

AGREEMENT NO.
BETWEEN THE CITY OF LOS ANGELES
AND
MARK DION

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its acting by and through its Board of Harbor Commissioners ("Board") and MARK DION STUDIO INC. ("Artist") whose address is 601 West 17th Street #67, New York, NY 10033.

WHEREAS, City under the Percent-for-Art policy desires to commission a work of art for display at the Port of Los Angeles ("Port") and therefore wishes to contract with an artist for the execution, fabrication, transportation and installation of a work of art that Artist has designed ("Artwork") in a public space at the Port located in the Town Square at the Downtown Harbor ("Project Site"). (Unless otherwise stated, references to City shall include the Port);

WHEREAS, Artist has been competitively selected by City and an Art Selection Panel comprised of community arts professionals through a solicitation of proposal process; Artist's proposal was selected competitively with respect to the design, fabrication and installation of a proposed work of art for the Port. The professional, expert and special artistic services required to produce a work of public art for City does not require competitive bidding and it is not practicable or advantageous to City in the selection.

WHEREAS, it is believed that Artist has the necessary knowledge, experience, requisite skill, creativity and professional expertise, to design, fabricate and install the Artwork and to perform the services described in this Agreement;

WHEREAS, Artist has created a design ("Design") of the Artwork which was approved by the City on April 21, 2011; (A copy of the Design is attached hereto as Exhibit "A");

WHEREAS, City and Artist desire to enter into this Agreement whereby Artist shall undertake and complete the fabrication and installation of the Artwork, as more particularly provided herein;

WHEREAS, by reason of the nature and length of the services required by City, it is not economical or feasible for City to have such services performed by its own employees;

NOW, THEREFORE, in consideration of the covenants, terms and conditions hereinafter contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

1. Incorporation of Recitals.

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Description and Scope of Services To Be Performed By Artist.

2.1 Artist shall fabricate and install the Artwork in accordance with this Agreement. The services Artist shall perform for City are set forth in Exhibit "B" hereto and hereinafter shall be referred to as "Scope of Work." The Scope of Work for the Artwork shall be as follows: The Artwork will be created in accordance with an established schedule ("Work Plan") with specific dates and milestones, including fabrication and installation of the Artwork by the Artist (as further described below). The Work Plan will be prepared by the Artist in consultation with the City and project engineer at the Port.

2.2 Artist acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Artist further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

2.3 Additional or changed services to be provided by Artist shall be subject to approval by City and may be subject to the approval of the Board and the Cultural Affairs Commission; any such services shall be described in a written amendment to this Agreement.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of City, whether performance is undertaken by Artist or third-parties with whom Artist has contracted as of the Effective Date (defined below) of this Agreement and whom are listed on Exhibit "C", or whom Engineer may subsequently approve in writing ("Subconsultants"). Obligations of this Agreement, whether undertaken by Artist or Subconsultants are and shall be the responsibility of Artist. Artist acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Artist alone. Upon City's written request, Artist shall supply City's Harbor Department with all agreements between it and its Subconsultants. All Subconsultants whom Artist utilizes shall be deemed to be his or her agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Artist from his or her obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

2.5 Artist, at his, her or its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Artist, Artist is solely responsible for any taxes or fees which may be assessed against Artist or Artist's employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity. City shall pay applicable state or local fees necessary to

obtain approval, plan checks, permits and variances for the Project.

2.6 Artist shall adhere to the total budget for, fabrication, transportation to the Project Site and installation of Artwork, as well as Artist's (and any assistant(s) of Artist's) travel and all other expenses relating to Artwork unless otherwise agreed to in this Agreement.

2.7 Artist is responsible for submitting material specifications and a cost estimate for annual maintenance devised for purposes of minimizing the effects of vandalism, weathering, or other hazards, as applicable. A comprehensive manual for maintenance and preservation of the Artwork ("Maintenance Manual") shall be prepared by Artist and submitted to City.

2.8 Artist shall make periodic written or verbal progress reports to City during the term of this Agreement at City's request. Such reports may include information on any meetings, conflicts, or resolutions, design fabrication and/or progress.

2.9 Upon reasonable prior notice, Artist shall provide City with access to Artwork during normal business hours to make reasonable inspections and reviews of Artist's progress with respect to Artwork. City shall have the right to review the Artwork at reasonable times during the fabrication. If the City, upon review of the Artwork, determines that the Artwork does not conform to the Design, city reserves the right to notify the Artist in writing of the deficiencies. Artist shall promptly make changes to the Artwork based on the City's objections, to the project engineer's reasonable satisfaction, at Artists' sole cost and expense and shall notify the City in writing of the completion of changes to the Artwork. City's project engineer shall resolve in his or her sole reasonable discretion any issues or questions as to the quality or acceptability of Artist's performance of the Scope of Work, the manner of performance, and the amount of compensation due (as provided in Section 5.1 below). Compliance with this section is a condition to payment by City of compensation to Artist under this Agreement.

2.10 Artist shall be responsible for providing services described herein including, but not limited to the quality and timely completion of the services. Artist shall promptly notify City of any problems encountered which may impede the satisfactory and timely performance of the work, or the satisfactory completion of any other activities required to be undertaken by Artist hereunder. Time is of the essence in the performance of the Scope of Work.

2.11 Artist agrees that an essential element of this Agreement is the skill and creativity of Artist. Artist shall therefore not assign this Agreement and/or any portion thereof. Failure to conform to this provision shall constitute grounds for termination of the Agreement pursuant to Section 4.2.2 below.

2.12 Fabrication

a. The Artist shall fabricate and install the Artwork in substantial conformity with the Design. Artist may not deviate from the approved Design without written approval of City.

b. Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as, the application of protective or anti-graffiti coatings, if applicable. The

Artwork must be durable, taking into consideration that the Project Site is in an outdoor public place exposed to elements including but not limited to weather, temperature variation, and people. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of Artist's operations.

c. Prior to requesting authorization to transport and install the Artwork, Artist shall be required to provide City with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All additional workers or subcontractors must provide proof of insurance prior to entering the site.

d. The Artist shall notify the City when fabrication of the Artwork has been completed and that the Artwork is ready for delivery and installation at the Project Site if the Artwork has been fabricated off-site.

e. Artist acknowledges that some preparation of the Project Site has been executed by the Port in coordination with the Artist. All further expenses for additional Project Site preparation shall be paid by Artist unless otherwise provided in this Agreement.

2.13 Installation

a. Upon the City's final approval of the fabricated Artwork, as being in conformity with the Design, the Artist shall deliver and install the completed Artwork to the Project Site in accordance with the direction of the project engineer.

b. The Artist or Artist's designee shall be present to supervise the installation of the Artwork. The Artist shall be present at the final completion of the Project to sign off on the work performed and completion of the Project.

c. Upon installation of the Artwork, the Artist shall provide the City with the Maintenance Manual along with product data sheets for any material or finish used. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

2.14 When City agrees that the Artwork has been completed and installed satisfactorily, Artist may submit an invoice for payment of any unpaid money due under this Agreement provided that Artist has supplied City with the Maintenance Manual.

3. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Artist, upon request, information which may be lawfully supplied to Artist and which is necessary to perform Artist's obligations as determined by City.

B. City's project engineer or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance.

4. EFFECTIVE DATE; TERM OF AGREEMENT; TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

4.1 The effective date ("Effective Date") of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement. . The term shall be a period of one year from the Effective Date.

4.2. The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Artist ten (10) days' written notice of the City's election to cancel and terminate this Agreement.

4.3 Notwithstanding the foregoing, this Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The City, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the City is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the City does not appropriate funds therefore. Artist is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the City.

Although the Artist is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Artist agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the City within that 60-day period. Artist is responsible for maintaining all insurance during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the City for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, City shall pay Artist and Artist shall accept a sum not to exceed Two Hundred Twenty-five Thousand Dollars (\$225,000.00) payable as follows:
 45% (\$101,250) after the execution by all parties of this Agreement;
 30% (\$67,500) after City's first inspection and approval of the original pre-

fabricated Artwork;
20% (\$45,000) after City's second inspection and final approval of the original pre-fabricated Artwork prior to transport, delivery and installation;
5% (\$11,250) after completion of exterior and interior installation and lighting and upon acceptance by City of Maintenance Manual required under this Agreement.

5.2. Artist shall submit an invoice in quadruplicate to City for payment. Each such invoice shall be signed by Artist and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. ___ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance."



Artist's Signature

5.3 All sums due and payable to Artist shall be paid as soon as, in the ordinary course of City business, the same may be reviewed and approved. City shall use all reasonable effort to pay said sums within sixty (60) days of receipt of each statement.

For payment and processing, all invoices shall be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
P.O. Box 191
San Pedro, CA 90733-0191

5.4 City may require and Artist shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

6. Recordkeeping and Audit Rights.

Artist shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Artist for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

7. Artist Is An Independent Contractor.

Artist, in the performance of the Scope of Work, is an independent contractor and not an agent or employee of City. Artist shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

8. Business Tax Registration Certificate.

City's Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides that every person, other than a municipal employee, who engages in any business within City, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for City's Harbor Department. See Exhibit "D."

9. Indemnification and Insurance.

9.1 Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Artist undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Artist's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Artist or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. This indemnity shall survive the termination or expiration of this Agreement.

9.2 General Liability Insurance

Artist shall procure and maintain in effect for all periods when Artist is working on City's property throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Artist's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit

a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Artist. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Artist's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons. Artist's insurance broker or agent shall submit for approval on Artist's behalf said insurance to the City's online insurance compliance system Track4LA[®] at <http://track4la.lacity.org/>.

9.3 Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Artist's insurance documents. Artist's insurance broker or agent shall register with the City's online insurance compliance system Track4LA[™] at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Artist's behalf.

9.4 Carrier Requirements

All insurance which Artist is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

9.5 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

9.6 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of City's insurance consultants, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Artist.

9.7 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Artist shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Artist neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such

insurance will be deducted from the next payment due Artist.

10. Warranties

A. Artist shall guarantee all work to be free from faults of material and workmanship for a period of one (1) year after installation, free and clear of any liens from any source whatsoever, and will not require maintenance substantially in excess of that described in the recommendation provided by Artist to City in the Maintenance Manual. This guarantee shall apply only to work which is entirely that of Artist, as installed, and shall not apply to materials or workmanship of projects in which Artwork of Artist is integrated or combined with materials acquired from, or installed by, any person or entity other than Artist.

B. Artist shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in performance of the work within sixty (60) days after discovery by City or by mutual agreement between Artist and City after final acceptance. Corrections will be made in a timely fashion.

C. Artist also warrants that, unless otherwise stipulated, Artwork is original, that it is an edition of one (1), and that Artist shall not sell or reproduce Artwork or allow others to do so without the prior written consent of City, which may be withheld in City's sole discretion.

11. Personal Services Agreement.

11.1 During the term of this Agreement, Artist agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of City's Harbor Department.

11.2 Artist acknowledges that it has been selected to perform the Scope of Work because of his or her experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Artist may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Section 2.4.

12. Confidentiality.

Artist shall not disclose any proprietary or confidential information of City to any third party or parties during or after the term of this Agreement without the prior written consent of City. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work and any recommendations made by Artist relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Artist or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Artist is required to safeguard such information from access by unauthorized personnel.

13. Affirmative Action.

Artist shall not discriminate in its employment practices against any employee or

applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code are incorporated herein by this reference and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit "E."

14. Small/Very Small Business Development Program.

It is the policy of City's Harbor Department to provide Small Business Enterprises ("SBE") and Minority-Owned, Women-Owned and all Other Business Enterprises ("MBE"/"WBE"/"OBE") an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Artist shall assist City's Harbor Department in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, and OBEs, have equal participation opportunities which might be presented under this Agreement. See Exhibit "F."

NOTE: Prior to being awarded a contract with the City, Artist and all Subconsultants, if any, must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

15. Conflict of Interest.

Artist has reviewed and understands the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code ("LAMC") Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and City's Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof. Artist's signature of this Agreement constitutes its affirmation that any former employees of City or City's Harbor Department that are employed by Artist and that assist in performing the Scope of Work shall be free of any conflicts of interest with respect to City and City's Harbor Department.

16. Compliance with Applicable Laws.

Artist's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders. If in any instance a City standard is more stringent than a state, federal or other requirement, the City standard shall be followed unless City notifies Artist otherwise in writing, in which case the requirements of said notification shall apply.

17. Title, Ownership and Copyright

17.1 Artist shall retain the copyright in and to the Artwork, as provided by state and federal laws. City shall have all rights of ownership and possession of the Artwork upon payment in full, and Artist shall execute any documents City may require to evidence transfer.

17.2 Artist grants to City, including its authorized agents and consultants, an irrevocable, perpetual license to use two-dimensional images of the Artwork, including any reproductions in any form (e.g., photographs), for purposes of publicity, marketing and/or promotion of the City, and for non-profit use including, but not limited to, use in the form of brochures, posters, or calendars about or featuring the Port (and/or the City), as well as internet, and all other forms of electronic and/or all other forms of media (existing now and in the future). City's rights under the license include the right to allow productions at the Port by movie, television or any other media, in which the image of the Artwork might appear, irrespective of the nature of the production (e.g, educational, profit or non-profit) without further compensation by City to Artist. City will retain one hundred percent (100%) of all license or permit fees (including all filming permit fees) levied by City in connection with the use of City premises by any third party.

17.3 All reproductions by the City shall contain a credit to the Artist and a copyright notice to the extent and in form reasonably possible and appropriate, as determined by City.

17.4 Reproductions of images of the Artwork for commercial purposes (i.e., including the sale of t-shirts, post cards, and posters), shall be subject to a separate written agreement to address the terms of the license to be granted by Artist to City.

17.5 City's right of ownership includes the right to remove permanently and/or relocate the Artwork if City so desires. In the event that City desires to remove the Artwork, City shall give Artist notice as provided in paragraph 20, below to give Artist the opportunity for a first right to reintegrate the Artwork, regain ownership of the Artwork, or disclaim authorship, of the Artwork. Artist shall be given sixty (60) days to respond to City's notice.

17.6 Artist warrants that the Artwork is the result of the artistic efforts of Artist and that it will be installed and become the property of City free and clear of any liens, claims or other encumbrances of any type.

17.7 In view of the intention that the Artwork in its final dimension shall be unique, Artist will not execute or authorize another to execute a duplicate (including a work substantially similar in materials, scale, shape, color and composition) of the Artwork.

17.8 City shall, at its expense, prepare and install at the Project Site in consultation with the Artist, a plaque identifying the Artist, the title of the Artwork, and the year of completion, and shall reasonably maintain such plaque in good repair.

17.9 Except as otherwise provided in this Agreement, City will be responsible for handling all maintenance, repair and restoration of the Artwork, including ongoing

day-to-day maintenance and all repairs of the Artwork necessitated by ordinary wear and tear. All other maintenance, repair, or restoration of the Artwork will be done at City's discretion.

17.10 City is not responsible for any infringement of Artist's copyright by third parties (e.g., photos taken by third parties at site to be used for commercial purposes by third party.)

17.11 Artist shall promptly and fully inform City in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent, trademark or copyright disputes, existing or potential, of which Artist has knowledge, relating in any way to the Artwork. Artist agrees to save, keep, hold harmless, protect and indemnify City and any of its officers or agents from any and all damages, cost or expenses in law or equity from any claim of infringement of any patent, trademark, services mark or copyright of any person or persons, or corporations in connection with the Artwork.

18. Excusable Delays

In the event that performance of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy, insurrection acts of the federal government or any unit of state or local government in either sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargos, or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent they are beyond the party's reasonable control.

19. City's Disclosure Obligations.

Artist acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

20. Notices.

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. **It shall be the duty of each party to give notice of any change of address in writing. If not advised of a change of address in writing, notice given to the address below shall be deemed sufficient even if the address is no longer applicable. There shall be no duty, express or implied of City to undertake any research of a current address or the whereabouts of Artist or his, her or its successors and/or heirs.**

Notice to the City shall be addressed to:

The Port of Los Angeles
Engineering Department
425 S. Palos Verdes Street
San Pedro, California 90731
Attn: Jonathan Cuevas

Notice to the Artist shall be addressed to:

Mark Dion Studio Inc.
601 West 17th Street #67
New York, NY 90026

21. Taxpayer Identification Number ("TIN").

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Artist declares that its authorized TIN is 26-082-9516. No payments will be made under this Agreement without a valid TIN.

22. Service Contractor Worker Retention Policy and Living Wage Requirements.

Board adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention ("SCWR"), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Artist shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle City to terminate this Agreement and otherwise pursue legal remedies that may be available.

23. Wage and Earnings Assignment Orders/Notices of Assignments.

Artist and Subconsultants, if any, shall comply with all applicable state and federal employment reporting requirements for employees.

Artist and Subconsultants, if any, shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Artist and Subconsultants shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Section 5230 et seq. of the California Family Code.

24. Equal Benefits Policy.

Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of City's Harbor Department. Artist shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any agreement with Artist and pursue any and all other legal remedies that may be available. See Exhibit "G"

25. State Tidelands Grants.

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Artist agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

26. Construction of Agreement.

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

27. Titles and Captions.

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

28. Modification in Writing.

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

29. Waiver.

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

30. Governing Law.

This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules.

31. Severability.

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

32. Jurisdiction.

The parties hereto consent to the jurisdiction of the State of California for the enforcement of this Agreement.

33. Integrated Agreement.

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

34. Exhibits; Sections.

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to sections are to sections of this Agreement unless stated otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date next to their signatures.

THE CITY OF LOS ANGELES by its Board of Harbor Commissioners

Date: _____

By: _____
Executive Director

Attest _____
Korla G. Tondreault, Board Secretary

**ARTIST
MARK DION STUDIO INC.**

Date: 1/27/13

By: [Signature]
Mark Dion
Director

Print Title of Officer

Attest: [Signature]

Nicole Soukup, MIA Agent
Print Name and Title of Officer

APPROVED AS TO FORM AND LEGALITY

_____, 2012
CARMEN A. TRUTANICH, City Attorney

By _____
Estelle M. Braaf, Deputy

Account #	54220	W.O. #	24977
Ctr/Div #	1183	Job Fac. #	228-62
Proj/Prog #	624		
Budget FY: Amount:			
	12/13	\$101,250	
	13/14	\$123,750	
	TOTAL	\$225,000	
For Acct/Budget Div. Use Only:			
Verified by:	_____		
Verified Funds Available:	_____		
Date Approved:	_____		

**THE CITY OF LOS ANGELES by its
Board of Harbor Commissioners**


Date: _____

By: _____
Executive Director

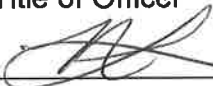
Attest _____
Korla G. Tondreault, Board Secretary

**ARTIST
MARK DION STUDIO INC.**

Date: 1/27/13

By: 
Mark Dion
Director

Print Title of Officer

Attest: 

Nicole Soukup, MIA Agent
Print Name and Title of Officer

APPROVED AS TO FORM AND LEGALITY
_____, 2012
CARMEN A. TRUTANICH, City Attorney

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Account #	<u>54220</u>	W.O. #	<u>24977</u>
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