

ARTWORK LICENCING AGREEMENT

for

Environmental Outreach Program

THIS AGREEMENT is entered into as of this [insert day] day of [insert month], [insert year], between the Cities of [insert partner cities] ("CITIES"), municipal corporations organized under the laws of the state of Washington, and [insert artist name] ("ARTIST"), with their principal place of business located at [insert artist's address]. The CITIES and ARTIST are referred to collectively as "the PARTIES".

RECITALS

- A. The CITIES administer a variety of programs that seek to safeguard natural resources and reduce ecological footprints, which includes, but is not limited to, public education campaigns to promote environmentally friendly practices, behaviors, and habits.
- B. The CITIES are seeking artwork ("WORK") to support their environmental programming and promotional/educational/informational efforts, which WORK would then be reproduced as custom graphics and applied to program materials at the CITIES' discretion.
- C. The PARTIES wish to memorialize their understandings regarding the commission and subsequent use of the WORK in a binding contract.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the PARTIES agree as follows:

AGREEMENT

I. RECITALS

The recitals set forth above are incorporated herein by reference as if set forth in full in the body of this Agreement.

II. PURPOSE

The purpose of this Agreement is to memorialize the terms upon which the CITIES shall use WORK of the ARTIST for its environmental programs and related educational/informational/promotional efforts ("PROJECT").

This Agreement is not intended to divest the ARTIST of all rights of ownership to the WORK used; and it shall in no way limit the CITIES' rights to control property (*e.g.* websites) where the WORK may be displayed.

To the fullest extent allowed by law, unless expressly limited herein, this Agreement is intended to confer all rights to the CITIES so that they can freely use, at their sole discretion, the WORK used for their environmental programming and promotional/educational/informational needs.

III. TERM

This Agreement shall begin as of the date last signed and shall be in full force and effect until [insert contract end date], unless mutually extended in writing by the Parties.

IV. ARTISTS RESPONSIBILITIES / SCOPE OF WORK

The ARTIST agrees to provide the following obligations in the manner described below:

- A. The ARTIST shall allow use of the unique and original WORK that can be reproduced as custom graphics and used in educational/promotional/informational campaigns related to the CITIES' environmental programming, including, but not limited to, their websites, informational materials (e.g. posters, pamphlets, presentations) and consumer goods (e.g. tote bags, stickers, reusable cups) that may be used to promote their environmental programs and/or inform, educate, encourage, and inspire community members to change behaviors/habits.
- B. The ARTIST must own all rights to images and content used in the WORK, and the WORK must not violate or otherwise infringe on any copyright, patent, intellectual property, brand, logo, advertising, or other proprietary rights of another third party.
- C. The ARTIST shall provide the CITIES with any/all licensing rights that will enable the CITIES to reproduce the WORK (as needed and at their sole discretion) on any/all materials related to the CITIES' environmental programs and on the CITIES' internet, intranet, and social media sites.
- D. As the WORK may be displayed in the public realm and/or included on consumable goods given to third parties, there is a risk that said WORK may be vandalized and/or misappropriated. The ARTIST understands, appreciates, and accepts this risk.
- E. The ARTIST understands that the CITIES are not obligated to use/display the WORK commissioned, nor are they obligated to use/display the WORK for any definitive time.
- F. The rights granted to CITIES under this Agreement shall be perpetual and the CITIES' rights to utilize the work as described above shall survive any termination or expiration of this Agreement.

V. CITIES' RESPONSIBILITIES

- A. Use of Artwork: The ARTIST acknowledges the CITIES retain sole and complete discretion and control over the use, location, display, and removal of the WORK in connection with their environmental programs, and the ARTIST recognizes that the WORK may also be located on the CITIES' internet, intranet, and social media site and used in connection with promotional/educational/informational materials – including being reproduced on consumer goods (e.g. tote bags, posters, reusable cups) to promote and incentivize public participation in said environmental programs.
- B. Removal, Relocation, or Destruction. In the event the CITIES publicly display (e.g. internet, intranet, city offices/property) the WORK, nothing in this Agreement shall preclude any right of the CITIES in their sole discretion to (i) remove the WORK from public display; (ii) move or relocate the WORK on public display; and/or (iii) destroy the WORK in their possession. The ARTIST waives any greater or other rights which they may have in connection with the maintenance, removal, and/or destruction of the WORK under 17 USC §106A(a) and §113.
- C. Attribution. The CITIES shall allow the WORK to bear the ARTIST'S signature.
- D. Modification of WORK. The CITIES agree they will not intentionally alter, modify, or change, the WORK without the ARTIST'S written approval, unless it needs to remove, relocate, or the destroy the WORK consistent with Section V(B).
- E. Compensation: The CITY OF [insert city distributing payment] will distribute payment under this agreement in the manner described below.
 - 1. The ARTIST shall be paid a total of \$[insert artist's fee], which shall compensate the ARTIST for perpetual licensing rights to enable the CITIES to use and

reproduce the WORK on their internet, intranet, and social media sites and other promotional/educational/informational materials related to the CITIES' environmental programs.

2. The ARTIST shall invoice the CITY OF [insert city distributing payment], and the CITY OF [insert city distributing payment] shall pay such invoice within 30 days of receipt of such invoice.
3. The amount paid to the ARTIST by the CITY OF [insert city distributing payment] shall not exceed \$[insert artist's fee].

VI. WARRANTY

The ARTIST warrants that it has the legal right to enter into this Agreement and submit and license WORK to the CITIES in connection with the PROJECT, either because the ARTIST is the owner of said WORK or because the owner has given permission for the WORK to be included in the PROJECT.

The ARTIST further warrants as follows:

- A. Except as otherwise disclosed to the CITIES, the WORK is unique, original, and does not infringe on any copyright or other intellectual property right;
- B. The WORK has not been accepted for sale elsewhere, nor has a substantial duplicate been so accepted; and
- C. The WORK is free and clear of any liens from any source whatsoever.
- D. The ARTIST will indemnify, defend, and hold harmless the CITIES, their officials, and employees from any breach of this warranty or from any claim or allegation that the WORK infringes on any copyright, trademark, patent, or other intellectual property of another.

VII. SAFEKEEPING, SECURITY, AND RISK

The ARTIST expressly acknowledges that the WORK used in connection with the PROJECT may be located in the public realm and may be located on a virtual platform managed by the CITIES. The ARTIST understands and agrees that the CITIES will not provide any security measures to protect against the unauthorized use of the WORK. The ARTIST shall bear the sole responsibility for the protection and enforcement of any copyright or intellectual property related to the WORK. The CITIES shall have no financial responsibility whatsoever in the event of damage to or theft of the WORK.

VIII. OTHER SIMILAR ARTS PROJECTS

The ARTIST shall retain ownership of the WORK, but the ARTIST agrees that they will not license the same WORK that is the subject of this Agreement to another government or utility (public/private) for purpose of any governmental, utility, or environmental programs without the CITIES' prior permission.

IX. LICENSE AND USE OF THE ARTWORK

The ARTIST grants the CITIES a perpetual, non-exclusive, non-commercial, and royalty-free license as follows:

- A. To produce, print, publish, use, copy, broadcast, distribute, or publicly display the WORK in connection with any and all promotional/educational/informational materials, needs, and efforts

related to the CITIES' environmental programs. However, the CITIES may not so use the WORK for other city programming unless they have prior written authorization from the ARTIST.

- B. To produce, print, publish, use, copy, broadcast, distribute, or publicly display the WORK in its entirety or in any portion, individually, collectively, or other compilation, including but not limited to, the exercise of such rights through internet or intranet sites, and all other media and distribution mechanisms now known or later developed; provided said acts are part of or reasonably related to the CITIES' environmental programming.
- C. To produce, print, publish, use, copy, broadcast, distribute, or publicly display the WORK for marketing and promotional purposes by any method the CITIES, in their discretion, deems appropriate, including both electronic and physical reproduction and distribution; provided said acts are part of or reasonably related to the CITIES' environmental programming. For clarity, this provision allows the CITIES to reproduce the image on consumable goods (e.g. tote bags, stickers, posters, reusable cups, etc.) to promote and incentivize their environmental programs.
- D. To use ARTIST's name, voice, photograph, biographical information, and likeness in connection with the commissioned WORK.
- E. The ARTIST hereby acknowledges the rights of integrity and attribution conferred by Section 106A(a), paragraphs (2) and (3) of Title 17 of the United States Code, and any other rights of the same nature granted by federal, state, or international laws, and of their own free will hereby waives such rights with respect to the CITIES' usage or use of the WORK consistent with the Agreement.
- F. This section shall survive any termination or expiration of this Agreement.

X. INDEPENDENT CONTRACTOR

The ARTIST shall be, at all times during the term of this Agreement, an independent contractor and not an employee of the CITIES. Any and all employees of the ARTIST, while engaged in the performance of any work or services required of the ARTIST under this Agreement, shall be considered employees of the ARTIST only and not of the CITIES. Any and all claims that may arise under the Worker's Compensation Act on behalf of said employees, while engaged, and all claims made by any third party as consequence of any negligent act or omission on the part of the ARTIST's employees, while so engaged on any of the work or service provided or rendered herein, shall not be the obligation of the CITIES.

XI. DOCUMENTATION

CITIES retain the right to inspect and audit during normal business hours any relevant records of the ARTIST in connection with or related to this Agreement.

XII. AGREEMENT ADMINISTRATION AND NOTICES

This Agreement will be administered by the [insert city staff and titles] or their designees. All notices required under this Agreement shall be in writing and may be delivered digitally or in hard copy to the PARTIES at the following addresses:

CITIES	ARTIST
Name, City #1 Title	Name Address

Address Phone Number Email Name, City #2 Title Address Phone Number Email Name, City #3 Title Address Phone Number Email Name, City #4 Title Address Phone Number Email	Phone Number Email
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If notice is hand delivered, then it shall be effective on the date it is delivered. If the notice is delivered electronically, then it shall be effective on the next business day after being sent. If notice is delivered via mail, then it shall be effective on the third business day after being sent. The ARTIST shall notify the CITIES of changes in its address. The failure to do so, if such failure prevents the CITIES from locating the ARTIST, shall be deemed a waiver by the ARTIST of the rights granted to or retained by the ARTIST in this Agreement, the exercise of which requires a response by the ARTIST.

XIII. COMPLIANCE WITH LAWS

The ARTIST will comply with all federal, state, and local regulations and ordinances applicable to any work done under this Agreement. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, and may result ineligibility for further work for the CITIES.

XIV. TERMINATION

The CITIES reserve the right to terminate this Agreement for the CITIES' convenience with or without cause at any time without penalty. Termination of this Agreement shall be effective upon the CITIES delivering fourteen (14) days written notice to the ARTIST.

XV. TAXES

The ARTIST is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, and ARTIST agrees to comply with all applicable laws

regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law.

XVI. CLAIMS

Any claims against the CITIES for damages arising out of the performance of this Agreement must be made in writing to CITIES within thirty (30) days after payment to the ARTIST. Should ARTIST fail to do so, it will be deemed to have waived its right to a claim for any damage for which a claim has not been made.

XVII. INDEMNIFICATION

- A. The ARTIST shall protect, defend, indemnify and save harmless the CITIES, their officers, employees, and agents from any and all costs, claims, judgments, awards, or damages, arising out of or in connection with the performance of this Agreement, including but not limited to the acts or omissions of the ARTIST, its officers, employees, and/or agents; except for injuries and damages caused by the sole negligence of the CITIES. The ARTIST agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. In the event the CITIES obtain any judgment or award, and/or incur any cost arising therefrom, including attorneys' fees to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the ARTIST.
- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the ARTIST and the CITIES, or each party's respective officers, officials, employees, and agents, the indemnifying party's liability hereunder shall be only to the extent of the indemnifying party's negligence.
- C. It is further specifically and expressly understood that the indemnification provided herein constitutes the PARTIES' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the PARTIES.
- D. The ARTIST will indemnify, defend, and hold harmless the CITIES, including their officers, officials, employees, and agents, from all claims, damages, losses, and expenses (including reasonable attorneys' fees incurred through such claims and in proving the right to indemnification) arising out of or resulting from any claim, action, or other proceeding that is based upon (a) the ARTIST's breach of any obligations, representations, or warranties under this Agreement, (b) the ARTIST's outside business activities, or (c) the infringement or misappropriation by the ARTIST of any foreign or United States patent, copyright, trade secret or other proprietary or intellectual right.
- E. This section XVII shall survive the termination or expiration of this Agreement.

XVIII. PUBLIC DISCLOSURE

This Agreement and documents provided to the CITIES by the ARTIST are public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records ACT). Thus, the CITIES may be required to disclose this Agreement and records related to it

(including records held by ARTIST) unless an exemption under the Public Records Act or other law applies.

XIX. MISCELLANEOUS PROVISIONS

- A. Governing Law. This Agreement shall be governed by the laws of Washington and its choice of law rules. The ARTIST irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts located in [insert county], Washington, with respect to any dispute arising out of or in connection with the Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.
- B. Assignment. Neither the Agreement, nor any of the rights or obligations of the ARTIST arising under the Agreement, may be assigned, without the CITIES' prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of the PARTIES and their successors and assigns.
- C. City Marks. The ARTIST will not use any trade name, trademark, service mark, or logo of the CITIES (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the CITIES' Express prior written consent.
- D. Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provision will continue in full force without being impaired or invalidated in any way. The CITIES and the ARTIST agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- E. Nonwaiver. Any failure by the CITIES to enforce strict performance of any provision of the Agreement will not constitute a waiver of the CITIES' rights to subsequently enforce such provision or any other provision of the Agreement.
- F. Disputes. The PARTIES agree to use the principles of collaboration and cooperation, to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes, claims or legal actions. The PARTIES agree that any and all claims, controversies, breaches or disputes arising from or related to this Agreement, including those pertaining to the formation, construction, performance, applicability, interpretation, or enforceability of this Agreement is subject to a requirement of mediation in King County, Washington prior to filing any lawsuit.
- G. Legal Fees. In any lawsuit between the PARTIES with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.
- H. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.
- I. Entire Agreement / Amendment. This Agreement together with the attachments and/or addenda, represents the entire and integrated Agreement between the PARTIES hereto with respect to the scope of work described herein and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to such scope of work. This Agreement may be amended, modified, or added to only by written instrument properly signed by all PARTIES.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement and it shall be effective as of the last date written below:

ARTIST

Printed Name:

Signature: _____ Date: _____

CITY OF [Insert]

Printed Name:

Title:

Signature: _____ Date: _____

CITY OF [Insert]

Printed Name:

Title:

Signature: _____ Date: _____

CITY OF [Insert]

Printed Name:

Title:

Signature: _____ Date: _____

CITY OF [Insert]

Printed Name:

Title:

Signature: _____ Date: _____