

State of Washington
Washington State Historical Society
Museum Gift Shop
Consignment Contract

This CONSIGNMENT CONTRACT is made and entered into between the State of Washington, WASHINGTON STATE HISTORICAL SOCIETY Gift Shop (**GIFT SHOP**), and **ARTIST NAME** (**ARTIST**).

Name:

Address:

Phone:

Fax:

Washington State UBI No.

Federal ID No.

WHEREAS, the purpose of this contract is for the consignment of original artwork related to the mission of the WSHS to be displayed and sold by the GIFT SHOP on behalf of the artist for the purpose of mutual benefit.

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, the AGENCY and CONTRACTOR mutually agree as follows:

1. **Scope of Agency.** The **ARTIST** appoints the **GIFT SHOP** as agent for the works of art consigned under this agreement, for the purposes of exhibition and sale. The **GIFT SHOP** shall not permit the Artwork(s) to be used for any other purposes without the written consent of the **ARTIST**. The **GIFT SHOP** shall serve as agent for the **ARTIST** in consideration for a percentage of the profits derived from such exhibition and sale. This agency shall cover only artwork submitted by the artist while this agreement is in force.
2. **Consignment of Inventory.** The **ARTIST** hereby consigns to the **GIFT SHOP** and the **GIFT SHOP** accepts on consignment the Artworks listed on the attached inventory sheet which is hereby incorporated by reference. Additional inventory sheets may be incorporated into this contract by agreement of both parties to the consignment of other works of art in a written amendment to this contract. All inventory sheets shall be signed by the **ARTIST** and a designated representative of the **GIFT SHOP**.
3. **Governing Law.** The **ARTIST** hereby warrants that he/she created and possesses unencumbered rights to the Artworks, their descriptions are true and accurate, and that the Artworks comply with all State and Federal Laws including but not limited to the Maritime Mammal Protection Act, the Endangered Species Act, the Archaeological Resource Protection Act, and all applicable copyright laws.
4. **Location.** The **GIFT SHOP** is located at 1911 Pacific Avenue, Tacoma, Washington 98402. Hours of operation are within Washington State History Museum hours. No store merchandise will be displayed in the museum gallery and there will be a clear demarcation of store and museum gallery.

5. **Pricing and Terms of Payment.** The **ARTIST**, as original owner, must establish a price for each piece within fair market value. The **GIFT SHOP** shall sell the artworks only at the retail price specified on the List of Inventory. The **GIFT SHOP** and **ARTIST** agree that the **GIFT SHOP's** commission is to be 40% percent of the retail price of the artwork. Both parties must agree in writing to any change to the retail price or the **GIFT SHOP's** commission in advance of the change.
6. **Discounts.** In the case that the WSHS offers a discount on a sale, the discount shall be deducted from the **GIFT SHOP's** commission. The **ARTIST** will be given the full **ARTIST's** share of the retail price as agreed.
7. **Payment.** The **GIFT SHOP** shall pay the **ARTIST** all proceeds due to the **ARTIST** within 30 days of the last day of the month in which the piece was sold.
8. **Loss or Damage.** The **GIFT SHOP** shall be liable only for loss or damage to any consigned artwork that is proven to be due to negligence or intentional acts of its employees. This liability is limited to the date of delivery to the **GIFT SHOP** until the date the artwork is returned to the **ARTIST** or delivered to a purchaser.
9. **Insurance.** The **ARTIST** shall maintain insurance for the consignment items. In the event that an insurance claim is made, the **ARTIST** shall pay all deductibles.
10. **Commission.** If the **ARTIST** sells any artwork directly to a purchaser through contacts established initially through the **GIFT SHOP** or while the artwork is commissioned to the **GIFT SHOP**, then the **GIFT SHOP** is entitled to a commission of 40% percent of the selling price.
11. **Promotion.** The **GIFT SHOP** shall use its best efforts to promote, display and sell artworks. The **GIFT SHOP** shall clearly identify the **ARTIST's** name with all artworks. The **GIFT SHOP** reserves the right to rotate work based on the needs of the gallery and space available.
12. **Reproduction.** The **ARTIST** reserves all copyrights to the production of artworks except as noted in writing to the contrary. The **GIFT SHOP** may arrange to have the artworks photographed to publicize and promote the artworks. In every such use, the **ARTIST** shall be acknowledged as the creator and owner of the artwork.
13. **Period of Performance.** The period of performance under this contract will be from _____ through _____.
14. **Rights and Obligations.** All rights and obligations of the parties to this contract shall be subject to and governed by the Special Terms and Conditions contained in the text of this contract instrument, the General Terms and Conditions attached hereto as Exhibit B, and Inventory Sheet attached hereto as Exhibit A, each incorporated by reference herein.

THIS AGREEMENT, consisting of four (4) pages, and two exhibits, is executed by the persons signing below who warrant that they have the authority to execute the agreement.

**WASHINGTON STATE HISTORICAL SOCIETY
MUSEUM GIFT SHOP**
1911 Pacific Avenue
Tacoma, WA 98402
(253) 798-5880

ARTIST NAME
ARTIST STREET ADDRESS
ARTIST CITY, STATE, ZIP
ARTIST PHONE

Signature_____

Signature_____

Title_____

Title_____

Date_____

Date_____

APPROVED AS TO FORM:

Assistant Attorney General

Date:

Exhibit A
INVENTORY SHEET

	ARTWORK TITLE	DESCRIPTION	QUANTITY	COST	
1					
2					
3					
4					
5					
6					
7					
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11					
12					
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30					
	TOTALS				

WASHINGTON STATE HISTORICAL SOCIETY
MUSEUM GIFT SHOP
 1911 Pacific Avenue
 Tacoma, WA 98402
 (253) 798-5880

ARTIST NAME
 ARTIST STREET ADDRESS
 ARTIST CITY, STATE, ZIP
 ARTIST PHONE
 ARTIST EMAIL

Signature _____

Signature _____

Title _____

Title _____

Date _____

Date _____

EXHIBIT B
GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "WSHS" shall mean the Washington State Historical Society of the State of Washington, any division, section, office, unit or other entity of the WSHS, or any of the officers or other officials lawfully representing the WSHS.
- B. "DIRECTOR" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "ARTIST" shall mean that firm, provider, organization, individual or other entity providing artworks under this contract, and shall include all employees of the ARTIST.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the WSHS.

AMENDMENTS

This contract 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.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The ARTIST must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the ARTIST without prior written consent of the WSHS.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The ARTIST shall not use or disclose any information concerning the WSHS, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the WSHS, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the WSHS may, in its sole discretion, by written notice to the ARTIST terminate this contract if it is found after due notice and examination by the DIRECTOR that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the ARTIST in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the WSHS shall be entitled to pursue the same remedies against the ARTIST as it could pursue in the event of a breach of the contract by the ARTIST. The rights and remedies of the WSHS provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided

by law. The existence of facts upon which the DIRECTOR makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

DISALLOWED COSTS

The ARTIST is responsible for any audit exceptions or disallowed costs incurred by its own organization.

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the DIRECTOR.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the ARTIST’S name, address, and contract number; and
 - Be mailed to the DIRECTOR and the other party’s (respondent’s) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester’s statement to both the DIRECTOR and the requester within five (5) working calendar days.
3. The Director shall review the written statements and reply in writing to both parties within ten (10) working days. The DIRECTOR may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties’ choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

The WSHS shall not pay the ARTIST, if the ARTIST has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION

ARTIST expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to ARTIST’S performance or failure to perform the contract. ARTIST’S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its directors, agencies, employees and officials.

ARTIST waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, directors or employees.

INDEPENDENT CAPACITY OF THE ARTIST

The parties intend that an independent ARTIST relationship will be created by this contract. The ARTIST and his or her employees or agents performing under this contract are not employees or agents of the WSHS. The ARTIST will not hold himself/herself out as or claim to be an officer or employee of the WSHS or of the State of Washington by reason hereof,

nor will the ARTIST make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the ARTIST.

INDUSTRIAL INSURANCE COVERAGE

The ARTIST shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the ARTIST fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, WSHS may collect from the ARTIST the full amount payable to the Industrial Insurance accident fund. The WSHS may deduct the amount owed by the ARTIST to the accident fund from the amount payable to the ARTIST by the WSHS under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the ARTIST.

LICENSING, ACCREDITATION AND REGISTRATION

The ARTIST shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY

Only the DIRECTOR or DIRECTOR's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the DIRECTOR.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the ARTIST'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the ARTIST may be declared ineligible for further contracts with the WSHS. The ARTIST shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION

During the performance of this contract, the ARTIST shall comply with all federal and state nondiscrimination laws, regulations and policies.

PUBLICITY

The ARTIST agrees to submit to the WSHS all advertising and publicity matters relating to this contract wherein the WSHS's name is mentioned or language used from which the connection of the WSHS's name may, in the WSHS's judgment, be inferred or implied. The ARTIST agrees not to publish or use such advertising and publicity matters without the prior written consent of the WSHS.

RECORDS MAINTENANCE

The ARTIST shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

ARTIST shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the WSHS, personnel duly authorized by the WSHS, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The ARTIST shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the WSHS may terminate or suspend the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the WSHS's discretion under those new funding limitations and conditions.

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.

SITE SECURITY

While on WSHS premises, ARTIST, its agents and employees shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING

The ARTIST shall not enter into subcontracts for any of the artwork contemplated under this contract without obtaining prior written approval of the WSHS. In no event shall the existence of the subcontract operate to release or reduce the liability of the ARTIST to the WSHS for any breach in the performance of the ARTIST's duties. This clause does not include contracts of employment between the ARTIST and personnel assigned to work under this contract.

Additionally, the ARTIST is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts.

TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the ARTIST or its staff shall be the sole responsibility of the ARTIST.

TERMINATION FOR CAUSE

In the event the WSHS determines the ARTIST has failed to comply with the conditions of this contract in a timely manner, the WSHS has the right to suspend or terminate this contract. Before suspending or terminating the contract, the WSHS shall notify the ARTIST in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the ARTIST shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The WSHS reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the ARTIST from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the ARTIST or a decision by the WSHS to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the ARTIST: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the WSHS provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the WSHS may, by ten (10) calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the WSHS shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES

Upon termination of this contract, the WSHS, in addition to any other rights provided in this contract, may require the ARTIST to collect any artwork provided for the performance of such part of this contract as has been terminated and settle all outstanding liabilities and all claims arising out of such termination of commissions. The WSHS shall pay to the ARTIST the agreed upon price for any sold artwork. The WSHS may withhold from any amounts due the ARTIST such sum as the DIRECTOR determines to be necessary to protect the WSHS against potential loss or liability. The rights and remedies of the WSHS provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL

The WSHS complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the WSHS does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the WSHS will download the current OFAC SDN file and compare it to WSHS and statewide vendor files. In the event of a positive match, the WSHS reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the ARTIST in writing and terminate the contract according to the Termination for Convenience provision without making payment. The WSHS will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the WSHS.