

**FOR USE ONLY FOR ARTISTIC CONTRACTING DIRECTLY WITH ARTISTS**

Instructions: Unprotect Document, click on the [###] tab below and type the Contract No. Then, enter required data into individual fields, replicated data will prefill throughout the document.

**CONTRACT NO. [Contract Number]**

This number must appear  
on all invoices



**PERSONAL SERVICES CONTRACT**

**[Autofill]**

**Parties:** Port of Portland ("Port")  
P.O. Box 3529  
Portland, Oregon 97208

[Autofill] ("Artist")  
[Autofill]  
[Autofill]

**RECITALS**

Recital A will require adjustment dependent of the circumstances.

- A.** The Port contracted with ZGF through Contract Number [Autofill] to engage the Regional Arts & Culture Council (RACC) to coordinate and facilitate artist selection for the [Autofill] in (PDX) using Solicitation Number [Autofill] on [Date].

End Section

- B.** Through the selection process [Autofill] (the "Artist"), was selected to design, fabricate, transport, and install (the "Services") the Artwork to be located at the [Location of Artwork] (the "Artwork"), as described on Schedule 2.1, discussed in Section 2.1.
- C.** The Port now wishes to engage the Artist to provide for the Artist's performance of the Services and the Artwork location indicated in Recital B (the "Site").

**AGREEMENT**

**1 TERM**

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

or the date that this Contract is fully signed by both parties (the "Effective Date"), whichever is later, and shall expire on [Autofill], unless sooner terminated under the provisions of this Contract. Expiration of the Contract term does not excuse Artist'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.

## **2 SERVICES AND ARTWORK**

### **2.1 Artist Obligations**

The Artist shall:

- 2.1.1** Perform all Services by furnishing all supplies, materials and equipment, transportation, travel, delivery, taxes, and fees as necessary to design, fabricate, and install Artwork in accordance with the specific requirements on Schedule 2.1 Statement of Services, and within the specified schedule. All Services under this Contract will be performed in a professional manner and in strict compliance with all terms and conditions in this Contract.
- 2.1.2** Determine the artistic expression, design, dimensions, and materials of the Artwork, subject to review and acceptance by the Port under this Contract. The Artwork as installed must be durable, taking into consideration that the Site is a public space that may be exposed to elements such considerable movement of people and equipment. The Artist must ensure that all maintenance requirements shall be reasonable in terms of time and expense. The Artwork shall not interfere with the intended use of the Site, nor pedestrian flow either to or from, or through the concourse connector, any safety and security devices or procedures applicable to the Site.

Section 2.1.3 will require adjustment dependent of the circumstances, or removed if the Port's General Contractor is not being utilized.

- 2.1.3** The Artist, or Artist's Representative, shall attend public information meetings with the public, design and construction coordination meetings with the Port, its General Contractor, [Name of General Contractor], architect, and other parties as appropriate, to foster communication about the Artwork and to ensure appropriate integration and installation. Plan for installation logistics with the contractors, including installation equipment, access, protection of finished materials installed by the contractors, operational hours, and safety requirements required by the General Contractor.

End Section

- 2.1.4** Complete the fabrication of the Artwork based on Artist's design and construction documents by the scheduled installation date, as provided in Schedule 2.4 Construction Schedule.
- 2.1.5** Provide all necessary information to the Port, including all design services, engineering information for the structure of the of the Artwork, fire rating information; and any other Artwork-specific information requested by the City of

Portland to enable the Port to apply for and secure a building permit. Secure any other licenses, permits and similar legal authorizations required by Applicable Laws, at the Artist's expense, as may be necessary for the installation and maintenance of the Artwork at the Site, including registering [Autofill] to do business in Oregon.

- 2.1.6** Arrange the transportation and installation of the Artwork in consultation with the Port. If the Artist Subcontracts the installation or fabrication of the Artwork, Artist shall supervise and approve the installation or fabrication personally and shall be solely responsible financially or otherwise for all need corrections to any subcontracted Services.
- 2.1.7** Provide required insurance, or require such insurance from any subcontractors Artist uses, in amounts and limits specified in Section 8.3. Name the Port and General Contractor in the COI.
- 2.1.8** Provide a list of all subcontractors along with a copy of the agreement between the Artist 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.
- 2.1.10** Provide photographic documentation of the Artwork under Section 2.5.5.
- 2.1.11** Be available with reasonable advance notice for up to two public meetings, ceremonies, or promotional events, as the Artist's schedule allows. For purposes of this section, reasonable advance notice means thirty (30) calendar days or more for in-person requests.

## **2.2 Port's Obligations**

The Port shall:

- 2.2.1** At no expense to the Artist, supply the Artist with copies of existing designs, drawings, reports, a list of required permits, and other existing relevant data, if any, as needed to perform the Services.
- 2.2.2** Be responsible for compliance with all laws, regulations, and ordinances, including zoning or environmental regulations (the "Applicable Laws") applicable to the installation, presence, and maintenance of the Artwork at the Site, and shall explain any limitations imposed by such Applicable Laws to the Artist.
- 2.2.3** Apply for and obtain a building permit for the Artwork installation, based on information supplied by Artist.
- 2.2.4** Prepare the Site in accordance with the specifications detailed in the approved design provided by the Artist. 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 in Schedule 2.4

Construction Schedule or shall inform the Artist of any delays, which delays the Port will make reasonable efforts to avoid and minimize.

- 2.2.5** 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].
- 2.2.6** Maintain the Artwork after installation consistent with the Artist's maintenance manual required under Section 2.1.9.
- 2.2.7** Use its best efforts not to permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist'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.
- 2.2.8** Be responsible for leading the Artist 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 Artist with written instructions for the materials required at such meetings.

## **2.3 Design**

### **2.3.1 Revisions**

The Port shall notify the Artist if it becomes aware that any revisions to the design are required to comply with any Applicable Laws, 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 Design & Construction Documents**

- a)** The Artist shall prepare engineered stamped 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. Structural design must meet local seismic code requirements.
- b)** When appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State of Oregon, paid by the Artist, for certification that the Artwork shall be of adequate structural integrity for installation to the building components at the Site. The Artist shall provide the Port with such certification.
- c)** At the Artist's discretion, the Artist shall present the drawings to a qualified conservator, capable of making recommendations on the maintenance of the Artwork, and Artist shall integrate conservator's recommendations into the maintenance manual prepared under Section 2.1.9 and provide the updated

manual to the Port.

## **2.4 Construction Schedule**

- 2.4.1** The Artist's tentative construction schedule for the design, fabrication, and installation of the Artwork, including a schedule for progress reports and inspections, if any, is attached as Schedule 2.4 Construction Schedule.
- 2.4.2** The Artist shall fabricate and install the Artwork in substantial conformity with the design. The Artist may not substantially deviate from the approved design without prior written approval of the Port.
- 2.4.3** The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork through the application of protective coatings unless the Port disapproves. If the Artwork is being constructed on Site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall also provide the Port with a list of all subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed for installation on Site.
- 2.4.4** The Port shall have the right to review and 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 and construction documents, the Port reserves the right to notify the Artist in writing of the deficiencies and that the Port intends to withhold any further invoice payment. The Artist 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 Artist disputes the Port's determination that the Artwork does not conform to the design and construction documents, the Artist shall promptly submit reasons in writing to the Port within ten (10) calendar days of the Port's prior notice. The Port shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Contract is the Port's.
- 2.4.6** The Artist shall notify the Port and its General Contractor in writing when fabrication of the Artwork has been completed and 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 seven (7) calendar days after receiving notification pursuant to Section 2.4.6, prior to installation, to determine whether the Artwork conforms with the design and construction documents and to give final approval. The Port shall not unreasonably withhold final approval of the fabricated Artwork. If the Port does withhold final approval, the Port shall submit the reasons for such disapproval in writing within seven (7) calendar days of

examining the fabricated Artwork. The Artist shall have seven (7) 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 Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has fully and substantially deviated from the design and construction documents without the prior approval of the Port. The Artist 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 and construction documents, the Artist shall deliver and install the completed Artwork at the Site in accordance with the Schedule 2.4 Construction Schedule.
- 2.5.2** The Artist, or Artist's Representative for this section, shall coordinate closely with the Port and the Port's General Contractor to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the Port of any adverse conditions at the Site that would affect or impede the installation of the Artwork. The Artist shall confer and coordinate with the Port to ensure timely coordination with the Port's General Contractor's construction team.
- 2.5.3** The Artist, or Artist's Representative, agrees to be present to supervise the installation of the Artwork. The Artist shall provide the final sign-off of the installation of the Artwork. Either shortly before, or at the final completion of the installation, as agreed upon between the Port and the Artist, the Artist shall be on-site for final installation approval.
- 2.5.4** Upon the Port's 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 Artist 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 Artist shall also furnish the Port with a full written narrative description of the Artwork.
- 2.5.6** Upon installation of the Artwork, the Artist shall supply the Port with the maintenance manual required by Section 2.1.9 along with product data sheets for any material or finish used in fabrication. Direction on cleaning and protecting materials shall be provided by the Artist.

## **2.6 Services Performed by Subcontractors**

Artist shall be responsible for the quality of the Services performed by any subcontractors employed by Artist to perform any part of the Services. Artist shall ensure that Artist's subcontractors comply with the terms and conditions of this Contract. For purposes of this Contract, the term "subcontractor" includes a firm with which Artist contracts for services necessary or convenient for Artist's performance of the Services.

## **2.7 Small Business Participation**

Artist 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 Artist has already identified qualified small businesses to the Port, Artist shall fully utilize such businesses possible when work in their area(s) of expertise becomes available. When Artist works with the Port to identify qualified small businesses, Artist 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 Artist shall notify the Port in writing when they believe all Services as required by this Contract have been completed.
- 2.8.2** The Port shall promptly notify the Artist of its final acceptance of the Artwork within fourteen (14) calendar days after the Artist 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 Artist of its final acceptance of the Artwork. Final acceptance means that the Port acknowledges completion of the Artwork in substantial conformity with the design and construction documents and installation requirements, and that the Port confirms that all Services as required of both parties by this Contract 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 Artist in writing of those Services it believes the Artist has failed to perform within thirty (30) calendar days after the Artist submitted written notice pursuant to Section 2.8.1. The Artist shall promptly perform those Services indicated by the Port. If the Artist disputes the Port's determination that not all Services have been performed, the Artist shall submit reasons in writing to the Port within thirty (30) calendar days of the Port's prior notice. The Port shall make reasonable efforts to resolve the dispute with the Artist in good faith. The final determination as to whether all Services have been performed shall be the Port's. Upon the resolution of any disputes that arise under this Section 2.8.3, the Port shall notify the Artist of its final acceptance of the Artwork pursuant to Section 2.8.2.

**2.8.4** After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the Port and the Artist 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 Artist, the Artist 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**

So long as the Artist's work under this Contract does not involve work "necessary to the structural integrity of the public work" as defined by OAR 839-025-0150, and Artist coordinates with the Port's General Contractor to have any such structural work performed by the Port's General Contractor, public works contracting requirements under ORS 279C.800 – 279C.870 shall not be applicable to this Contract,

### **3 COMPENSATION**

#### **3.1 Total Compensation**

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

#### **3.2 Budget**

The Artist's budget, itemizing all costs for the Services, and materials required to design, fabricate, and install the Artwork (the "Budget") is 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 Artist shall keep a log of the project hours and shall retain all original receipts pertaining directly to the Services. If the Artist incurs costs more than the amount listed in the Budget, the Artist shall pay such excess from the Artists own funds unless the Artist previously obtained approval for such costs from the Port and such modifications were authorized in a written amendment to the Contract signed by both parties.



### **3.3 Subcontractor Hourly Rates**

### **3.4 Allowable Subcontract Administrative Costs**

Artist 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.

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

Artist and Subcontractors of 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.

#### **3.5.1 Double-Charging Not Allowed**

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

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

If Artist fails, neglects, or refuses to promptly pay any claim for labor or services furnished to Artist 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 Artist under this Contract. The Port's payment of a claim under this subsection shall not relieve Artist responsibility for such claim.

#### **3.5.3 Audit Rights**

- a) The Port may audit the books and records of Artist and Artist's Subcontractors pertaining to the Services upon reasonable notice at any time to verify Artist's compliance with this Section 3
- b) If the Port determines that Artist or Artist's Subcontractors were not in compliance with this Section 3, Artist 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 Artist reimburses the Port for the audit costs and the overpayment.

## **4 INVOICING; RELATED SUBMISSIONS**

### **4.1 Payment Schedule**

Artist shall invoice the Port consistent with this Section 4.1 Payment Schedule. The Artist must submit a signed invoice to Port for each payment based on Section 4.2 Invoice Content, Information for payments for services:

The following payment structure is provided as sample and may be modified as required. It is best practice that coincide with the deliverables shown on the construction schedule.

[\$dollar]	upon signing of this agreement (10%)
[\$dollar]	upon acceptance of final design concept by the Port (15%)
[\$dollar]	upon acceptance of final construction and submittal for fabrication documents (15%)
[\$dollar]	production of the artwork (35%)
[\$dollar]	upon completion and delivery of artwork (10%)
[\$dollar]	upon completion of installation of artwork and Port approval (10%)
[\$dollar]	upon final completion of project documentation (5%)

#### End Section

**4.2** Artist shall submit invoices with all backup documentation, including all documentation described in Section 4.3 below, and progress reports with photographs, to Accounts Payable, Port of Portland, P.O. Box 3529, Portland, Oregon 97208 or via email to [portinvoices@portofportland.com](mailto:portinvoices@portofportland.com).

#### **4.3 Invoice Content, Information of Artist's invoices shall include:**

- a) The Port-assigned Contract number and copies of accounting informational receipts as required by Section 3.2 Budget. Artist shall include content such as original budget amount, charges to date, current invoice amount and remaining budget information.
- b) 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.
- c) A statement confirming Artist's timely submission of subcontractor payment information and utilization data as required under Section 4.4.

#### **4.4 Subcontractor Payment and Utilization Reporting**

Artist shall report payment information and utilization data for Subcontractors that perform any Services, using a Port-designated online reporting system. Such system is accessible at: [www.portofportland.dbesystem.com](http://www.portofportland.dbesystem.com). Artist must log in to an account in the system to submit reporting information. Reporting information must be submitted at least once monthly, concurrent with Artist's invoice submission, or on such other frequency as the Port Project Manager (or their designee) may require. Artist must designate a representative to administer the reporting function.

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

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

##### **4.5.1 No Compensation for Preparation**

The Port shall not compensate Artist for time spent preparing or submitting invoices or

invoice supporting materials.

## **5 PAYMENT, NO WAIVER**

### **5.1 Payment**

The Port shall pay Artist all undisputed amounts within thirty (30) days after the Port's receipt of Artist'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 Artist 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 Artist within forty-five (45) days after the Port's receipt of Artist'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 Artist 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 Artist shall bear the risk of loss or damage to the Artwork until the Port's final acceptance. The Artist 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 for the purposes of maintaining the Artwork.

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

### **7.1 Warranties of Title**

The Artist 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 a duplicate has not been accepted for sale elsewhere,
- 7.1.4** the Artist has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Artwork or any element or any relevant copyright 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 Artist under this Contract whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and

shall not infringe upon or violate the rights of any third party,

- 7.1.7** the Artist 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, 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 Artist represents and warrants as follows:

- 7.2.1** That all Services shall be performed in accordance with the same professional skill, care, diligence, standards, and generally accepted professional practices as other professionals performing the same or similar services in the same or similar localities under similar conditions and free from defective or inferior materials and work (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 more than 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 equipment in accordance with the maintenance manual required by Section 2.1.10 will be able to maintain the Artwork to 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 in accordance with the maintenance manual required by Section 2.1.9, 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 in Section 7.2.4, are conditional and shall be voided by the failure of the Port to maintain the Artwork in accordance with the Artist's maintenance manual and any identified conservation standards. If the Port fails

to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and any reproductions until the Artwork's condition is satisfactorily repaired.

- 7.2.6** If during the warranty period in Section 7.2.1 the Port observes any breach of a warranty described in Section 7.2 that is curable by the Artist, at the request of the Port the Artist 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 Artist of such breach with reasonable promptness.
- 7.2.7** If after the warranty period in Section 7.2.1 the Port observes any breach of a warranty described in Section 7.2 that is curable by the Artist during the Artist's lifetime, the Port shall contact the Artist to make or supervise repairs or restorations at a reasonable fee. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist 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 in Section 7.2.1 the Port observes a breach of a warranty described in Section 7.2 that is not curable by the Artist, the Artist is responsible for reimbursing the Port for damages, expenses, and loss incurred by the Port as a result of the breach.
- 7.2.9** To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall assign and provide copies of such warranties to the Port.

## **8 INDEMNIFICATION, INSURANCE**

### **8.1 Indemnification**

- 8.1.1** The Artist 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 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, Subcontractors, and suppliers occurring prior to the Port's acceptance of the Artwork under Section 2.8.2;

- b) any use 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, Artist shall be deemed to include the Artist and the Artists' employees, agents, invitees, contractors, Subcontractors, and suppliers.

## **8.2 General Insurance Requirements**

**8.2.1** The insurance requirements in Section 8.2 do not limit the amount or scope of liability of the Artist 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 Artist under this Contract shall meet the following minimum requirements:

- a) On or before the Effective Date and 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 Artist'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 Artist's obligation to maintain the insurance required by this Contract.
- b) The Port and its General Contractor 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.
- c) 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.
- d) 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 Artist to change any carrier whose rating drops below an "A " rating.
- e) 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 Artist shall provide and maintain the following types of coverage or ensure that Artist's subcontractors have such coverage:

#### **8.3.1 General Liability Insurance**

The Artist 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 Artist.. 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**

If automobiles are used in connection with the Artist's business or operations. the Site, the Artist 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 Artist'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 Artist shall maintain workers' compensation and employers' liability coverage for all of the Artist's employees, if any, who are subject to Oregon's workers' compensation statute (and the Artist'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 Artist'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 Artist's Risks**

The Artist shall be responsible for obtaining any insurance (including having its subcontractors obtain appropriate insurance) the Artist deems necessary to cover the Artist's own risks, including:

- 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 automobile physical damage and 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 Artist'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 Artist and the Port waive any right of action that they and 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 Artist also waives any right of action it and 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 indemnities in Section 8.1 shall survive the expiration or earlier termination of this Agreement and be fully enforceable.

**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 Artist 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 Artist 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 Artist from creating future Artworks in the Artist's manner and style of artistic expression.

- 9.3.2** The Artist 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 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 Artist and a copyright notice in substantially the following form: Copyright © [ARTIST'S NAME, DATE OF PUBLICATION].
- 9.3.4** The Artist shall use the Artist'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 Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- 9.3.6** If the Port wishes to make reproductions of the Artwork for commercial purposes, including T shirts, post cards and posters, the parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- 9.3.7** The Port is not responsible for any third-party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

## **10 ARTIST'S RIGHTS**

- 10.1** The Artist 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 Artist. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist 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 Artist 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 Artist may take such other action as the Artist 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 Artist 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 Artist 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 Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the Port with written handling instructions. In the event the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist 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 Artist 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.

### **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 ARTIST AS AN INDEPENDENT CONTRACTOR**

Artist is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract. Neither Artist nor any partner, director, officer, manager, member, employee, Subcontractor, or agents of Artist shall be deemed to be an employee of the Port. The Port shall not withhold any taxes from any payments made to Artist, and Artist shall be solely responsible for paying all applicable taxes arising out of or resulting from the performance of the Services, including income, social security, worker's compensation, and employment insurance taxes. Artist represents, warrants, and covenants to the Port that, in the provision of the Services, Artist 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 Artist, whether before or during the term of this Contract, including all communications

between the Port and Artist relating to the Port, the Services, the RFP, or this Contract.

### **13.2 Use Restrictions**

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

### **13.3 Confidentiality**

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

**13.3.1** on a need-to-know basis, to Artist'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 Artist of the confidential nature of the Confidential Information and the obligations of Artist 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 Artist promptly notifies the Port of the order and complies with any applicable protective or similar order.

### **13.4 Sharing Information**

Artist shall not share any information relating to the Services with any third party (such as a corporation or other business entity, service Artist, governmental entity, or person) other than Artist's approved Subcontractors. If information relating to the Services needs to be shared with another party, Artist 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 Artist shall not deviate from those requirements without the Port's prior written authorization. Artist shall not communicate with representatives of any of the news media regarding Services; any such communications shall be exclusively by the Port. Artist shall refer any public records requests received by Artist or a subcontractor to the Port for response.

### **13.5 Subcontractors and Employees**

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

#### **13.5.1 Notification**

Artist 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 Artist or any of Artist'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**

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

## **14 SECURITY REQUIREMENTS**

### **14.1 Portland International Airport**

At all times during the performance of Services at the Portland International Airport ("PDX"), Artist shall comply with all applicable rules and regulations governing airport security (collectively, "Airport Security Rules and Regulations"), including 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 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.

### **14.3 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.

#### **14.4 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.

#### **14.5 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 Artist 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 Artist are personal and shall not be assigned, sublet, or transferred. Any attempt by the Artist 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 Artist's consent, if ownership of the Site is transferred; if the Artist 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 Artist. The Port shall pay the Artist for Services performed and commitments made prior to the date of termination, consistent with the Section 3 Compensation. The Artist shall have the right to an equitable adjustment in the fee for Services performed and expenses incurred beyond those for which the Artist 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 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 Artist defaults for cause other than death or incapacitation (as described in Section 17.2, the Artist shall return to the Port all funds provided by the Port in excess of expenses already incurred. The Artist 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 Artist under this Contract for delivery to the Port. The Port shall retain the right to have the Artwork completed, fabricated, 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 Artist for all Services performed by the Artist prior to termination. The Port shall pay the Artist for Services performed and commitments made prior to the date of termination, consistent with the Section 3 Compensation. The Artist shall have the right to an equitable adjustment in the fee for Services performed and expenses incurred beyond those for which the Artist has been compensated to date with reasonable allowance for lost opportunities. The Artist shall retain possession and title to the Design development documents and any studies, drawings, designs, maquettes, or models already prepared and submitted or prepared for submission to the Port by the Artist under this Contract prior to the date of termination.

### **17.2.3 Cessation of Services**

Upon notice of termination, the Artist and their Subcontractors shall cease all Services.

## **18 DEATH OR INCAPACITY**

If the Artist 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 Artist 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 Artist shall assign the Artist's obligations and Services under this Contract to another Artist, provided that the Port, in its sole discretion, approves of the new Artist. 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 Artist's heirs or legal successors shall retain all rights under Sections 9 and 10. The Artist'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 Artist unless the Port is otherwise directed by the Artist's

estate or successor.

## **19 CONTRACT ADMINISTRATORS AND NOTICES**

### **19.1 Contract Administrators**

The Port's Contract Administrator for this Contract is [Name], [Phone], [Email]. Artist's Contract Administrator is [Name], [Phone], [Email].

Each party shall notify the other of any change in the party's Contract Administrator.

### **19.2 Notices**

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 Artist'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.

### **19.3 Time of Essence**

Artist 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 PUBLIC CONTRACTING CODE**

To the extent applicable under this Contract, the following provisions required in public contracts under the Oregon Public Contracting Code are part of this Contract: ORS 279B.045 (compliance with tax laws); ORS 279B.220(1) (payment for labor or material); ORS 279B.220(2) (contributions to the industrial accident fund); ORS 279B.220(3) (liens and claims prohibited); ORS 279B.220(4) (income tax withholding); ORS 279B.230(1) (medical care for employees); ORS 279B.230(2) (worker's compensation); ORS 279B.235(1)(b) (pay equity); ORS 279B.235(1)(c) (employee discussions of rate of pay or benefits); ORS 279B.235(3) (hours of labor for personal services contracts); and ORS 279B.235(5)(a) (hours of labor for services contracts).

## **21 CIVIL RIGHTS**

### **21.1 General Civil Rights Provisions**

Provider will comply with pertinent statutes, Executive Orders, and such rules as identified in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (see FAA Order 1400.11A; the "Nondiscrimination Acts and Authorities"), to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds Provider and its subcontractors from the solicitation period through the completion of the Contract.

## **21.2 Compliance with Title VI Nondiscrimination Requirements**

During the performance of this Contract, Provider agrees as follows: (a) Provider will comply with the Nondiscrimination Acts and Authorities, which are incorporated into this Contract; (b) Provider, with regard to the work it performs during the Contract, will not discriminate on the grounds of race, color, national origin (including LEP), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment; (c) Provider will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21; (d) in all solicitations, either by competitive bidding or negotiation made by Provider for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Provider of Provider's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin; and (e) Provider will include the provisions of this subsection in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities or directives issued pursuant thereto.

## **22 EQUAL EMPLOYMENT OPPORTUNITY; AFFIRMATIVE ACTION**

When the Contract exceeds \$10,000, Provider and its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), including without limitation the obligation to comply with all provisions of Executive Order 11246. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on any characteristic protected by law, including without limitation their race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing, or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, veteran status, or any other characteristic protected by law. Provider will include the provisions of this Section in every subcontract.

## **23 GENERAL PROVISIONS**

### **23.1 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.



## **23.2 Counterparts, Signature, Electronic Signatures**

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

**23.2.1** original signatures, and

**23.2.2** DocuSign, or

**23.2.3** 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, Artist's consent is not required for this Contract to be signed using Electronic Signatures. Even if ORS 84.014 is determined to be inapplicable or invalid, Artist grants such consent.

## **23.3 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. Nothing in this subsection precludes the parties from agreeing to binding or nonbinding arbitration.

## **23.4 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.

## **23.5 Binding Effect**

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

## **23.6 Artist's Employer Identification Number**

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

## **23.7 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.

### **23.8 Modification**

This Contract may be modified only by a written amendment signed by both parties. No oral modification shall be effective.

### **23.9 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.

### **23.10 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.

### **23.11 Government Powers**

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

### **23.12 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.

### **23.13 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.

### **23.14 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.

### **23.15 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.

### **23.16 Acknowledgment**

By signing this Contract, Artist acknowledges that it has:

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

**23.16.2** reviewed or is otherwise familiar with all Applicable Laws that are relevant to the Services, and

**23.16.3** not relied upon any representation by the Port or its employees or representatives other than those expressed in this Contract.

### **23.17 Authority**

The individuals signing below warrant that they have full authority to sign and implement this Contract on behalf of the party for whom they sign.

**Provider:**

**Port:**

**[Autofill]**

**Port of Portland**

By:

\_\_\_\_\_

By:

\_\_\_\_\_

Print  
name:

\_\_\_\_\_

Print name:

\_\_\_\_\_

As its:

\_\_\_\_\_

As its:

\_\_\_\_\_

Date  
signed:

\_\_\_\_\_

Date signed:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Approved as to legal

Email:

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sufficiency for the Port of  
Portland

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Counsel for the Port of  
Portland

**SCHEDULE 2.1**  
**Statement of Services**

- 1 SITE DEFINITION**
- 2 SEQUENCE OF ACTIVITIES**

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

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

- Progress reports with photographs [Date]
- Artist design work [Date]
- Permitting documentation [Date]
- Art fabrication [Date]
- Art Installation [Date]
- Project Close out [Date]

**SCHEDULE 3.2**  
**Budget**