

5. In the event that the Artist's design is not accepted, implemented, or incorporated in the Project, all rights in the design shall revert to the Artist.

S. RISK OF LOSS

The Artist shall bear the risk of loss and shall take such measures as are reasonably necessary to protect the artwork from loss or damage until final acceptance and shall insure for loss of materials paid for by Sound Transit while in the Artist's exclusive possession and control, except that the risk of loss or damage shall be borne by Sound Transit prior to final acceptance during such periods of time as the partially or wholly completed artwork is in the exclusive custody, control, or supervision of Sound Transit or its agents.

T. INSURANCE REQUIREMENTS

1. **Evidences and Cancellation of Insurance:** The Artist shall file with Sound Transit evidences of insurance from the insurer(s) certifying to the coverage of all insurance and endorsements required herein. All evidences of insurance must be certified by an authorized officer, agent, general agent, or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, and the expiration date. **The evidence of insurance shall reference the contract number and title of this Contract (NUMBER; NAME)** and contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Sound Transit in writing of any cancellation at least 30 days prior thereto. Any failure to mail such notice shall not relieve the insurance company, its agents, or representatives from obligations and/or liability hereunder. The Artist, the Artist's insurance broker/agent or insurance company shall notify Sound Transit in writing of any material alteration, including any change in the retroactive date of any "claims made" policies or substantial (>40%) reduction of aggregate limits, if such limits apply.

The Artist shall, upon demand of Sound Transit, deliver to Sound Transit a certified copy of any such policy or all such policies of insurance. Should the Artist neglect so to obtain and maintain in force any such insurance, Sound Transit may suspend or terminate the Artist's work. Suspension or termination of this Agreement shall not relieve the Artist from his/her insurance obligations hereunder.

Taking into account the scope of work and services to be performed by a subcontractor, the Artist shall prudently determine whether, and in what amounts, each subcontractor shall obtain and maintain public liability, professional liability, and any other insurance coverage. Any insurance required of subcontractors shall, where appropriate and/or applicable, name Sound Transit as an additional insured.

2. **Insurance Requirements:** Except as otherwise specified, the Artist shall at his/her sole cost and expense, obtain and maintain during the entire term of this Agreement the minimum insurance set forth below. **The workers' compensation insurance requirement shall not apply if the Artist has no full or part time employees.** In the event the Artist is a Joint Venture, these insurance requirements shall apply to each Joint Venture member separately. By requiring such minimum insurance, Sound Transit shall not be deemed or construed to have assessed the risks that may be applicable to the Artist under this Agreement. The Artist shall assess his/her own risks and, if he/she deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The fact that insurance is obtained by the Artist shall not be deemed to release or diminish the liability of the Artist, including without limitation, liability under the indemnity

provisions of this Agreement. Damages recoverable by Sound Transit shall not be limited to the amount of the required insurance coverage.

- a. **General Liability:** Commercial General Liability for bodily injury including death, personal injury, and property damage coverage, with a contractual liability endorsement, and Employer's Liability coverage, utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least \$1,000,000 per occurrence.
- b. **Automobile Liability:** Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least \$1,000,000 combined single limit per accident.

Such liability insurance, identified in a and b above, shall name Sound Transit, its officers, directors, agents, and employees as additional insureds with respect to the work under this Agreement.

- c. **Property Insurance:** Upon commencement of the fabrication phase, which includes purchasing or acquiring material to be used in the artwork, the Artist shall obtain and maintain throughout the fabrication phase, in transit and delivery, the installation phase, and until final acceptance by Sound Transit, property insurance on the full value of the materials and finished artwork to be furnished under this Agreement, which shall also include in transit coverage and an installation floater.
- d. **Workers' Compensation:** If the Artist employs part or full time employees, the Artist shall certify that his/her operations are covered by the Washington State Worker's Compensation Fund. The Artist shall provide his/her account number or, if self-insured, his/her Certificate of Qualification number. The Artist shall also provide evidence of Stop-Gap Employer's Liability Insurance.
- e. Except as otherwise specified, such insurance shall be maintained throughout the entire term of this Agreement and, except for automobile liability, for a period of three years after termination or three years after acceptance of work, whichever occurs later. If coverage is on a "claims made" basis, coverage shall be further extended to cover claims made during three additional years beyond said initial three-year period for a total of six years.
- f. The Artist's insurance shall be primary to and not contributing with any insurance or self-insurance that may be carried by Sound Transit. The insurance policy(ies) shall be written by a reputable insurance company(ies) acceptable to Sound Transit or with a current Best's Insurance Guide rating of B and class VII or better, and authorized to do business in the state(s) in which the job site is located.
- g. The Artist and his/her insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against Sound Transit. The Artist and his/her insurers also waive their right of subrogation against Sound Transit for loss of his/her owned or leased property or property under his/her care, custody and control.
- h. Complete copies of the Additional Insured Endorsement(s) required in 1 and 2 above, the Waiver of Subrogation Endorsements, and the Primary and Non-Contributory Endorsements, or policy provisions, from the General Liability and Automobile Liability policies shall be attached to the Certificates of Insurance required in this section.

- i. No provision in this Section shall be construed to limit the liability of the Artist for work not done in accordance with the Agreement, or express or implied warranties. The Artist's liability for the work shall extend as far as the appropriate periods of limitation provided by law and up to any legal limits.
- j. The Artist may obtain any combination of coverage or limits that effectively provides the same or better amounts and types of coverage as stipulated above, subject to review and approval by Sound Transit.
- k. The Artist warrants that this Agreement has been thoroughly reviewed by the Artist's insurance agent(s)/broker(s), who have been instructed by Artist to procure the insurance coverage required by this Agreement.
- l. **Railroad Protective Liability:** If the artwork site is within 50 feet of a railway, upon commencement of installation, Artist shall provide Railroad Protective Liability coverage either by (1) endorsing the General Liability policy with an ISO form CG 24 27 10 01 – Contractual Liability – Railroads endorsement, or equivalent, or (2) obtaining a separate Railroad Protective Liability policy. This insurance shall name Central Puget Sound Regional Transit Authority, dba Sound Transit, its officers, directors, agents, and employees as additional insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage shall be effective for the entire duration of the work to be performed on site. The policy shall be issued on a standard ISO form CG 00 35 10 93, or equivalent. (If necessary)

#### U. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of the nondefaulting party.

#### V. TIME OF PERFORMANCE

Performance of work under this Agreement shall be in accordance with the Scope of Work and any amendments thereto. The parties agree that time is of the essence of this Agreement and is one of the considerations for the compensation specified herein. Failure to complete the work according to the established schedule and failure to make sufficient progress during the course of performance, through no fault of Sound Transit, its agents, contractors, or assignees, shall constitute default under this Agreement. Sound Transit agrees to perform in a timely manner its reviews, approvals, and other duties.

#### W. COORDINATION AND INTEGRATION

1. **COORDINATION:** The Artist understands and agrees that he/she will not have exclusive or unrestricted access to the site where the artwork is to be installed. The Artist shall be responsible for coordinating his/her schedule and activities with the other contractors working on the site. Sound Transit shall incorporate the Artist's schedule and activities in the construction documents to the extent that they have been made known in writing to Sound Transit by the Artist.
2. **INTEGRATION:** In the event the artwork is integrated into, combined, or otherwise coordinated with services by third parties not within the control of the Artist, the Artist shall not be responsible for such third party services. If any part of the Artist's work depends for proper execution or results upon the work of Sound Transit or a third party,