

[PROJECT NAME]
ATTACHMENT A2 - AGREEMENT FOR DESIGN PHASE SERVICES

This **AGREEMENT FOR COMMISSION DESIGN PHASE SERVICES** (this "Agreement") is entered into this [] day of [] 202[] (the "Effective Date") by and between the **HOUSTON ARTS ALLIANCE**, a Texas nonprofit corporation ("HAA"), and **[ARTIST(S)/ENTITY]** (the "Artist"), (each a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the City of Houston, Texas (the "City") established the City's Civic Art Program (the "Program") under Ordinance No. 99-1351 (the "Ordinance"), adopted on December 21, 1999; and

WHEREAS, the Ordinance, as amended by Ordinance No. 2006-731 (the "Civic Art Ordinance"), adopted on June 28, 2006, authorized appropriations to the Program of 1.75 percent of amounts appropriated by the City for eligible projects within the City's Capital Improvement Plan (the "Civic Art Appropriations"); and

WHEREAS, in accordance with the Civic Art Ordinance, HAA is authorized to manage and apply Civic Art Appropriations to pay costs and expenses related to the Program, including costs and expenses incurred under contracts and purchasing agreements entered into by HAA in service of the Program; and

WHEREAS, HAA customarily applies Civic Art Appropriations to pay for costs and expenses related to commissions for Civic Art in connection with eligible Capital Improvement Plan projects; and

WHEREAS, HAA has solicited a preliminary design from Artist and now desires to solicit a Final Design (as hereinafter defined) from Artist to create the Project (as hereinafter defined) in exchange for Compensation (as hereinafter defined) payable from the Civic Art Appropriations; and

WHEREAS, the Artist's receipt of the Compensation is conditioned on the performance of the Design Phase Services (as hereinafter defined) in accordance with the description attached here as the scope of work ("Scope") on **Exhibit A**; and

WHEREAS, HAA and Artist wish to set out the terms and conditions required under this Agreement by which the Design Phase Services shall be rendered to promote the integrity of Artist's ideas and HAA's furtherance of the objectives of the Program as represented by the Project.

ARTICLE 1.
DEFINITIONS

In addition to the terms defined in the recitals above, as used in this Agreement, the following terms shall have the meanings as set forth below:

Agreement means this Design Phase Services Agreement by and between the Houston Arts Alliance and Artist in relation to the Civic Art Project.

Artist has the meaning assigned above.

Business Day means any day other than a Saturday or Sunday on which banks in the State are required to remain opened.

City means the City of Houston, Texas, a municipal corporation principally located in Harris County, Texas.

City Council means the City Council of the City of Houston, Texas.

Civic Art or Civic Art Project means a work of visual art or master plan for artwork for the City, or a particular City department or location developed by a professional artist acknowledged by critics and peers as a professional of recognized ability appropriate for the Civic Art Project, who produces art in any permanent medium or material.

Civic Art Appropriation means an amount equal to 1.75 percent of the amount appropriated by City Council for an eligible project undertaken as part of the City's Capital Improvement Plan, as amended

Civic Art Collection means the City of Houston's public art collection comprised of works of art in all media that are purchased, commissioned, or gifted to the City and accepted by City Council for inclusion in the City's public art collection. The City Collection may include portable artwork commissioned for specific sites, or design team projects where artists work collaboratively with other artists, architects, engineers, or planners.

Civic Art Program means those Civic Art Projects and Conservation Projects approved by the Director of the affected City departments and City Council for funding under the Civic Art Ordinance.

Civic Art Ordinance means the City of Houston Ordinance No. 2006-731 adopted by City Council on June 28, 2006, authorizing appropriations to the Civic Art Program.

Compensation means monetary funds 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.

Completion Date means the second Milestone Date, the day on which the Design Phase Services are to be completed.

Contract Manager means the authorized representative of HAA who will oversee this Agreement.

Cure Period means, where applicable, a period of ten (10) Business Days during which Artist may remedy any Event of Default.

Design means the accepted and approved products resulting from an artists' Design Phase Services, which describe the features, functions, characteristics, qualities and/or properties for the Project.

Design Phase Package means and includes those deliverables associated with the design phase of the Project as set forth in the Scope of this Agreement.

Design Phase Services has the meaning assigned to it in Section 2.1 of this Agreement.

Director means the duly authorized Director of Civic Art + Design at HAA.

Event of Default has the meaning assigned to it in Section 6.1 of this Agreement.

HAA means the Houston Arts Alliance, a Texas non-profit corporation.

Invoice means an invoice submitted by Artist to HAA payable towards Artist's Compensation for the Design Phase Services.

Milestone Date means each date on the Scope on which a portion of the Design Phase Services must be completed by Artist.

Modifications means modifications, supplements, additions, or omissions to the Scope that HAA may reasonably request, subject to the provisions of Section 2.3.

Progress Meetings means meetings between Artist and HAA to discuss the progress and areas of concern for the Design Phase Services.

Project means and includes the Civic Art Project administered by HAA for which the Design Phase Services are to be provided pursuant to this Agreement.

Project Artist means the Artist selected for the commission of the Project.

Performance Schedule means the schedule created on a Business Day basis covering completion of the Design Phase Services.

Retainage has the meaning assigned to it in Section 5.3.

Remediation Period has the meaning assigned to it in Section 3.4(b).

Remediation Plan has the meaning assigned to it in Section 3.4(a).

Scope means the scope of work as described in Exhibit A, attached hereto.

Site means the location of the Project, which is more particularly described in Exhibit B.

Standard of Care has the meaning assigned to it in Section 3.2.

Timeline Notice means a notice delivered to Artist from HAA indicating a lack of satisfactory performance.

ARTICLE 2. THE DESIGN PHASE SERVICES AND SCOPE

Section 2.1. Generally. The “Design Phase Services” shall comprise the completion and submission of (i) the Design Phase and (ii) all other documentation required by the Scope.

Section 2.2. Planning of Work and Performance Schedule. The Artist shall submit a Performance Schedule to HAA concurrently with the deliverables associated with the first Milestone Date indicated on the Scope. The Performance Schedule shall state the sequence of operations for each portion of the Design Phase Services including without limitation and as applicable (i) start and finish days for all items corresponding with both Milestone Dates (ii) dates required for review and approval by HAA and (iii) permit dates, if needed and as applicable. Such Performance Schedule shall be subject to HAA’s approval, and once approved, no changes to the Performance Schedule may be made without HAA’s approval; provided, however, that any revisions to the Performance Schedule that change a Milestone Date or the Completion Date shall be subject to Section 2.3 below.

Section 2.3. Modifications to the Scope. HAA may, at any time, request modifications to the scope. In the event Artist believes that such Modifications will entitle Artist to an adjustment in Compensation, Milestone Date(s) or Completion Date, Artist shall notify HAA in writing before implementing such Modifications. Such notification shall include a statement of the proposed Compensation, Milestone Date or Completion Date, as applicable, for such Modifications. In the event that HAA agrees, in its sole discretion and upon approval of the change order request, the Artist is entitled to an adjustment, HAA shall issue a revised scope of work setting forth the agreed upon equitable adjustment to the Scope to reflect the Modifications. If the Artist implements such Modifications without first notifying HAA as required herein and obtaining such revised scope of work and HAA does not subsequently agree to an adjustment for such Modifications in writing, the Artist does so at its own risk and HAA shall not be required to pay or otherwise be liable for any costs or expenses associated with such Modifications and the Artist will not be entitled to any adjustment to Compensation, Milestone Date, or Completion Date. Furthermore, if any such Modifications are required due to the Artist’s errors, omissions, failure to comply with this Agreement or the Scope or other fault, the Artist shall provide such Modifications at its own cost and expense and without any adjustment to Compensation or Milestone Dates.

ARTICLE 3. DUTIES OF THE ARTIST

Section 3.1. Design Phase Services. Artist shall perform all services and will furnish all supplies, materials and equipment necessary to complete the Design Phase Services.

Section 3.2. Standard of Care. All Design Phase Services shall be of good quality and shall be performed in a professional manner. The standard of care for all Design Phase Services will be the care and skill ordinarily used by members of the Artist's profession, practicing under similar conditions at the same time and in the same general locality (the "Standard of Care").

Section 3.3. Reporting to HAA. Consistent with the Standard of Care described above, upon reasonable request by HAA, Artist shall take the following measures to keep HAA apprised of all aspects of the Design Phase Services:

- (a) Artist shall schedule Progress Meetings, upon HAA's request and at the interval requested by HAA, to discuss the Design Phase Services.
- (b) Artist shall submit an updated Performance Schedule each time there is a change in progress that would make it reasonably likely for either of the Milestone Dates or the Completion Date to be inaccurate.
- (c) Artist shall reply with reasonable promptness but in no event later than ten (10) Business Days to any correspondence from HAA.

Section 3.4. Lack of Satisfactory Progress. If HAA, within its sole judgement, determines that a delay in the Design Phase Services is reasonably likely, it may send Artist a Timeline Notice, and upon receipt of such Timeline Notice, Artist shall, whether or not it disputes responsibility for the delay:

- (a) provide HAA with a written narrative within ten (10) Business Days setting forth in a degree of detail acceptable to HAA a plan of recovery to overcome or mitigate the delay or lack of satisfactory performance ("Remediation Plan"); and
- (b) diligently undertake the steps outlined in the Remediation Plan to mitigate the delay in the Design Phase Services within ten (10) Business Days ("Remediation Period"). Notwithstanding the foregoing, if remediation is not feasible within the Remediation Period and Artist has made reasonable efforts to mitigate the delay, HAA may, in its sole discretion, allow Artist reasonable time past the Remediation Period.

Section 3.5. Selection of Alternate Artist. If Artist is either not capable of completing the steps outlined in the Remediation Plan within the Remediation Period, HAA may (i) terminate this Agreement pursuant to Section 6.3 herein and (ii) select an alternate artist to complete the Project.

ARTICLE 4. RESPONSIBILITIES OF HAA

Section 4.1. Compensation. Unless otherwise modified in this Agreement HAA pay the Artist the Compensation in accordance with the provisions of Article 5 of this Agreement.

Section 4.2. Site Access. If HAA has the ability to guarantee Site access, HAA shall cause the Artist to have access to the Site or Sites to the extent necessary for the performance of the Design Phase Services under this Agreement; provided, however, that the Artist shall not enter the Site or Sites unless and until Artist has been expressly provided with such access and at any time that Artist is present upon the Site or Sites, Artist shall, and shall cause any

of Artist's agents, consultants, and/or employees to, fully comply with all rules and regulations of HAA and any owner and/or contractor in control of the Site.

Section 4.3. Request for Information. HAA shall furnish all information and materials required by the Artist to the extent that such materials are available. HAA shall also provide correct scaled drawings of the Site, if available.

Section 4.4. 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 D** for use by Artist in the fulfillment of this Agreement.

Section 4.5. Notification of Approval to Proceed. HAA, or any of its authorized representatives, shall notify the Artist, in writing, of its decision within fifteen (15) days of the City's acceptance and approval of the Final Design, subject to the following:

- (a) If the Artist is not named the Project Artist within the timeframe set forth in this Section, the provisions of Section 9.1 shall apply.
- (b) If the Artist is named the Project Artist, then the provisions of Section 9.2 shall apply.

ARTICLE 5. COMPENSATION AND PAYMENT SCHEDULE

Section 5.1. Compensation. Within thirty (30) Business Days of each Milestone Date, Artist shall submit an Invoice to HAA that meets the requirements of **Exhibit E** attached to this Agreement, and HAA shall make the payments indicated on each Invoice within forty-five (45) days after it approves the same; provided, however, that the total of the Invoices may not exceed the Compensation.

Section 5.2. Offset. HAA may withhold and/or all or part of the portion of the Compensation requested in an Invoice because of:

- (a) Design Phase Services that are defective or not in compliance with this Agreement or any failure of Artist to perform the Design Phase Services in accordance with the provisions of this Agreement;
- (b) any failure of Artist to pay any of its contractors, subcontractors, subconsultants or third parties under its direction and control;
- (c) failure of Artist to submit proper an Invoice with all required information listed in **Exhibit E**; or
- (d) any other failure of Artist to comply with this Agreement.

Section 5.3. Retainage. HAA shall have the right to withhold % ("Retainage") from each Invoice and shall remit such Retainage to Artist no later than days after the City's final acceptance of the Design Phase Services. The provisions of this Section 5.3 shall apply even if there are no defects with the Design Phase Services.

Section 5.4. 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 6. BREACH; REMEDIATION

Section 6.1. Event of Default. For the purposes of this Agreement, the following events constitute an Event of Default by Artist:

- (a) Failure to meet a Milestone Date and/or the Completion Date.
- (b) Failure of Artist to submit the Remediation Plan in the time limit provided in Section 3.4(a).
- (c) Failure of Artist to remedy any delays in the applicable timeframe provided in Section 3.4(b), irrespective of whether Artist completed the Remediation Plan promptly.
- (d) Failure of Artist to otherwise materially comply with the provisions of this Agreement that endures past the Cure Period.

Section 6.2. Non-Termination Remedies. HAA shall have the following remedies available to it upon the occurrence of the following Events of Default by Artist:

- (a) Upon the occurrence of the Event of Default described in Section 6.1(a) above, HAA shall have the right to (i) require Artist to procure additional vendors and/or studio assistants; and/or (ii) request Artist to complete or cause to be completed additional hours of work on the portion of the Design Phase Services that have not met the applicable Milestone Date or Completion Date.
- (b) Upon the occurrence of the Event of Default described in Section 6.1(b) above, in addition to Retainage, HAA shall have the right to withhold ten percent (10%) of the amount of the Artist's next Invoice to HAA.
- (c) Upon the occurrence of the Event of Default described in Section 6.1(c) above, in addition to the Compensation withheld pursuant to Section 6.2(b) above, HAA shall have the right to withhold an additional ten percent (10%) from of the Artist's next Invoice.

Section 6.3. Termination Remedies. HAA may at its option elect to terminate this Agreement pursuant to Section 7.2 below upon the occurrence of (i) both Events of Default described in Sections 6.1(a) and 6.1(b) above or (ii) an Event of Default described in Section 6.1(d) above.

ARTICLE 7. TERM AND TERMINATION

Section 7.1. 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 payment of the Retainage to Artist.

Section 7.2. Termination for Cause.

- (a) HAA may terminate this Agreement for cause by delivering a written notice of termination to Artist (i) upon the satisfaction of either condition described in Section 6.3 above or (ii) if a Milestone Date and/or the Completion Date is missed and remains incomplete for days, irrespective of whether Artist has initiated a Remediation Plan. Termination shall be deemed effective as of the electronic transmission of such notice.
- (b) Upon termination of this Agreement pursuant to this Section, Artist shall:
 - (1) Immediately stop work on the Design Phase Services; and
 - (2) Take such further action regarding the termination of the Design Phase Services as HAA shall reasonably direct.

- (c) Upon termination of this Agreement pursuant to this Section, HAA shall provide the applicable portion of the Compensation for the Design Phase Services actually completed by Artist; provided, however, that payment of any such portion of the Compensation will be subject to HAA's right to offset all damages and costs associated with finally completing the Design Phase Services if it elects to do so.

Section 7.3. Termination for Convenience.

- (a) The Design Phase Services may be terminated by either Party, subject to written notice submitted thirty (30) calendar days before termination.
- (b) Upon HAA's termination of this Agreement pursuant to this Section, HAA shall pay Artist for any Design Phase Services actually rendered up to the effective date of termination.
- (c) Upon the Artist's termination of this Agreement pursuant to this Section, HAA shall have the right, in its sole discretion, to pay Artist for Design Phase 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.

Section 7.4. Incapacity of Artist.

- (a) 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.
- (b) 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 7.4, 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 8.
FORCE MAJEURE.**

Section 8.1. Generally. Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement 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 Agreement. 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 Compensation.

Section 8.2. Applicability. This relief is not applicable unless the affected Party does the following:

- (a) 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
- (b) provides the other Party with prompt written notice of the cause and its anticipated effect.

Section 8.3. Director Approval. 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.

Section 8.4. HAA's Rights. HAA may perform Agreement functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the HAA.

- (a) If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Agreement by giving seven days' written notice to Artist. This termination is not a default or breach of this Agreement. **ARTIST WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**
- (b) Artist is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Artist shall employ only fully trained and qualified personnel during a strike

ARTICLE 9. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

Section 9.1. Non-Approved Design

- (a) If Artist's Final Design is not approved to proceed, 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.
- (b) In view of the intention that the 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.
- (c) City is not responsible for any third-party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.
- (d) If, within the above-stated one-year period, the City decides to approve the Design to proceed to the next phase of the Project as Fabrication and Installation and the Project Artist agrees to such selection, then the rights set forth in Section 9.2 for the selected Artist shall supersede and govern any ownership and intellectual property rights associated with or related to this Agreement.

Section 9.2. Selected Project Artist.

- (a) If Artist is selected to become the Project Artist, then the ownership and intellectual property rights set forth in this subsection shall apply.
- (b) 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.

- (c) 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.
- (d) 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. The 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: "©Artist Name, Artwork Title, Year."
- (e) 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.
- (f) 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 10. WARRANTIES OF TITLE AND COPYRIGHT

Section 10.1. Artist represents and warrants that:

- (a) Final Design and/or Work shall be the original product of the Artist's sole creative efforts.
- (b) 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;
- (c) 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;
- (d) Final Design and/or Work (or duplicate thereof) have not been accepted for sale elsewhere;
- (e) Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement; and
- (f) 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 11. ARTIST AS INDEPENDENT CONTRACTOR

Section 11.1. Independent Contractor. Artist shall perform all Design Phase 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. Artist is solely responsible for the compensation of such personnel, for the withholding of income, social security, and other payroll taxes, and for all workers' compensation benefits coverage. 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 12. INDEMNIFICATION AND INSURANCE

Section 12.1. General Indemnity.

- (a) **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, REASONABLE AND DOCUMENTED 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 ANY ACTS, ERRORS, OR OMISSIONS OF ARTIST AND/OR ARTIST'S SUBCONTRACTORS AND CONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, MEMBERS, PARTNERS, AND REPRESENTATIVES IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, NONPERFORMANCE, OR BREACH OF THIS AGREEMENT.**
- (b) Artist agrees to and shall release the City and HAA 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.
- (c) Artist shall require all of its subcontractors to include in their subcontracts a release and indemnity in favor of HAA and the City in substantially the same form as above.

Section 12.2. Insurance. Artist will maintain insurance coverage in the amounts listed on the attached Exhibit C.

Section 12.3. 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.

ARTICLE 13. MISCELLANEOUS

Section 13.1. Severability. If any part of this Agreement is for any reason held to be invalid, all other parts remain enforceable unless the result materially prejudices either Party.

Section 13.2. Entire Agreement. This Agreement 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 Agreement.

Section 13.3. Written Amendment. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument.

Section 13.4. Applicable Laws.

- (a) This Agreement 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.
- (b) **Venue.** Venue for any litigation relating to this Agreement is Harris County, Texas.

Section 13.5. Notices. All notices to either Party to the Agreement 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 Article 15 of this Agreement 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.

Section 13.6. Captions. The captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section or article in this Agreement.

Section 13.7. Acceptance and Approval. An approval by HAA does not waive compliance with this Agreement or establish a standard of performance other than required by this Agreement or by law. HAA is not authorized to vary the terms of this Agreement.

Section 13.8. Inspections, Audits and Enforcement.

- (a) 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 Agreement. The Artist and HAA shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.
- (b) The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement 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 Agreement, with the exception of those documents made confidential by federal or State law or regulation.

Section 13.9. Ambiguities. If any term of this Agreement 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.

Section 13.10. Survival. Artist shall remain obligated to the HAA and City and the HAA shall remain obligated to the Artist under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement; 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.

Section 13.11. Parties in Interest. This Agreement does not bestow any rights upon any third Party other than the City, but binds and benefits the Artist and HAA only.

Section 13.12. Remedies Cumulative. Except as otherwise provided herein, the rights and remedies contained in this Agreement 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 Agreement except in accordance with the provisions hereof.

Section 13.13. Non-Waiver. If either Party fails to require the other Party to perform a term of this Agreement, 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 Agreement.

Section 13.14. Business Structure and Assignments. Neither Artist nor HAA shall not assign this Agreement 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 Section 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 Agreement 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.

Section 13.15. Successors and Assigns. This Agreement 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 13.14. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Section 13.16. No Partnership Created Hereby. The Artist and the HAA agree that no partnership relationship or joint venture between the Parties is created by this Agreement.

Section 13.17. No City Expenditure. Nothing in this Agreement requires the City to make any expenditure of its funds to the HAA or to any other party.

Section 13.18. 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.

Section 13.19. Artist Debt IF ARTIST, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, 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 AGREEMENT, AND ARTIST WAIVES ANY RECOURSE THEREFOR.

Section 13.20. 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.

Section 13.21. 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 14. COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.

Section 14.1. Anti-Boycott of Israel. Artist certifies that Artist 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.

Section 14.2. Anti-Boycott of Energy Companies. Artist certifies that Artist 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.

Section 14.3. Anti-Boycott of Firearm Entities or Firearm Trade Associations. Artist certifies that Artist 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.

Section 14.4. Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Artist certifies that, at the time of this Agreement neither Artist nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Artist, 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 15. NOTICES

Section 15.1. 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, or transmitted electronically as follows:

Section 15.2.

HAA:

Taylor Jackson, Chief Executive Officer
Houston Arts Alliance
5280 Caroline St., Suite 100
Houston, TX 77004

ARTIST

[●]
[Street Address
City, State, Zip Code]

Copies to:

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

For HAS-sponsored projects, copies to

Jim Szczesniak, Director
Houston Airport System
16930 John F. Kennedy Blvd.
Houston, TX 77032

(Remainder of Page Left Blank Intentionally)

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

HOUSTON ARTS ALLIANCE

By: _____

Name: Taylor Jackson

Title: Chief Executive Officer

[ARTIST/ENTITY], as Artist

By: _____

Name: [ARTIST]

Title: [Title]

**EXHIBIT A
SCOPE OF SERVICES**

Total Compensation: \$[]

Each Invoice may be submitted after the successful completion or submission of the items listed on the Milestone Dates listed below:

[Milestone Date 1] 50% of Compensation (\$[])

- Fully executed Agreement
- 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 HAA and the City as Additional Insured.
- ***Required Completion of all items by Milestone Date 1 []***

[Milestone Date 2] 50% of Compensation (\$[])

- Delivery of Final Design deliverables listed below:
 - Final Design documents
 - Updated Project narrative
 - Substantially final detailed fabrication and installation budget
 - Detailed construction documents, including input from a structural engineer if required by the building code
 - Material samples, specifications and warranties
 - High-quality, press-ready image or rendering
 - Draft maintenance and conservation plan
 - Engineering drawings and materials signed, dated, and stamped, with the label "Issued for Permitting" (IFP)
- Signed Invoice
- Updated projected Performance Schedule
- ***Required Completion of all items by: []***

EXHIBIT B
SITE LOCATION

Project:

Address:

Council District:

EXHIBIT C
INSURANCE REQUIREMENTS

- (a) Artist will maintain the following insurance coverages in the following amounts:

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	• Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit)
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.	

- (b) At all times during the term of this Agreement and any extensions or renewals, Artist 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, Artist 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 Artist shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts.
- (c) 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. Artist waives any claim or right of subrogation to recover against the HAA or its officers, agents, or employees, and each of Artist'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.
- (d) ARTIST SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Artist shall provide other suitable policies in order to maintain the 8 required coverage. If Artist does not comply with this requirement, the HAA may immediately suspend Artist from any further performance under this Agreement and begin procedures to terminate for default.

EXHIBIT D
TAX EXEMPTION CERTIFICATE

 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) 5280 Caroline Street, Suite 100	Phone (Area code and number) (713)527-9330
City, State, ZIP code Houston, TX 77004	

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: _____

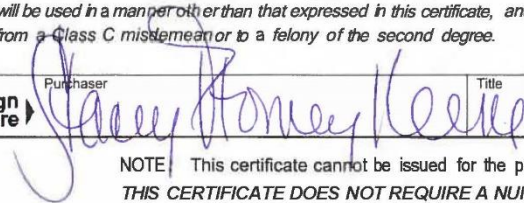
Description of items to be purchased or on the attached order or invoice:

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
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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 E
INVOICE REQUIREMENTS

- 1) Artist 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 Artists by the HAA will be after HAA receipt of funds from the City of Houston for each Artists Invoice. Please note that as per the HAA's contract with GSD, payment is within 30 days. Payment to the Artist can take up to 45 days. If payment to the HAA from the City is later than 30 days, the schedule may be delayed.
- 2) Each Invoice will include the following:
 - a. Date Invoice is submitted
 - b. Artist's contact information including address, phone number and email
 - c. Time period covered by Invoice
 - d. Total contract amount
 - e. Total amount invoiced to date; date that each prior payment was received by the Artist
 - f. List of deliverables
 - g. Artist's signature
 - h. Each Invoice to be numbered consecutively
- 3) The Artist 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.