

INTERAGENCY AGREEMENT
FOR THE ADMINISTRATION AND MANAGEMENT OF THE STATE ART COLLECTION
BETWEEN THE
WASHINGTON STATE ARTS COMMISSION
AND
Kennewick School District

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DEFINITIONS

The following definitions are used in this AGREEMENT:

"ADDENDUM" shall mean a binding agreement between ARTS COMMISSION, AGENCY, and ARTIST contracted to create a WORK that further obligates the AGENCY beyond the standard terms of this AGREEMENT.

"AGENCY" shall mean any public entity where WORK acquired for the STATE ART COLLECTION is commissioned and/or sited.

"AGENCY ART COMMITTEE" shall mean an advisory committee that works with the ARTS COMMISSION to develop plans and overarching project specifications. The AGENCY ART COMMITTEE shall be appointed by the AGENCY at the request of the ARTS COMMISSION

and may consist of members representing AGENCY administration, artists or art professionals, community members, and building users. The AGENCY should strive to appoint a committee that is balanced by gender, ethnically diverse, and representative of the constituencies of the AGENCY. The ARTS COMMISSION may recommend representatives to the AGENCY ART COMMITTEE.

“AGREEMENT” shall mean this interagency agreement in its whole.

“AMENDMENT” shall mean an agreement that changes the CONTRACT between the ARTS COMMISSION and the ARTIST.

“ARTIST” shall mean that individual, firm, provider, organization, or other entity creating a WORK sited at the AGENCY.

“ARTS COMMISSION” shall mean the Washington State Arts Commission, of the state of Washington, any division, section, office, unit, or other entity of the agency, or any of the officers or other officials lawfully representing that agency.

“ART SELECTION COMMITTEE” shall mean a decision-making panel appointed by the AGENCY, in consultation with the ARTS COMMISSION, to review, recommend, and select artists for projects according to AGENCY ART COMMITTEE specifications. Panels may vary in size and will be comprised of representatives of the AGENCY, members of the local community, and at least one professional artist. The AGENCY should strive to appoint a panel that is balanced by gender, ethnically diverse, and representative of the constituencies of the AGENCY.

“CONSERVATION” shall mean those extraordinary activities required to repair a malfunctioning or damaged WORK and to the treatment undertaken to bring a WORK to a stable condition so that future ROUTINE and SPECIAL ROUTINE MAINTENANCE can be effective. CONSERVATION may also include examination and documentation of the WORK.

“CONTRACT(S)” shall mean the signed contract(s) between the ARTS COMMISSION and the ARTIST.

“RESTORATION” shall mean those extraordinary activities required to repair a malfunctioning or damaged WORK, including treatment that returns the WORK to a known or assumed state, often through the addition of non-original material.

“ROUTINE MAINTENANCE” shall mean regular scheduled activities required to keep a WORK in clean, presentable, and working condition, including but not limited to surface dusting, removal of debris, cleaning of glass, oiling of moving parts, removal of debris, and/or landscape maintenance.

“SPECIAL ROUTINE MAINTENANCE” shall mean anticipated but infrequent activities required to maintain structural aspects of the WORK, including integrity of the overall surface and/or individual elements. SPECIAL ROUTINE MAINTENANCE typically involves non-art specific skills, including but not limited to application of paint and/or sealant and mortar replacement.

“STATE ART COLLECTION” shall mean artwork acquired by the state through RCW 43.17.210, 43.19.455, 28A.335.210, and 28B.10.025.

"STEWARDSHIP" shall mean the responsible management of WORK(S) entrusted to one's care.

PURPOSE OF AGREEMENT

THIS AGREEMENT is made and entered into by and between the Washington State Arts Commission, hereinafter referred to as the "ARTS COMMISSION," and **Kennewick School District**, hereinafter referred to as the "AGENCY."

WHEREAS the ARTS COMMISSION recognizes the best practices of professional administration of and local involvement with the STATE ART COLLECTION; the desire to place and retain WORKS with the AGENCY whose local committee developed site-responsive criteria; that STEWARDSHIP is essential in the long-term care of the state's cultural assets; and copyright law dictates that the original intent of the ARTIST(S) be maintained.

It is the purpose of this agreement to outline responsibilities of the parties as they relate to the acquisition, copyright, and STEWARDSHIP including but not limited to material changes, site changes, and maintenance of WORK(S) placed within the jurisdiction of the AGENCY and held in the STATE ART COLLECTION, a collection of WORKS owned by the State of Washington and administered and managed by the ARTS COMMISSION.

The ARTS COMMISSION has the responsibility to develop, administer and operate the STATE ART COLLECTION pursuant to Chapter 43.17.200 RCW, 43.17.205 RCW, 43.17.210 RCW, 43.19.455 RCS, 43.46.090 RCW, 43.46.095 RCW under which all state agencies, universities, colleges, and public schools shall allocate ½ of 1% of the appropriation for original construction, and for universities and colleges to include major renovation or remodeling in excess of two hundred thousand dollars (\$200,000), for the acquisition of WORK(S).

The ARTS COMMISSION and the AGENCY, for the consideration, covenants, and conditions hereinafter set forth, do agree as follows:

A. STEWARDSHIP OF WORK(S) including surrounding environment

The ARTS COMMISSION does hereby agree to accept the following responsibilities and to perform the following services related to STEWARDSHIP of WORK(S) held in the STATE ART COLLECTION:

1. Be responsible for all STEWARDSHIP decisions regarding the WORK, including but not limited to, providing AGENCY with specifications for ROUTINE and SPECIAL ROUTINE MAINTENANCE and determining actions related to inventory, loan, relocation, storage, CONSERVATION, records management, deaccession from STATE ART COLLECTION, and disposition of WORKS;
2. Upon completion of WORK, provide information about the WORK to the AGENCY, including maintenance and technical specifications, and an artist's statement intended to facilitate understanding of the WORK by members of the public;
3. Be responsible for all necessary CONSERVATION and RESTORATION of the WORK, contingent upon receipt of adequate funding for this purpose;
4. Be responsible for consulting with the ARTIST as deemed necessary, or as required by

the CONTRACT, prior to relocation, CONSERVATION, RESTORATION, and/or other treatment or disposition of the WORK;

5. Consider AGENCY requests to alter, modify, or change the site surrounding the WORK, the WORK itself, and/or the location of the WORK and to exercise its discretion in granting or withholding consent for those requests; and
6. Report assets held in STATE ART COLLECTION in compliance with State auditing and reporting requirements.

The AGENCY does hereby agree to the following conditions for STEWARDSHIP of WORK(S) held in the STATE ART COLLECTION:

1. Upon installation of the WORK and acceptance by the ARTS COMMISSION in consultation by the AGENCY, use best efforts to protect the WORK against loss, theft, mutilation, vandalism, or other damage;
2. To immediately notify the ARTS COMMISSION if the WORK, or the identification plaque for the WORK, is lost, stolen, mutilated, vandalized, or damaged and to promptly file police reports or property loss reports, as appropriate;
3. Provide ROUTINE and SPECIAL ROUTINE MAINTENANCE for the WORK in accordance with the specifications provided by the ARTS COMMISSION;
4. To host an appropriate site, as approved by the ARTS COMMISSION, for the WORK during the life of the WORK. Prior to approved site being withdrawn due to demolition, program changes or other space-related reasons, propose in writing to the ARTS COMMISSION, for its prior approval, a new site within the AGENCY, detailing the reason, documenting the newly proposed location, timeline, and proposed method of removal, proposed temporary storage, and reinstallation of the WORK;
5. Propose in writing to the ARTS COMMISSION, for its prior approval, any temporary relocation due to safety considerations, detailing the reason, timeline, and proposed method for storage and reinstallation of the WORK;
6. Participate in the ARTS COMMISSION'S regular condition and location survey or inventory of WORK(S);
7. To not alter, modify, or change the WORK, or the site surrounding the WORK if the site is considered integral to the WORK as agreed by the ARTIST, ARTS COMMISSION, and AGENCY in an ADDENDUM to the CONTRACT, and to not intentionally or negligently damage or destroy the WORK in any way whatsoever;

Alteration, modification, or changes to the WORK could result from any treatment that alters the appearance, surface or structure of the WORK including but not limited to application of new paint color, alteration of surface texture, and/or redesign of landscaping considered integral to the WORK and specified in an ADDENDUM to the CONTRACT. Those treatments and activities recommended in the technical and maintenance specifications and other written recommendations provided to the AGENCY by the ARTS COMMISSION are not considered alteration, modification, or

change.

- a. The AGENCY will be responsible for the expense incurred in restoring the WORK and/or site to its original form should the WORK, or site as relevant, be altered, modified, changed or intentionally or negligently damaged by the AGENCY. The method and procedure for RESTORATION of the WORK and/or site will be determined by the ARTS COMMISSION, in consultation with the AGENCY;
 - b. Should the WORK be altered, modified, or changed by the AGENCY without the ARTIST'S written consent negotiated by the ARTS COMMISSION, the ARTIST will have the option of requesting the removal of his/her name from the identification plaque, signature from the WORK, and/or identifying emblem from the WORK. The AGENCY will be responsible for the expense incurred in such removal;
 - c. The AGENCY will be responsible for the expense incurred in replacing the WORK should the WORK be destroyed by the AGENCY. Expense would include fair market value at time of destruction of the WORK and associated administrative, site preparation, delivery, and installation costs of WORK replacement as determined by the ARTS COMMISSION.
 - d. For the purpose of this AGREEMENT, no modification of the WORK that results from the passage of time, the inherent nature of the materials used in the WORK, or the WORK'S public presentation (including but not limited to lighting and placement), shall constitute a modification for which the ARTIST or the ARTS COMMISSION may claim relief or remedy from the AGENCY.
8. Display the identification plaque with the WORK, using the AGENCY'S best efforts to maintain such plaque in good repair against loss, theft, mutilation, vandalism, or other damage;
 9. Retain records related to the WORK provided by the ARTS COMMISSION, including but not limited to copies of all CONTRACTS, AGREEMENTS, AMENDMENTS, ADDENDUMS, technical and maintenance specifications, ARTIST'S statement about the WORK, and inventory forms.
 10. Make the WORK available to the ARTS COMMISSION and/or its representative for the purpose of examination, documentation, repair, CONSERVATION, and RESTORATION as determined necessary by the ARTS COMMISSION; and
 11. Make the WORK available for loan upon the ARTS COMMISSION'S request at no cost to the AGENCY unless negotiated through a signed agreement. All loan requests must be made directly to the ARTS COMMISSION, which has the sole discretion to negotiate loan terms for WORKS held in the STATE ART COLLECTION.

B. COPYRIGHT AND ARTWORK CREDIT

The ARTIST retains all rights under copyright law to which drawings, models, specifications, and the WORK may be subject.

The ARTS COMMISSION and the AGENCY shall have the right to present the WORK for purposes of public information, education, and exhibition.

- a. the right to permanently display the WORK;
- b. the right to make graphic reproductions of the WORK, including reproductions in all graphic media now known or later developed, digital or otherwise, and including the Internet and the World Wide Web;
- c. the right to display and distribute such reproductions at the ARTS COMMISSION, AGENCY, or other locations.

In presenting the WORK in the above ways and purposes, the ARTIST, the ARTS COMMISSION and the AGENCY shall be acknowledged in substantially the following form: "*Artwork Title, Artist Name, Year Completed, Medium/s, Washington State Arts Commission in partnership with Kennewick School District,*" and *optional artist statement*.

The AGENCY shall not identify or present graphic reproductions of the WORK, proposal, preliminary studies, model or installation documentation as the finished WORK.

If the AGENCY wishes to make reproductions of the WORK for commercial purposes, including, but not limited to, tee shirts, mugs, and note cards, the ARTS COMMISSION shall execute a separate agreement to address the terms of the license granted by the ARTIST and the royalty the ARTIST shall receive.

Any information releases or media announcements produced by the AGENCY or by a representative of the AGENCY concerning the WORK or the STATE ART COLLECTION will be submitted to the ARTS COMMISSION for approval prior to distribution.

C. ACQUISITION OF WORK

The ARTS COMMISSION does hereby agree to accept the following responsibilities and to perform the following services related to acquisition of WORK for the STATE ART COLLECTION:

1. Determine funds to be made available for art under RCW 43.17.210, 43.19.455, 28A.335.210 and 28B.10.025, in consultation with the AGENCY.
2. Manage funds made available for WORKS, in consultation with the AGENCY;
3. Designate projects and sites for WORKS, in consultation with the AGENCY;
4. Determine method(s) of selecting ARTISTS and/or WORKS;
5. Facilitate and manage selection of ARTISTS and/or WORKS, in consultation with the AGENCY;
6. Review design, conservation evaluation, maintenance requirements, budget, timeline, execution, fabrication, and installation of WORKS, in consultation with the AGENCY;
7. Issue and manage CONTRACTS, AMENDMENTS, and ADDENDUMS for acquisition of

WORKS;

8. Provide copies of **CONTRACTS, AMENDMENTS, ADDENDUMS** and attachments, upon their execution, to the **AGENCY** for their records;
9. Provide an identification plaque for the **WORK**;
10. Upon installation of the **WORK**, be responsible for the determination of the **ARTIST'S** liability for faults or defects in the **WORK** per the terms of the **CONTRACT**.

The **AGENCY** does hereby agree to the following conditions related to the acquisition of **WORKS** for the **STATE ART COLLECTION**:

1. Notify the **ARTS COMMISSION** of the amount of formula-generated art funding for **WORK(S)** in compliance with **RCW 43.17.210, 43.19.455, 28A.335.210** and **28B.10.025**. Funding is to be calculated as $\frac{1}{2}$ of 1% of state funds applied to the original construction cost of any state building in the case of colleges, universities, state agencies, and public schools, or to any major renovation or remodel exceeding \$200,000 in the case of colleges and universities. Original construction cost is calculated as total construction cost, including architectural and engineering fees, equipment, and maximum allowable construction cost (**WAC 30-40-050**);
2. Reimburse the total amount of the formula-generated art funding to the **ARTS COMMISSION** for actual expenditures by the **ARTS COMMISSION** for acquisition of **WORKS** for the **STATE ART COLLECTION**, not to exceed the amount authorized by law. The **ARTS COMMISSION** may designate a portion of the total amount to be used for administrative expenses and **CONSERVATION** of **WORKS** as per the Capital Budget Bill;
3. Appoint **ART SELECTION COMMITTEE** and/or **AGENCY ART COMMITTEE** in consultation with the **ARTS COMMISSION** and provide site opportunities and adequate personnel and time to plan for and conduct meetings related to the: selection of sites, selection of **ARTISTS**, selection of **WORKS**, review of design of **WORKS**, review of **ROUTINE MAINTENANCE**, review of **SPECIAL ROUTINE MAINTENANCE**, and final completion of **WORKS** with the **ARTS COMMISSION**;
4. Require the architect to attend meetings, provide drawings, and perform the necessary work to incorporate the **WORKS** into the building and/or site, as agreed upon between the **ARTIST**, **ARTS COMMISSION**, and **AGENCY**, and pay architect for such services, as required;
5. Provide to the **ARTIST** and/or **ARTS COMMISSION** details of the building and/or site as needed for the design and/or installation of **WORKS**, including but not limited to architectural plans, elevations, and other relevant site specifications;
6. Submit proposals, decisions, and updated architectural plans, construction documents, and schedules affecting the site or the **WORK**, as necessary during proposal development, design, fabrication, and/or installation of the **WORK**, to the **ARTS COMMISSION** for review by the **ARTS COMMISSION** and the **ARTIST**;

7. If new construction, require the general contractor, as necessary, to coordinate integration of the WORK, including but not limited to lighting, attachments, and installation with the ARTIST;
8. If an ADDENDUM to the CONTRACT is generated, be responsible for AGENCY obligations, as specified and agreed to by the AGENCY. Such obligations may include but are not limited to lighting, landscaping, and preparation of the selected site, base, or footings. In the event that the AGENCY has agreed to prepare detailed plans and specifications for the WORK, the AGENCY shall provide the ARTS COMMISSION with such detailed plans or specifications for review by the ARTIST and ARTS COMMISSION. Detailed plans or specifications may include but are not limited to plans and/or specifications for site preparation, landscaping, design, and/or placement of base, footing or other anchoring devices for the WORK, engineers drawings and calculations for technical installation of the WORK, lighting, etc.;
9. Provide the ARTS COMMISSION, ARTIST, and/or their representatives with access to the site to facilitate the fabrication and installation of the WORK;
10. Be responsible for planning and implementing, in consultation with the ARTIST, at least one public event relating to the WORK, such as a dedication ceremony, public presentation, or other educational outreach event; and
11. Write media and information releases announcing the ARTIST selection process, WORK proposal acceptance, installation, and public event. Provide releases to the ARTS COMMISSION for approval prior to distribution.

D. BILLING PROCEDURE

The ARTS COMMISSION shall submit invoices to the AGENCY, or to the appropriate Washington State agency, for reimbursement of actual expenditures for the acquisition of WORKS and for administrative and CONSERVATION expenses of the STATE ART COLLECTION.

Payment to the ARTS COMMISSION for approved and completed work will be made by warrant or account transfer by the AGENCY within 30 days of receipt of the invoice.

E. CHANGES IN FUNDING

In the event that appropriations from state, federal, or other sources are withdrawn, reduced, or limited in any way after the effective date of this AGREEMENT, the ARTS COMMISSION has the sole discretion to determine if termination of CONTRACT(S) related to the WORK is necessary. Withdrawal, reduction or other limitation of available funds for acquisition and STEWARDSHIP of WORKS may result in discontinuation of proposal development, design, fabrication, installation, CONSERVATION, RESTORATION, and/or other activities related to the WORKS acquired and cared for under this AGREEMENT.

F. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this AGREEMENT shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

G. AGREEMENT ALTERATIONS AND AMENDMENTS

This AGREEMENT may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

H. DISPUTES

In the event that a dispute arises under this AGREEMENT and it cannot be resolved by direct negotiation, it shall be determined by a Dispute Board in the following manner: Each party to this AGREEMENT shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, AGREEMENT terms and applicable statutes and rules and make a determination in the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330.

I. GOVERNANCE

This AGREEMENT is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this AGREEMENT shall be construed to conform to those laws. Venue of any action brought hereunder shall be in Superior Court of Thurston County.

In the event of an inconsistency in the terms of this AGREEMENT, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules; and
- b. This AGREEMENT; and
- c. Any other provisions of the AGREEMENT, including materials incorporated by reference.

J. ASSIGNMENT

The work to be provided under this AGREEMENT, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

K. INDEMNIFICATION

The ARTS COMMISSION and AGENCY agree to be responsible for negligent acts or omissions of their own officers, employees, and agents in the performance of this agreement, including but not limited to site preparation, installation, placement, ROUTINE MAINTENANCE, SPECIAL ROUTINE MAINTENANCE, and disposition of the WORKS, and each agrees to indemnify and hold harmless the other against any and all claims, demands, or liabilities arising therefrom.

L. WAIVER

A failure by either party to exercise its rights under this AGREEMENT shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this AGREEMENT unless stated to be such in a writing signed by an authorized

representative of the party and attached to the original AGREEMENT.

M. SEVERABILITY

The provisions of this CONTRACT are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the CONTRACT.

N. TERMINATION

This AGREEMENT may not be terminated, changed, modified, and/or amended unless by written agreement, executed by both parties and attached hereto. Termination of this AGREEMENT shall not release the AGENCY from the responsibilities outlined in the "Stewardship" section of this AGREEMENT for all WORKS of the STATE ART COLLECTION in the jurisdiction of the AGENCY.

O. TERM OF AGREEMENT AND SURVIVABILITY

All sections of this AGREEMENT with the exception of C. and D. shall remain in effect while any WORK of the State Art Collection is under the AGENCY's care/STEWARDSHIP.

P. ALL WRITINGS CONTAINED HEREIN

This AGREEMENT contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the parties hereto.

The date of execution of this AGREEMENT shall take effect upon signature by both parties.

Agreed to and signed by:

Washington State Arts Commission

Kennewick School District

Kris Tucker
AUTHORIZED SIGNATURE

Dave Bond
AUTHORIZED SIGNATURE

Kris Tucker, Executive Director

Dave Bond
NAME (please print)

1.15.10
DATE

Superintendent
TITLE

Approved as to form:
Assistant Attorney General
ORIGINAL SIGNATURE ON FILE
August 1, 2008

1/12/10
DATE