairs where emergency conditions do not require immediate action by the City in order to prevent injury to persons or property. Where emergency conditions require immediate action in order to prevent injury to persons or property, City shall thereafter notify Collector as soon as is practically possible of the existence of the emergency and City's need to take immediate action.

(d) In no event shall City have any liability for any value of the Art Works, nor shall City have any liability for damage or injury to or from the Art Works, whether caused directly or indirectly, except for those caused by City's grossly negligent, reckless or intentionally tortious acts.

6. Indemnification. Collector hereby warrants that, to its knowledge, the Art Works are structurally sound and properly constructed. To this end, Collector hereby agrees to indemnify and hold harmless City, and its officers, agents and employees, from and against any and all claims, losses, liability, costs or expenses (including attorneys' fees and costs) arising from, in connection with, or caused by the negligent or otherwise wrongful act or omission of Collector or any of its

officers, agents, subcontractors, or assigns, or caused by the Art Works for any reason whatsoever except as a result of City's intentionally tortious acts.

7. Insurance.

(a) At its own cost, Collector shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Collector, its employees, contractors or agents in connection with the loan of the Art Works to the City.

(b) At its own cost, Collector shall at all times during the term of this Agreement insure the Art Works for their full market value as determined by Collector in a form approved by the City Attorney and Risk Manager. In the event such insurance is not adequate to cover losses which arise in connection with this Agreement, Collector shall be responsible for all such losses not covered by insurance. Collector shall insure the Art Works under a standard policy of insurance for art objects against all risks of physical loss or damage which may contain standard exclusions, including exclusions for wear and tear, gradual deterioration, insects, vermin; damage from repair, restoration or retouching processes; hostile or warlike action, insurrection, and rebellion; and nuclear reaction or radioactive contamination.

(c) The policy or policies required by this Section shall be issued by an insurer acceptable to the City's Risk Manager.

(d) Collector agrees that if it does not keep the aforesaid insurance in full force and effect City may, at its option, either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, and Collector shall reimburse City, the premium thereon.

(e) At all times during the term of this Agreement, Collector shall maintain on file with the City Clerk a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts. Collector shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Section shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be cancelled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by Collector shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation. Collector hereby waives its right of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by City prior to the commencement of work under this Agreement.

(h) The City is not obligated to provide the Collector or Artist Fine Arts Insurance for the Art Works while the Art Works are located in the City (i.e. delivered, installed, exhibited, stored, removed and transported).

8. Removal of Art Works.

(a) Collector shall be responsible for removing the Art Works at its own cost and expense at the expiration or sooner termination of the loan hereunder. Prior to the expiration of the loan, Collector shall coordinate the removal of the Art Works with the City Manager or his designee. If Collector fails to retrieve the Art Works within thirty (30) days after the term of this Agreement, City shall have the right to remove and store the Art Works at Collector's cost and expense. City shall have no liability to Collector for damage to the Art Works which results from its removal, transportation and/or storage. Collector shall be responsible for the costs to repair City property damaged by the removal of the Art Works.

(b) If the legal ownership of the Art Works shall change during the pendency of this loan, whether by reason of death, sale, insolvency, gift or otherwise, the new owner may, prior to the Art Works' return, be required to establish his or her legal right to receive the Art Works upon proof satisfactory to the City.

9. City Obligations.

(a) If requested by Collector, City will work with Collector to locate space for the storage of the shipping crates. Any costs shall be paid by Collector.

(b) City shall place appropriate signs near the Art Works that indicate the name of the artist and title of the Art Works. City will work in conjunction with Collector to determine the size, location and text of the signage.

10. Collector's Warranty. Collector represents and warrants to City that it has the proper legal authority to loan the Art Works to City on the terms and conditions set forth in this Agreement and grant the City the rights set forth in Section 11 of this Agreement. Collector shall hold harmless City, and its officers, agents and employees from any and all losses, liability, costs or expenses (including attorneys' fees and costs) arising from any breach by Collector of such representation and warranty.

11. Copyright and Reproduction. Sculptors (the "Artists") shall retain all copyright and other intellectual property rights with respect to the Art Works. Notwithstanding the foregoing, the Collector, on behalf of the Artist, hereby grants the City a non-exclusive, non-commercial license to make two-dimensional reproductions of the Art Works for any publication or for other publicity media. The Artist shall be appropriately identified as the creator of the Art Works in any use of the license hereby granted. Such permission is for the purpose of non-commercially promoting the exhibition in which the Art Works will appear but not for commercial ventures.

Collector and Artists acknowledge that City issues film permits to third parties to conduct filming in the City. Any such filming may or may not include the filming of City Hall lawn, which will contain the Art Works. The City has no control over such filming other than issuing a film permit. By entering into this Agreement, Collector and Artists hereby (a) acknowledge that filming is conducted in the City by third parties which may include the filming of the Art Works; and (b) agree to hold City harmless from any claims or liabilities that the filming of the Art Works by third parties violates the Collector's and/or Artist's intellectual property rights including but not limited to the copyright holder's right of display. The City is under no obligation to provide notice of filming to the Collector and/or Artist.

12. Addresses for Notices. Any notice, demand or document which any party is required or may desire to give or deliver to the other hereunder, shall be in writing and may be delivered personally or given by United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

To Collector: Paul Amir  
935 N. Alpine Drive  
Beverly Hill, CA 90210

To City: City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: Pat Agnitch, Assistant Director of Community  
Services/Recreation and Parks

Either party shall have the right to designate a different address by written notice similarly given. Any notice, demand or documents to be given, delivered or made by United States mail shall be deemed to have been given or delivered or made two (2) days after the day on which the same is postmarked by the United States mail, addressed as above provided, with postage thereon fully prepaid. Collector shall notify City promptly in writing if there is any change in ownership of the Art Works (whether through inter vivos transfer or death) or if there is a change in the identity or address of Collector. City assumes no responsibility to search for Collector if it cannot be reached at the address of record.

13. Entire Agreement. This Agreement represents the entire integrated agreement between City and Collector, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Collector.

14. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

15. Headings. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only and shall not be deemed to limit, expand or define the contents of the respective sections or paragraphs.

16. Attorneys' Fees. In the event either party shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained herein, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, expenses, and court costs.

17. Successors, Assigns and Subcontractors. The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties hereto. Collector shall not assign or subcontract or attempt to assign or subcontract any portion of this Agreement without the prior written approval of City.

18. Governing Law. This Agreement shall be governed by the laws of the State of California.

19. Contract Administration The City Manager or his designee shall administer the terms and conditions of this Agreement for the City.

20. Third Parties. City shall have no obligations to any third parties under this Agreement.

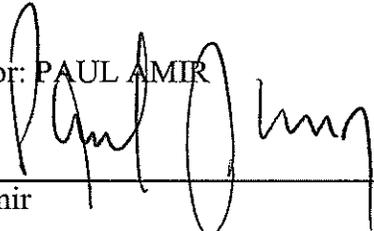
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

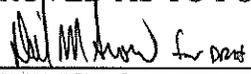
\_\_\_\_\_  
JIMMY DELSHAD  
Mayor of the City of  
Beverly Hills, California

ATTEST:

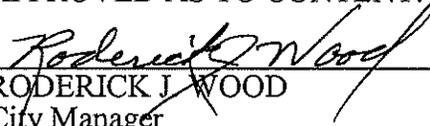
\_\_\_\_\_  
BYRON POPE  
City Clerk

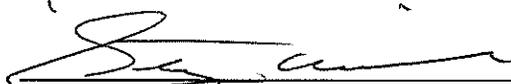
Collector: PAUL AMIR  
  
\_\_\_\_\_  
Paul Amir  
Owner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

  
\_\_\_\_\_  
STEPHEN M. MILLER  
Director of Community Services

  
\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

**ATTACHMENT 1**

**FOUR SCULPTURES FROM RESIDENT PAUL AMIR  
Proposed Location: City Hall West Lawn  
Length of Loan: Six Months**

**Barbara Hepworth**  
Sculptor  
1903-1975  
England  
60"x 40"x 8"



Valued: \$800,000

**Marc Di Suvero 1933 -**  
Sculptor  
Shanghai China  
64 "x 50" x 6"



Valued: \$200,000

**Joel Shapiro 1941 -**  
American Sculptor  
30" x 34" x 6"



Valued: \$220,000

**Lynn Chadwick, 1914 - 2003**  
British Sculptor  
London, England  
55" x36" x 28"



Valued: \$400,000