

**Exhibit D Sample Contract**

**CONTRACT NO. [###]**

This number must appear  
on all invoices

**PORT OF PORTLAND  
PERSONAL SERVICES CONTRACT  
Commission of Public artwork  
At the  
Portland International Airport (PDX)**

**Parties:** Port of Portland ("Port")  
P.O. Box 3529  
Portland, Oregon 97208  
  
[Company] ("Provider")  
[Address]  
[City, State, Zip]

**RECITALS**

- A.** The Port issued A Request Qualifications and Proposals No. [YYYY-####] (the "RFQP") dated [Date], inviting proposals from experienced Providers for Commission of Public Artwork at the Portland International Airport (the "Services" or "Artwork").
- B.** Provider submitted a written qualifications and proposal in response to the RFQP.
- C.** During Stage 1 of the RFQP the Port evaluated all Requests for Qualifications submitted in response to the RFQP, and those in Stage 2, only those Proposals submitted by Artists qualified under Stage 1, and selected Provider to deliver Services.
- D.** Provider shall provide Artwork titled "[enter title of Artwork]" to be located within the Portland International Airport, [Describe Location], (the "Site").
- E.** This Contract was approved by the Port of Portland Commission on [Date]

**AGREEMENT**

**1 GENERAL**

**1.1 Term**

The term of this Personal Services Contract (the "Contract") shall commence on [Date]

or the date that this Contract is fully executed by both parties (the "Effective Date"), whichever is later, and shall expire on [Date], unless sooner terminated under the provisions of this Contract. Expiration of the Contract term does not excuse Provider's duty to provide all Services relating to work initiated prior to the expiration date, and the completion of those Services shall be subject to the terms of this Contract.

## **1.2 Contract Modifications**

This Contract may only be modified by written amendment, executed by both parties.

## **2 ARTWORK/SERVICES**

### **2.1 Provider Obligations**

The Provider shall:

**2.1.1** Perform all Services by furnishing all supplies, materials and/or equipment, transportation, travel, delivery, taxes, and fees as necessary to design, fabricate, and install Artwork in accordance with the specific requirements set forth on Schedule 2.1 Statement of Services, and with the specified schedule. All services under this Contract shall be performed in a professional manner and in strict compliance with all terms and conditions herein.

**2.1.2** Determine the artistic expression, design, dimensions, and materials of the Artwork, subject to review and acceptance by the Port as set forth in this Contract. The Artwork as installed shall not interfere with the intended use of the Site, nor any associated pedestrian or other traffic flow, parking, and safety devices and procedures at the Site.

**2.1.3** Attend public information meetings with the general public, design and construction coordination meetings with the Port, general contractor, architect, and other parties as appropriate, to foster communication about the Artwork and to ensure appropriate integration and/or installation.

**2.1.4** Complete the fabrication of the Artwork by the scheduled installation date as provided in Schedule 2.4 Construction Schedule.

**2.1.5** Secure any and all required licenses, permits and similar legal authorizations at the Provider's expense as may be necessary for the installation and maintenance of the Artwork at the Site.

**2.1.6** Arrange the transportation and installation of the Artwork in consultation with the Port. If the Provider Subcontracts the installation or fabrication of the Artwork, Provider shall supervise and approve the installation and/or fabrication personally and shall be solely responsible financially or otherwise for any and all need corrections to any subcontracted Services.

**2.1.7** Provide required insurance in amounts and limits specified in Section 8.3.

**2.1.8** Provide a list of all subcontractors along with a copy of the agreement between the Provider and each subcontractor immediately upon demand from the Port.

**2.1.9** Provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep required.

**2.1.10** Provide photographic documentation of the Artwork as set forth in Section 2.5.5 below.

**2.1.11** Be available with reasonable advance notice for meetings, ceremonies, and promotional events, as necessary. For purposes of this section, reasonable advance notice means fourteen (14) calendar days or more.

## **2.2 Port's Obligations**

The Port shall:

**2.2.1** At no expense to the Provider, supply the Provider with copies of existing designs, drawings, reports, a list of required permits, and other existing relevant data, if any, as needed to preform the Services.

**2.2.2** Be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the Provider.

**2.2.3** Prepare the Site in accordance with the specifications detailed in the approved design. The Port shall be responsible for all expenses, labor and equipment which may be described on Schedule 2.2 Site Preparation to prepare the Site for the timely installation of the Artwork; and shall complete Site preparations by the scheduled installation date as provided in Schedule 2.4 Construction Schedule or shall inform the Provider of any delays.

**2.2.4** Provide and install a plaque or other readily visible object on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © [ARTIST'S NAME, DATE OF PUBLICATION].

**2.2.5** Use its best efforts not to permit any use of the Provider's name or misuse of the Artwork which would reflect discredit on the Provider's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the Port's control.

**2.2.6** Be responsible for leading the Provider through any required internal review process required by the Port and be responsible for organizing and scheduling meetings with any applicable review entities, and for supplying the Provider with written instructions for the materials required at such meetings.

## **2.3 Design**

### **2.3.1 Revisions**

The Port shall notify the Provider if it becomes aware that any revisions to the design are required in order to comply with any applicable laws, ordinances and/or regulations or for other reasons, including but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. The Port shall give such notice within fifteen (15) calendar

days of its actual knowledge of such requirements. Any such modifications to the design shall be memorialized through a written amendment to the Contract signed by both parties.

### **2.3.2 Final Construction Documents**

**a)** The Provider shall prepare structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings shall indicate any risks involved in the construction, integration, and maintenance of the Artwork, and any third-party subcontractors needed within 30 days of final installation.

**b)** Where appropriate, the Provider shall present such drawings to a qualified engineer, licensed by the State of Oregon, paid by the Provider, for certification that the Artwork shall be of adequate structural integrity. The Provider provide the Port with such certification.

**c)** Where deemed appropriate by the provider or when demanded by the Port, the Provider shall present the Design to a qualified conservator, capable of making recommendations on the maintenance of the Artwork, and the Provider shall provide a written copy of the conservator's recommendations to the Port.

### **2.4 Construction Schedule**

**2.4.1** The Provider's tentative construction schedule for the design, fabrication, and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any is attached as Schedule 2.4 Construction Schedule.

**2.4.2** The Provider shall fabricate and install the Artwork in substantial conformity with the design. The Provider may not deviate from the approved design without prior written approval of the Port.

**2.4.3** The Provider shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti graffiti coatings, if applicable, unless the Port disapproves. If the Artwork is being constructed on Site, the Provider shall avoid creating nuisance conditions arising out of the Provider's operations. Prior to requesting authorization to transport and install the Artwork, the Provider shall also provide the Port with a list of all works or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on Site.

**2.4.4** The Port shall have the right to review and/or inspect the Artwork at reasonable times during its fabrication upon fourteen (14) days' notice.

**2.4.5** If the Port, upon review of the Artwork, determines that the Artwork does not conform to the design as it may have been amended, the Port reserves the right to notify the Provider in writing of the deficiencies and that the Port intends to withhold the invoice payment. The Provider shall promptly cure the Port's objections and shall notify the Port in writing of completion of the cure. The Port shall promptly review the Artwork, and upon approval, release invoice payment if it considers the remedy satisfactory. If the Provider disputes the Port's determination that the Artwork does not conform, the Provider shall promptly submit reasons in writing to the Port within ten (10) calendar days of the Port's

prior notification to the contrary. The Port shall make reasonable efforts to resolve the dispute with the Provider in good faith. However, final determination as to whether the Provider has complied with the terms of this Contract shall remain with the Port.

**2.4.6** The Provider shall notify the Port in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated elsewhere.

**2.4.7** The Port shall inspect the Artwork within fifteen (15) calendar days after receiving notification pursuant to Section 2.4.6, prior to installation, to determine whether the Artwork conforms with the design and to give final approval. The Port shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the Port does withhold final approval, the Port shall submit the reasons for such disapproval in writing within fifteen (15) calendar days of examining the fabricated Artwork. The Provider shall have thirty (30) calendar days from the date of the Port's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such notice. The Provider shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Provider has fully and substantially deviated from the design without the prior approval of the Port. The Provider shall then be held responsible for any expenses incurred in correcting such deviation.

## **2.5 Installation**

**2.5.1** Upon the Port's final approval of the fabricated Artwork as being in conformity with the design, the Provider shall deliver and install the completed Artwork at the Site in accordance with the Schedule 2.4 Construction Schedule.

**2.5.2** The Provider shall coordinate closely with the Port to ascertain that the Site is prepared to receive the Artwork. The Provider must notify the Port of any adverse conditions at the Site that would affect or impede the installation of the Artwork. The Provider is responsible for timely installation of the Artwork. The Provider shall confer and coordinate with the Port to ensure timely coordination with the Port's construction team. The Provider may not install the Artwork until authorized to do so in writing by the Port.

**2.5.3** The Provider shall be present to supervise the installation of the Artwork.

**2.5.4** Upon written acceptance of the installation, the Artwork shall be deemed to be in the custody of the Port for purposes of Sections 6 Risk of Loss and Section 8.1 Indemnification.

**2.5.5** Within thirty (30) calendar days after installation of the Artwork, the Provider shall furnish the Port with the following: photographs of the Artwork as installed; a set of three (3) digital, minimum 300dpi JPG files of the completed Artwork, one (1) taken from each of three (3) different viewpoints, provided to the Port on such media as the Port may designate. Photographs must be labeled with the name of the Artwork, the date upon which the photograph was taken, and the viewpoint from which the photograph was taken. The Provider shall also furnish the Port with a full written narrative description of the

Artwork.

**2.5.6** Upon installation of the Artwork, the Provider shall supply the Port with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Artwork must be durable, taking into consideration that the Site is a public space that may be exposed to elements such as considerable movement of people and equipment. The Provider must ensure that all maintenance requirements shall be reasonable in terms of time and expense. The Port is responsible for the proper care and maintenance of the Artwork.

## **2.6 Services Performed by Subcontractors**

Provider shall be responsible for the quality of the Services performed by any subcontractors employed by Provider to perform any part of the Services, and shall ensure that Provider's subcontractors comply with the terms and conditions of this Contract. For purposes of this Contract, the term "subcontractor" includes but is not limited to a firm with which Provider contracts for services necessary or convenient for Provider's performance of the Services.

## **2.7 Small Business Participation**

Provider has identified, or shall identify with the Port's assistance, small businesses that may be qualified to perform subcontract work under this Contract. For purposes of this subsection, "small business" means a for-profit business enterprise that has been certified by the Oregon State Certification Office for Business Inclusion and Diversity (COBID) or by the Washington State Office of Minority and Women's Business Enterprise (OMWBE). A certified small business enterprise includes a certified minority owned business enterprise (MBE), certified women-owned business enterprise (WBE), service-disabled veteran-owned business enterprise (SDVBE), and certified emerging small business (ESB). Lists of certified firms are available on each agency's website. Where Provider has already identified qualified small businesses to the Port, Provider shall utilize such businesses to the fullest extent possible when work in their area(s) of expertise becomes available. When Provider works with the Port to identify qualified small businesses, Provider shall give such businesses a fair opportunity to compete for subcontract work by:

**2.7.1** placing small businesses on solicitation lists,

**2.7.2** assuring those small businesses are solicited whenever they are potential sources of goods or services to be procured by subcontract,

**2.7.3** dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small businesses, and

**2.7.4** establishing delivery schedules, where the requirement permits, which encourage participation by small businesses.

## **2.8 Approval and Acceptance**

**2.8.1** The Provider shall notify the Port in writing when they believe all Services as

required by this Contract have been completed in substantial conformity with the design.

**2.8.2** The Port shall promptly notify the Provider of its final acceptance of the Artwork within thirty (30) calendar days after the Provider submits written notice pursuant to Section 2.8.1. The date of final acceptance shall be the date the Port submits written notice to the Provider of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the Port acknowledges completion of the Artwork in substantial conformity with the design, and that the Port confirms that all Services as required of both parties by this Contract prior to Section 2.8.3 have been completed. Title to the Artwork passes to the Port upon final acceptance and final payment.

**2.8.3** If the Port disputes that all the Services have been performed, the Port shall notify the Provider in writing of those Services it believes the Provider has failed to perform within thirty (30) calendar days after the Provider submitted written notice pursuant to Section 2.8.1. The Provider shall promptly perform those Services indicated by the Port. If the Provider disputes the Port's determination that not all Services have been performed, the Provider shall submit reasons in writing to the Port within thirty (30) calendar days of the Port's prior notification to the contrary. The Port shall make reasonable efforts to resolve the dispute with the Provider in good faith. However, final determination as to whether all Services have been performed shall remain with the Port. Upon the resolution of any disputes that arise under this subsection, the Port shall notify the Provider of its final acceptance of the Artwork pursuant to Section 2.8.2.

**2.8.4** After final acceptance of the Artwork, the Provider shall be available at such time(s) as may be mutually agreed upon by the Port and the Provider to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork. During such public presentations by the Provider, the Provider shall acknowledge the Port's role in funding the Artwork. The Port shall be solely responsible for coordinating public information materials and activities related to public presentations.

### **2.8.5 Public Works Contracting Requirements**

The Port shall indicate whether the Services are subject to public works contracting requirements under ORS 279C.800 – 279C.870 and in such cases additional contract provisions shall apply, as required by the Port in its sole discretion. Those additional contract provisions may include, but not be limited to, requirements to pay prevailing wages, provide certified payroll reports, and provide a public works bond. All additional contract provisions resulting from public works contracting requirements shall be set forth in an addendum and shall become a part of this Contract as it relates to the Services performed under this Contract.

## **3 COMPENSATION**

### **3.1 Total Compensation**

The total compensation paid under this Contract shall not exceed \$[Amount] without a written Contract amendment executed by both parties.

## **3.2 Budget**

The Provider's budget, itemizing all costs for the Services, and materials required to design, fabricate, and install the Artwork (the "Budget") is attached to this Contract as Schedule 3.2 Budget. Calculation of the Budget has taken into consideration the possible inflation of the Service and material costs between the Effective Date and the anticipated completion date. The Provider shall keep a log of the project hours and shall retain all original receipts pertaining directly to the Services. If the Provider incurs costs in excess of the amount listed in the Budget, the Provider shall pay such excess from the Provider's own funds unless the Provider previously obtained approval for such costs from the Port and such modifications were authorized in a written amendment to the Contract executed by both parties.

## **3.3 Subcontractor Hourly Rates**

### **3.3.1 Rate Discounts**

Provider shall seek discounts from its subcontractors and shall pass through to the Port all discounts allowed to Provider by its subcontractors. The discounts shall be displayed on Provider's invoices and in Provider's reporting under Section 4.

### **3.3.2 Allowable Subcontract Administrative Costs**

Provider may charge the Port at the hourly rates established by this Contract for time spent supervising subcontractors and administering approved subcontracts, for additional insurance premiums necessitated by approved subcontracts, and for other actual direct costs necessitated by approved subcontracts.

### **3.3.3 No Additional Charges, Add-on Fees, or Markups**

Provider and subcontractors at all tiers shall be entitled to no additional charges, add-on fees (including communication fees, telephone fees based upon a percentage of labor hours, or safety program fees), or markups on any charges under this Contract, including but not limited to markups on subcontract charges at all tiers for goods, services, direct labor costs, or expenses.

### **3.3.4 Double-Charging Not Allowed**

Provider may not double charge by the hour for work that also is included in Provider's calculation of its overhead rate.

### **3.3.5 Payment of Claims by the Port**

If Provider fails, neglects, or refuses to promptly pay any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this Contract as the claim becomes due; the Port may pay the amount due on the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider under this Contract. The Port's payment of a claim under this subsection shall not relieve Provider responsibility for such claim.



### **3.3.6 Audit Rights**

- a)** The Port may audit the books and records of Provider and Provider's subcontractors pertaining to the Services upon reasonable notice at any time to verify Provider's compliance with this Section 3
- b)** If the Port determines that Provider or Provider's subcontractors were not in compliance with this Section 3, Provider shall reimburse the Port for any amounts overpaid by the Port plus interest on the amount of the overpayment at the rate of 1.5 percent per month from the time the Port made the overpayment to the time Provider reimburses the Port for the audit costs and the overpayment.

## **4 INVOICING; RELATED SUBMISSIONS**

### **4.1 Invoice Submissions**

Provider shall invoice the Port no more than frequently than once monthly, and each monthly invoice must be received at the Port no later than twenty (20) calendar days following the last day of the preceding calendar month. Provider shall submit invoices with all backup documentation, including but not limited to all documentation described in Section 4.2 below, to Accounts Payable, Port of Portland, P.O. Box 3529, Portland, Oregon 97208 or via email to portinvoices@portofportland.com.

### **4.2 Invoice Content, Information to be Included**

Each of Provider's invoices shall include:

- a)** The Port-assigned Contract number and copies of accounting informational receipts as required by Section 3.2 Budget. Provider shall include content such as original budget amount, charges to date, current invoice amount and remaining budget information.
- b)** Copies of backup information for direct labor and direct expense costs, including copies of time sheets, equipment rental invoices, telephone charges, and similar expense charges allowed under the Expense Reimbursement Guideline.
- c)** A separate display of all charges by any subcontractor and copies of the subcontractor's backup documentation, including the subcontractor's summary letter, detailed time sheets, and invoices.
- d)** A statement confirming Provider's timely submission of subcontractor payment information and utilization data as required under Section 4.3.

### **4.3 Subcontractor Payment and Utilization Reporting**

Provider shall report payment information and utilization data for subcontractors that perform any Services, using a Port-designated online reporting system. As of the effective date of this Contract, such system is accessible at: [www.portofportland.dbesystem.com](http://www.portofportland.dbesystem.com). Provider must log in to an account in the system in order to submit reporting information. Reporting information must be submitted at least once monthly, concurrent with Provider's invoice submission, or on such other frequency as the Port Project Manager (or his/her designee) may require. Provider must designate

a representative to administer the reporting function.

#### **4.4 Invoices Do Not Modify Contract Terms**

Provisions on Provider's invoices that purport to modify or supplement the provisions of this Contract are void.

#### **4.5 No Compensation for Preparation**

The Port shall not compensate Provider for time spent preparing or submitting invoices or invoice supporting materials.

### **5 PAYMENT, NO WAIVER**

#### **5.1 Payment**

The Port shall pay Provider all undisputed amounts within thirty (30) days after the Port's receipt of Provider's properly completed invoice, or any shorter period required by law. The Port is not obligated to pay an invoice until all required supporting materials are submitted. Upon the Port's request Provider shall correct and re-issue invoices submitted to the Port that do not comply with this Contract's invoicing requirements. If corrections are required, the Port shall transmit payment to Provider within forty-five (45) days after the Port's receipt of Provider's corrected invoice, or any shorter period required by law.

#### **5.2 No Waiver**

By making monthly payments or final payments the Port does not waive any of its rights to recover from Provider any damages to which the Port may be entitled under this Contract or at common law for failure to perform precisely in accordance with this Contract, regardless of whether the basis for the damages is known or unknown to the Port at the time of payment.

### **6 RISK OF LOSS**

The Provider shall bear the risk of loss or damage to the Artwork until the Port's final acceptance. The Provider shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The Port shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the Port or its agent(s) for the purposes of transporting, storing, installing, or performing other services to the Artwork.

### **7 ARTIST'S REPRESENTATIONS AND WARRANTIES**

#### **7.1 Warranties of Title**

The Provider represents and warrants that:

**7.1.1** the Artwork is solely the result of the artistic effort of the Artist,

**7.1.2** except as otherwise disclosed in writing to the Port, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person,

**7.1.3** the Artwork (or duplicate thereof) has not been accepted for sale elsewhere

**7.1.4** the Provider has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted to the Port under this Contract,

**7.1.5** the Artwork is free and clear of any liens or encumbrances from any source whatsoever,

**7.1.6** all Artwork created by the Provider under this Contract whether created by the Provider alone or in collaboration with others, shall be wholly original with the Provider and shall not infringe upon or violate the rights of any third party,

**7.1.7** the Provider has the full power to enter into and perform this Contract and to make the grant of rights contained in this Contract,

**7.1.8** all Services performed under this Contract shall be performed in accordance with all applicable laws, regulations, and ordinances. and with all necessary care, skill, and diligence, and

**7.1.9** these representations and warranties shall survive the expiration or earlier termination of this Contract.

## **7.2 Warranties of Quality and Condition**

The Provider represents and warrants as follows:

**7.2.1** That all Services shall be performed in accordance with professional workmanlike standards and free from defective or inferior materials and workmanship (including any defects consisting of inherent vice or qualities that cause or accelerate deterioration of the Artwork) for one (1) year after the date of final acceptance by the Port under Section 2.8.2.

**7.2.2** The Artwork and the Services used are not currently known to be harmful to public health and safety.

**7.2.3** Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 2.5.6.

**7.2.4** Acceptable Standard of Display:

**a)** General routine cleaning and repair of the Artwork and any associated working parts and/or equipment shall maintain the Artwork within an acceptable standard of public display.

**b)** Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and shall not cause the Artwork to fall below an acceptable standard of public display.

**c)** With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork shall not experience irreparable conditions that do not fall within an acceptable standard of public display,

including mold, rust, fracturing, staining, chipping, tearing, abrading, and peeling.

**7.2.5** The warranties set forth at Section 7.2.4 are conditional and shall be voided by the failure of the Port to maintain the Artwork in accordance with the Provider's specifications and the applicable conservation standards. If the Port fails to maintain the Artwork in good condition, the Provider, in addition to other rights or remedies the Provider may have in equity or at law, shall have the right to disown the Artwork as the Provider's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

**7.2.6** If during the warranty period set forth in Section 7.2.1 the Port observes any breach of a warranty described in Section 7.2 that is curable by the Provider, at the request of the Port the Provider shall cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the Port. The Port shall give notice to the Provider of such breach with reasonable promptness.

**7.2.7** If after the warranty period set forth in Section 7.2.1 the Port observes any breach of a warranty described in Section 7.2 that is curable by the Provider, the Port shall contact the Provider to make or supervise repairs or restorations at a reasonable fee during the Provider's lifetime. The Provider shall have the right of first refusal to make or supervise repairs or restorations. Should the Provider be unavailable or unwilling to accept reasonable compensation under the industry standard, the Port may seek the services of a qualified art conservator or maintenance technician.

**7.2.8** If during the warranty period set forth in Section 7.2.1 the Port observes a breach of a warranty described in Section 7.2 that is not curable by the Provider, the Provider is responsible for reimbursing the Port for damages, expenses, and loss incurred by the Port as a result of the breach.

7.3 To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Provider shall assign and provide copies of such warranties to the Port.

## **8 INDEMNIFICATION, INSURANCE**

### **8.1 Indemnification**

**8.1.1** The Provider agrees to defend, indemnify, and hold harmless the Port from and against and reimburse the Port for any and all actual or alleged claims, damages, losses, expenses, costs, fees (including but not limited to reasonable attorney, accountant, paralegal, and expert fees), fines, and/or penalties (collectively "Costs") which may be imposed upon, claimed against, or incurred or suffered by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, except to the extent resulting from the Port's negligence or willful misconduct:

- a)** any act, omission, or negligence of the Artist or the Artist's partners, officers, directors, agents, employees, invitees, contractors, and/or suppliers,
- b)** any use, occupation, management, or control of the Site by the Artist, and
- c)** any breach, violation, or nonperformance of any of the Artist's obligations under

this Agreement. For purposes of this Section, Provider shall be deemed to include the Provider and the Providers' employees, agents, invitees, contractors, and suppliers.

## **8.2 General Insurance Requirements**

**8.2.1** The insurance requirements set forth in this section do not limit the amount or scope of liability of the Provider under this Contract. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Contract. All insurance required of and provided by the Provider under this Contract shall meet the following minimum requirements:

**8.2.2** On or before the Effective Date and thereafter during this Contract's Term, the Artist shall provide the Port with current certificates of insurance, executed by a duly authorized representative of each insurer, evidencing the existence of all insurance policies required under this section. The Port shall receive at least thirty (30) calendar days written notice prior to cancellation, non-renewal, or material change in any policy. Insurance must be maintained without any lapse in coverage during the Contract Term. The Port shall also be provided with copies of the Provider's policies of insurance, upon written request. The Port's failure to demand such certificates or other evidence of full compliance with these insurance requirements or the Port's failure to identify any deficiency or noncompliance with coverage requirements shall not be construed as a waiver of the Provider's obligation to maintain the insurance required by this Contract.

**8.2.3** The Port shall be named as an additional insured on each insurance policy. Such insurance shall provide cross liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices or a successor organization.

**8.2.4** The required policies shall provide that the coverage is primary and shall not seek any contribution from any insurance or self insurance carried by the Port.

**8.2.5** All policies of insurance must be written by companies having an A.M. Best rating of "A " or better, or equivalent. The Port may, upon thirty (30) calendar days written notice to the Artist, require the Provider to change any carrier whose rating drops below an "A " rating.

**8.2.6** Any deductible or self-insured retention exceeding fifteen percent (15%) of the per occurrence or per accident limit of a required policy is subject to approval by the Port.

## **8.3 Required Insurance Coverages**

At all times during the term of this Contract, the Provider shall provide and maintain the following types of coverage:

### **8.3.1 General Liability Insurance**

The Provider shall maintain an occurrence form commercial general liability policy or policies, with broad form property damage, contractual liability, and independent contractor coverage, insuring against liability arising from premises, operations, independent contractors, products completed operations, personal injury, and liability

assumed under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Artwork or occasioned by reason of the operations of Provider.. Such coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence.

### **8.3.2 Automobile Liability Insurance**

In the event that automobiles are used in connection with the Provider's business or operations. the Site, the Provider shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of any of the Provider's vehicles (including owned, hired and non owned vehicles) at and the Site. Coverage shall be in an amount of not less than three hundred thousand dollars (\$300,000) for each accident.

### **8.3.3 Workers' Compensation Insurance**

The Provider shall maintain workers' compensation and employers' liability coverage for all of the Provider's employees, if any, who are subject to Oregon's workers' compensation statute (and/or the Provider's domicile state, if different), either as a carrier-insured employer or as a self-insured employer as provided by ORS 656.407. If the Provider's domicile state is a monopolistic state, employers' stop gap liability insurance may be substituted for employers' liability coverage.

### **8.3.4 Builder's Risk Insurance**

During any construction activity, the Provider shall obtain and maintain for the benefit of both parties to this Contract, "all risk" Builder's Risk insurance equal to one hundred percent (100%) of the value of the Art. Coverage shall also include:

- a) temporary structures,
- b) equipment, and
- c) supplies related to the work while at the Site.

### **8.3.5 Provider's Risks**

The Provider shall be responsible for obtaining any insurance the Provider deems necessary to cover the Provider's own risks, including without limitation:

- a) business interruption, such as business income, extra expense, or similar coverage, and
- b) property damage insurance to cover loss or damage to the Artwork or the Artist's personal property; and/or automobile physical damage and/or theft.

### **8.3.6** In no event shall the Port be liable for any:

- a) business interruption or other consequential loss sustained by the Artist,
- b) damage to or loss of the Artwork prior to final acceptance of the Artwork by the Port or for the Provider's trade fixtures, equipment, or other personal property, or
- c) damage to or loss of an automobile, whether or not such loss or losses are insured.

#### **8.4 Waiver of Subrogation**

The Provider and the Port waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of adjacent properties for any loss, cost, damage, or expense (collectively "Loss") to the extent that such loss or damage is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Contract and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. The Provider also waives any right of action it and/or its insurance carrier might have against the Port (including its employees, officers, commissioners, or agents) for any Loss expressed under this Contract. If any of the Artist's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, the Artist shall cause it to be endorsed to allow the waivers of subrogation required by this subsection.

#### **8.5 Survival of Indemnities**

The indemnification obligations set forth in Section 8.1 shall survive the expiration or earlier termination of this Agreement and be fully enforceable thereafter.

### **9 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

#### **9.1 Title to Artwork**

Title to the Artwork shall automatically pass to the Port upon the Port's written final acceptance and payment for the Artwork pursuant to Section 2.8.2.

#### **9.2 Copyright Ownership**

The Provider retains all rights under the Copyright Act of 1976, 17 USC 101 et seq., as the sole author of the Artwork for the duration of the copyright.

#### **9.3 Reproduction Rights**

**9.3.1** In view of the intention that the final Artwork be unique, the Provider shall not make any exact duplicate three dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the Port. However, nothing shall prevent the Provider from creating future Artworks in the Artist's manner and style of artistic expression.

**9.3.2** The Provider grants to the Port and its assigns an irrevocable, royalty-free license to make two dimensional reproductions of the Artwork for non-commercial purposes. Acceptable reproduction purposes under this subsection include but are not limited to promotional uses such as reproductions used in Port brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.

**9.3.3** All reproductions by the Port shall contain a credit to the Provider and a copyright notice in substantially the following form: Copyright © [ARTIST'S NAME, DATE OF

PUBLICATION].

**9.3.4** The Provider shall use the Provider's best efforts in any public showing or resume use of reproductions to give acknowledgment to the Port in substantially the following form: "an original Artwork commissioned by and in the public art collection of the Port of Portland."

**9.3.5** The Provider shall, at the Provider's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Provider's name.

**9.3.6** If the Port wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, T shirts, post cards and posters, the parties shall execute a separate agreement to address the terms of the license granted by the Provider and the royalty the Provider shall receive.

**9.3.7** The Port is not responsible for any third-party infringement of Provider's copyright and not responsible for protecting the intellectual property rights of Provider.

## **10 PROVIDER'S RIGHTS**

10.1 The Provider retains all rights under state and federal copyright laws including Section 106A of the Copyright Act of 1976.

10.2 The Port will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Provider. If any alteration or damage to the Artwork occurs, the Provider shall have the right to disclaim authorship of the Artwork in addition to any remedies the Provider may have in law or equity under this Contract. Upon written request, the Port shall remove the identification plaque and all attributive references to the Provider at its own expense within thirty (30) calendar days of receipt of the notice. No provision of this Contract shall obligate the Port to alter or remove any such attributive reference printed or published prior to the Port's receipt of such notice. The Provider may take such other action as the Provider may choose in order to disavow the Artwork.

### **10.3 Alterations of Site or Removal of Artwork**

#### **10.3.1 Alterations of Site**

The Port shall notify the Provider of any proposed significant alteration of the Site after installation that would affect the intended character and appearance of the Artwork. The Port shall make a good faith effort to consult with the Provider in the planning and execution of any such alteration. The Port shall make a reasonable effort to maintain the integrity of the Artwork.

#### **10.3.2 Removal or Relocation**

The Port agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Provider. The Provider shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Provider agree to such removal or relocation, the Provider shall provide the Port with written handling



instructions. In the event that the Provider is deceased or unable to otherwise give the Provider's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Provider at the time of commission and fabrication.

### **10.3.3 Visual Artists' Rights Act**

The terms and conditions of this Contract are intended to replace and substitute for the rights of the Provider under the Visual Artists' Rights Act to the extent that any portion of this Contract is in direct conflict with those rights. The parties acknowledge that this Contract supersedes that law to the extent that this Contract is in direct conflict therewith.

## **11 PERMANENT RECORD**

The Port shall maintain on permanent file a record of this Contract and of the location and disposition of the Artwork.

## **12 PROVIDER AS AN INDEPENDENT CONTRACTOR**

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract. Neither Provider nor any partner, director, officer, manager, member, employee, subcontractor, or agents of Provider shall be deemed to be an employee of the Port. The Port shall not withhold any taxes from any payments made to Provider, and Provider shall be solely responsible for paying all applicable taxes arising out of or resulting from the performance of the Services, including but not limited to income, social security, worker's compensation, and employment insurance taxes. Provider represents, warrants, and covenants to the Port that, in the provision of the Services, Provider is customarily engaged in, and shall continue to customarily engage in, an independently established business as described in ORS 670.600(3).

## **13 CONFIDENTIALITY**

### **13.1 Confidential Information**

For purposes of this Contract, "Confidential Information" means all information related to the Port, the Services, the RFP, or this Contract that is or was received or accessed by Provider, whether before or during the term of this Contract, including but not limited to all communications between the Port and Provider relating to the Port, the Services, the RFP, or this Contract.

### **13.2 Use Restrictions**

Provider shall not use Confidential Information for any purpose without the Port's specific prior written authorization, except that Provider may use Confidential Information as may be necessary to perform the Services.

### **13.3 Confidentiality**

Provider shall not disclose Confidential Information to any person without the Port's specific prior written authorization, except that Provider may disclose Confidential

Information:

**13.3.1** on a need-to-know basis, to Provider's own staff and to the staff of any Port-approved subcontractors, who are directly involved with the performance of the Services who are informed by Provider of the confidential nature of the Confidential Information and the obligations of Provider under this Contract and instructed not to further disclose Confidential Information, or

**13.3.2** in accordance with a judicial or other governmental order, but only if Provider promptly notifies the Port of the order and complies with any applicable protective or similar order.

### **13.4 Sharing Information**

Provider shall not share any information relating to the Services with any third party (such as a corporation or other business entity, service provider, governmental entity, or person) other than Provider's approved subcontractors. If information relating to the Services needs to be shared with another party, Provider shall provide that information to the Port for forwarding by the Port. The Port may authorize deviation from the foregoing requirements on a case-by-case basis, but Provider shall not deviate from those requirements without the Port's prior written authorization. Provider shall not communicate with representatives of any of the news media regarding Services; any such communications shall be exclusively by the Port. Provider shall refer any public records requests received by Provider or a subcontractor to the Port for response.

### **13.5 Subcontractors and Employees**

Provider shall make diligent efforts and shall take all reasonably necessary steps to ensure that the confidentiality required by this Contract is protected by Provider's subcontractors and the employees of Provider and Provider's subcontractors.

#### **13.5.1 Notification**

Provider shall:

- a)** promptly notify the Port of any unauthorized use or disclosure of Confidential Information, or any other breach of this Section 15, and
- b)** assist the Port in every reasonable way to retrieve any Confidential Information that was used or disclosed by Provider or any of Provider's staff or the staff of any subcontractor without the Port's specific prior written authorization and to mitigate the harm caused by the unauthorized use or disclosure.

#### **13.5.2 Exceptions**

Provider shall not breach the Contract under Section 13 by using or disclosing Confidential Information if Provider demonstrates that the information used or disclosed is generally available to the public other than as a result of a disclosure by Provider or any of Provider's staff or the staff of any subcontractor.

### **13.5.3 Return of Confidential Information**

Upon the Port's request, or upon the expiration or termination of this Contract, Provider shall promptly return to the Port all materials furnished by the Port containing confidential information, together with all copies and summaries of confidential information in the possession or under the control of Provider.

## **14 SECURITY REQUIREMENTS**

### **14.1 Portland International Airport**

At all times during the performance of Services at the Portland International Airport ("PDX"), Provider shall comply with all applicable rules and regulations governing airport security (collectively, "Airport Security Rules and Regulations"), including without limitation the security badging, access control, and keys/locks requirements set forth in the PDX Rules (available at [www2.portofportland.com](http://www2.portofportland.com) or from the Port Project Manager upon request), and all applicable regulations promulgated by the Transportation Security Administration ("TSA") and the Federal Aviation Administration ("FAA").

### **14.2 Other Port Locations**

At all times during the performance of Services at other locations, including without limitation the Port's marine terminals and headquarters offices ("HQ"), Provider shall comply with all applicable security requirements for such premises. Such requirements may include, without limitation, the Port's Marine Terminal Security Guidelines; HQ policies, procedures, guidelines, and standards; and any other security rules maintained by the Port, its tenant in possession of the premises, or other governing authorities. As more fully described in the Port's Marine Terminal Security Guidelines, all personnel requiring unescorted access to secure areas of Port marine terminals 2,4,5, and 6 must possess a Transportation Worker Identification Credential ("TWIC") issued by the Transportation Security Administration ("TSA"). Enrollment is available online at [www.tsa.gov/twic](http://www.tsa.gov/twic).

### **14.3 Ensuring Compliance**

Provider shall ensure that its partners, directors, officers, managers, members, employees, subcontractors, invitees, agents, and suppliers comply with all security requirements applicable to the Services. Provider must obtain and review copies of applicable security requirements from the Port before commencing Services.

### **14.4 Security Badges**

Provider warrants and shall ensure that any person providing Services that receives a security badge meets all applicable requirements for having a security badge. When badgeholders leave Provider's employment or no longer provide Services ("a Separation"), Provider shall ensure that any security badges, access control devices, or keys provided by the Port are returned promptly to the Port Security Badging Office, obtain a receipt for the return of such items and submit a copy of the receipt to the Port Project Manager. Any unreturned badge or access device fees due in accordance with

applicable Port rules, including without limitation the PDX Rules, may be deducted from any payment due under this Contract. Further, within 24 hours from any Separation, Provider must notify the Port Project Manager of such Separation, to enable the Port to promptly terminate the badge-holder's access privileges.

#### **14.5 Authorized Personnel**

Provider shall provide to the Port a list of names and contact information for all authorized individuals who shall enter on Port premises to perform any Services. Provider shall keep the list current and shall not direct any individual to perform Services on Port premises without first informing the Port and updating the authorization list.

#### **14.6 Security Violations**

A violation of any security requirements applicable under this Section 14 shall be considered an act or omission for purposes of the indemnification provisions in Section 8.1, and is a per se material breach of this Contract.

### **15 NONDISCRIMINATION**

The Provider shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Contract.

### **16 ASSIGNMENT OF ARTWORK**

The Artwork and Services required of the Provider are personal and shall not be assigned, sublet, or transferred. Any attempt by the Provider to assign this Contract or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the Port. The Port shall have the right to assign or transfer any and all of the Port's rights and obligations under this Contract, subject to the Provider's consent, if ownership of the Site is transferred; if the Provider refuses to give consent, this Contract shall terminate.

### **17 TERMINATION**

#### **17.1 Termination by the Port Without Cause**

The Port may terminate this Contract without cause upon fifteen (15) calendar days written notice to the Provider. The Port shall pay the Provider for Services performed and commitments made prior to the date of termination, consistent with the Section 3 Compensation. The Provider shall have the right to an equitable adjustment in the fee for Services performed and expenses incurred beyond those for which the Provider has been compensated to date under Section 3 with reasonable allowance for lost opportunities unless the parties come to a settlement otherwise.

#### **17.2 Termination Due to Default**

If either party to this Contract willfully or negligently fails to fulfill in a timely and proper manner, or otherwise violates any of the covenants, agreements or stipulations material to this Contract, the other party shall thereupon have the right to terminate this Contract

by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have fifteen (15) calendar days after the date of the notice to cure the default. If it is not cured by that time, this Contract shall terminate.

#### **17.2.1 Default by the Artist**

If the Provider defaults for cause other than death or incapacitation (as described in Section 17.2, the Provider shall return to the Port all funds provided by the Port in excess of expenses already incurred. The Provider shall provide an accounting of all finished and unfinished drawings, sketches, photographs and other Services, and products prepared and submitted or prepared for submission by the Provider under this Contract for delivery to the Port. The Port shall retain the right to have the Artwork completed, fabricated, executed, delivered, and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Sections 9 and 10.

#### **17.2.2 Default by the Port**

If the Port defaults, the Port shall promptly compensate the Provider for all Services performed by the Provider prior to termination. The Port shall pay the Provider for Services performed and commitments made prior to the date of termination, consistent with the Section 3 Compensation. The Provider shall have the right to an equitable adjustment in the fee for Services performed and expenses incurred beyond those for which the Provider has been compensated to date with reasonable allowance for lost opportunities. The Provider shall retain possession and title to the Design development documents and/or any studies, drawings, designs, maquettes, or models already prepared and submitted or prepared for submission to the Port by the Provider under this Contract prior to the date of termination.

#### **17.2.3 Cessation of Services**

Upon notice of termination, the Provider and their subcontractors shall cease all Services.

### **18 DEATH OR INCAPACITY**

If the Provider becomes unable to complete this Contract due to death or incapacitation, such death or incapacity will not be deemed a breach of this Contract or a default on the part of the Provider for the purpose of Section 17.2. However, nothing in this Section shall obligate the Port to accept the Artwork.

#### **18.1 Incapacity**

In the event of incapacity, the Provider shall assign the Provider's obligations and Services under this Contract to another provider, provided that the Port, in its sole discretion, approves of the new Provider. Alternatively, the Port may elect to terminate this Agreement. The Artist shall retain all rights under Sections 9 and 10.

#### **18.2 Death**

In the event of death, this Contract shall terminate effective the date of death. The

Provider's heirs or successors shall retain all rights under Sections 9 and 10. The Provider's executor or equivalent representative shall deliver to the Port the Artwork in whatever form or degree of completion it may be at the time. Title to the Artwork shall then transfer to the Port. However, the Artwork shall not be represented to be the completed Artwork of the Provider unless the Port is otherwise directed by the Provider's estate or successor.

## **19 CONTRACT ADMINISTRATORS AND NOTICES**

### **19.1 Contract Administrators**

The Port's Contract Administrator for this Contract is [Name], [###-###-####], [Email]. Provider's Contract Administrator is [Name], [###-###-####], [Email]. Each party shall notify the other of any change in the party's Contract Administrator.

### **19.2 Notices**

19.3 All notices or other correspondence required or permitted by this Contract shall be in writing and must be directed to Contract Administrator for the party to whom the notices or correspondence is intended at the e-mail addresses set forth above (or any other address that a party may designate by notice to the other party, including a physical or post office box address). Upon the Port's request, copies of Provider's notices or other correspondence required or permitted by this Contract shall also be delivered to a designated recipient in the Port's Contracts and Procurement Department.

### **19.4 Time of Essence**

Provider shall at all times perform the Services diligently and without delay and shall punctually fulfill all Contract requirements. Time is of the essence with respect to all dates and time periods in this Contract.

## **20 STATUTORILY- REQUIRED PROVISIONS**

### **20.1 Payment for Labor or Material**

As a condition of this Contract, Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the performance of the work provided for in this Contract. [Required by ORS 279B.220(1)]

### **20.2 Hours of Labor; Pay Equity; Employee Discussions of Rate of Pay or Benefits**

#### **20.2.1 Hours of Labor**

Provider shall pay employees performing work under this Contract at least time and a half for all overtime worked in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. [Required by ORS 279B.235(3)]

### **20.3 Pay Equity**

Provider shall comply with the prohibitions set forth in ORS 652.220. Such compliance

is a material element of the Contract and a failure to comply is a breach that entitles the Port to terminate the Contract for cause [Required by ORS 279B.235(1)(b)]

#### **20.4 Employee Discussions of Rate of Pay or Benefits**

Provider shall not prohibit any of Provider's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. [Required by ORS 279B.235(1)(c)]

#### **20.5 Contributions to the Industrial Accident Fund**

As a condition of this Contract, Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider or any subcontractor of Provider incurred in the performance of this Contract. [Required by ORS 279B.220(2)]

#### **20.6 Income Tax Withholding**

As a condition of this Contract, Provider shall pay to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167. [Required by ORS 279B.220(4)]

#### **20.7 Worker's Compensation**

All subject employers performing Services under this Contract are either employers that shall comply with ORS 656.017 or employers that are exempt under ORS 656.126. [Required by ORS 279B.230(2)]

#### **20.8 Medical Care for Employees**

As a condition of this Contract, Provider shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Provider, of all sums that Provider agrees to pay for such services and all moneys and sums that Provider collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. [Required by ORS 279B.230(1)]

#### **20.9 Liens and Claims Prohibited**

As a condition of this Contract, Provider shall not permit any lien or claim to be filed or prosecuted against the Port, the state, or a county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished. [Required by ORS 279B.220 (3)]

#### **20.10 Compliance with Tax Laws**

##### **20.10.1 Representation and Warranty**

Provider represents and warrants that Provider has complied with the tax laws of the State of Oregon or a political subdivision of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.

## **20.10.2 Covenant**

Provider covenants that Provider shall continue to comply with the tax laws of the State of Oregon or a political subdivision of the State of Oregon during the term of this Contract.

## **20.11 Failure to Comply**

Provider's failure to comply with the tax laws of the State of Oregon or a political subdivision of the State of Oregon before Provider executed this Contract or during the term of this Contract shall be a default for which the Port may terminate the Contract and seek damages and other relief available under the terms of this Contract and under applicable law. [Required by ORS 279B.045]

## **21 MISCELLANEOUS PROVISIONS**

### **21.1 Governing Law; Venue**

ORS 15.320 provides that Oregon law applies to this Contract. Even if ORS 15.320 is determined to be inapplicable or invalid, the parties agree that this Contract is governed by Oregon law, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Contract. Any action, suit, or proceeding arising out of the subject matter of this Contract shall be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

### **21.2 Counterparts, Execution, Electronic Signatures**

This Contract may be executed in counterparts. This Contract may be executed using:

**21.2.1** original signatures; and

**21.2.2** facsimile signatures; or

**21.2.3** only with the Port's prior approval, Electronic Signatures as defined in the Electronic Signatures in Global and National Commerce Act, that can be authenticated. Under ORS 84.014, Contractor's consent is not required for this Contract to be executed using Electronic Signatures. Even if ORS 84.014 is determined to be inapplicable or invalid, Provider grants such consent.

### **21.3 Dispute Resolution**

The parties shall negotiate to resolve any disputes that may arise in connection with this Contract. If a dispute cannot be resolved by negotiation, the parties shall attempt to resolve the dispute through mediation. If mediation is unsuccessful, the parties may pursue whatever remedies may be available to them under the circumstances. Venue for actions or proceedings arising out of this Contract shall be in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon. However, nothing in this subsection precludes the parties from agreeing to binding or nonbinding arbitration.



#### **21.4 Attorney's Fees**

If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Contract, or otherwise in connection with the subject matter of this Contract, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim shall be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

#### **21.5 Binding Effect**

This Contract shall bind the parties and their respective successors, executors, administrators, and permitted assignees.

#### **21.6 Provider Identification Number**

Provider shall furnish to the Port Provider's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

#### **21.7 No Waiver of Legal Rights**

No waiver shall be binding on a party unless it is in writing and signed by the party making the waiver. A waiver by a party of any breach of a provision by the other shall not be deemed to be a waiver of any other provision or any subsequent breach of the same provision.

#### **21.8 Modification**

Except as expressly provided in Section 1, this Contract may be modified only by a written amendment signed by both parties. No oral modification shall be effective.

#### **21.9 Integration**

This Contract contains the entire agreement between the parties regarding the subject matter of this Contract, and supersedes all prior written or oral discussions, negotiations, or agreements between the parties regarding the subject matter of this Contract.

#### **21.10 Severability**

If a provision of this Contract is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Contract shall not be impaired.

#### **21.11 Government Powers**

Nothing in this Contract shall be deemed to limit the Port's exercise of its governmental rights and powers.

## **21.12 Attachments; Order of Precedence**

Any schedules and other attachments referenced in this Contract are part of this Contract. Any conflict between provisions stated within the body of this Contract and provisions stated within any attachment thereto shall be resolved in favor of the provisions stated within the body of this Contract.

## **21.13 Force Majeure**

Except for the obligation to make payment for the Services, any delay in or failure of performance by either party to this Contract shall not constitute a default under this Contract nor give rise to any claim for damage, cost, or expense if and to the extent such delay or failure is caused by an act of God, flood, fire, earthquake or explosion, war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest, government order or law, actions, embargoes or blockades, national or regional emergency, or other similar event beyond the control of the delayed or non-performing party. Notwithstanding the foregoing, a party that is delayed in or prevented from performing for any reason shall promptly notify the other party in writing of the reason for the non-performance and the anticipated extent of any delay or non-performance and shall take diligent steps to minimize the adverse impact of the delay or non-performance.

## **21.14 Approvals and Consents**

Except as otherwise expressly provided in this Contract, whenever this Contract provides for the approval or consent of one of the parties hereto, including but not limited to acceptance, approval, belief, change, completion, consent, decision, designation, determination, direction, discretion, estimation, finding, prescription, request, requirement, review, satisfaction, selection, specification, or suspension, such party shall not unreasonably withhold, delay, or condition its approval or consent.

## **21.15 Survival**

All provisions of this Contract shall survive the expiration or termination of this Contract to the extent necessary to fully effectuate the intended purpose of the provision.

## **21.16 Acknowledgment**

**21.16.1** By executing this Contract, Provider acknowledges that it has:

**21.16.2** carefully reviewed the entire Contract and all documents related to the Services that the Port has provided and,

**21.16.3** reviewed or is otherwise familiar with all laws and regulations that are relevant to the Services, and

**21.16.4** not relied upon any representation by the Port or its employees or representatives other than those expressly set forth in this Contract.

## **21.17 Authority**

The individuals signing below warrant that they have full authority to execute this Contract

on behalf of the party for whom they sign.

**Provider:**

[Company]

By: \_\_\_\_\_

Print name: \_\_\_\_\_

As its: \_\_\_\_\_

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

Phone: \_\_\_\_\_

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

**Port:**

Port of Portland

By: \_\_\_\_\_

Print name: \_\_\_\_\_

As its: \_\_\_\_\_

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

Approved as to legal sufficiency for  
the Port of Portland

\_\_\_\_\_  
Counsel for the Port of Portland

**SCHEDULE 2.1**  
**General Scope of Services**

**SCHEDULE 2.4**  
**Construction Schedule**

**SCHEDULE 2.2**  
**Site Preparation**

**SCHEDULE 3.2**  
**Budget**