

## CITY OF OLYMPIA ART PROGRAM

### *Gift of Artwork Agreement*

**THIS AGREEMENT**, dated and effective as of the last signature affixed below, is between the City of Olympia, with a business address of 601 4<sup>th</sup> Ave SE, Olympia, WA 98501, hereinafter referred to as the "CITY" and Jesse Swickard, with an address of 29011 SW Ladd Hill RD, Sherwood, OR 97140, hereinafter referred to as the "ARTIST".

**WHEREAS**, the ARTIST proposed to the City the gift of "Growing II" a picture of which is attached as **Exhibit "A,"** a welded stainless steel sculpture, measuring 10' x 4' x 3', hereinafter called the **ARTWORK**; and

**WHEREAS**, the proposal has been approved through the Olympia Arts Commission gift policy; and

**WHEREAS**, the Olympia City Council wishes to accept the ARTIST'S donation pursuant to the terms and conditions of this Agreement; and

**NOW, THEREFORE**, the CITY and the ARTIST, for sufficient, good, and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. The ARTIST represents and warrants to the CITY that it is free to enter into this Agreement and that the **ARTWORK** is a unique and original work that is clear of any claims or encumbrances and does not infringe on the rights, including but not limited to the copyright, of any third parties. The ARTIST agrees to defend, indemnify, and hold the CITY, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against the CITY based on a breach by the ARTIST of any representation and warranty made in this Agreement. The ARTIST agrees to fully cooperate with the CITY in the prosecution of any such suit.
2. The ARTIST hereby assigns and transfers to the CITY the entire right, title, and interest in and to the **ARTWORK** and to all U.S. and foreign copyrights therefor, with no terms, conditions or restrictions on its use or display by the CITY.
3. The CITY agrees that the ARTIST may graphically reproduce the **ARTWORK** for the limited purposes of inclusion in the ARTIST's portfolio of works solely for the purposes of documenting the ARTIST's work in a factual manner. The CITY also agrees that the ARTIST has a limited, revocable license to reproduce the **ARTWORK** for the ARTIST's own commercial purposes so long as such uses do not compete with the CITY's efforts or use of the **ARTWORK**. The ARTIST shall use his or her best effort to provide a credit to the CITY in any reproduction of the **ARTWORK**, with such credit reading "The subject of this photograph [or other graphic or electronic reproduction] is an original work of art owned by the City of Olympia, Washington."
4. The CITY agrees to use its best effort to provide proper credit including the ARTIST'S name, the title of the **ARTWORK**, and the date acquired by the CITY in any of the CITY's graphic reproductions.
5. The CITY has the right to display or not display the **ARTWORK**, and to move or re-arrange individual pieces of multiple piece **ARTWORK**. If the City determines to remove the **ARTWORK** with no plans to return it to public view, the City will notify the ARTIST, at the ARTIST's most recently provided contact information, for return of the **ARTWORK** to the

ARTIST. If the ARTIST fails to respond to the City within sixty (60) days of such notification, the City may dispose of the ARTWORK as the City deems fit.

6. The CITY agrees not to sell the ARTWORK while it is in the collection and will give ARTIST first rights to the ARTWORK should the City decide to remove it from display, as provided in section 5, above.

7. Should the ARTWORK be intentionally or accidentally destroyed, altered, modified or changed subsequent to its transfer to the CITY, the CITY is under the obligation to make only reasonable effort to restore the artwork to its original form.

8. This Agreement shall be binding upon the parties, their heirs, successors, assigns, and personal representatives. This Agreement constitutes the entire understanding of the parties. Its terms can be modified only by an instrument in writing signed by both parties. A waiver or a breach of any provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions. If any provision in this Agreement is found to be illegal, invalid, or unenforceable in any jurisdiction for any reason, then, to the full extent permitted by law all other provisions will remain in full force and effect and will be liberally construed in order to carry out the intent of the parties. A party will not be liable to the other should its performance or display of the ARTWORK be prevented, restricted, or interfered with by circumstances or events beyond its reasonable control ("Force Majeure Event").

9. Any notice or demand to be given under this Agreement shall be in writing and will be effective upon receipt if delivered in person or if sent by electronic mail, or one day after deposit prepaid with a national overnight express delivery service, or three days after deposit in the United States mail (registered or certified mail, postage prepaid, return receipt requested), if sent to the parties at the addresses noted above. Either party may change its address for receipt of notices by written notice to the other party.

10. This Agreement shall be governed by the laws of the State of Washington and courts of such state shall have exclusive jurisdiction and venue. The parties will negotiate in good faith to resolve expeditiously on a mutually acceptable negotiated basis between appropriate management personnel for each party any dispute between them that may arise. The parties may, by mutual consent, retain a mediator to aid in their attempt to informally negotiate resolution of any dispute, although any opinion expressed by a mediator will be strictly advisory and will not be binding on the parties, nor will any opinion, statement or proposed resolution expressed by the mediator or the parties be admissible in any proceeding. Costs of the mediation will be borne equally by the parties, except that each party will be responsible for its own expenses. Should any dispute not be resolved pursuant to this paragraph of this Agreement, the parties hereby irrevocably submit themselves to the non-exclusive jurisdiction of the Thurston County Superior Court and the federal court sitting in Tacoma, Washington.

11. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous oral or written communications understanding or agreements between the parties with respect to such subject matter are hereby superseded in their entirety. This Agreement may not be amended, supplemented or modified except by a written agreement which identifies this Agreement and is signed by an authorized representative of each party.

12. This Agreement may be executed by the parties in any number of separate counterparts, each of which counterparts, when executed and delivered, shall be deemed to be an original, and all of which taken together shall constitute a single instrument.

**IN WITNESS** thereof, the parties hereto executed this Agreement on the day and year first written above.

**ARTIST**

Jesse Swickard  
29011 SW Ladd Hill RD  
Sherwood, OR 97140

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF OLYMPIA**

Steven R. Hall, City Manager  
601 – 4<sup>th</sup> Avenue E.

PO Box 1967  
Olympia WA 98507-1967

Telephone: 360.753.8447

Date: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

## Exhibit A



“Growing II” by Jesse Swickard