

## AGREEMENT FOR DIRECT PURCHASE OF ARTWORK

This **AGREEMENT FOR DIRECT PURCHASE OF ARTWORK** (this "Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 202[] (the "Effective Date") by and between [\_\_\_\_\_] ("Seller") on behalf of [\_\_\_\_\_] ("Artist"), and **HOUSTON ARTS ALLIANCE** ("HAA") (each a "Party," and collectively, the "Parties").

### RECITALS

**WHEREAS**, HAA was created by the City of Houston (the "City") to administer the City's Civic Art Program; and

**WHEREAS**, in connection with the foregoing, the City has authorized HAA to purchase existing works of art on the City's behalf for the benefit of the City's civic art collection (the "Civic Art Collection"); and

**WHEREAS**, Artist has previously commissioned that certain artwork (the "Artwork"); and

**WHEREAS**, HAA now desires to purchase the Artwork from the Seller on behalf of the City, and the Seller desires to sell the Artwork to HAA for the benefit of the City upon the terms and conditions of this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in exchange for the mutual agreements set out below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

#### ARTICLE 1

##### PURCHASE AND SALE OF ARTWORK AND CERTAIN RELATED MATTERS.

**Section 1.1** HAA hereby agrees to purchase from the Seller, and the Seller hereby agrees sell to HAA, the Artwork as further described on **Exhibit A**, attached hereto and made a part hereof. The Parties confirm that HAA has informed the Seller that HAA is acquiring the Artwork for accession into the Civic Art Collection, and that the Artwork is intended to be placed in the facilities owned and/or managed by the City, and as such will be under the ownership, supervision, and control of the City.

**Section 1.2** The purchase price for the Artwork to be paid by HAA to the Seller shall be \$[] (the "Purchase Price"). The Purchase Price shall be paid, by ACH or wire transfer at HAA's sole discretion, according to the information provided by the Seller on or before the date that is 45 days following the later of: (a) approval of a complete and accurate invoice from the Seller after the Artwork is delivered by the Seller to HAA's art handling services; and (b) receipt and approval by HAA of the deliverables described in subsections (A)-(D), below; subject, however, to HAA's receipt from the City the funds attributable to this Agreement:

- (A) Signed execution of this Purchase Agreement including but not limited to:
- (B) Completed Vendor Packet (separate attachment)
- (C) Artist Waiver of Claims attached hereto as **Exhibit C**
- (D) Completed Catalog and Maintenance form in the format provided on the attached **Exhibit D**

**Section 1.3** Within [ ] business days after receipt of the Purchase Price, Seller shall execute and deliver the Bill of Sale, in substantially the same form of **Exhibit B**, which is attached hereto and made a part hereof (the "Bill of Sale"). For the avoidance of doubt, title to the Artwork shall transfer to the City (or its assigns) only upon satisfaction of the conditions set forth in Section 1.2 above and this Section 1.3.

## **ARTICLE 2 TITLE TO THE ARTWORK; COPYRIGHT**

**Section 2.1** All of the Seller's right, title and interest in and to the Artwork shall be transferred to the City (or its assigns), including without limitation as contemplated by the Bill of Sale, upon the payment in full of the Purchase Price. The Parties confirm that copyright or other rights granted under the Visual Artists' Rights Act of 1990, as amended, and as codified in Title 17 of the United States Code (the "Visual Artists' Rights Act") belong only to the Artist relating to the Artwork or the Artist's estate, and therefore, only the Artist or the Artist's estate has the right to transfer any of the same (and is transferring the same) pursuant to this Agreement, including without limitation the Bill of Sale. The Seller agrees to secure the Waiver and License Agreement executed by the Artist and deliver to HAA the attached Waiver and License, in the form of **Exhibit C**, attached hereto and made a part hereof. The Seller confirms that HAA has informed the Seller that, following payment in full of the Purchase Price to the Seller, title to the Artwork that is conveyed by the Seller to HAA shall pass to the City upon final acceptance of the Artwork by the City.

**Section 2.2** The Seller confirms that the Seller has informed the Artist that the Artist shall retain the copyright to the Artwork, provided that the HAA and the City is hereby granted an exclusive, perpetual, irrevocable and royalty-free license to graphically reproduce the image of Artwork. Such reproductions of the Artwork may only be used for educational, public relations, arts promotion, or other noncommercial purposes.

## **ARTICLE 3 DELIVERY AND CERTAIN RELATED MATTERS.**

**Section 3.1** The Seller shall be responsible for delivery (and its own cost, risk and expense) of the Artwork to [specific location and address], between [precise dates], we will coordinate more specific drop off dates and times. Subsequent to delivery, HAA will promptly send its authorized representatives to inspect and, if acceptable, approve of the Artwork to confirm delivery in good condition.

**Section 3.2** HAA will issue a condition report on the Artwork as promptly as reasonably possible following delivery of the Artwork, and in no event later than seven (7) days after such delivery. So long as no damage to the Artwork is detected upon inspection by HAA, HAA agrees to accept the Artwork as contemplated in this Agreement.

**Section 3.3** Seller agrees to provide to HAA documentation including, but not limited to the Bill of Sale and completed Vendor Packet, object descriptions, maintenance, conservation, and/or installation instructions in the form of **Exhibit D**. Seller agrees to provide suitable and customary shipping storage materials and delivery of the Artwork for the purpose of delivering the same to HAA as contemplated by this Agreement. For the avoidance of doubt, Seller intends to provide standard shipping material that HAA will continue to use for the storage and transport Artwork until final installation at City facilities. Seller's failure to deliver such documentation and such materials may negate this Agreement.

## **ARTICLE 4 LOSS OR DAMAGES.**

**Section 4.1** The Seller represents and warrants that the Artwork is in good condition and will withstand damage from the packaging and delivery of the same to HAA as contemplated by this Agreement.

**Section 4.2** Once the Artwork is delivered to and accepted by HAA as contemplated by this Agreement, in good condition, free of damage, HAA (and its successors and/or assigns) assume all risk of damage or loss to the Artwork, and Artist shall have no further responsibility or liability therefor.

**Section 4.3** The Seller is responsible for insurance coverage of the Artwork up to delivery and receipt by HAA. In the event of loss or damage occurring prior to or in connection with delivery of the Artwork to HAA as contemplated by this Agreement, it will be the Seller's responsibility to provide their insurance carrier with appropriate documentation concerning the value of the Artwork in accordance with standard practices.

**Section 4.4** If, at any time prior to HAA's inspection upon delivery of the Artwork, an insurance carrier finds damage incurred directly related to insufficient packaging or crating by the Seller, or Seller's assignee, HAA will not be held liable for damage incurred. In that event, the Seller agrees that, in the event of loss or damage, recovery shall be limited to such amount, if any, as may be paid by the insurer, hereby releasing HAA, HAA's board of directors, the City, and employees of HAA from liability for any and all claims arising out of such loss or damage. If no amount has been specified by the Seller, HAA shall value the Artwork at its own estimated valuation; provided, however, that such estimated valuation shall not be construed to be an appraisal of the Artwork by HAA for any purpose other than insurance.

## **ARTICLE 5 ADDITIONAL TERMS AND PROVISIONS.**

**Section 5.1** This Agreement shall bind and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns. The conditions contained below, are incorporated to this Agreement. Upon signing this document, the Artist indicates agreement with the terms set forth therein.

**Section 5.2** Once possession of the Artwork, delivered without damage, is under the control of the City or its assigns, maintenance of the Artwork shall be the responsibility of the City, as those Parties shall determine in their sole discretion.

**Section 5.3** Each Party shall notify the other Party to this Agreement in writing of any changes in address, phone number or e-mail address of such notifying Party that occur at any time prior to delivery of the Artwork or during the 90-day period following such delivery.

**Section 5.4** This Agreement represents the entire agreement between the Seller and HAA and supersedes all prior negotiations, representation and agreements, whether written or oral. Any modification of this Agreement must be in writing and signed by both Parties.

**Section 5.5** Headings and titles used in this Agreement are for reference purposes only, shall not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.

**Section 5.6** No amendment of this Agreement shall be binding upon a Party hereto unless such amendment is set forth in a written instrument, which is executed by an authorized representative of each Party.

**Section 5.7** This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between HAA and Seller, their assigns and successors in interest, as to the matters contained

herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**Section 5.8** This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally binding for all purposes as an original signature.

**Section 5.9** This Agreement shall be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action shall lie in state courts located in Harris County, Texas or the United States District Court for the Southern District of Texas, Houston Division.

**Section 5.10** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

*[Signature Pages Follow]*

In witness whereof, the Parties hereby execute this Agreement as of the dates written below, but to be effective as of the Effective Date.

\_\_\_\_\_ (Seller's Name),

By: \_\_\_\_\_

Name:

Title:

Date:

HOUSTON ARTS ALLIANCE

By: \_\_\_\_\_

Name:

Title: CEO

Date:

**Exhibit A**

**DESCRIPTION OF ARTWORK**

Artwork to be Purchased and Sold:

*Title:*

Artist:

Year:

Materials, Media:

Dimensions:

Value:

Image of Artwork is shown below:

**EXHIBIT B**

**BILL OF SALE**

Date: \_\_\_\_\_, 202\_

Seller: \_\_\_\_\_ ("Seller")

Street Address

City State Zip Code

Buyer: Houston Arts Alliance  
5280 Caroline St, Ste 100  
Houston, TX 77004

Artwork sold by the Seller and purchased by Buyer on behalf of the City of Houston, Texas:

Title:

Medium:

Dimensions:

Artist:

Date:

Provenance:

Purchase Price:

\*Purchase Price includes professional framing and/or glazing, if deemed necessary by HAA, and hardware for hanging, (d-rings or mirror hanger if under 50lbs, cleats if over 50lbs).

*[Remainder of Page Intentionally Left Blank]*

The Seller, subject to and effective upon its receipt of the above-referenced Purchase Price and in consideration thereof, hereby irrevocably and without condition or reservation of any kind sells, transfers and conveys to the Buyer the Artwork, good, valid and marketable title thereto, and all right to possession and all legal ownership thereof, free of all written or oral claims, demands, suits, proceedings, causes of action and claims of others, to have and to hold the Artwork unto the Buyer, its successors and assigns, forever; provided, however, that the Artist and/or his assigns shall retain all copyright rights and interests in and to the Works.

The Artwork is being sold in accordance with the terms and conditions of, including each and all of the representations, warranties, covenants and agreements in, the Artwork Purchase Agreement, executed by Seller and Houston Arts Alliance on [date], and all such terms, conditions, representations, warranties, covenants and agreements thereunder are incorporated herein by this reference.

The Seller warrants that the individual or agent who signs this document on behalf of Seller has the authority and the legal capacity to execute this document on behalf of Seller. Execution by facsimile or emailed PDF file signature shall be deemed to be, and shall have the same effect as, execution by original signature.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Seller's Name

\_\_\_\_\_  
Date



## EXHIBIT C

### 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.), noncommercial purposes. Noncommercial 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Artist Name

\_\_\_\_\_  
Date

**EXHIBIT D**  
**CITY OF HOUSTON CIVIC ART PROGRAM**  
**FORMAT FOR CATALOG AND MAINTENANCE RECORD**

**This form is to be completed as part of the Artist deliverables for direct purchase of existing Artwork. The information provided by the Artist will be used as a record as well as to provide maintenance directives. Please complete this form and add all required attachments.**

Completed By:		Date:	
<b>1. Artist(s)/Design Team</b>			
If the Artwork is the result of an Artist collaboration or Team, please provide this information for each collaborator. Please attach any information for additional primary Artists or Team members.			
Artist's Name as it should appear on all labels and display information:			
Artist's Full Name if different from above:			
Street Address:			
City, State ZIP			
Mailing Address:			
City, State ZIP			
Phone 1:		Email:	
Phone (Mobile)		Gender Identity:	Choose an item.
Nationality:		Other Gender, please specify:	
Birth Date:		Birth City:	
Birth State or Province:		Birth Country:	
Death Date (if deceased):		Place of Death (City, ST, Country)	

How do you identify your race and/or ethnic identities? (Check all that apply):			
<input type="checkbox"/> White or European <input type="checkbox"/> African American or Black <input type="checkbox"/> Native American or Alaskan Native <input type="checkbox"/> Native Hawaiian or other Pacific Islander <input type="checkbox"/> Hispanic or Latino/x <input type="checkbox"/> Other American Indigenous (non-U.S.)		<input type="checkbox"/> East Asian <input type="checkbox"/> South Asian <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Multi-racial, including White/Caucasian <input type="checkbox"/> Prefer not to answer <input type="checkbox"/> Other <a href="#">Click or tap here to enter text.</a>	
<b>2. Artwork Title:</b>			
<b>3. Year Created:</b>			
<b>4. Dimensions (inches):</b>	Height:	Width:	Depth:
<b>5. Framed Dimensions:</b>	Height:	Width:	Depth:
<b>6. Medium/Materials</b> (Please be as specific as possible):			
<b>7. Material Finish (Fixatives, retardants, glazes, tool patterns, patina, surface sealers - include brand names):</b>			
<b>8. Support (base, plinth, shelf, etc.) if any:</b>			

<b>9. Technique: (example: Painting, Drawing, Photography, Ceramic, Carving, assemblage, textile, etc.)</b>

<b>10. Signed?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>11. Location of Signature:</b>	
<b>12. Recommended maintenance:</b>			
<b>13. Artist's Website:</b>			
<b>14. Instagram:</b>			
<b>15. Twitter:</b>			
<b>16. Other Social Media:</b>			
<b>17. If represented by a commercial Gallery, please provide the name and contact information:</b>			
	<b>Gallery Name:</b>		
	<b>Contact Name:</b>		
	<b>Phone:</b>		<b>Email:</b>
	<b>Street Address:</b>		
	<b>City, State, ZIP:</b>		
	<b>Website:</b>		

**Please attach the following documents to this record**

**18. Artist Biography**

**19. Artist Statement**

**20. High Resolution Digital Image of Artwork**

**21. High Resolution Digital Image of Artist(s) Headshot. (Include all artists if it is a team)**

**22. Specific Statement about the Artwork or series, 150 – 500 words.**