

CITY OF OLYMPIA ART PROGRAM
Gift of Artwork Agreement

THIS AGREEMENT, effective as of the last signature below, is between the **CITY OF OLYMPIA**, a municipal corporation with an address of 601 4th Ave E, Olympia, WA 98501 ("CITY") and **COREY DEMBECK**, an individual with an address of 3116 Lorne St SE, Olympia, WA 98501, ("ARTIST").

WHEREAS, the ARTIST has been moved by the topic of grief to create an installation called "Telephone of the Wind," which includes a telephone affixed to a board are roughly 24 1/2 inches across and 23 inches tall, mounted on a 6 foot tall natural tree limb about 4 1/2 inches in diameter to create "Telephone of the Wind," a photograph of which is attached as **Exhibit "A,"** ("the ARTWORK"); and

WHEREAS, the ARTIST's gift proposal has been approved through the Olympia Arts Commission gift policy; and

WHEREAS, the CITY wishes to accept the ARTIST'S donation, pursuant to the terms and conditions of this Agreement, for inclusion in the CITY's public art collection; and

WHEREAS, all parties understand and acknowledge that ARTIST intends to continue to create similar sculptures on the theme of the telephone and grief, which ARTIST may provide to other persons or entities.

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. ARTIST hereby donates to City, and City hereby accepts from ARTIST the ARTWORK, subject to the terms of this Agreement.
2. The ARTIST represents and warrants to the CITY that the ARTIST 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 shall 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.
3. 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 graphically 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 the Artist's best effort to provide a credit to the CITY in any graphical reproduction of the ARTWORK with such credit reading "The subject of this photograph [or other graphic or electronic reproduction] is an installation of art owned by the City of Olympia, Washington."

4. The CITY agrees to use its best effort to provide proper credit to Artist 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 of the ARTWORK.
5. The CITY has the right to display or not display the ARTWORK and to move or rearrange individual pieces of multiple piece ARTWORK, at its sole discretion.
6. Should the ARTWORK be intentionally or accidentally destroyed, altered, modified, or changed after to its transfer to the CITY, the CITY is only obligated to make reasonable efforts to restore the artwork to its original form.
7. This Agreement is binding upon the parties, their heirs, successors, assigns, and personal representatives. 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 may 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 remain in full force and effect and must be liberally construed in order to carry out the intent of the parties. A party is not 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").
8. Any notice or demand to be given under this Agreement must be in writing and is 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.
9. This Agreement is governed by the laws of the State of Washington and the Superior Court for Thurston County, Washington is the exclusive jurisdiction and venue for any lawsuit arising out of or related to this Agreement. The parties shall 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.
10. 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.

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

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

ARTIST

CITY OF OLYMPIA




Corey Dembeck
3116 Lorne St SE
Olympia, WA 98501
Email: coreydembeck@gmail.com

Jay Burney, City Manager
601 – 4th Avenue E
PO Box 1967
Olympia WA 98507-1967
Telephone: 360.753.8447

Date: 07/01/2021

Date: _____

APPROVED AS TO FORM:



Deputy City Attorney

Exhibit A

Gift of Art Proposal – Telephone of the Wind

Telephone of the Wind was placed in Priest Point Park in November 2020, to commemorate the life of Joelle Sylvester, and provide an opportunity for grief. Inspired by a project in Japan, a rotary phone, situated in a forest, helps people communicate with those they have lost. The current installation is very temporary and with the support of the Parks Department, this proposal is for a more long-lived presentation.

The donor, Corey Dembeck, does not consider themselves an artist, and has no art resume or other existing sculptures. This is their first installation.



L: The current *Telephone of the Wind* is composed of plywood, with a rotary phone, affixed directly to a tree.
R: The dimensions of the revised board are roughly 24 1/2 inches across and 23 inches tall, mounted on a 6 foot tall natural tree limb about 4 1/2 inches in diameter. The sign is 3 inches lower than the top of the post.



The donor will fabricate the free-standing structure, which will be installed by the Parks Maintenance Department in the approximate location to where it is currently located. The structure is fairly straightforward - cedar is common material for outdoor structures and can be maintained by the City annually. The rotary telephone is the specialized feature, and the donor has several in waiting in the case of damage or disappearance and will agree to provide them as needed to the City.

Materials provided by the donor are estimated at less than \$2,000. As this is the first sculpture by the donor, there is no art market history for valuation of the work.

Materials provided by the City to install the sculpture and provide a plaque are estimated at less than \$500.