

**AGREEMENT BETWEEN THE HOUSTON ARTS ALLIANCE
AND ARTIST(S)/ENTITY FOR FINAL COMMISSION DESIGN
FOR THE CIVIC ART PROJECT FOR PROJECT NAME**

This Agreement is entered into this day **DATE**, by and between the **HOUSTON ARTS ALLIANCE**, a Texas nonprofit corporation ("HAA"), and **ARTIST(S)/ENTITY** (ARTIST), a *limited liability corporation (omit if not applicable)*, located at Artist(s)/Entity Address, and acting by and Artist(s)/Entity Name(s) its duly authorized Artist. The City of Houston has designated the HAA to manage this Agreement on its behalf as authorized by Ordinance No. 2006-731 approved on June 28, 2006.

WHEREAS, HAA has been engaged by the City of Houston (the "City") to provide professional civic art administration services in connection with the City of Houston Civic Art Program; and,

WHEREAS, HAA and Artist wish to set out the terms and conditions under which said Work shall be designed to promote the integrity of Artist's ideas and statements as represented by the Work.

NOW, THEREFORE, HAA and Artist for and in consideration of the covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1. General.

- 1.1.1 The Artist shall perform all services and will furnish all supplies, materials, and equipment as necessary to fabricate, deliver and install the Work, as set forth in Sections 1.4 and 1.5. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- 1.1.2 The Artist shall determine the artistic expression, scope, design, color, size, material, and texture of the Work, subject to review and acceptance by HAA as set forth in this Agreement. The location at the Site in which the Work shall be installed shall be mutually agreed upon by the HAA and the Artist.
- 1.1.3 The Artist shall obtain written permission, as needed, including Copyright permission, for use of the selected photographic images that the Artist has incorporated into his design.
- 1.1.4 The Artist shall install the Work on dates and at times mutually agreed upon by the Artist and the HAA.
- 1.1.5 The Artist shall plan and participate in one public education event in Houston at a mutually agreed upon date and time.

1.2. Design Approval. HAA and Artist acknowledge that the Artist's Final Design, attached hereto as **Exhibit "B"**, has been reviewed and approved by the Mayor's Office of Cultural Affairs as the basis for executing this Agreement with the Artist.

1.3. Schedule. Artist shall fabricate and install the Work in accordance with the Schedule

which is attached hereto as **Exhibit "C"**. Any changes to the Schedule must be mutually agreed to in writing by the Artist and HAA.

1.4. Execution of the Work.

1.4.1 The City and HAA shall have the right to review the Work at reasonable times during its fabrication and/or request visual documentation of the fabrication. Artist shall, upon written request by Contract Manager, provide a written progress report detailing the progress made toward completion of the Work and the remainder of work to be done to complete the Work.

1.4.2 The Artist shall complete the fabrication of the Work in substantial conformity with the Final Design. However, Artist may present to the Contract Manager, in writing for further review and approval, any significant changes in the scope, composition, sound, design, color, size, material, or texture of the Work not in substantial conformity with the Final Design. The Contract Manager shall, in light of the Final Design, determine whether a significant change requires HAA approval.

1.5. Delivery and Installation.

1.5.1 The Artist shall notify the HAA, through its Contract Manager, in writing when fabrication of the Work is completed and ready for its delivery and installation at the Site.

1.5.2 The Artist shall deliver and install the completed Work at the Site in compliance with the Schedule; provided, however, that delivery and installation activities may not commence until written permission is delivered to the Artist by the Contract Manager.

1.5.3 Should Artist complete the Work in advance of the completion of the Site, Artist shall store the Work at no expense to the City until such a time as the Site is completed and the Contract Manager notifies the Artist that installation may commence.

1.5.4 Alief Neighborhood Center contract for the Site via a change order, and shall be paid for by public art project funds.

1.5.5 The Artist, individually and through its subcontractors, including its fabricator, shall take all necessary precautions to protect and preserve the integrity and finish of the Site while delivering and installing the Work. The Artist shall repair any damage to the Site due to delivery, installation, or Artist's negligence or the negligence of Artist's subcontractors.

1.5.6 Prior to installation of the Work, Artist shall consult with a qualified art conservator, and provide to the Contract Manager written instructions for appropriate maintenance and preservation of the Work on the form attached hereto as Exhibit "D" (Technical and Maintenance Record). The appropriate maintenance and preservation instructions shall not be substantially different from the maintenance and preservation anticipated and conveyed to City for the Work in the final design phase for the Work.

1.6. Post-installation.

1.6.1 The Artist shall be available at such time or times as may be agreed between the HAA and the Artist to attend any inauguration or presentation ceremonies relating to the of the Work to the City. The HAA shall use its best efforts to arrange for publicity for the completed Work in such art publications and otherwise as may be determined

between the HAA and the Artist as soon as practicable following installation.

1.7. Final Acceptance.

1.7.1 The Artist shall notify the HAA Manager in writing when all services required have been completed in substantial conformity with the Final Design. Included in such notice from the Artist shall be an affidavit, attached hereto as Exhibit "D" (Affidavit), certifying that all bills relating to services or supplies used in the performance of this Agreement have been paid.

1.7.2 The HAA shall notify the Artist and Contract Manager in writing of its final acceptance of the Work ("Final Acceptance").

1.7.3 Final Acceptance shall be effective as of the earlier to occur of (1) the date of the HAA's notification of Final Acceptance; or, (2) the 35th day after the Artist has sent the written notice to the City required under Section 1.6.a unless the City, upon receipt of such notice and prior to the expiration of the 35-day period, gives the Artist written notice specifying and describing the services which have not been completed.

1.8. **Risk of Loss.** The risk of loss or damage to the Work shall be borne by the Artist prior to Final Acceptance, and the Artist shall take such measures as are necessary to protect the Work from loss or damage until Final Acceptance, including but not limited to the purchase of property loss insurance; except that the risk of loss or damage shall be borne by the City or its agents prior to Final Acceptance during such periods of time as the partially or wholly completed Work is in the custody, control or supervision of the City or its agents for the purposes of moving, storing, or performing any other ancillary services to the Work.

ARTICLE 2. COMPENSATION AND PAYMENT SCHEDULE

2.1. **Fee.** The Contract Manager shall pay the Artist in the amount of **\$0.00** (collectively, the "Fee"), which shall constitute full compensation for all services to be performed and materials to be furnished by the Artist under this Agreement, inclusive of fabrication, transportation, installation, Artist's fees, insurance, documentation and incidental costs, and all travel expenses.

2.1.1 **25% of project budget or \$0.00** upon full execution of this Agreement.

2.1.2 **40% of project budget or \$0.00** upon the Contract Manager's verification that fabrication is 50% complete.

2.1.3. **25% of project budget or \$0.00** upon the Contract Manager's verification that fabrication is 100% complete and ready to install.

2.1.4 **10% of project budget or \$0.00** within sixty (60) days after Final Acceptance and receipt by City of such documentation it may require payment of supplies and services rendered to the Artist [see Section 1.6 (a)].

2.2. **Sales Taxes.** The HAA is a tax-exempt organization, and no state or local sales taxes or federal excise taxes shall be due upon the Project. The HAA shall supply the Artist with the "Texas Sales Tax and Local Sales Tax Exemption Certificate," in substantially the same form as that attached hereto and incorporated herein as **Exhibit "E"** for use by Artist in the fulfillment of this Agreement.

2.3. **Artist's Expenses.** Artist shall be responsible for the payments of all expenses incurred during the performance of this Agreement, including but not limited to services, materials, mailing/shipping charges and insurance on submissions to the HAA, cost of all travel,

insurance and costs for Artist's agents, consultants, and/or employees necessary for the proper performance of the services required under this Agreement.

ARTICLE 3. TERM AND TIME OF PERFORMANCE

- 3.1. **Term.** This Agreement shall be in effect from the date stated in the first paragraph of this Agreement, and, unless terminated earlier pursuant to such provisions in this Agreement, shall extend until final payment to Artist by HAA, whichever is later.
- 3.2. **Duration.** The services to be required of the Artist set forth in Article I shall be completed in accordance with the Schedule; provided, however, such time limits may be extended or otherwise modified by mutual written agreement between the Artist and the Contract Manager.
- 3.3. **Early Completion of Artist Services.** The Artist shall bear any transportation and storage charges incurred from the completion of his or her services prior to the time provided in the schedule for delivery.

ARTICLE 4. WARRANTIES

- 4.1. **Warranties of Title.** The Artist represents and warrants that:
 - 4.1.1 the Work shall be the original product of the Artist's sole creative efforts.
 - 4.1.2 the Work is and will be unique and original, and does not infringe upon any copyright or the rights of any person;
 - 4.1.3 the Work (or duplicate thereof) has not been accepted for sale elsewhere;
 - 4.1.4 the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Work or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
 - 4.1.5 the Work is free and clear of any liens from any source whatsoever;
 - 4.1.6 the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
 - 4.1.7 all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc., and with all necessary care, skill and diligence;
 - 4.1.8 the Artist shall assume the defense of, and INDEMNIFY AND HOLD HARMLESS, THE CITY and Contract Manager, ITS OFFICERS, EMPLOYEES, AGENTS, AND CONTRACTORS FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, ACTIONS OR EXPENSES OF EVERY TYPE AND DESCRIPTION, INCLUDING ATTORNEY'S FEES, TO WHICH THEY MAY BE SUBJECTED ARISING OUT OF THE CITY'S USE OR POSSESSION OF THE WORK BY REASON OF AN ALLEGED OR ACTUAL COPYRIGHT VIOLATION OR OTHER LACK OF OWNERSHIP, AUTHORSHIP, OR ORIGINALITY.
- 4.2 **Warranties of Quality and Condition**

- 4.2.1 Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Work) for one year after the date of Final Acceptance.
- 4.2.2 Artist represents and warrants that the Work and the materials used are not currently known to be harmful to public health and safety.
- 4.2.3 If within one year Contract Manager observes any breach of warranty described in this Section 4.2 that is curable by the Artist, the Artist shall, at the request of the Contract Manager, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to City or Contract Manager. Contract Manager shall give notice to Artist of such breach with reasonable promptness.
- 4.2.4 If after one year Contract Manager observes any breach of warranty described in this Section 4.2 that is curable by the Artist, Contract Manager shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during Artist's lifetime. Artist shall have the right of first refusal to make or supervise repairs or restorations. Should Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, Contract Manager may seek the services of a qualified restorative conservator and maintenance expert.
- 4.2.5 If within one year Contract Manager observes any breach of warranty described in this Section 4.2 that is not curable by the Artist, Artist is responsible for reimbursing Contract Manager for damages, expenses and loss incurred by Contract Manager as a result of the breach. However, if Artist disclosed the risk of this breach in the Proposal and Contract Manager accepted that it may occur, it shall not be deemed a breach for purposes of this Section 4.2.
- 4.2.6 Acceptable Standard of Display. Artist represents and warrants that:
 - 4.2.6.1 General routine cleaning and repair of the Work and any associated working parts and/or equipment will maintain the Work within an acceptable standard of public display.
 - 4.2.6.2 Foreseeable exposure to the elements and general wear and tear will cause the Work to experience only minor repairable damages and will not cause the Work to fall below an acceptable standard of public display.
 - 4.2.6.3 With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Work will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
 - 4.2.6.4 Manufacturer's Warranties. To the extent the Work incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to City.
- 4.2.7 The foregoing warranties are conditional, and shall be voided by the failure of City to maintain the Work in accordance with Artist's specifications and the applicable conservation standards. If City fails to maintain the Work in good condition, Artist, in

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

- 4.3 **Survival of Representations and Warranties** These representations and warranties shall survive the termination or other extinction of this Agreement.

ARTICLE 5. INSURANCE AND INDEMNITY

5.1. **General.** The Artist shall carry insurance as set out in Exhibit "F." Except as provided in Section 1.7 hereof, the risk of damage to or loss of the Work shall, during fabrication and installation but prior to Final Acceptance, shall be solely that of the Artist. This risk shall transfer to the City and shall no longer be the responsibility of the Artist upon Final Acceptance.

5.2. **Performance Bonds.** The Artist shall not be required by the Contract Manager to post any performance bonds or similar undertakings.

5.3. **Indemnity.**

5.3.1 ARTIST COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES AND SERVICES DESCRIBED HEREIN, PROVIDED THAT SAID CLAIMS OR SUITS ARE CAUSED BY ARTIST'S NEGLIGENCE OR WILLFUL MISCONDUCT; AND ARTIST HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY OF CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FOR ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KINDS OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES AND SERVICES DESCRIBED HEREIN, PROVIDED THAT SAID CLAIMS OR SUITS ARE CAUSED BY ARTIST'S NEGLIGENCE OR WILLFUL MISCONDUCT. ARTIST LIKEWISE COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY AND HARMLESS CITY FROM AND AGAINST ANY AND ALL INJURY, DAMAGE OR DESTRUCTION OF PROPERTY OF CITY, ARISING OUT OF OR IN CONNECTION WITH ALL ACTS OR OMISSIONS OF ARTIST, ITS OFFICERS, MEMBERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES, LICENSEES, OR PROGRAM PARTICIPANTS. ARTIST AGREES TO AND SHALL RELEASE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED BY ARTIST IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT.

5.3.2 Artist shall require all of its subcontractors to include in their subcontracts a release and indemnity in favor of City in substantially the same form as above.

- 5.3.3 All indemnification provisions of this Agreement shall survive the termination or expiration of this Agreement.

ARTICLE 6. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 6.1. **Title.** Title to the Work, including all documents, models and/or drawings which constitute or are components of the Final Design, shall pass to City upon Final Acceptance and payment for the Work. These documents, models and/or drawings will be retained for archival and exhibition purposes. Artist's Final Design and all other work products under this Agreement shall become the property of City, without restriction on future use, except as provided below.
- 6.2 **Copyright Ownership.** Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. Section 101 et seq., as the sole author of the Work for the duration of the copyright.
- 6.3 **Reproduction Rights.**
- 6.3.1 In view of the intention that the final Work be unique, Artist shall not make any additional exact duplicate reproductions of the final Work, nor shall Artist grant permission to others to do so except with the express written permission of City. However, nothing herein shall prevent the Artist from creating future artworks in the Artist's manner and style of artistic expression.
- 6.3.2 By execution of this Agreement, Artist grants to City a perpetual, irrevocable license to graphically depict or display the Work for any non-commercial purpose whatsoever; for purposes of this limitation, any graphic depiction or display of the Work intended to promote or benefit City, its public services or its public purposes, regardless of whether or not a fee is charged to the public, or whether revenue is otherwise received by City, shall be deemed a non-commercial purpose. Notwithstanding the above limitation, Artist agrees and understands that nothing in this paragraph shall affect or limit City's absolute, unrestricted rights incidental to City's full ownership of the Work to alter, change, modify, destroy, remove, move, replace, operate, maintain, transport, sell or transfer, in whole or in part, the Work when City deems it necessary within its discretion, in order to otherwise exercise City's powers and responsibility in regard to public works and improvements, in furtherance of City's operations or for any other reason.
- 6.3.3 All reproductions by City shall contain a credit to Artist and a copyright notice substantially in the following form: "© date, Artist's name." ,
- 6.3.4 Unless notified otherwise by the City, Artist shall use Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to City in substantially the following form: "an original artwork commissioned by and in the public art collection of the City of Houston, Texas."
- 6.3.5 Artist shall, at Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Work in the Artist's name.
- 6.3.6 City is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

ARTICLE 7. ARTIST'S RIGHTS

7.1. **Identification.** The Contract Manager shall include credit to the Artist on the public art websites and a permanent plaque at the site.

7.2. **Maintenance.** The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City shall reasonably assure that the Work is properly maintained and protected, taking into account the maintenance instructions provided by Artist in accordance with Section I .4 and Exhibit "C", Technical and Maintenance Record.

7.3. Repairs and Restoration.

7.3.1 The City shall have the right to determine when and if repairs and restorations to the Work will be made. During the Artist's lifetime and to the extent practicable, the City shall give the Artist the right to approve all major repairs and restorations; provided, however, the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. Should Artist unreasonably withhold approval of any intended major repair or restoration, the City shall have the right to make such repair or restoration. To the extent practicable, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise major repairs and restorations and shall be paid a reasonable fee for any such services, provided that the City and the Artist shall agree in writing, prior to commencement of any significant repairs and restorations, upon the Artist's fee for such services. Should the Artist fail to agree to make or supervise the repairs and restorations, the City shall have the right to choose another entity or person to assist with the restoration and/or repairs or make said repairs by the City.

7.3.2 All repairs and restorations shall be made in accordance with recognized principles of conservation.

7.3.3 When emergency repairs are necessary in order to prevent the loss of or further damage to the Work, such repairs shall be undertaken or arranged by City without advance notice to Artist, and such repairs shall not be deemed to constitute artistic alteration.

7.4. Alteration of the Work or of the Site.

7.4.1 In the event that the Work is incorporated into a building, structure or realty, the installation of the Work may subject it to destruction, distortion, mutilation or other modification by reason of its removal. If removal of the Work would damage either the Work or the Site, the City shall have the right to remove the Work by any means, including destruction, in performing maintenance, repair, renovation, or reconstruction of the building, structure or in devoting realty to a new use.

7.4.2 In the event that the Work is freestanding, or incorporated into a building, structure or realty such that it may be removed without damaging or destroying the Work or the building or structure, the Artist may be given written notice and 90 days to remove the Work at his or her sole expense. Upon Artist's failure to remove the Work, the City shall have the right to remove and dispose of the Work by any means, including its destruction.

- 7.4.3 The City agrees that it will not willfully destroy, damage, or modify the work, except as provided in paragraphs a. and b. above.
- 7.4.4 In the event the Work is substantially damaged or altered, the City shall no longer represent the Work as that of the Artist if the Artist gives written notice to the City that it is the position of the Artist to deny authorship on the grounds stated in this paragraph.
- 7.4.5 The City shall at all times have the right to move the Work, or remove it from public display. The City shall also have the right to sell or trade the Work.
- 7.5. **Permanent Record.** The City and Contract Manager shall maintain on permanent file a record of this Agreement and of the location and disposition of the Work.
- 7.6. **Artist's Address.** The Artist shall notify the City and Contract Manager of changes in the address set forth in Article 13. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce these provisions of Article 7 that require the express approval of the Artist. Notwithstanding this provision, the City shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.
- 7.7. **Additional Rights and Remedies.** Nothing contained in this Article 7 shall be construed as a limitation on such other rights and remedies available to the Artist under the law, which may now or in the future be applicable.

ARTICLE 8. ARTIST AS AN INDEPENDENT CONTRACTOR

- 8.1 Artist shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of City or Contract Manager. Artist shall have exclusive control of, and the exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of his/her officers, agents, employees and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between City, its Contract Manager and Artist, his/her officers, agents, employees and subcontractors, and doctrine of respondent superior has no application as between City, its Contract Manager and Artist.

ARTICLE 9. SUBCONTRACTING

- 9.1 The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense, provided that said subcontracting shall not adversely affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision of the Artist. Any subcontract entered into under this Agreement shall be expressly subject to the terms of this Agreement. Artist shall provide information regarding all subcontractors, including its fabricator, along with a copy of the subcontract between Artist and each subcontractor.

ARTICLE 10. TERMINATION

- 10.1. **Gratuities.** The Contract Manager may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts or otherwise were offered or given by the Artist

or any agent or representative to any City official or employee or Contract Manager employee with a view toward securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to this performance of this Agreement. In the event this Agreement is canceled by the Contract Manager, pursuant to this Section 10.1, the Contract Manager shall be entitled, in addition to any other rights and remedies, to recover from the Artist a sum equal in amount to the cost incurred by the Artist in providing such gratuities.

10.2. **Termination for Cause.** If either party to this Agreement shall fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of the intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this Agreement shall terminate. Termination of this Agreement under this provision shall not relieve the party in default of any liability for damages resulting from a breach or a violation of the terms of this Agreement.

10.3. **Termination for Convenience.**

10.3.1 The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) days before termination. The notice shall specify whether the termination is for convenience or cause.

10.3.2 If the termination is for the convenience of the Contract Manager, the Artist shall have the right to an equitable adjustment in the fee including all work performed to date plus any remaining artist fee up to a total of 5% or \$13,414, in which event the Contract Manager shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or presented for submission to the City by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the City.

10.3.3 If termination is for the convenience of the Artist, the Artist shall remit to the City's Contract Manager a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to termination.

10.4. **Incapacity of Artist.**

10.4.1 In the event of Artist's death or Artist becoming physically or legally incapacitated during the term of this Agreement, the Contract Manager shall have the right to terminate this Agreement on payment to Artist or Artist's successors for all work and services performed prior to death or incapacity. All finished and unfinished drawings, sketches, photographs, models and work shall become property of the City.

10.4.2 Should Artist's design have been approved or if the Artist's work has progressed to the point of fabrication of the Work, in the event of termination under this Section 10.4, the Contract Manager shall have the right to complete the Work. Due regard shall be made for Artist's intended results and proper credit and acknowledgement shall be given to Artist.

Article 11. EQUAL OPPORTUNITY

- 11.1 The Artist shall not discriminate against any employee or applicant for employment because of disability, familial status, race, color, religion, sex, sexual orientation, or national origin. The Artist shall take affirmative action to ensure that employees are treated equally during employment, without regard to their disability, familial status, race, color, religion, sex, sexual orientation and national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, transfer, recruitment or pay or other forms of compensations, and selection for training, including apprenticeship.
- 11.2 The Artist shall state in all solicitation or advertisements for employment placed by or on behalf of the Artist that all qualified applicants shall receive consideration for employment without regard to disability, familial status, race, color, religion, sex, sexual orientation, or national origin.
- 11.3 The Artist shall furnish all information and reports requested by the Contract Manager, and shall permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such rules and regulations.
- 11.4 In the event of the Artist's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Artist may be debarred from further agreements with the Contract Manager on behalf of the City of Houston.

ARTICLE 12. MISCELLANEOUS

- 12.1 **INDEPENDENT CONTRACTOR.** Artist is an independent contractor, and shall perform services provided for in this Contract in such capacity. The City has no control or supervisory powers over the manner or method of Artist or HAA's performance under this Contract. All personnel Artist or HAA uses or provides are its employees or subcontractors and not the City's employees, agents or subcontractors for any purpose whatsoever. Artist is solely responsible for the compensation of all such personnel, for the withholding of income, social security and other payroll taxes, and for all workers' compensation benefits coverage.
- 12.2 **FORCE MAJEURE.**
- 12.2.1 Timely performance by both parties is essential to this Contract. However, neither party is liable for reasonable delays in performing its obligations under this Contract to the extent the delay is caused by Force Majeure that directly impacts the City or HAA. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Contract. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or HAA, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle HAA or Artist to extra Reimbursable Expenses or payment.
- 12.2.2 This relief is not applicable unless the affected party does the following:

- 12.2.2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure to the extent performance is not affected by the Force Majeure; and
- 12.2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 12.2.3 The Director will review claims that a Force Majeure that directly impacts the Artist or HAA has occurred and render a written decision within 14 days. The decision of the Director is final.
- 12.2.4 The HAA may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Contract by the HAA.
- 12.2.5 If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Contract by giving seven days' written notice to Artist. This termination is not a default or breach of this Contract. **ARTIST WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE CONTRACT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**
- 12.2.6 Artist is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Artist shall employ only fully trained and qualified personnel during a strike.
- 12.3 **SEVERABILITY.** If any part of this Contract is for any reason held to be invalid, all other parts remain enforceable unless the result materially prejudices either party.
- 12.4 **ENTIRE AGREEMENT.** This Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Contract.
- 12.5 **WRITTEN AMENDMENT.** Unless otherwise specified elsewhere in this Contract, this Contract may be amended only by written instrument.
- 12.6 **APPLICABLE LAWS.**
 - 12.6.1 This Contract is subject to all laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
 - 12.6.2 Venue for any litigation relating to this Contract is Harris County, Texas.
- 12.7 **NOTICES.** All notices to either party to the Contract must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Contract or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.
- 12.8 **COMPLIANCE.** The Artist shall be required to comply with Federal, State and City statutes, ordinances and regulations applicable to the performance of the Artist services under this

Agreement.

- 12.9 **CAPTIONS.** The Captions contained in this Contract are for reference only, and, therefore, have no effect in construing this Contract. The captions are not restrictive of the subject matter of any section or article in this Contract.
- 12.10. **ACCEPTANCE AND APPROVAL.** An approval by HAA does not waive compliance with this Contract or establish a standard of performance other than required by this Contract or by law. HAA is not authorized to vary the terms of this Contract.
- 12.11 **INSPECTIONS, AUDITS AND ENFORCEMENT.**
- 12.11.1 HAA and City representatives may perform, or have performed, (i) audits of HAA's books and records, and (ii) inspection of all places where work is undertaken in connection with this Contract. The Artist and HAA shall keep its books and records available for this purpose for at least four years after this Contract terminates. This provision does not affect the applicable statute of limitations.
- 12.11.2 The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract without further authorization. The Artist and HAA shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining HAA's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.
- 12.12 **AMBIGUITIES.** If any term of this Contract is ambiguous, it shall not be construed for or against any party hereto on the basis that the party did or did not write it.
- 12.13 **SURVIVAL.** Artist shall remain obligated to the HAA and City and the HAA shall remain obligated to the Artist under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract; provided, however, the HAA remains obligated to pay for any such services and/or products delivered by Artist hereunder to the extent allowed by law.
- 12.14 **PARTIES IN INTEREST.** This Contract does not bestow any rights upon any third party other than the City, but binds and benefits the Artist and HAA only.
- 12.15 **REMEDIES CUMULATIVE.** Except as otherwise provided herein, the rights and remedies contained in this Contract are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Contract except in accordance with the provisions hereof.
- 12.16 **NON-WAIVER.** If either party fails to require the other party to perform a term of this Contract, that failure does not prevent the party from later enforcing that terms and all other terms. If either party waives the other party's breach of a term, that waiver does not waive a later breach of this Contract.
- 12.17 **BUSINESS STRUCTURE AND ASSIGNMENTS.** Neither Artist nor HAA shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Artist and HAA shall immediately furnish the HAA and City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Neither HAA nor Artist shall not delegate any portion of its performance under this Contract without the HAA's prior written consent after confirmation

from the Director. Any merger or reorganization of HAA pursuant to a City- approved plan shall not be deemed to be an assignment. Such surviving entity shall be deemed to be the legal successor of the HAA.

- 12.18 **SUCCESSORS AND ASSIGNS.** This Contract binds and benefits the parties and their legal successors and permitted assigns. However, this provision does not alter the restriction on assignment and disposal of assets set out in **Section 6.16**. This Contract does not create any personal liability on the part of any officer or agent of the City.
- 12.19 **NO PARTNERSHIP CREATED HEREBY.** The Artist and the HAA agree that no partnership relationship or joint venture between the parties is created by this Contract.
- 12.20 **NO CITY EXPENDITURE.** Nothing in this Contract requires the City to make any expenditure of its funds to the HAA or to any other party.
- 12.21 **RIGHTS TO USE PROPERTY.** The rights granted to the HAA and the Artist to use City property shall be personal only and shall not be construed to be any kind of lease, sublease, or any other interest in land, either corporeal or incorporeal.
- 12.22 **ARTIST DEBT.** IF ARTIST, AT ANY TIME DURING THE TERM OF THIS CONTRACT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER and HAA IN WRITING. IF THE HAA OR CITY CONTROLLER BECOMES AWARE THAT ARTIST HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY ARTIST IN WRITING. IF ARTIST DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE HAA MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO ARTIST UNDER THIS CONTRACT, AND ARTIST WAIVES ANY RECOURSE THEREFOR.
- 12.23 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES.** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. The Artist and HAA have reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. HAA and Artist shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by HAA, Artist or its subcontractors providing services or goods under this Agreement.

Article 13: Compliance with Certain State Law Requirements.

- 13.1 **Anti-Boycott of Israel.** Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 13.2 **Anti-Boycott of Energy Companies.** Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 13.3 **Anti-Boycott of Firearm Entities or Firearm Trade Associations.** Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

13.4 **Certification of No Business with Foreign Terrorist Organizations.** For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

ARTICLE 14. NOTICES

14.1 **NOTICES.** All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

14.1.1. HAA: John Abodeely, CEO
Houston Arts Alliance
5280 Caroline, Suite 100
Houston, TX 77004

14.1.2. ARTIST: Artist(s)/Entity
Street Address
City, State, Zip Code

Copies to: Necole Irvin, Director
City of Houston, Mayor's Office of Cultural Affairs
901 Bagby Street
Houston, TX 77002

IN WITNESS HEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

HAA

ARTIST

by: _____
John Abodeely
CEO

_____ Name
_____ Title

Exhibit "A"
SITE LOCATION

Address:

Add Photos

Exhibit "B"
(not used in this contract)

Exhibit "C"
PERFORMANCE SCHEDULE

SEPTEMBER 30, 2021:	Construction Contract Execution
SEPTEMBER 30, 2021 – MARCH 01, 2022	Fabrication Work
MARCH 02 – 31, 2022:	Installation
APRIL 30, 2022:	Closeout

Contractor will submit signed invoices via email to the Director addressed to Houston Arts Alliance, with requested documentation upon the completion of each payment phase outlined in Exhibit "B". The HAA will approve all invoices that are complete and accurate and will submit these invoices to the City of Houston for payment. Payment to Contractors by the HAA will be after HAA receipt of funds from the City of Houston for each Contractors invoice. Please note that as per the HAA's contract with GSD, payment is within 30 days. Payment to the Contractor can take up to 45 days. If payment to the HAA from the City is later than 30 days, the schedule may be delayed.

Each invoice will include the following:

1. Date invoice is submitted
2. Contractors contact information including address, phone number and email
3. Time period covered by invoice
4. Total contract amount
5. Total amount invoiced to date; date that each prior payment was received by the Contractor
6. List of deliverables
7. Contractors signature
8. Each invoice to be numbered consecutively

The Contractor will submit each invoice with the required deliverables (listed below) in one email to the Director. The HAA may request other materials be submitted in order to process payment.

Total Construction Budget: \$0

The Project fee shall be invoiced in the following installments:

Invoice 1: 25% of total construction budget amount or \$0

- Fully executed Final Design Contract
- Signed invoice
- Detailed schedule of upcoming fabrication work
- Completed W9 form (unless current form is already on file with HAA)
- Completed ACH Form (unless current form is already on file with HAA)
- If certified as a small business, MWBE, or Hire Houston First business, a copy of your certification.
- Required Certificate of Insurance listing Houston Arts Alliance and the City of Houston as Additional Insured.

Invoice 2: 40% of total construction budget amount or \$0

- Contract Manager's verification that major fabrication subcontracts are executed and fabrication has commenced
- Signed Invoice
- Updated projected project schedule

Invoice 3: 25% of total construction budget amount or \$0


- Contract manager's verification of 50% completion of fabrication
- Updated installation schedule
- Signed invoice

Invoice 4: 10% of total construction budget amount or \$0

- Completion of installation, installation site cleared and clean
- Completed Catalog & Maintenance form for artwork
- Signed invoice
- Final payment to artist within 60 days after Final Acceptance and receipt by City of Houston

Exhibit "D"
(not used in this contract)

Exhibit "E"
HOUSTON ARTS ALLIANCE TAX EXEMPTION CERTIFICATION

 01-339 (Back)
 (Rev 4-13/8)

Texas Sales and Use Tax Exemption Certification

This certificate does not require a number to be valid.

Name of purchaser, firm or agency Houston Arts Alliance	
Address (Street & number, P.O. Box or Route number) 3201 Allen Parkway #250	Phone (Area code and number) 713-527-9330
City, State, ZIP code Houston, TX 77019	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: _____

Street address: _____ City, State, ZIP code: _____

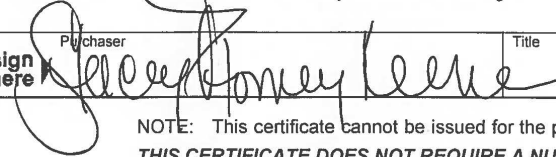
Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

501(c)(3) Tax ID 74-1946756

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

sign here	Purchaser 	Title Chief Financial Officer	Date
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NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

**This certificate should be furnished to the supplier.
 Do not send the completed certificate to the Comptroller of Public Accounts.**

**Exhibit “F”
INSURANCE**

Risks and Limits of Liability. Party shall maintain the following insurance coverages in the following amounts:

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	<p>\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</p> <p>\$10,000,000 for auto driven in the Airfield Operations Area (AOA)</p>
Professional Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability applicable to CGL, and Auto	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

Insurance Coverage. At all times during the term of this Contract and any extensions or renewals, Party shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon HAA's request, or each time coverage is renewed or updated, Party shall furnish to HAA current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Party shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Party waives any claim it may have for premiums or deductibles against HAA, its officers, agents, or employees. Party shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

Form of insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

Required Coverage. HAA and the City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name HAA as an Additional Insured. HAA shall enjoy the same coverage as the Named Insured without regard

Exhibit "F"
continued.

to other Contract provisions. Party waives any claim or right of subrogation to recover against HAA, its officers, agents, or employees, and each of the Party's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Party shall also provide proof of renewal each year for two years after substantial completion of a project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the project covered by this Contract with a duration of two years after substantial completion.

Notice. **PARTY SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO HAA IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Party shall provide other suitable policies in order to maintain the required coverage. If Party does not comply with this requirement, HAA, at his or her sole discretion, may immediately suspend Party from any further performance under this Contract and begin procedures to terminate for default.