

San Francisco Port Commission
Gift of Art
Terms and Conditions; Release and Waiver

This Agreement, dated _____ for reference purposes only, is made by and among the James R. Herman Memorial Committee, a California 501(c)(3) corporation (“Donor”), Floating Point, LLC, a Delaware limited liability company (“Artist”) and the City and County of San Francisco, acting by and through the San Francisco Port Commission (“City” or “Port”), for a gift of public art for the James R. Herman Cruise Terminal at Pier 27, San Francisco, California 94105 (“Pier 27”).

RECITALS

A. The James R. Herman Memorial Committee has commissioned a James R. Herman tribute with the intention of donating this tribute to the Port for public display, in a location to be determined and approved by the Port at the new James R. Herman Cruise Terminal at Pier 27. The Floating Point Collective, a design collective based in Brooklyn New York, was selected to design this tribute as an interactive art installation, which will be known as the “JRH Tribute.”

B. Donor and Artist have informed the Port that the value of the JRH Tribute is over \$250,000. Accordingly, acceptance of this gift is subject to approval by the Board of Supervisors.

C. The Burton Act and Charter Section B3.581 empower the Port Commission with the authority to place, accept, and install the Artwork in Pier 27.

TERMS AND CONDITIONS

In consideration of the foregoing recitals and the promises and conditions herein contained, the parties agree as follows:

1. DESCRIPTION OF ARTWORK.

The “JRH Tribute” shall consist of: a metallic wave sculpture that replicates the water on the San Francisco Bay through its finish and shape with interactive audio and visual components. These components include: (1) Embedded LED lights that will display wave patterns and text onto the sculpture, (2) an interactive touch screen with buttons to enable visitors to scroll through images of James R. Herman’s life, (3) directional sound speakers that will feature highlights from James R. Herman’s speeches, and (4) a sensory camera that will detect when visitors are within thirteen (13) feet of the sculpture (the “Artwork”). A detailed description and/or illustration or design of the JRH Tribute is attached to this Agreement as Exhibit A. The anticipated lifespan of the Artwork is twenty (20) years from the date of delivery.

Text and other content used in the Artwork, is subject to prior Port approval and must be appropriate for a public facility (e.g., not concern a political campaign; not contain false, misleading, or deceptive speech; not contain obscene elements or materials; not be libelous, slanderous, or defamatory; not advocate or promote the use of illegal goods or services, or unlawful conduct; not infringe on any copyright, trademark, or other protected intellectual property; not discriminate against any individual or group; and not contain, imply, or declare an endorsement by the Port). Artist or Donor, at Donor’s cost, shall be responsible for obtaining all necessary permissions for use of third party copyrighted materials in the Artwork. Any audiovisual or electronic elements, including images or text on any screen must be clear,

readable, uninterrupted, and visible from a distance of 10 feet or less from the center of the screen.

2. UNRESTRICTED GIFT OF ARTWORK.

At its sole cost, Donor agrees to irrevocably and unconditionally give, transfer and assign to the Port by way of this unrestricted gift, all right, title, and interest, which it has in the Artwork, including all intellectual property interests it may have as well as all equipment, mechanisms, devices, plans, software, instructions, controls, or other systems required to operate the Artwork and any of its components. The Port shall have full and absolute discretion over the Artwork and administration of the gift, and full and absolute power of ownership, including, without limitation, management, display, activation, maintenance, conservation, placement, removal, and disposition (including dismantling or destruction). For the avoidance of doubt and notwithstanding any other provision of this Agreement, Port, rather than the Donor or Artist, shall have exclusive control of the Artwork.

Donor represents and warrants, and Artist agrees, that Donor has good and complete right, title, and interest to and in the subject of the Artwork; free and clear of all encumbrances and restrictions; and that it has the full power and authority to sell, assign and transfer all right, title and interest in and to the subject of the Artwork, including the corresponding intellectual property rights ("**Warranty of Title and Intellectual Property Rights**"). Donor agrees to indemnify and hold Port harmless from all claims, losses, and liabilities (including attorneys' fees, court costs and all other litigation expenses) arising out of a breach of this Warranty of Title and Intellectual Property Rights.

Donor and/or Artist, at their expense, shall be solely responsible for packing, shipping transferring and installing the Artwork in its Fully-Operational and Durable Condition (as defined below) in the location designated by Port in Pier 27 and subject to Port permitting and any other Port requirements and agreements no later than Two Hundred Fifty (250) days from the date of Board of Supervisors' approval, unless otherwise agreed upon in writing by the parties. Failure to timely deliver the Artwork in its Fully-Operational and Durable Condition shall be a material breach of this Agreement. All of the rights, title and interests in and to the Artwork will pass to Port upon Port's acceptance in writing of proper installation in Pier 27. For purposes of this Agreement, "Fully-Operational and Durable Condition" means that the Artwork and all components thereof, including but not limited to any audiovisual, web-based program or website, computer generated or other electronic or mechanical components, shall, as determined by Port in its sole discretion, function as intended by the parties and in accordance with the Artist's design and specifications and the terms and conditions of this Agreement, without interruption in service or need for non-routine maintenance, repair, redesign or additional parts and be comprised of long-lasting materials and components that are designed to operate in, and withstand damage or deterioration in a non-secure, publicly-accessible space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment with only routine or minimal maintenance and repair. In order for the Artwork to be "Fully-Operational and Durable," the audiovisual, computer generated or other electronic or mechanical components or elements must function both alone and as integrated into the Artwork and must be remotely operable through a web portal to enable remote web-based control of the audiovisual functions of the Artwork with specific control functions such as allowing activation of the visual components without activating the audio components.

Upon execution of this Agreement and updated at Port's request from time to time, Artist shall also deliver an operation and maintenance plan which consists of detailed instructions for at least the following: routine daily cleaning; enabling/disabling each component of the Artwork (including remote web-based control); maintenance, including a maintenance schedule; care and/or replacement of parts of the Artwork and associated equipment; manufacturer's specifications for reasonably foreseeable maintenance; preservation activities; and updating

content of the Artwork. Artist shall update the operations and maintenance plan at Port's request from time to time.

The Artist shall not be responsible for maintenance of the Artwork, but shall remain available either in person or by phone, as well as by electronic mail, for consultation on an as needed basis, at no expense to the Port. Notwithstanding any other provision of this Agreement, Port has no obligation to maintain the Artwork on display, to display the Artwork in any particular location for any particular duration, or to restore or allow maintenance or restoration of the Artwork to its original condition, to compensate any entity for any maintenance, replacement or restoration work, or to maintain the Artwork on display. Port may, in its sole and absolute discretion, remove or deaccession the Artwork or otherwise store, transfer or dispose of the Artwork at any time without notice to Donor or Artist.

3. COPYRIGHT LICENSE AND WAIVER OF RIGHTS

Unique. Artist hereby represents and warrants that all of the work and materials used to create, and operate and maintain the Artwork do not infringe upon or violate any personal or property rights of others, including but not limited to copyright, trademark, trade secrets, patents, rights of privacy and publicity, and that the Artwork and its materials are not libelous or obscene. Except as expressly set forth in this Agreement, Artist makes no warranties, express or implied, including but not limited to any implied warranties of merchantability, fitness for a particular purpose or any warranties arising as a result of Donor or Port usage in the trade or by course of dealing.

Copyright. The Artist warrants that Artist is the sole copyright owner and, subject to the perpetual and irrevocable license granted to the Port under this Agreement, shall retain the copyright to the Artwork and in all work produced by Artist, its employees, or its subcontractors in connection with this Agreement, including without limitation, all drawings, specifications, and models of the Artwork or related to the Artwork, including but not limited to the right to control the making and dissemination of copies or reproduction of the Artwork; provided however, that Artist warrants that the Artwork is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the Artwork. This warranty shall continue in effect for a period consisting of the life of Artist plus 70 years or for the duration of the Artwork's copyright protected status, whichever is longer, and shall be binding on Artist and Artist's heirs and assigns. In the case where Artist is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising Artist. Recognizing that City has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, City shall be entitled to enjoin Artist's breach, and Artist shall be responsible for reimbursing all of City's costs, including reasonable attorney's fees, incurred in enforcing this warranty.

Copyright License. Artist hereby grants the San Francisco Port Commission, the City and County of San Francisco and City's employees, officials, agents, contractors and assigns (collectively, "Port"), a perpetual, unlimited, non-exclusive and irrevocable license to use, display and reproduce the Artwork and any corresponding identifying information or written material created, installed or produced in connection with this Agreement for any purpose, in all forms and media and in all manners, in whole or in part, and to authorize the making, display and distribution of, derivative works and reproductions of the Artwork, in its sole discretion. Artist agrees that it will not be entitled to any compensation or royalty payment from the Port for such uses, derivative works or reproductions.

Artists Rights Waiver. Artist further agrees to waive and does hereby waive voluntarily all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d), the California Art Preservation Act (Cal. Civil Code §§987 and 989) or any other local, state foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or

similar rights ("Moral Rights Laws"), with respect to the Artwork, its display, removal from display, exhibition, installation, conservation, storage, study, alteration (including display without sound or and/or visual components) and any other activities conducted by Port. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without physical defacement, mutilation, alteration, distortion, destruction, or other modification (collectively, "Modification") of the Artwork, Artist waives any and all such claims under any Moral Rights Laws arising out of or against any current or future owners of the site, and its agents, officers and employees, for Modification of the Artwork. Donor hereby waives any rights it may have under Moral Rights Laws.

Artist acknowledges that all such decisions concerning the Artwork shall be made in the sole discretion of Port. Artist further acknowledges that, other than the rights reserved or granted in this Agreement, he retains no rights in and to the Artwork itself nor to any design, sketches, drawings, maquettes, models, slides, photographs or other related materials with regard to attribution and integrity of the Artwork. In addition, to the extent such rights may not be waived, Artist covenants not to assert such rights against Port.

Port has no obligation to pursue claims against third parties for modifications or damage to the Artwork done without Port's authorization. However, Port may pursue claims against third parties for modifications or damage or to restore the Artwork if the Artwork has been modified without Port's authorization. In the event that Port pursues such a claim, it shall notify the Artist, and Artist shall cooperate with Port's efforts to prosecute such claims.

If Port modifies the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. §106A(a)(2).

Artist and Donor understand the effect of these waivers and hereby acknowledge that each of them are surrendering the rights described herein with respect to the Artwork.

Except as provided in these waivers, with respect to third parties who are not officers, employees, agents, successors or assigns of Port or City, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for Alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of Port. Port has no obligation to pursue claims against third parties to remedy or prevent Alteration of the Artwork.

4. RELEASE AND WAIVER

Each of Donor and Artist, as material consideration for this Agreement, agree that Port shall not be responsible for or liable to them for any and all losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the location of the Artwork or arising from this Agreement, from any cause whatsoever. In addition, to the fullest extent allowed by any Laws, Donor and Artist hereby waive all rights against Port and, on behalf of itself and its successors and assigns, waives its right to recover from Port, and forever RELEASES, WAIVES AND DISCHARGES, Port from any and all of the losses described above, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Artwork or this Agreement.

Donor and Artist also understand that the Artwork shall not be insured by Port for damage or theft and that Pier 27 is a publicly accessible area used both during and after business hours with limited security that is not insured for damage, theft or loss to the Artwork and that Port shall not be responsible for insuring the Artwork or for providing any particular level of security, supervision or lighting of the exhibition area. Donor and Artist hereby waive their right to file any claim against Port and release Port from any liability for any damage, theft, loss of the

Artwork or other losses arising out of this Agreement and further waive any right to insurance coverage by Port.

Each of Donor and Artist understand and expressly accept and assume the risk that any facts concerning the claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agree that the releases in this Agreement shall remain effective. Therefore, with respect to the claims released in this Agreement, each of Donor and Artist waive any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each of Donor and Artist specifically acknowledge and confirm the validity of the release made above and the fact that each of Donor and Artist was represented by counsel who explained the consequences of the release at the time this Agreement was made, or that they had the opportunity to consult with counsel, but declined to do so.

The provisions of Section 5 shall survive the expiration or earlier termination of this Agreement.

5. NOTICE.

Without affecting any other provision of this Agreement, as a courtesy to Donor, Port agrees to make reasonable efforts to provide Donor with notice at an address provided in writing by Donor (as changed from time to time) that Port intends to remove, deaccession, store, transfer or dispose of the Artwork. In the event of an emergency, such notification may take place after Port takes such action.

6. SUCCESSORS AND ASSIGNS

The rights under this Agreement are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Donor or Artist unless first approved by Port by written instrument executed and approved in the same manner as this Agreement.

7. ENTIRE AGREEMENT

This Agreement contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

8. AMENDMENTS

No amendment of Agreement or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

9. GOVERNING LAW

This Agreement is subject to all applicable California and San Francisco laws and shall be construed and interpreted in accordance with the laws of the State of California and City's Charter. This Agreement, including the gift of Artwork contemplated hereunder, shall be subject to all required City approvals.

10. BOARD OF SUPERVISORS

Notwithstanding anything to the contrary contained in this Agreement, the parties acknowledge and agree that no officer or employee of City has authority to accept the gift of the Artwork unless and until City's Board of Supervisors shall have duly adopted a resolution accepting such gift. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this agreement shall be null and void if City's Mayor and the Board of Supervisors do not adopt such a resolution, in their respective sole discretion. Approval of this agreement by any department, commission or agency of City shall not be deemed to imply that such resolution will be adopted, nor will any such approval create any binding obligations on City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the last date below.

CITY
San Francisco Port Commission

ARTIST:
Floating Point Collective, a LLC, a Delaware limited liability company

By: _____
Monique Moyer
Executive Director

By: Genny Hoffman
Print Name: Genevieve Hoffman
Title: Co-Founder

Approved as to Form:

Dennis J. Herrera
City Attorney

Address:

By: _____
Deputy City Attorney

Phone:
E-mail:

DONOR:
James R. Herman Memorial Committee, a California 501(c)(3) corporation

By: Sean Farley
Print Name: SEAN Farley
Title: President

By: _____
Print Name:
Title:

Address:

Phone:
E-mail:

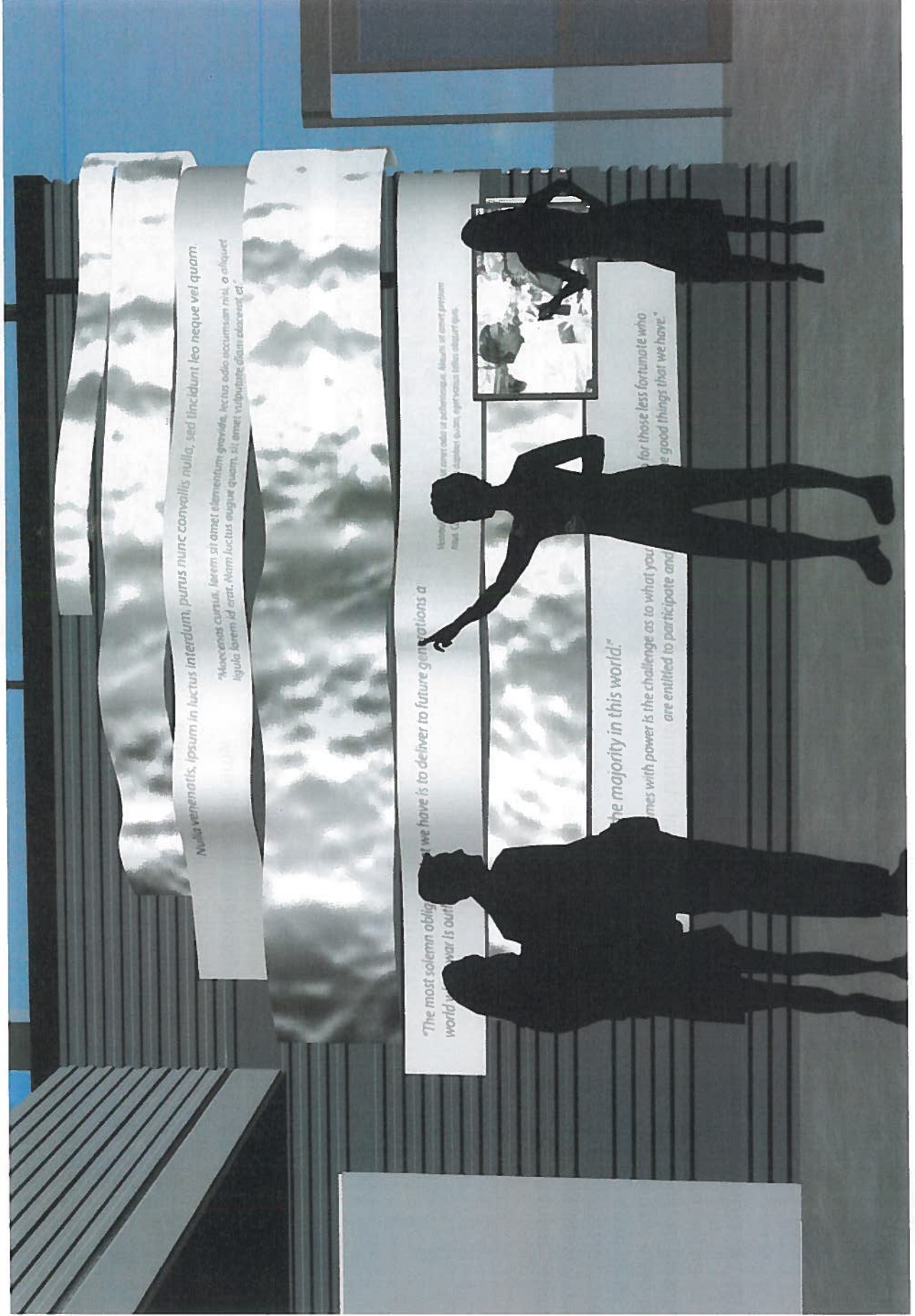
Exhibit A

Handwritten text, likely bleed-through from the reverse side of the page. The text is mirrored and difficult to decipher but appears to contain several lines of cursive writing.

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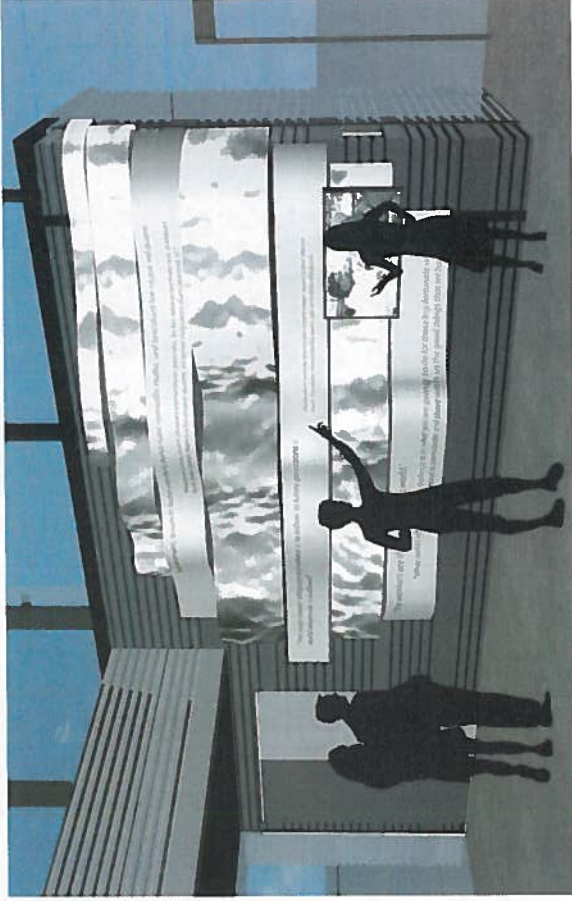
RENDERING

James R. Herman Memorial - Tides of Change



INTERACTION SCENARIO

- + When no one is present in front of the piece, or when people are passing by the sculpture, abstract imagery and visual elements animate across LEDs embedded in the sculpture
- + When people stop and look, the abstract animations evolve into text overlaid on the sculpture. The text will be pulled from a database of quotes from James R. Herman's speeches, as well as quotes about him.



TOUCHSCREEN INTERFACE

- + In addition to interactive elements of the metal sculpture, the touchscreen contains biographical information about Jimmy, searchable through a timeline or thematic navigation.
- + The touchscreen will also have a slideshow mode, displaying images from James R. Herman's life.

James R. Herman 1924 - 1998

1924 Ben Aronson, Newark, NJ
1939 Alfred Kerkovits, Milwaukee, WI
1947 Mark Lee Smith, Pasadena
1953 James R. Herman, Local 8
1956 Tom Wood, Local 24
1969 Elected to ILWU International Executive Board
1977 Alvin G. Thompson, ILWU President
1983 Appointed to SF Port Commission
1989 ILWU Subchapter refiled by court
1990 Ilwaco, Astoria, Clatsop
1992 Bay Bridge

About the ILWU
The International Longshore and Warehouse Union has approximately 42,000 members in over 60 local unions in the states of California, Washington, Oregon, Alaska and Hawaii. An additional 3,500 members belong to the International Union of the Marine Workers which comprises the Union's maritime division. There are 14,000 members belonging to the autonomous ILWU Canadian Area.

The ILWU is a racial structure which was put in place by delegates to the Union's first International Convention in 1939, and later modified by the 1945 Convention.

Images + Video

The highest governing body of the Union is the International Executive Board, which since 1995 meets in Ilwaco, Oregon. The Convention is made up of delegates elected by district rank and has one vote in each local or affiliate.

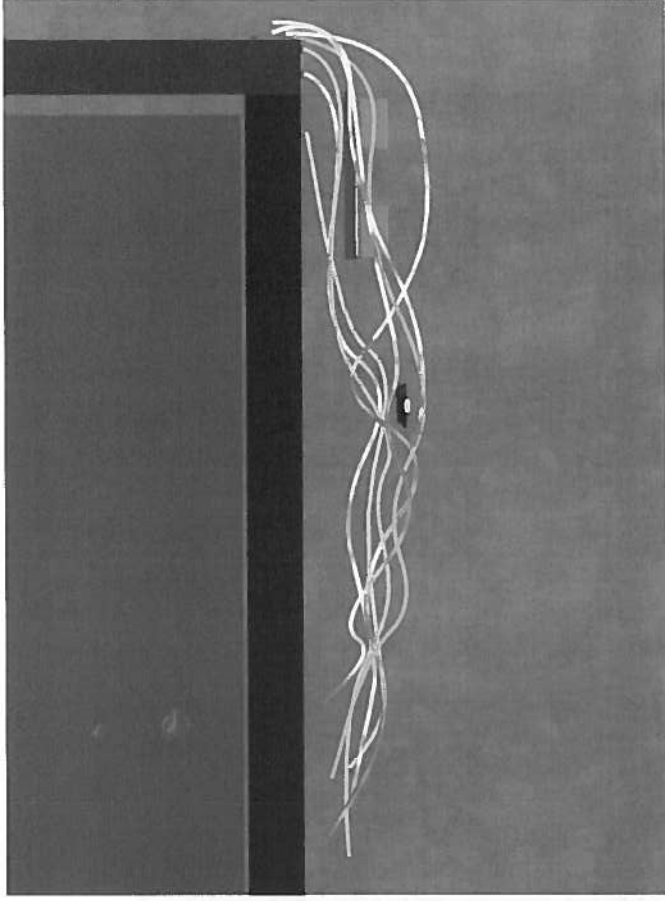
TECHNICAL RENDERING



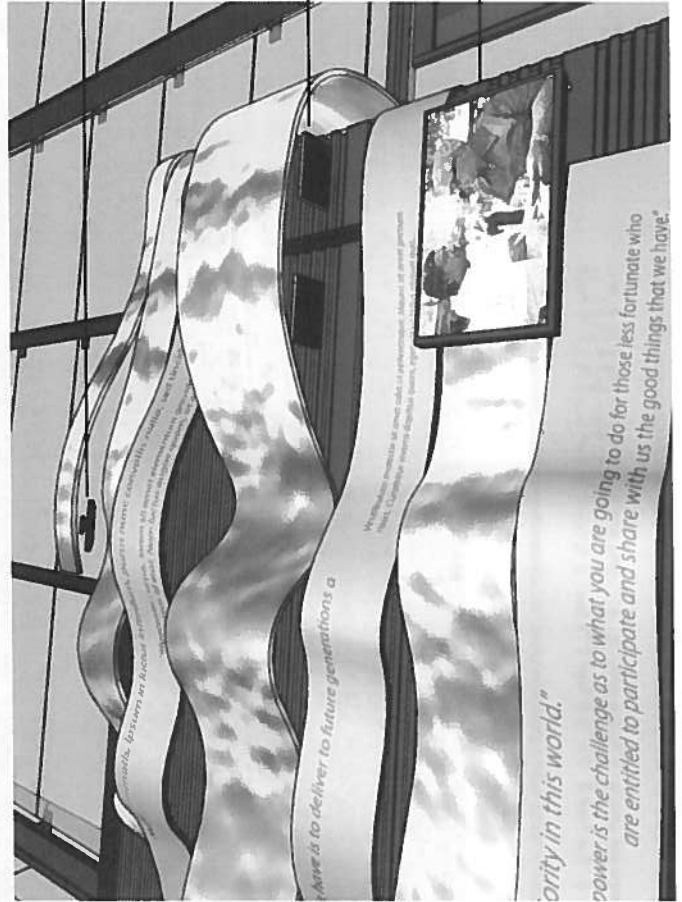
Memorial Plaque

IP Camera

Exhibit A



Top view of wave forms and tech components



Kinect_Depth Camera

Directional Audio Speakers

46" LCD Touchscreen

TECHNICAL RENDERING

TWO TYPES OF WAVES

- + The metal waves of the sculpture will alternate between two types of LED lighting
- + Four waves will be covered with outward-facing LED matrix tiles, which are flexible and can curve along the form of the sculpture.
- + These tiles will also be covered by a diffusion element
- + Three waves will have quotes etched on their surface.
- + Individually addressable LEDs will be lined along the top and bottom of the metal waves, with patterns of light reflecting the LED tiles.
- + All LEDs will only display white colored light.

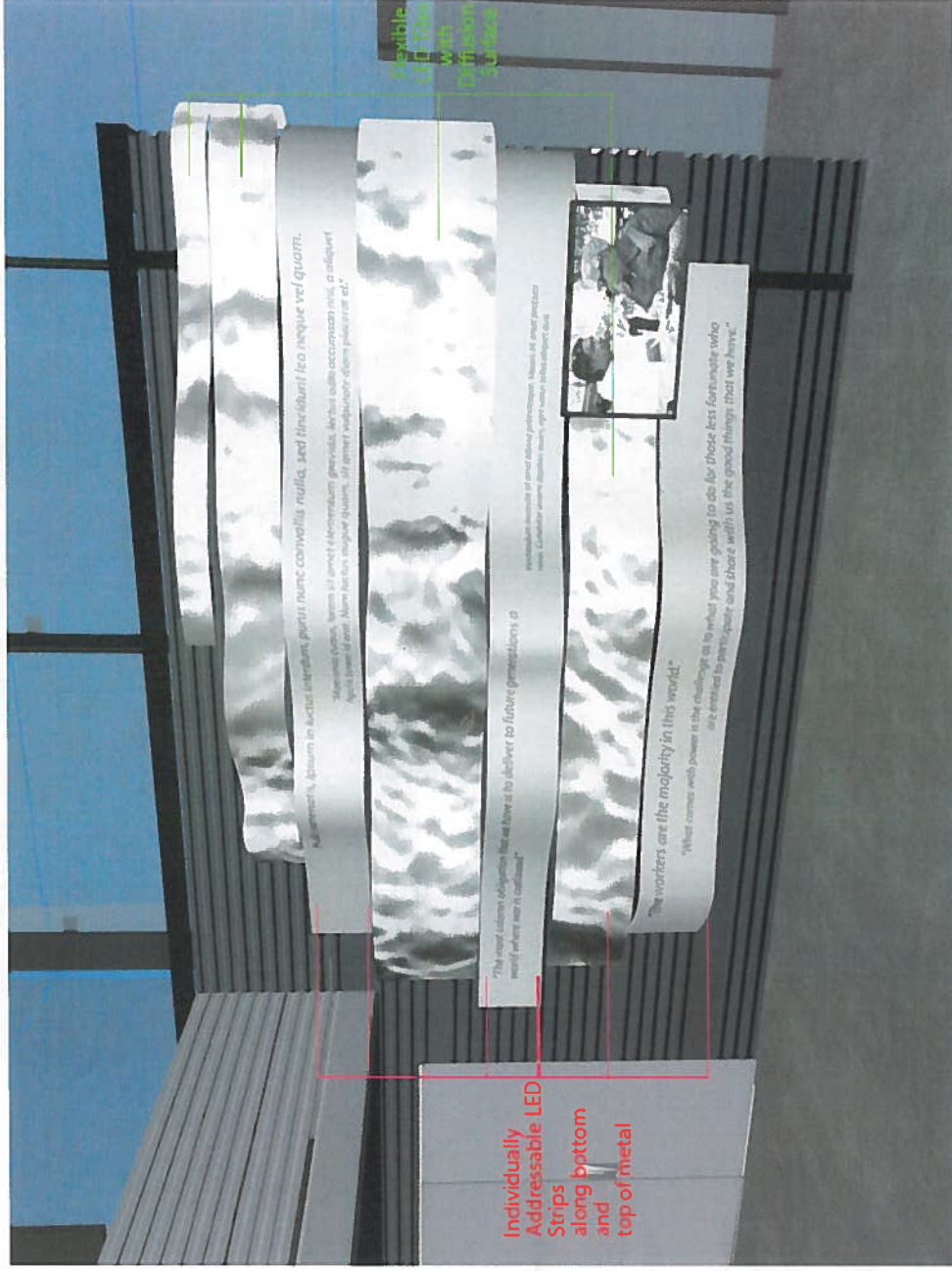


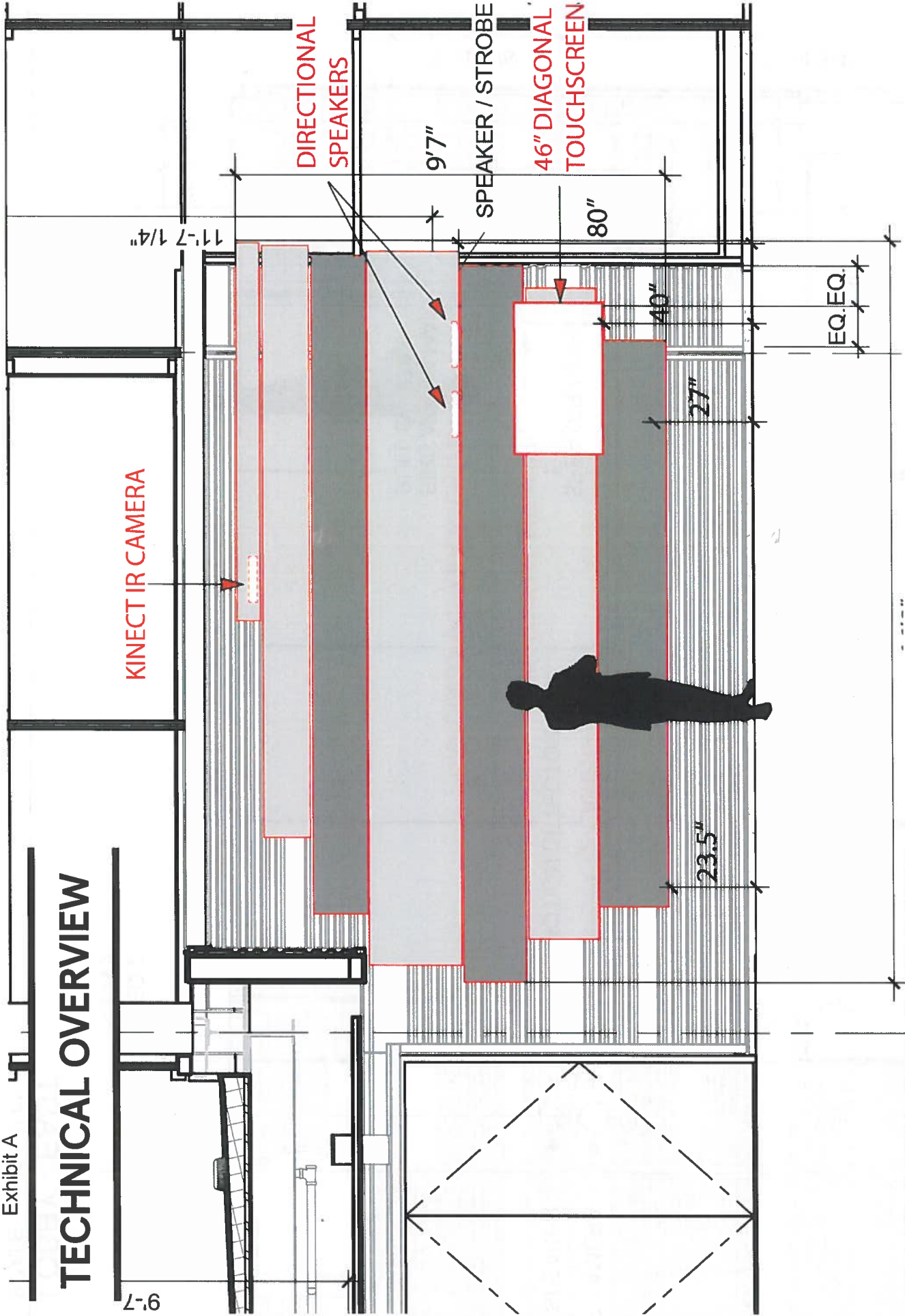
Exhibit A

CAMERA VISION FOR INTERACTIVITY

- + A Kinect v1 depth camera will be used to watch people in front of the installation.
- + The Kinect camera combines a traditional RGB camera with an IR depth sensor and is able to accurately track peoples' distances from the camera in the space.
- + The visual elements animating across the sculpture will change according to the activity and amount of people in the space.
- + These renderings depict the approximate field of view of the Kinect camera.



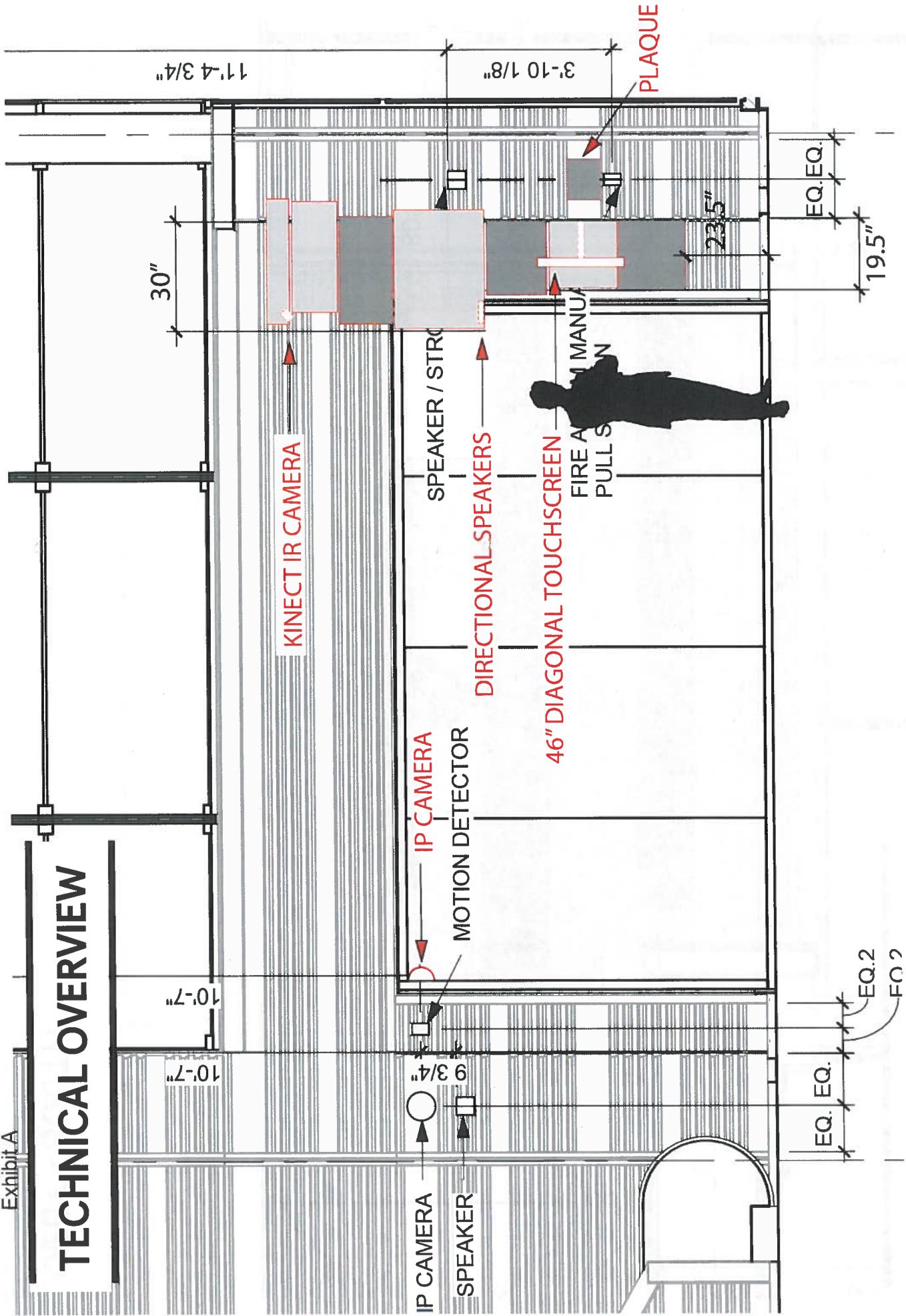
TECHNICAL OVERVIEW



LOBBY - SOUTH

SCALE: 1/4" = 1'-0"

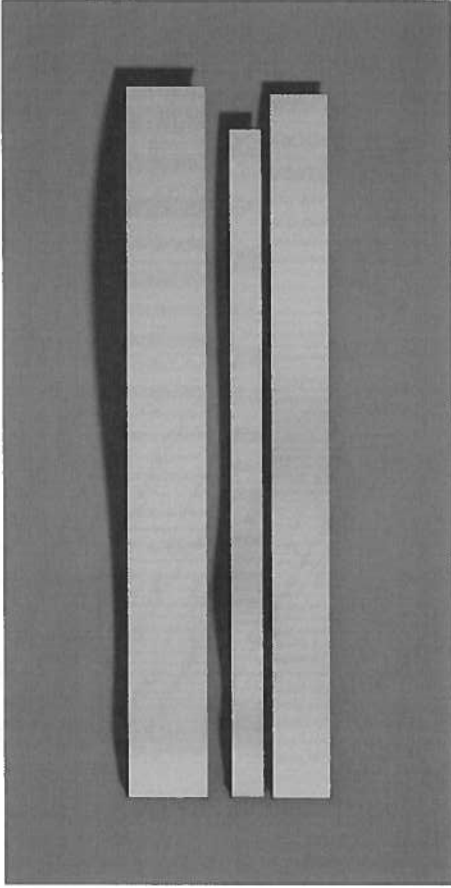
TECHNICAL OVERVIEW



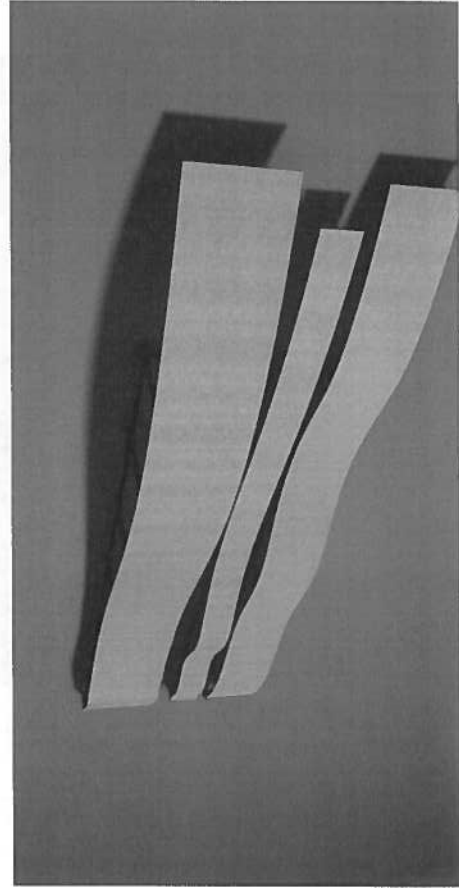
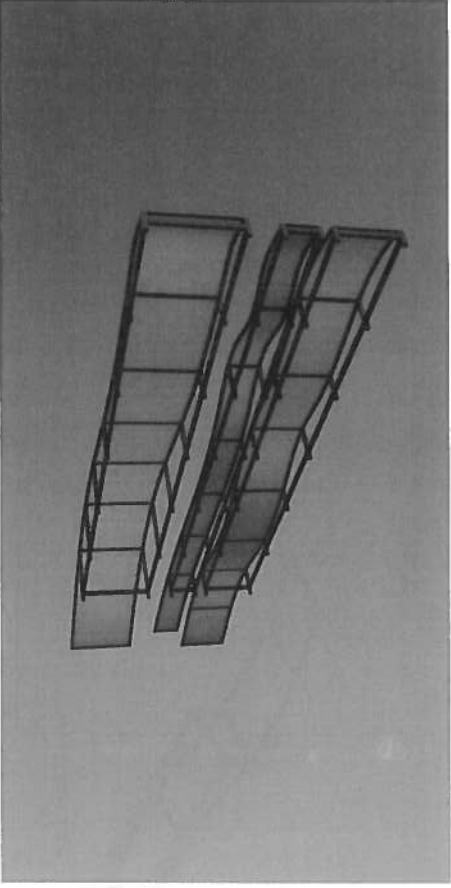
LOBBY - EAST

SCALE: 1/4" = 1'-0"

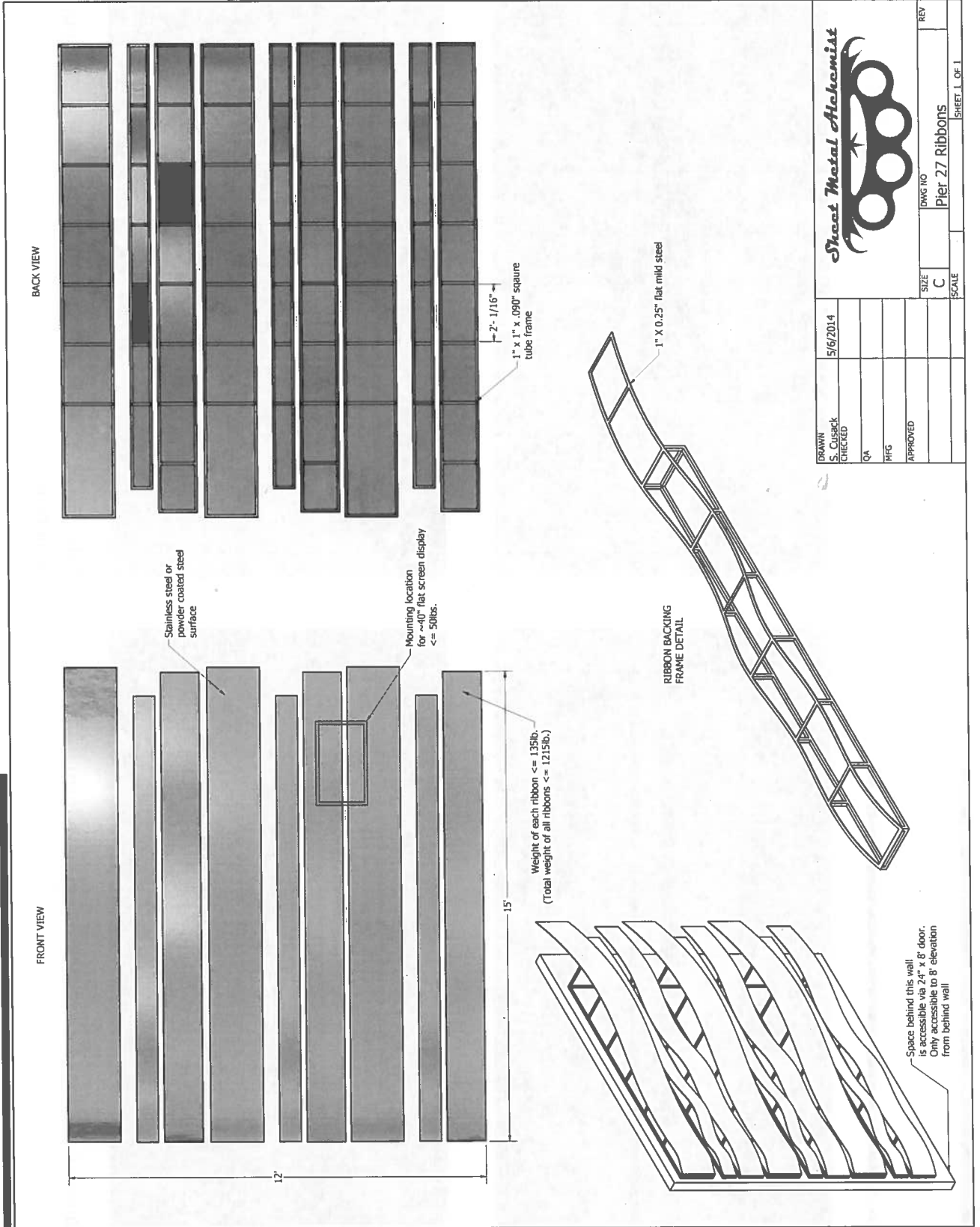
Exhibit A




Fabrication renderings for stainless steel wave form



Fabrication renderings for stainless steel rear-side mounting structure



DRAWN	5/6/2014		DWG NO Pier 27 Ribbons	REV	
S. Cusick				SIZE	C
CHECKED				SCALE	
QA				SHEET 1 OF 1	
MFG					
APPROVED					