

**AGREEMENT BETWEEN THE HOUSTON ARTS ALLIANCE
AND ARTIST(S)/ENTITY FOR FINAL 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 through Artist(s)/Entity, 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. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings as set forth below:

- 1.1. **Agreement** – Means and includes this Agreement between the HAA and Artist for the Design of public art for the Site.
- 1.2. **Artist** (if artist is individual) – Means and includes Artist and/or his heirs, executors, administrators, legal representatives, successors, agents, subartists, contractors, and assigns.
- 1.3. **Artist** (if artist is entity) - Means and includes Artist and/or its partners, members, managing members, officers, managers, proprietors, directors, employees, representatives, agents, subsidiary organizations, parent organizations, successor entities, assigns, predecessors, stockholders, administrators, subartists, contractors, and related companies.
- 1.4. **Effective Date** – Means and includes the date represented in the first paragraph of this Agreement, which shall be the official date of execution of this Agreement.
- 1.5. **Parties** – Means and includes HAA and Artist.
- 1.6. **Final Design** – Means all drawings, plans, renderings, performance schedules, narrative descriptions, budgets, and the like that are created by Artist in connection with this Agreement between Artist and HAA for the Work.
- 1.7. **Final Design Deliverables** – Means and includes those items set forth in Article 2.4 of this Agreement that Artist is required to submit to HAA for its review and approval.
- 1.8. **Project** – Means and includes the capital improvement or public art development undertaking of HAA for which Artist's services are to be provided pursuant to this Agreement.
- 1.9. **Project Stakeholders** – Means and includes the City and the HAA's appointed representative and others as may be appropriate.

- 1.10. **Project Consultant** – Means and includes the design firm/professional(s) hired by HAA or the City to design the Site.
- 1.11. **Site** – Means [site address], which are more particularly described on Exhibit “B,” attached hereto and incorporated herein by reference for all purposes.
- 1.12. **Work** – Means and includes the finished object(s) of art and design that are the subject of this Agreement, or any intermediary stage of completion of such work.

ARTICLE 2. PURPOSE, SCOPE OF SERVICES, AND DELIVERABLES

- 2.1. **Purpose.** The purpose of this Agreement is to solicit a completed design and plan from Artist for review by the HAA and the City of Houston and ultimately used to proceed to the next phase of this Project, which may include commission for the fabrication and installation of the Work. The HAA does not guarantee that Artist will be selected to proceed to the next phase of the Project and specifically reserves the right to reject all designs.
- 2.2. **Scope of Services.** Artist shall perform all services and will furnish all supplies, materials, and equipment as necessary for developing Final Design documents and materials of the Work and for providing the Final Design Deliverables. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- 2.3. **HAA Assistance.** Upon request by Artist, HAA shall promptly furnish all information and materials required by Artist to the extent that such materials are available. HAA, upon request by Artist, shall also provide correct scaled drawings of the Site, if available.
- 2.4. **Final Design Deliverables.**
 - 2.4.1. Artist shall provide services and all supplies, materials, and equipment necessary to provide certain deliverables, as set forth in this subsection to HAA for consideration.
 - 2.4.2. Artist shall develop a Final Design for the Site based on the Concept Design Proposal that was accepted and approved by the City of Houston.
 - 2.4.3. Final Design Deliverables shall consist of the following:
 - 2.4.3.1. Final design documents
 - 2.4.3.2. Updated narrative
 - 2.4.3.3. Detailed fabrication and installation budget
 - 2.4.3.4. Detailed construction documents, including input from a structural engineer if required by the building code
 - 2.4.3.5. Material samples, specifications and warranties
 - 2.4.3.6. Draft maintenance and conservation plan
 - 2.4.3.7. Any necessary permits and engineering reviews, site modifications and preparations, including the repair of any disturbed areas.
- 2.5. **Notification of Revisions.** HAA may request revisions by providing a written statement of the nature and reasons for the revision.

ARTICLE 3. COMPENSATION AND PAYMENT SCHEDULE

- 3.1. **Compensation.** Total compensation to Artist under the Agreement shall be **\$0.00** which shall constitute full compensation for any and all costs associated with the Agreement, including, but not limited to, all travel expenses, services performed and materials furnished

by Artist under this Agreement.

3.1.1. The Artist will submit invoices to HAA at intervals determined by the Payment Schedule.

3.1.2. HAA will pay invoices from Artist within forty-five (45) days after HAA approval of Artist invoice, provided that HAA has received from the City the funds attributable to this Agreement.

3.1.3. Artist and City may amend this Agreement to allow for additional payment if additional services are required.

3.2. **Payment Schedule.** HAA agrees to pay Artist in the following installments set forth below, each installment to represent full and final, non-refundable payment for all services and materials provided prior to the due date thereof:

3.2.1. Artist may Invoice HAA according to performance schedule listed in following Exhibit "A".

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

3.4. **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 HAA cost of all travel, and costs for Artist's agents, consultants, and/or employees necessary for the proper performance of the services required under this Agreement.

ARTICLE 4. TERM AND TERMINATION

4.1. **Term.** This Agreement shall be in effect from the Effective Date and, unless terminated earlier pursuant to such provisions in this Agreement, shall extend until final payment to Artist by HAA.

4.2. **Gratuities.** City may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by Artist or any agent or representative to any City or HAA official or 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.

4.3. **Termination for Cause.** The HAA may terminate this Agreement for cause in the event Artist fails to perform in accordance with the requirements contained herein. In such event, HAA shall give Artist written notice of Artist's failure to perform, giving Artist seven (7) calendar days to come into compliance with the Agreement. If Artist fails to come into compliance with this Agreement, HAA shall notify Artist in writing, and this Agreement shall be terminated as of the date of such notification. In such event, Artist shall not be entitled to any additional compensation.

4.4. **Termination for Convenience.**

4.4.1. The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) calendar days before termination.

4.4.2. If the termination is for the convenience of HAA, HAA shall pay Artist for services actually rendered up to the effective date of termination.

- 4.4.3. If termination is for the convenience of Artist, HAA shall have the right, in its sole discretion, to pay Artist for services actually rendered up to the effective date of termination or require the Artist to remit to HAA a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to the effective date of termination.

ARTICLE 5. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

5.1 Non-Selected Artists.

- 5.1.1. If Artist's design is not selected to proceed to the next phase of the Project for Fabrication and Installation, then, upon payment in full to the Artist, the Final Design and all other work product under this Agreement shall become the property of City for a period of one year from the date the HAA sends final payment to Artist under this Agreement. Artist shall retain copyright and other intellectual property rights in and to the Final Design.
- 5.1.2. In view of the intention that the Final Design be unique, Artist shall not make any additional exact duplicate reproductions of the Final Design, nor shall Artist grant permission to others to do so except with the express written permission of City.
- 5.1.3. City is not responsible for any third-party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.
- 5.1.4. If, within the above-stated one-year period, the City decides to select the Artist to proceed to the next phase of the Project as the Project artist and Artist agrees to such selection, then the rights set forth in Article 5.2 for the selected artist shall supersede and govern any ownership and intellectual property rights associated with or related to this Agreement.

5.2 Selected Artist.

- 5.2.1. If Artist is selected to proceed to the next phase of the Project for Fabrication and Installation, then the ownership and intellectual property rights set forth in this subsection shall apply.
- 5.2.2. Upon payment in full to Artist, the Final Design and all other work product under this Agreement shall become the property of City, without restriction on future use, except as provided below. Artist shall retain copyright and other intellectual property rights in and to the Final Design and/or Work. Artist grants to the City and HAA an exclusive, perpetual, irrevocable, and royalty free license to graphically depict or display the Final Design and/or work for any non-commercial purpose whatsoever. For purposes of this limitation, any graphic depiction or display of the Final Design and/or 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.
- 5.2.3. In view of the intention that the Final Design and the Work be unique, Artist shall not make any additional exact duplicate reproductions of the Final Design or the Work, nor shall Artist grant permission to others to do so except with the express written permission of City. However, nothing herein shall prevent Artist from creating future artworks in Artist's manner and style of artistic expression.
- 5.2.4. Artist reserves every right available under the Federal Copyright Act to control the making and dissemination of copies or reproductions of the Final Design and/or Work, except as those rights are limited by this Agreement. If Artist is selected to proceed

as the Project artist, City may make and disseminate photographs, drawings, and other two-dimensional reproductions of the Final Design and/or Work and accompanying materials for any municipal purpose. All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: "© date, Artist's name."

- 5.2.5. Nothing in this Agreement shall prevent the Artist from using images of the Final Design and/or Work for marketing and promotional purposes in connection with the Artist's business.
- 5.2.6. 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 6. WARRANTIES OF TITLE AND COPYRIGHT

- 6.1. Artist represents and warrants that:
 - 6.1.1. Final Design and/or Work shall be the original product of the Artist's sole creative efforts.
 - 6.1.2. Final Design and/or Work is and will be unique and original, and does not infringe upon any copyright or the rights of any person;
 - 6.1.3. Artist has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Final Design and/or Work or any copyright related thereto that may affect or impair the rights granted pursuant to this Agreement;
 - 6.1.4. Final Design and/or Work (or duplicate thereof) have not been accepted for sale elsewhere;
 - 6.1.5. Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement; and
 - 6.1.6. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc., and with all necessary care, skill and diligence.

ARTICLE 7. ARTIST AS INDEPENDENT CONTRACTOR

- 7.1 **Independent Contractor.** Artist shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of City or HAA. 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 or HAA and Artist, his/her officers, agents, employees and subcontractors, and doctrine of respondent superior has no application as between City or HAA and Artist.

ARTICLE 8. INDEMNIFICATION AND INSURANCE

- 8.1. **General Indemnity.**
 - 8.1.1. **ARTIST COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, CITY FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, ACTIONS, CAUSES OF ACTION, LIENS, LOSSES, EXPENSES, COSTS, FEES (INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, DEMANDS, DAMAGES, LIABILITIES, AND/OR SUITS OF ANY**

KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY LOSS (INCLUDING, BUT NOT LIMITED TO, WORKERS' COMPENSATION ACT LIABILITY, LOST PROFITS, AND PROPERTY DAMAGE) AND/OR PERSONAL INJURY (INCLUDING, BUT NOT LIMITED TO, DEATH) TO ANY AND ALL PERSONS, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR RESULTING FROM THE ANY ACTS, ERRORS, OR OMISSIONS OF ARTIST AND/OR ARTIST'S SUBARTISTS AND CONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, MEMBERS, PARTNERS, AND REPRESENTATIVES IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THIS AGREEMENT.

8.1.2. Artist agrees to and shall release City from any and all liability for injury, death, damage, or loss to persons or property sustained or caused by Artist in connection with or incidental to performance under this Agreement.

8.1.3. 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.

8.2. **Intellectual Property.** Artist agrees to assume full responsibility for complying with all State and Federal Copyright Laws and any other regulations, including, but not limited to, the assumption of any and all responsibilities for paying royalties that are due for the use of other third party copyrighted works by Artist. City expressly assumes no obligations, implied or otherwise, regarding payment or collection of any such fees or financial obligations. City specifically does not authorize, permit, or condone the reproduction or use of copyrighted materials by Artist without the appropriate licenses or permission being secured by Artist in advance. **IT IS FURTHER AGREED THAT ARTIST SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, OR EXPENSES OF EVERY TYPE AND DESCRIPTION, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, TO WHICH THEY MAY BE SUBJECTED ARISING OUT OF CITY'S USE OR POSSESSION OF THE WORKS BY REASON OF AN ALLEGED OR ACTUAL COPYRIGHT VIOLATION OR OTHER LACK OF OWNERSHIP, AUTHORSHIP, OR ORIGINALITY.** City expressly assumes no obligation to review or obtain appropriate licensing and all such licensing shall be the exclusive obligation of Artist. This intellectual property indemnification provision shall survive the termination or expiration of this Agreement.

8.3. **Insurance.** Artist will maintain the following insurance coverages in the following amounts:

COVERAGE LIMIT OF LIABILITY

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 \$500,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

Aggregate Limits are per 12-month policy period unless otherwise indicated.

- 8.3.1. At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of the HAA. Prior to beginning performance under this Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Any failure on the part of the HAA to request required insurance documentation shall not constitute a waiver of the insurance requirement. The Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts.
- 8.3.2. Each of the HAA and the City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the HAA and the City as an Additional Insured. Contractor waives any claim or right of subrogation to recover against the HAA or its officers, agents, or employees, and each of Contractor'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 Agreement.
- 8.3.3. CONTRACTOR SHALL GIVE 30 DAYS' ADVANCEWRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the 8 required coverage. If Contractor does not comply with this requirement, the HAA may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

ARTICLE 9. MISCELLANEOUS

- 9.1 **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.
- 9.2 **Force Majeure**
 - 9.2.1 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 Artist, 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.

9.2.2 This relief is not applicable unless the affected party does the following:

9.2.2.1 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

9.2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

9.2.3 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.

9.2.4 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.

9.2.4.1 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.**

9.2.4.2 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.

9.3 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.

9.4 **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.

9.5 **Written Amendment.** Unless otherwise specified elsewhere in this Contract, this Contract may be amended only by written instrument.

9.6 **Applicable Laws**

9.6.1 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.

9.6.2 **Venue.** Venue for any litigation relating to this Contract is Harris County, Texas.

9.7 **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 1 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.

- 9.8 **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.
- 9.9 **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.
- 9.10 **Inspections, Audits and Enforcement.**
- 9.10.1 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.
- 9.10.2 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.
- 9.11 **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.
- 9.12 **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.
- 9.13 **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.
- 9.14 **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.
- 9.15 **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.
- 9.16 **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.

- 9.17 **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.
- 9.18 **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.
- 9.19 **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.
- 9.20 **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.
- 9.21 **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.
- 9.22 **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.
- 9.23 **Compliance.** Artist shall comply with all Federal, state, and local statutes, ordinances, and regulations applicable to the performance of Artist's services under this Agreement.

ARTICLE 10. COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.

- 10.1 **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.
- 10.2 **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.
- 10.3 **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.

- 10.4 **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 11. NOTICES

11.1 **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:

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

10.1.2. ARTIST Artist Name
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"
PERFORMANCE SCHEDULE

Dates: Final Design Contract Execution
Dates: Design Work
Date: Final Design Delivery

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 below. 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 Final Design Budget: \$0

The Project fee shall be invoiced in the following installments:

Invoice 1: 50% of total contract amount or \$0

- Fully executed Final Design Contract
- Signed invoice
- 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: 50% of total contract amount or \$0

- Delivery of Final Design documents
- Signed Invoice
- Updated projected project schedule

Exhibit "B"
SITE LOCATION

Project:
Address:

Exhibit "C"
HOUSTON ARTS ALLIANCE TAX EXEMPTION CERTIFICATION

 Form 01-339 (Back)
 Sales Tax
 (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: _____

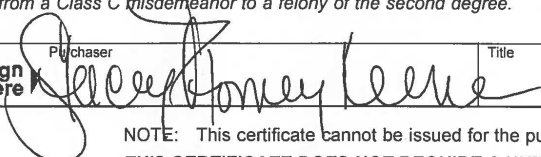
Description of items to be purchased or on the attached order or invoice:

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	Date
		Chief Financial Officer	

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 "D"
WAIVER AND LICENSE

In connection with the Artwork " _____ " ("Work") created by the Artist, the Artist recognizes the existence of moral rights of artists set forth in the Visual Artists' Rights Act of 1990, as amended, and as codified in Title 17 of United States Code (the "Visual Artists' Rights Act").

TO THE EXTENT THE WORK IS PROTECTED BY THE VISUAL ARTISTS' RIGHTS ACT AND THE ARTIST IS ENTITLED TO PROTECTION THEREUNDER, THE ARTIST EXPRESSLY WAIVES ANY AND ALL RIGHTS ARISING UNDER THE VISUAL ARTISTS' RIGHTS ACT, AND ANY RIGHTS ARISING UNDER FEDERAL OR STATE LAW OR UNDER THE LAWS OF ANY OTHER COUNTRY THAT CONVEYS RIGHTS OF THE SAME NATURE AS THOSE CONVEYED UNDER THE VISUAL ARTISTS' RIGHTS ACT OR ANY OTHER TYPE OF MORAL RIGHT OR DROIT MORAL WITH RESPECT TO THE WORK FOR ANY AND ALL USES IN WHICH EITHER THE ATTRIBUTION OR THE INTEGRITY RIGHT MAY BE IMPLICATED INCLUDING, WITHOUT LIMITATION, THE REMOVAL, RELOCATION, DESTRUCTION, DISTORTION, MUTILATION OR OTHER MODIFICATION OF ALL OR ANY PORTION OF THE WORK AS DEEMED NECESSARY BY THE CITY. THE ARTIST EXPRESSLY RECOGNIZES AND ACKNOWLEDGES THAT THE NATURE OF THE WORK MAY SUBJECT THE WORK TO DESTRUCTION, DISTORTION, MUTILATION OR OTHER MODIFICATION BY REASON OF REMOVAL OR RELOCATION OF ALL OR ANY PORTION OF THE WORK.

Artist has no outstanding claims and knows of no outstanding claims against the Artwork. Artist grants the City of Houston, Texas an irrevocable license to graphically reproduce (through photography, the internet or otherwise) the image of the Artwork for municipal (e.g. education, public information, promotion of the arts, etc.) purposes. Municipal purposes mean reproduction in exhibit catalogues, books, slides, photographs, postcards, the City's web sites, City promotional items, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature, slides and films not intended for mass audience; and television from stations operated for educational purpose or on programs for educational or informational purposes from all stations.

Artist Name

Artist Signature

Date