

SHUNPIKE ARTS COLLECTIVE
ASSOCIATED PROGRAM AGREEMENT

THIS AGREEMENT is made this 7TH day of July 2011, by and between Shunpike Arts Collective, a Washington nonprofit corporation ("Shunpike"), and Fab-5 ("Associated Program").

RECITALS

WHEREAS, Shunpike is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), is a public charity under Sections 509(a)(1) and 170(b)(1)(a)(vi) of the Code, and is organized and operated for literary and other charitable purposes, including supporting local community arts projects and improving the capacity and effectiveness of arts organizations in order to enrich the artistic and cultural experience of residents of Washington State;

WHEREAS, the Associated Program has been established in the form and manner specified in Exhibit A for the purpose of conducting artistic and cultural endeavors that would qualify as charitable activities under Section 501(c)(3) of the Code;

WHEREAS, the Associated Program desires assistance and sponsorship for an artistic and cultural endeavor that it believes qualifies as a charitable activity within the meaning of Section 501(c)(3) of the Code (the "Project"), which is described in the Associated Program's Project Application ("Project Application") attached hereto as Exhibit B;

WHEREAS, Shunpike's Board of Directors has approved the Project Application attached hereto as Exhibit B; has determined that support of the Project as described in the Project Application is in furtherance of Shunpike's tax-exempt purposes, has approved the nature of the Project as specified on Exhibit A attached hereto, and has approved support of the Project through provision of fiscal sponsorship, as well as provision of certain development, administrative and production support services, as specified in and subject to the terms and conditions of this Agreement; and

WHEREAS, Shunpike's Board of Directors has approved establishment of a restricted fund to receive donations of cash and other property from which Shunpike may, in its sole

discretion, make distributions in furtherance of the Project, in accordance with the terms and conditions of the Project Application and this Agreement; **NOW, THEREFORE,**

IN CONSIDERATION OF the mutual covenants and conditions herein, the parties hereby agree to the terms and conditions set forth in this Agreement.

I. SHUNPIKE'S RIGHTS AND RESPONSIBILITIES

A. Fiscal Sponsorship. Shunpike agrees to act as a fiscal sponsor for the Project by performing the fiscal sponsorship services set forth below.

1. Donations into Restricted Fund. Beginning on the Effective Date (as described in Section IV.I. below), Shunpike will place all gifts, grants, contributions and other donated assets (collectively, "Donations") received by it that are properly identified (in accordance with Section II.B.4 below) by donors or other funding sources as for the support or benefit of the Project into a restricted fund (the "Fund"). The parties agree that all Donations transferred to the Fund are and will remain the sole property of Shunpike and will be reported as income to Shunpike, for both tax and accounting purposes. All Donations received by Shunpike and placed into the Fund, as well as all income thereon, will be devoted to supporting the Project, to the extent consistent with and in furtherance of Shunpike's tax-exempt purposes. No portion of the Fund may be used to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper benefit to occur, or to take any other action inconsistent with Shunpike's continued qualification under Section 501(c)(3) of the Code. All Donations to the Fund must be in the form of cash (including checks, wire transfers, or other cash equivalents), and Shunpike shall be under no obligation to accept non-cash or in-kind Donations except in such instances, and subject to such terms and conditions, as Shunpike may in its sole discretion determine.

2. Disbursements from Fund. Depending on the nature of the Project as specified in Exhibit A attached hereto, Shunpike will in its discretion use the Fund either to make grants to the Associated Program or to make payments to independent contractors and vendors, in either case in furtherance of the Project (all such grants or payments from the Fund being

referred to herein as “Disbursements”). As a general rule, Disbursements will be made by Shunpike for support of the Project only at such times and in such amounts as Shunpike may determine in its sole discretion, and only after receiving from the Associated Program receipts or invoices for expenses described in the budget included in the Project Application. Shunpike will, as a general rule, approve or deny any Disbursement request from the Associated Program within a reasonable period of time after receipt by Shunpike. In the event of any material breach of this Agreement by the Associated Program, or conduct by the Associated Program of any activity which may jeopardize Shunpike’s status as a Section 501(c)(3) organization, Shunpike will have the right to withhold, withdraw, or demand immediate return of any Disbursements previously made to the Associated Program, to pay further Disbursements only in such manner as will accomplish the purposes of the Project within Shunpike’s sole discretion, or to return any remaining Donations to the appropriate funding source.

3. Disbursement of Shunpike’s Fees. Shunpike may also disburse from the Fund, from time to time, any amounts necessary to pay itself fees as authorized under Section III. below.

4. Recordkeeping. Shunpike will maintain financial and other records reflecting donations to and disbursements from the Fund, and will make such records available to the Associated Program at reasonable times for inspection. Shunpike will retain copies of all agreements and documentation in its possession relating to Donations to the Fund by donors or other funding sources.

B. Development Support.

1. Shunpike’s Involvement. Shunpike will have no obligation to engage in any active fundraising activities on behalf of the Associated Program, and offers no assurances that adequate Donations will be received to finance the Project. To the extent that Shunpike may elect, in its sole discretion, to participate in fundraising activities for the Project, it will be authorized to use the Associated Program’s name solely in connection with such solicitations for the Project.

2. Informational Support. Shunpike will provide to the Associated Program and to third-party donors and funding sources all necessary information about Shunpike that will assist in qualifying for public and private donations related to the Project, including financial information and Shunpike's letter of determination concerning its status as a tax-exempt organization under the Code. Shunpike will, in its discretion, provide such additional letters of support as Shunpike may consider appropriate in cases where such is required by funding sources or may contribute significantly to the success of funding applications for the Project. The Associated Program will have no right or authority to use Shunpike's name in connection with any of its fundraising activities except as specifically set forth in written supporting materials provided by Shunpike for that purpose, or as otherwise authorized by Shunpike in writing in accordance with Sections II.B.1. or II.B.2.

3. Execution of Documents. Shunpike will, in its discretion, execute such grant agreements, pledge forms or other commitments as may be reasonably requested by funding sources as a condition of their Donations to the Fund. Shunpike will also, in its discretion, sign grant applications as the authorized sponsoring organization for the Project, whenever Shunpike has consented to being listed as the primary applicant.

4. Acknowledgements and Reports. Shunpike will provide all individual and corporate donors to the Fund with written acknowledgements of their Donations in compliance with Code Section 170(f)(8). Subject to Section II.C below, Shunpike will be primarily responsible for compliance with any reporting obligations to donors or other funding sources with respect to Donations or grants made to Shunpike and designated to the Fund. Shunpike may, in its discretion, notify the Associated Program, in a timely fashion, of any reporting obligations that the Associated Program itself must satisfy with respect to grants or Donations made to the Fund for support of the Project, but in any such case Shunpike will retain the right to review and approve any such reports prior to their submission to the appropriate donors or other funding sources.

5. Admission and Other Receipts. If the nature of the Project is specified on Exhibit A hereto as a Shunpike Project, Shunpike shall be authorized to collect all admission and other receipts generated by the Project; and the Associated Program shall deliver and remit

any receipts to Shunpike. Such receipts may, in Shunpike's sole discretion, be added to the Fund or separately accounted for and applied in furtherance of the Project.

C. Shunpike's Approval Rights. Shunpike will at all times have the right to review the Project activities for which Disbursements have been made or requested. Shunpike will at all times have the right to review and pre-approve: (1) any materials involving applications, submissions and solicitations for grants or Donations to the Fund, whether directed at funding entities or individual donors; (2) any information or report that the Associated Program desires or intends to submit to a donor or other funding source, whether or not required to satisfy reporting obligations with respect to any grant or Donation to the Fund for support of the Project; and (3) any material change to the purposes or activities of the Associated Program or to the Project, at least fifteen (15) business days prior to such change taking effect.

D. Production and Administrative Services. In addition to its fiscal sponsorship and development support obligations specified above, Shunpike will, at the Associated Program's request, provide such additional production and administrative support services as are specifically identified in Exhibit C attached hereto, to such extent as Shunpike may, in its sole discretion, determine to be reasonable and appropriate to the furtherance of the Project.

E. Service Standards. Shunpike's fiscal sponsorship and development support services, and other support services, provided under Sections I.A, I.B and I.D above will be performed with a reasonable degree of care and professionalism, according to standards of performance customary among similarly situated fiscal sponsorship organizations. Associated Program hereby releases Shunpike from any claims, liability or damages that may hereafter arise out of Shunpike's performance, or failure to perform any such services in connection with this Agreement, except to the extent that Shunpike or its officers, directors, employees or agents is finally adjudged to have engaged in intentional wrongdoing or grossly negligent behavior. Shunpike will not in any event have or assume any responsibility or obligation to detect fraud, malfeasance or other wrongdoing by the Associated Program or any of its organizers, officers, directors, managers, persons listed on Exhibit A hereto, employees, agents, representatives or performers. In no case may any of the services provided by Shunpike be relied upon as containing or constituting legal advice, in whole or in part; the Associated Program

acknowledges that it has the sole responsibility to obtain its own independent legal counsel as to this Agreement and all matters pertaining to or arising in connection with this Agreement.

F. Insurance Coverage. Shunpike may, in its sole discretion, provide event liability and property damage insurance coverage in connection with the Project, but in any case will have no obligation or responsibility to insure the Associated Program, or any of its organizers, officers, directors, employees, agents, representatives or performers against claims arising out of the Project, including claims by any of such persons.

II. ASSOCIATED PROGRAM'S RIGHTS AND RESPONSIBILITIES

A. Use of Disbursements. The Associated Program will use Disbursements that it receives from the Fund solely for charitable purposes within the meaning of Code Section 501(c)(3) and solely in support of the Project in accordance with the terms and conditions of the Project Application. The Associated Program will be obligated to repay to Shunpike any portion of any Disbursement that is not used for the purposes specified in the Project Application unless Shunpike (and any external funding source, if applicable) provides prior written approval to the Associated Program of an alternate charitable use. The Associated Program must submit any requests to Shunpike for a Disbursement from the Fund to reimburse or pay any expenses directly related to the Project, documented by either receipts or invoices therefor, no later than thirty (30) days after incurring such expense.

B. Solicitation Activities.

1. Grant Applications. The Associated Program may research, write and prepare grant applications seeking grants or donations to the Fund, in the name of Shunpike, but before submitting any such application to the funding source the Associated Program must first submit it to Shunpike for its review and advance written approval, which Shunpike may grant, conditionally or unconditionally, or withhold, in its sole discretion.

2. Solicitation of Individual Donations. The Associated Program may solicit donations to the Fund from individual donors and, subject to Shunpike's review and advance written approval of all such written solicitation materials, may use Shunpike's name in connection with such solicitations, subject to the style and verbiage guidelines of the Corporate

Identity Addendum attached hereto as Exhibit D. In making any such solicitations, the Associated Program must comply with the requirements of the Washington Charitable Solicitations Act, RCW Ch. 19.09, as that statute may apply to the Associated Programs' solicitations.

3. Costs and Timing. The Associated Program will bear all expenses associated with its solicitation of funds. The Associated Program must provide Shunpike with fifteen (15) business days' advance notice of intended funding requests, grant deadlines and charitable solicitations, to allow Shunpike to comply with its responsibilities as set forth in this Agreement and to permit Shunpike's Board of Directors to review such requests.

4. Deposit of Donations. Within five (5) business days of receipt of any Donations identified as for the Fund, the Associated Program will physically deliver such Donations to Shunpike, or will cause such Donations to be deposited into a bank account bearing Shunpike's federal employer identification number if such an account has been designated for such purpose by Shunpike in writing. The Associated Program will ensure that all Donations made by check or wire to the Fund identify Shunpike as the sole payee, that any restrictions attached to the Donation read 'for the support [or benefit] of the [name of Project]' or words to that effect, and that the Associated Program not be named as either a payee or in the body of any restrictive language pertaining to the Donation. Shunpike reserves the right to return all Donations that do not comply with the foregoing requirements.

C. Compliance with Donation Requirements. The Associated Program will on a timely basis prepare reports and any other documents required to be submitted by Shunpike under the terms of any grants or other donations made to Shunpike and designated to the Fund, and will submit such materials to Shunpike for its review and approval at least fifteen (15) business days in advance of their due date. The Associated Program will have no right to file or submit such reports or documents to the funding sources without Shunpike's advance written approval. The Associated Program will bear all expenses associated with compliance under this Section II.C.

D. Intellectual Property. The Associated Program (or, if it is not a legal entity, then the individuals who create or perform the Project) will, at all times during the term of this

Agreement as well as following expiration or termination of this Agreement, own all right, title and interest in and to all literary or artistic materials, work product or other results funded by Shunpike pursuant to this Agreement, in whatever stage of completion as they may exist from time to time, including without limitation all copyright, trademark and other intellectual property and proprietary rights therein.

E. Project Reporting. The Associated Program will on an annual basis furnish Shunpike with a detailed accounting of its use of Disbursements received from Shunpike for the Project during the preceding year, accompanied by a written report describing in detail the progress of the Project during the preceding year. Year-end accountings and reports are due within ninety (90) days after the end of the twelfth (12th) month following the Effective Date of this Agreement, and after the end of each successful twelve (12)-month period thereafter, relative to expenditures and activities occurring during the referenced twelve (12)-month period.

F. Approval of Changes. The Associated Program will notify Shunpike promptly of any change in its officers, directors, managers, or the individuals who should be included on Exhibit A, and will notify Shunpike at least fifteen (15) business days in advance of making any material changes in the Project or in the Associated Program's purpose or activities. Any material changes in the Project or the purpose or activities of the Associated Program must be approved in advance and in writing by Shunpike, and if Shunpike determines that such a material change has been made without its prior approval, Shunpike may in its sole discretion withhold any future Disbursements from the Fund and seek to recover past Disbursements to the Associated Program.

G. Credits. The Associated Program will credit Shunpike, in accordance with the guidelines set forth in the Corporate Identity Addendum attached as Exhibit D, in all announcements, public statements, advertising and notices (whether written, oral or via electronic or other media) regarding the Project and in any appearances or activities supported by Disbursements from the Fund.

H. Representations and Covenants. The Associated Program represents, warrants and covenants to Shunpike as follows: (1) the Associated Program has full right and power to enter into and perform this Agreement, and its performance under this Agreement does not and

will not violate any agreement or obligation between it and any third party; (2) the persons signing on its behalf at the end of this Agreement are duly authorized to sign hereon, and comprise all of the persons whose signatures are necessary in order to legally bind the Associated Program; (3) the Project does not and will not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights, including rights of publicity or privacy; (4) the Project does not and will not violate any law, statute, ordinance or regulation; (5) the Project is not and will not be defamatory or libelous; and (6) all factual assertions that the Associated Program has made or may hereafter make to Shunpike in the Project Application or otherwise pertaining to the Project or the Associated Program's performance under this Agreement are and will be true and complete in all material respects. The Associated Program will, upon reasonable request by Shunpike, promptly execute and deliver to Shunpike any documents or other materials that Shunpike may deem necessary or appropriate to evidence, effectuate or preserve Shunpike's rights under this Agreement. The Associated Program will be solely responsible for providing all copyright notices and other legal notices in connection with the Project.

I. Associated Program's Authority to Pursue Project. If the nature of the Project is specified on Exhibit A hereto as a Shunpike Project, then the Associated Program shall be deemed to be engaged by Shunpike as an independent contractor with the express objective of pursuing and implementing the Project as described in the Project Application, but with the Associated Program retaining the ability to determine the timing, location, methods and manner by which the purposes and goals of the Project will be achieved. Whether the nature of the Project specified in Exhibit A hereto is that of an Associated Program Project or a Shunpike Project, the Associated Program may incur expenses and other liabilities relating to the Project in its own name, and may seek reimbursement thereof from Shunpike in accordance with Section I.A above. In no event, however, will the Associated Program have any authority to contract or incur any liability on behalf of Shunpike, except with the advance written consent of Shunpike as to a particular expense or liability.

J. Liabilities of and Indemnification by Associated Program.

1. **Indemnification.** Except as to instances where Shunpike (or its officers, directors, employees or agents) has been finally adjudged to have engaged in intentional wrongdoing or grossly negligent behavior, the Associated Program will indemnify Shunpike as well as its officers, directors, agents and employees (collectively, the “Shunpike Representatives”) as to, and will hold Shunpike and the Shunpike Representatives harmless from, any and all claims, demands, litigation, expenses, or liabilities (including costs and attorneys’ fees) of any kind and character arising out of the pursuit or performance of the Project or any other actions, activities or omissions of the Associated Program (or any of its officers, directors, representatives signatory hereto, agents, employees or performers) (each, a “Claim”), including but not limited to any claim or action asserted or brought against Shunpike or any Shunpike Representative for actual or alleged infringement of any patent, copyright, trademark, service mark, trade secret, or other property right, or for any loss or damage arising out of or related to any breach by the Associated Program of any representation, covenant or other obligation under this Agreement. Shunpike will promptly notify the Associated Program in writing of any such Claim. If the Associated Program, after receiving notice of any such Claim, fails to immediately accept, provide and either satisfy or commence the defense of such Claim, Shunpike may (without further notice to the Associated Program) retain counsel of its own to undertake the defense, compromise or settlement of such Claim with all costs of such defense (including legal and other fees, as well as the amount of any compromise, settlement or judgment) to be paid by the Associated Program upon demand. Without limiting the foregoing, the Associated Program’s indemnification obligations hereunder will include the requirement to reimburse Shunpike for any deductible amounts paid by Shunpike under its own insurance policies, if a Claim is made or paid thereunder. Shunpike may in its discretion require that the Associated Program post a bond as security for performance of its obligations under this Section II.J.1. Shunpike may also, in its discretion, require that the Associated Program obtain liability insurance with respect to the Project, in such amounts as Shunpike may reasonably specify, and may require that Shunpike be named as an additional insured thereunder.

2. **Taxes.** Except with respect to Donations and other receipts from the Project that Shunpike will claim as part of its own federal tax return, the Associated Program will be responsible for the payment of any federal, state and local taxes, fees and charges, including employment taxes and related contributions, incurred with respect to Project activities.

3. Personal Liability. If the Associated Program is a single individual, sole proprietorship, partnership, joint venture, or other unincorporated association, then the individual or individuals listed on Exhibit A and signing this Agreement on its behalf will be personally, and jointly and severally, liable for the Associated Program's obligations under this Agreement, including but not limited to its indemnification obligations set forth above in this Section II.J.

III. PAYMENT OF FEES TO SHUNPIKE

In consideration for the fiscal sponsorship and various support services that Shunpike has under this Agreement agreed to provide to the Project and the Associated Program, Shunpike will be entitled from time to time to deduct and pay from the Fund to its other accounts, for its own uses and purposes, a sum equal to the percentage specified in Exhibit C hereto of all Donations received by the Fund. If the funding agency under any grant application approved by Shunpike under Section II.B.1 specifies a fee for Shunpike's fiscal sponsorship and other support services that is different from the percentage specified in Exhibit C hereto, then Shunpike will be entitled to deduct and pay to its other accounts that different percentage instead. In addition, Shunpike shall be entitled to deduct and pay from the Fund to its own accounts a one hundred dollar (US\$100.00) annual administrative fee.

IV. MISCELLANEOUS PROVISIONS.

A. Relationship of the Parties. Irrespective of whether the nature of the Project specified in Exhibit A hereto is that of an Associated Program Project or a Shunpike Project, the parties agree that: (1) no partnership or joint venture between the parties is intended to or will be created by this Agreement, nor any employer-employee or principal-agent relationship; (2) no fiduciary duty, or any trust relationship, will be created between the parties under this Agreement; (3) the Associated Program and its employees, agents or contractors will not hold themselves out as officers, employees, agents or representatives of Shunpike by reason of this Agreement, will not purport to act or contract on behalf of Shunpike, will not have any authority to incur liabilities on behalf of Shunpike, and will not make any claim of any right, privilege or benefit which would accrue to a Shunpike employee; and (4) each party will be responsible for maintaining books and records for, and paying all costs of conducting, its own business,