



OFFICE OF ARTS AND CULTURAL VITALITY
PUBLIC ART MANAGEMENT

City of Tacoma Office of Arts & Cultural Vitality provides professional public art management services to ensure that projects include artists of the highest caliber who meet the needs of the project. The goal is to commission artists to create artwork that reflects the demands of the project. Artists are engaged in a professional manner consistent with best practices to integrating and including artwork within the design and construction process.

Although flexible, depending on the nature of the project, the following represents the services provided.

Determining the Public Art Project Approach

Project Scope Definition: Meet with project stakeholders to determine the parameters of the project and to define the opportunities available and the best approach for commissioning public art.

RFQ* Development: Also known as the "Call to Artists" it describes the goals of the project, background, budgets, deadline, process for submissions, etc.

Advertisement: Dissemination of the Call to Artists to eligible markets and/or invitations to select artists

Artist Selection: Coordination of an artist selection panel that includes stakeholders, community members, and an arts commissioner.

Application Processing: Receive and organize all submission responses to the Call to Artists.

Artist Selection Process: Formal review of submissions to select finalists and finalist interviews.

- Identifying and scheduling review panel
- Providing space for review
- Coordinate all submitted materials for review
- Facilitate review and assist panel in identifying finalists
- Contact finalists and coordinate a project review and orientation

- Coordinate interview schedules with artists and committee
- Facilitation of interviews

The committee reviews submissions and selects finalists based on the criteria they established and the best matches based on work submitted.

[*NB: Artists are NOT asked to develop a specific proposal unless there is a stipend provided for a proposal stage. A proposal phase can be included if the project team wants to see specific models and approaches to the work. In this case, a proposal fee would be provided to the finalists.]

Public Art Project Management (Once the artist(s) is selected.

Contracting with Selected Artist(s) including negotiation, scope development, payment schedule, milestone development, etc.

Contract Management: Oversee the artists' work from design development through installation.

Coordinate artists' work with design team.

Coordinate opportunities for artist to connect with community.

Coordinate and facilitate design review stages including but not limited to:

- Conceptual Design
- Schematic Design
- Final Design

Art construction management

Assistance with permitting if required

Making presentations to committees, boards, staff, as needed to educate and inform.

Interpretive Materials and Dedication

Interpretive signage and artist recognition: writing content

Assist with a dedication event that acknowledges the artist(s) work on the project.

Administrative Fee: 10% base of public art budget

AGREEMENT BETWEEN CITY OF TACOMA
OFFICE OF ARTS AND CULTURAL VITALITY
AND THE PORT OF TACOMA
REGARDING CENTENNIAL ART PROJECT

This Agreement (AGREEMENT) is entered into this 31st day of December, 2018, by and between the City of Tacoma Office of Arts and Cultural Vitality, a department of a municipality of the State of Washington (hereinafter the "City"), and the **PORT OF TACOMA**, a Washington special purpose port district (the "Port"), (collectively "Parties") in consideration of the mutual covenants contained herein. The Parties hereby recite and agree as follows:

RECITALS

1. The Port was created in 1918 by Pierce County voters to create economic opportunities through trade. As the Port celebrates its centennial this year, it plans to solicit an industrial-themed art piece to be sited in a waterfront park or other publicly accessible area to celebrate and educate and engage citizens on the history and long-term benefits of port-related activity.
2. The City of Tacoma Office of Arts and Cultural Vitality has an established process to solicit, select, site and maintain public art in coordination with Metro Parks Tacoma, Sound Transit, Tacoma Housing Authority and other agencies. The City provides professional public art management services to ensure that projects include artists of the highest caliber who meet the needs of the Project. The goal is to commission artists to create artwork that reflects the demands of the Project. Artists are engaged in a professional manner consistent with best practices to integrate and include artwork within the design and construction process.
3. The Office of Arts & Cultural Vitality will develop and implement an artist selection process, contract with selected artist, manage the public art project development and implementation including: review, approvals and installation.
4. The Port agrees to fund the solicitation and selection process and actual artwork not to exceed \$100,000, expressly as specified herein.

NOW, THEREFORE, pursuant to Chapter 39.34 RCW, and in consideration of the mutual benefits and covenants described herein, the Parties agree as follows:

1. SCOPE OF WORK.

Project Description: The commissioning, installation and stewardship of the Centennial Legacy Art Project ("Project") consists of the following:

The Office of Arts & Cultural Vitality shall perform the following as per the Office of Arts and Cultural Vitality Public Art Management procedures which is attached as Exhibit A:

Site identification

- Work with the City of Tacoma, Metro Parks, and Foss Waterway Development Authority to identify a site to permanently site the artwork

Scope of Work

- Call to Artists
- Development & Dissemination
- Application Intake
- Selection Panel Coordination
- Contract Development
- Project Development Design Review
- Fabrication and Installation Management
- Communication, Outreach, Collection Prep

In addition, the City of Tacoma shall:

- Provide stewardship and maintenance for the artwork as part of the Municipal Art Collection.
- Provide space for artist selection and meetings related to the project.

The Port of Tacoma shall:

- Provide \$100,000 toward the commissioning of artwork and administration and management of the public art commissioning process.
\$90,000 shall be committed to the commissioning of artwork. \$10,000 shall be committed toward administration.
- Provide input regarding the scope of work and direction for the call to artists.
- Provide access to and use of industrial materials that may be utilized by the artist in the creation of the artwork.
- Participate on the selection and review panels with the understanding that the artist will include community stakeholders and a Tacoma Arts Commissioner.
- Provide access to information and content regarding the Port and the Working Waterfront that may inform the artwork.
- Assist in communications regarding the artwork and participate in coordinating a dedication.
- The Port also may provide raw materials for the artwork in the form of shipping containers or surplus crane components.

It is understood by the Port of Tacoma that the Artwork will be commissioned by the City of Tacoma and will be subject to all rules, regulations and procedures that are standard practice, policy and law for commissioning Artwork by the City of Tacoma. This

includes, but is not limited to: the artist selection process, contracting, copyright, and deaccessioning.

2. PORT'S CONDITIONAL AGREEMENT TO CONTRIBUTE FUNDS.

Subject to the terms herein, the Port agrees to pay the City one hundred thousand dollars (\$100,000) for the Project completion and services outlined in this AGREEMENT. Total Port contribution to all Project costs shall not to exceed one hundred thousand dollars (\$100,000).

The Port's Project contribution shall be allocated and specifically identified in the Port's 2018 Communications Department budget.

Port payments will be made within thirty (30) days of the City's submittal of written invoices upon the completion of the following phases.

	Description	Payment Schedule
Artist selection	Manage the selection of an artist to create a unique artwork honoring the Port's Centennial.	\$5,000 for administration upon completion of artist selection. \$90,000 for commissioning artwork.
Final Design Approval	Contract negotiation through final design.	\$2,500
Fabrication and Installation Communications, Outreach and Collection Prep	Completion of installation and certificate of substantial completion.	\$2,500

\$90,000 will be paid to the City of Tacoma for the commissioning of artwork and be reserved specifically for payment to the artist. Phases of payment for the artist will be defined in the artist contract. Payment of \$90,000 will be paid to the City of Tacoma upon completion of the Artist Selection Phase.

Invoices shall be sent to: cpinvoices@portoftacoma.com.

3. TIMEFRAME/PROJECT SCHEDULE.

- A. All work shall be satisfactorily completed on or before December 31, 2020, and this agreement shall expire on said date unless mutually extended in writing by the Parties.
- B. Neither party shall be considered to be in default in the performance of this agreement to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof.

4. CITY'S PROJECT FINANCIAL SUMMARY.

Total Project Cost borne by the Port: one hundred thousand dollars (\$100,000) (\$90,000 for the Project, \$10,000 for the City's administrative fee)

Source of Funds: Port's 2018 Communications Department budget

5. ABANDONMENT. If the Project is abandoned, then this AGREEMENT shall be of no further force or effect.

Upon termination of the AGREEMENT, the artist will be paid what is legally due per the Artist Contract and the Port will be paid any remaining funds that were not committed to the Artist.

6. ASSIGNMENT. Neither Party to this AGREEMENT shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions and interests under this AGREEMENT, without the prior written approval of the other.

7. THIRD PARTY BENEFICIARIES. This AGREEMENT is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right or cause of action based upon any provisions of this AGREEMENT.

8. EQUAL DRAFTING. This AGREEMENT has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this AGREEMENT.

9. SEVERABILITY. If any provisions of this ILA are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction, then the remainder of this AGREEMENT not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect to the extent that the primary purpose of this AGREEMENT can be preserved.

10. MODIFICATION. This AGREEMENT may not be modified except by mutual agreement reduced to writing in a formal amendment hereto and approved by each Party's governing body.

11. TERMINATION. This AGREEMENT shall terminate upon completion by both Parties of their respective obligations hereunder, or on November 5, 2019, unless terminated earlier.

12. GOVERNING LAW. This AGREEMENT shall be governed exclusively by the laws of the State of Washington both as to interpretation and performance without recourse to any principles of Conflicts of Laws. Any action at law, suit in equity or judicial proceeding for the endorsement of this AGREEMENT or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington

13. NOTICES. All notices given pursuant to this AGREEMENT shall be deemed delivered to the respective party on the date that it is personally delivered to the address(es) set forth below, or on the date that it is successfully sent by email transmission to the email addresses set forth below:

ENTITY: City of Tacoma
Attention: Amy McBride, Tacoma Arts Administrator
Office of Arts & Cultural Vitality
Tacoma Venues and Events
747 Market Street #900
Tacoma, WA 98402
253-591-5192
Email: amy.mcbride@cityoftacoma.org

Port: Port of Tacoma
Attention: Rod Koon
PO Box 1837
Tacoma, Washington 98401
Email: rkoon@portoftacoma.com
Phone: 253-383-9462

14. ENTIRE AGREEMENT. This AGREEMENT constitutes the entire agreement of the parties, supersedes all previous oral or written understandings, and incorporates all prior discussions and agreements pertaining to this subject matter. The Parties participated equally in any negotiations and the process leading to execution of this AGREEMENT. If a dispute should arise with regard to the meaning or interpretation of any provision hereof, there shall be no presumption of draftsmanship as to such provision.

15. DISPUTES. The designated representatives herein under Article 13, NOTIES, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the responsible Project directors for each Party shall review the matter and attempt to resolve it. If the Project directors are unable to resolve the dispute, the matter shall be reviewed by the department director or chief executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

16. LEGAL RELATIONS.

A. Independent Municipal Governments. The Parties hereto are independent governmental entities and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this AGREEMENT is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this AGREEMENT. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.

B. Legal obligations. This AGREEMENT does not relieve either Party of any obligation or responsibility imposed upon it by law.

C. Timely Performance. The requirements of this AGREEMENT shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the Parties and consistent with Article 3 herein above.

D. Recording. A copy of this AGREEMENT shall be recorded in the Office of the Pierce County Auditor as provided by law, or shall be posted to each Parties' web site.

17. RECORDS AND AUDIT. During the term of this AGREEMENT, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this AGREEMENT and accounting therefore shall be kept by each Party and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws.

18. LIMITS OF FINANCIAL OBLIGATIONS/PROPERTY OWNERSHIP. Except as provided above, each Party shall finance its own conduct of responsibilities under this AGREEMENT.

19. INDEMNIFICATION AND HOLD HARMLESS.

A. The City releases the Port from, and shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the City and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

B. The City shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

C. The Port releases the City from, and shall defend, indemnify, and hold the City and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the Port and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

D. The Port shall defend, indemnify, and hold the City and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

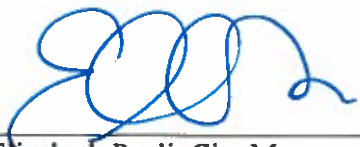
E. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

F. The Parties recognize that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this AGREEMENT against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.


G. No liability shall attach to any of the Parties by reason of entering into this AGREEMENT except as expressly provided herein.

H. The provisions of this Article shall survive any termination or expiration of this AGREEMENT.

CITY OF TACOMA:



Elizabeth Pauli, City Manager
Date: 3/11/19

PORT OF TACOMA:


John Wolfe, CEO
Date: 2-21-19


Kim Bedier, Director, Tacoma Venues & Events

Approved as to form:


Deputy City Attorney

Port Legal Counsel