

[PROJECT NAME]

ATTACHMENT A1 - AGREEMENT FOR CONCEPTUAL DESIGN SERVICES

This **AGREEMENT FOR CONCEPTUAL DESIGN SERVICES** (the "Agreement") is entered into this [●] day of [●], 202[●] ("Effective Date") by and between the **HOUSTON ARTS ALLIANCE**, a Texas nonprofit corporation ("HAA"), and [●] ("Artist"), a *[if an entity, state the entity type]* located at [●] and acting by and through [●], its duly authorized Artist (each a "Party," and collectively, the "Parties").

RECITALS

Whereas, the Agreement with [Client name], adopted on [executed client contract date], authorized appropriations for the Program for eligible [Artwork projects] within the [Client location]

WHEREAS, in accordance with the Agreement with [Client Name], HAA is authorized to manage and apply 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 Appropriations to pay for costs and expenses related to commissions for Artwork in connection with [Client name] projects; and

WHEREAS, HAA has issued a request for qualifications ("RFQ") to commission the conceptual design of a Civic Art Project to be installed at the Site (as hereinafter defined) described in the attached Exhibit A (the "Project"), and subsequently invited a select number of candidates to submit a request for proposals ("RFP"), the Artist being one such candidate; and

WHEREAS, HAA now desires to (i) solicit a Conceptual Design Proposal (as hereinafter defined) from Artist for review by the Artist Selection Panel (as hereinafter defined) and (ii) compensate the Artist with an honorarium in consideration of the Artist's services under this Agreement; and

WHEREAS, the Artist's receipt of the honorarium is conditioned on the performance of the Conceptual Design Services (as hereinafter defined) in accordance with the description attached here as Exhibit B; and

WHEREAS, HAA and Artist wish to set out the terms and conditions required under this Agreement by which the Conceptual Design 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.

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

**ARTICLE 1.
DEFINITIONS**

Section 1.1. Defined Terms. In addition to the terms set forth in the recitals above, as used in this Agreement, the following terms shall have the meanings as set forth below:

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

Artist has the meaning assigned above.

Artist Selection Panel means the group of panelists appointed by HAA to select and recommend for the [Client]'s approval a conceptual design for the Project.

Breach Notice has the meaning assigned to Section 5.2.

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

[Client Name] means the [Client name], a [entity], principally located in [location (city, county)]

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

Civic Art Appropriation means an amount appropriated by [Client name] for an eligible project undertaken as part of the Program

Civic Art Program means those Art Projects and Conservation Projects approved by the [Client name] for funding of the services associated with such projects.

Compensation means the amount owed to the Artist for the Conceptual Design Services, also referred to herein as the Honorarium.

Conceptual Design Proposal means and includes those items set forth in the attached Exhibit B.

Conceptual Design Services has the meaning assigned to it in Section 2.1.

Cure Period has the meaning assigned to it in Section 5.2.

Default Notice means the notice delivered to a defaulting Party after the lapse of the Cure Period detailing the occurrence of an Event of Default.

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

Event of Default means the failure of Artist to (i) promptly communicate with HAA, (ii) furnish any portion of the Conceptual Design Services in accordance with the Performance Schedule or (iii) otherwise comply with the terms of this Agreement; provided, however, that such failure must last beyond the Cure Period.

Force Majeure Event has the meaning assigned to it in Section 11.1.

Invoice means the document submitted to HAA by the Artist requesting payment of the Honorarium.

Non-Selected Artist means any artist who upon completion of the Conceptual Design Services is not requested to enter an agreement with HAA to further develop the design of the Project.

Performance Schedule means the schedule governing mandatory completion of the Conceptual Design Services in the attached Exhibit B.

Presentation means the Artist's presentation of the Conceptual Design Proposal to the Artist Selection Panel.

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

Project Alternate has the meaning assigned to it in Section 3.2.

Selected Artist means an Artist who has been selected to further develop the conceptual design and provide design phase services of the Project, pursuant to a separate Agreement for Commission Design Phase Services.

Site means the location described on the attached Exhibit A.

Term has the meaning assigned to it in Section 6.1.

Section 1.2. Gender; Singular and Plural. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

ARTICLE 2. SCOPE OF SERVICES

Section 2.1. Conceptual Design Services. The "Conceptual Design Services" shall be and include (i) the development of the Conceptual Design Proposal and (ii) the Presentation. The Conceptual Design Services may be amended, revised, or supplemented by mutual written agreement of the Parties, and any such mutually agreed revisions, updates, supplements, or modifications shall become incorporated into this Agreement and shall not constitute an amendment to this Agreement.

Section 2.2. HAA Assistance. HAA shall furnish all information and materials required by Artist to the extent that such materials are available. HAA, shall also provide correct scaled drawings of the Site, if available.

ARTICLE 3. ARTIST SELECTION

Section 3.1. Selection. The Artist shall perform the Conceptual Design Services on [●] day of [●], 202[●] and shall present their Conceptual Design Proposal to the Artist Selection Panel, which may include art world representatives and artists, community representatives and representatives from the department for which the funds are appropriated. The Artist Selection Panel will assess the Artist's Conceptual Design Proposal based on whether it [(i) is responsive to the history, culture, and identity of the community surrounding the site; (ii) is family-friendly, suitable for public display, and free of safety hazards; (iii) is compliant with the City ADA requirements (if applicable); (iv) is resistant to graffiti, vandalism, or other environmental stressors and requires minimal maintenance; (v) is expected to have a lifespan of at least twenty (20) years.] The Artist shall be given an allotted time for the Presentation, and beyond that period should not consult with any individual on the Artist Selection Panel who is not the Director about the Presentation or this selection process.

Section 3.2. Notification of Selection. HAA, or any of its authorized representatives, shall notify the Artist, in writing, of its decision to name the Artist the Selected Artist within fifteen (15) days of the [Client's] acceptance and approval of the same.

Section 3.3. Non-Selected Artist. If the Artist is not named the Selected Artist, Artist shall be a Non-Selected Artist, and the provisions of Section 7.1 shall apply.

Section 3.4. Project Alternate. If Artist becomes a Non-Selected Artist, HAA or any of its authorized representatives may elect to designate Artist as an alternate ("Project Alternate") for a period of one (1) year from the expiration of the Term. If Artist is designated as a Project

Alternate Pursuant to this Section 3.3, Artist shall receive no additional payment, unless by mutual written agreement among the Parties or if HAA designates such Project Alternate as the Selected Artist within the stipulated time period set forth in this section.

ARTICLE 4. COMPENSATION AND PAYMENT SCHEDULE

Section 4.1. Honorarium. Total compensation to Artist for the Conceptual Design Services shall be an amount equal to \$[●] (the "Honorarium"), which shall constitute full payment 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 or related to this Agreement. Artist shall be responsible for all costs incurred in connection with completing the Conceptual Design Services that exceed the sum of the Honorarium.

Section 4.2. Invoice. (a) Artist shall provide an invoice for the Honorarium to HAA; provided however, that HAA may in its sole discretion require that all Invoices show the work performed under the Conceptual Design Services and the itemized actual costs or expenses corresponding to that work.

- (b) Artist shall send the Invoice and the supporting documentation to HAA within thirty (30) calendar days after completing the Conceptual Design Services for the full value of the Honorarium, and HAA shall pay Artist within forty-five (45) days of approval of the same; provided, however, that Artist shall be responsible for all expenses incurred in connection with the performance of the Conceptual Design Services prior to receiving the Honorarium.

Section 4.3. 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.

Section 4.4. Limit of Appropriation. HAA's duty to pay the Honorarium under this Agreement is limited in its entirety by the provisions of this Section. The Artist acknowledges and agrees that HAA's ability to pay the Honorarium is contingent on receipt of funds from the Client, and HAA does not obligate itself by this Agreement to pay more money than it has received from the Client, and notwithstanding any other provision of this Agreement, HAA shall have no obligation to expend its own funds or make any payment except to the extent that the Client, at its sole discretion, has appropriated funds for such purposes.

ARTICLE 5. EVENT OF DEFAULT; NOTICE AND CURE

Section 5.1. Generally. For the purposes of this Agreement, the occurrence of each of the following events shall constitute an "Event of Default":

- (a) Artist's failure to complete the Conceptual Design Services in the time period and by the deadline indicated on the Performance Schedule;
- (b) Artist's failure to comply with any applicable state, federal, or local laws, rules, or regulations; and
- (c) Artist's failure to materially comply with the terms of this Agreement.

Section 5.2. Notice and Cure. Upon the occurrence of an Event of Default, HAA may provide Artist with written notice of the breach (the "Breach Notice") consistent with the notice requirements set forth in this Agreement. Artist shall then have five (5) business days from the date of receipt of the Breach Notice to cure the breach (the "Cure Period") or provide written proof that no breach existed. If Artist fails to cure any breach during the Cure Period or fails to provide proof that no claimed breach existed, then HAA may terminate this Agreement by delivery of a Default Notice pursuant to Section 6.3(a) below.

Section 5.3. Waiver; Extension. Upon the occurrence of an Event of Default, HAA may choose to waive any Event of Default of Artist at any time and/or provide an extension to performance of the Conceptual Design Services by giving Artist notice pursuant to Section 12.1 below. HAA may provide an extension under such terms and conditions as HAA may deem appropriate. Waiver by HAA of any occurrence of an Event of Default hereunder shall not be deemed or interpreted as a waiver of any other Event of Default under this or any other Agreement with Artist.

ARTICLE 6. TERM AND TERMINATION

Section 6.1. 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 (the "Term"); provided, however, that the provisions of Section 3.2 and Article 6 herein shall survive the expiration of the Term.

Section 6.2. Gratuities. Client 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 **[Client]** 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.

Section 6.3. Termination. Subject to the provisions of Section 11.1 below:

- (a) HAA may terminate this Agreement for cause if an Event of Default occurs and continues past the Cure Period. If Artist fails to cure an Event of Default, this Agreement shall be terminated as of the date of the defaulting Party's receipt of the Default Notice, unless waived pursuant to Section 5.3 above. If this Agreement is terminated for cause, Artist shall not be entitled to any additional payment, and Artist shall not be entitled to any portion of the Honorarium.
- (b) This Agreement may be terminated by either Party for convenience, subject to written notice submitted thirty (30) calendar days before termination.

ARTICLE 7. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

Section 7.1. Non-Selected Artists.

- (a) The Conceptual Design Services attributable to a Non-Selected Artist shall become the property of the **[Client]** for a period of one (1) year from the date the HAA sends final payment to a Non-Selected Artist under this Agreement. Non- Selected Artists shall retain copyright and other intellectual property rights in and to the Conceptual Design Proposal.
- (b) In view of the intention that the Conceptual Design Services be unique, Non-Selected Artists shall not make any additional exact duplicate reproductions of the Conceptual Design Services, nor shall Non-Selected Artists grant permission to others to do so except with the express written permission of **[Client]**.
- (c) **[Client]** is not responsible for any third-party infringement of any Non-Selected Artist's copyright and not responsible for protecting the intellectual property rights of any Non-Selected Artist.
- (d) If, within the above-stated one-year period, the **[Client]** decides to select a Non- Selected Artist to proceed to the next phase of the Project such Non-Selected Artist agrees to such selection, then the rights set forth in Section 7.2 for the Selected Artist shall supersede and govern any ownership and intellectual property rights associated with or related to this Agreement.

Section 7.2. Selected Artist.

- (a) Upon payment in full to Selected Artist, all work product under this Agreement shall become the property of **[Client]**, without restriction on future use, except as provided below. Selected Artist shall retain copyright and other intellectual property rights in and to the Conceptual Design Services. The Selected Artist grants to the **[Client]** an exclusive, perpetual, irrevocable, and royalty free license to graphically depict or display the Conceptual Design Services for any non- commercial purpose whatsoever. For purposes of this limitation, any graphic depiction or display of the Conceptual Design Services intended to promote or benefit **[Client]**, 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 **[Client]**, shall be deemed a non-commercial purpose.
- (b) In view of the intention that the Conceptual Design Services be unique, the Selected Artist shall not make any additional exact duplicate reproductions of the thereof, nor shall Selected Artist grant permission to others to do so except with the express written permission of **[Client]**. However, nothing herein shall prevent Selected Artist from creating future artworks in Selected Artist's manner and style of artistic expression.
- (c) Selected Artist reserves every right available under the Federal Copyright Act to control the making and dissemination of copies or reproductions of the Conceptual Design Services, except as those rights are limited by this Agreement. **[Client]** may make and disseminate photographs, drawings, and other two-dimensional reproductions of the Conceptual Design Services and accompanying materials for any municipal purpose. All reproductions by the **[Client]** shall contain a credit to the Selected Artist and a copyright notice substantially in the following form: "© date, Selected Artist's name."
- (d) Nothing in this Agreement shall prevent the Selected Artist from using images of the Conceptual Design Services for marketing and promotional purposes in connection with the Selected Artist's business, provided that such usage is in compliance with any non-disclosure agreement.
- (e) **[Client]** is not responsible for any third-party infringement of Selected Artist's copyright and not responsible for protecting the intellectual property rights of Selected Artist.

ARTICLE 8. WARRANTIES OF TITLE AND COPYRIGHT

Section 8.1. Representations and Warranties of Title. Artist represents and warrants that:

- (a) The Conceptual Design Services shall be the original product of the Artist's sole creative efforts.
- (b) The Conceptual Design Services are and will be unique and original, and do not infringe upon any copyright or the rights of any person;
- (c) Artist has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Conceptual Design Services or any copyright related thereto that may affect or impair the rights granted pursuant to this Agreement;
- (d) The Conceptual Design Services 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) The Conceptual Design Services shall be performed in accordance with all applicable laws, regulations, ordinances, etc., and with all necessary care, skill and diligence.

ARTICLE 9. ARTIST AS INDEPENDENT CONTRACTOR

Section 9.1. Status as Independent Contractor. Artist shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of [Client] or HAA. Artist shall have exclusive control of, and the exclusive right to control the details of the Conceptual Design Services, 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 the Parties or with the [Client], including without limitation its officers, agents, employees and subcontractors, and the doctrine of respondent superior has no application as between the [Client] or HAA and the Artist.

Section 9.2. Payment to Subcontractors. Artist is solely responsible (i) for the compensation of all subcontractors, consultants, employees, or other parties; (ii) for the withholding of income, social security and other payroll taxes; (iii) and for all workers' compensation benefits coverage.

ARTICLE 10. INDEMNIFICATION

Section 10.1. General Indemnity.

- (a) **ARTIST COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, [CLIENT] 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 [Client] 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 [Client] in substantially the same form as above.

Section 10.2. 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. [Client] expressly assumes no obligations, implied or otherwise, regarding payment or collection of any such fees or financial obligations. [Client] 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 [CLIENT] 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 [CLIENT]'S USE OR POSSESSION OF THE WORKS BY REASON OF AN ALLEGED OR ACTUAL COPYRIGHT VIOLATION OR OTHER LACK OF OWNERSHIP, AUTHORSHIP, OR ORIGINALITY.** [Client] 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 11. FORCE MAJEURE.

Section 11.1. 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 a Force Majeure Event (as defined below) that directly impacts the Artist, [Client] or HAA. The Force Majeure Event may permit a reasonable delay in performance of its obligations hereunder but does not excuse a Party's obligations to complete performance under this Agreement. For the purposes of this Agreement, "Force Majeure Event" means: fires, interruption of utility services, epidemics in the [Client], floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the [Client] 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. A Force Majeure Event does not entitle HAA or Artist to increase the value of Compensation.

Section 11.2. Applicability. This relief is not applicable unless the affected Party does the following:

- (i) uses due diligence to remove the effects of the Force Majeure Event as quickly as possible and to continue performance notwithstanding the Force Majeure Event to the extent performance is not affected by the Force Majeure Event; and
- (ii) provides the other Party with prompt written notice of the cause of the Force Majeure Event and its anticipated effect.

Section 11.3. Review of Claims. The Director will review claims that a Force Majeure Event that directly impacts the Artist or HAA has occurred and render a written decision within fourteen (14) calendar days. The decision of the Director is final.

Section 11.4. Rights of HAA. The HAA may perform Conceptual Design Services itself or contract them out during periods of Force Majeure Event. Such performance does not constitute an Event of Default by HAA.

- (i) If the Force Majeure Event continues for more than thirty (30) calendar days from the date performance is affected, the Director may terminate this Agreement by giving seven days' written notice to Artist. **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 COMPLETION OF THE Conceptual Design SERVICES IS HALTED DUE TO FORCE MAJEURE EVENT.

- (ii) 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 12.
NOTICES**

Section 12.1. 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:

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:

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

ARTICLE 13.
COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.

Section 13.1. Anti-Boycott of Israel. [Artist certifies that Art 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 13.2. 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 13.3. 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, as amended.

Section 13.4. Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, as amended, Agreement 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 amended, as a company known to have contracts with or provide supplies to a foreign terrorist organization.

ARTICLE 14. MISCELLANEOUS

Section 14.1. 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 14.2. 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 14.3. Written Amendment. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed by both Parties.

Section 14.4. Applicable Laws. 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.

Section 14.5. Venue. Venue for any litigation relating to this Agreement is Harris County, Texas.

Section 14.6. 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 Section 1 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 14.7. 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 14.8. 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 14.9. Inspections, Audits and Enforcement.

- (a) HAA and [Client] 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 [Client] 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 [Client] Attorney all documents and records that the [Client] 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 14.10. 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 14.11. Survival. Artist shall remain obligated to the HAA and [Client] 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 14.12. Parties in Interest. This Agreement does not bestow any rights upon any third party other than the [Client], but binds and benefits the Artist and HAA only.

Section 14.13. 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 14.14. 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 14.15. Business Structure and Assignments. The Parties shall not assign this Agreement at law or otherwise or dispose of all or substantially all of their assets without the Director's prior written consent. Nothing in this Section, 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, as amended. In the case of such an assignment, the Party making such assignment shall immediately furnish the other Party 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 Party shall delegate any portion of its performance under this Agreement without the other Party's prior written consent after confirmation from the Director. Any merger or reorganization of HAA pursuant to a [Client]-approved plan shall not be deemed to be an assignment, and any entity formed as a result of such merger or reorganization shall be deemed to be the legal successor of HAA.

Section 14.16. 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 14.15 This Agreement does not create any personal liability on the part of any officer or agent of the [Client].

Section 14.17. Severability. In the event any term, covenant or condition herein shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained; provided that such invalidity does not materially prejudice the Parties in their respective rights and obligations contained in the valid terms, covenants, and conditions hereof.

Section 14.18. No Partnership Created Hereby. The Parties agree that no partnership relationship or joint venture between the Parties is created by this Agreement.

Section 14.19. No [Client] Expenditure. Nothing in this Agreement requires the [Client] to make any expenditure of its funds to the HAA the Artist.

Section 14.20. Rights to Use Property. The rights granted to the Parties to use [Client] 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 14.21. 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 HAA IN WRITING. IF HAA 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 14.22. Zero Tolerance Policy for Human Trafficking and Related Activities. The requirements and terms of the City'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 Parties 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 the Effective Date. The Parties shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by any other Party (or, as applicable, its contractors or subcontractors).

Section 14.23. Compliance. Artist shall comply with all Federal, state, and local statutes, ordinances, and regulations applicable to the performance of the Conceptual Design Services.

(Signature Page Follows)

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 contractor

By: _____

Name: [●]

Title: [●]

EXHIBIT "A"
SITE LOCATION

Project:

Address:

Council District:

[Insert Images, if applicable]

Sites identified for artworks:

Exhibit B
Conceptual Design - SCOPE OF WORK

- (a) Artist shall provide services and all supplies, materials, and equipment necessary to provide the Conceptual Design Proposal, which shall consist of the following:
 - (i) A written narrative description of the Artist's concept, proposed materials, fabrication and installation methods, timeline for completion and maintenance requirements;
 - (ii) No more than five images of examples of relevant projects by the Artist, presented within a power point presentation;
 - (iii) Installation diagram showing the Project's relationship to the Site, including approximate weight of the Project, proposed attachment method(s), and location(s) for lighting, if any; and
 - (iv) A preliminary budget estimate, on the budget form attached hereto as **Attachment 1** for implementation of the project as indicated in this proposal, in an amount not to exceed \$[-], which includes all costs for materials, labor, fabrication, delivery, installation, insurance, transportation, Artist's fee, and all other associated costs for the Project, including, but not limited to, lighting, travel, permitting, and contingency. Budget estimate should also include costs for material or fabrication samples and/or prototype models to be delivered in the Commission Design Phase that show the size and placement of the Project in relation to the Site as appropriate.
- (b) **Method and Time for Completion.** Artist shall submit an electronic version of the Conceptual Design Proposal by no later than [-] via Submittable website, which will be accessible to Artist: <https://houstonartsalliance.submittable.com>
- (c) **Acceptable Formats for Submission.** The items listed above shall be sent in one of the following manners:
 - (i) Via email to name@haatx.com (9 MB size limit per each email)
 - (ii) Via an FTP site, such as dropbox.com
 - (iii) Mailed or hand delivered on a USB drive to HAA.

Attachment 1 Project Budget Sheet

An alternate format budget sheet may be substituted but should correspond to these itemized categories. If necessary, additional items not listed here may be included in your proposed budget.

Artist Design and Project Management Fee

\$ _____

This fee encompasses artist design fees, including fees for model making, design consultants, project planning, meetings, any assistants or project managers hired by the artist, and overall costs of managing the project. This fee typically ranges from 20 – 25% of the total project budget.

Professional Services

If these services are required, drawings must be stamped by a professional registered in the State of Texas.

Architect (CAD/Revit)	\$ _____	Permits	\$ _____
Structural Engineer	\$ _____	Landscape Architect	\$ _____
Electrical Engineer	\$ _____	Conservator	\$ _____
Civil Engineer	\$ _____	Lighting Designer	\$ _____

Fabrication Costs

Please include a detailed list of materials and estimated costs in this section

Materials	Cost (\$)

Fabrication Labor

\$ _____

Material Handling (inc. rigging, delivery, rental vehicles, storage)

\$ _____

Installation Costs

Costs incurred may increase if work is required to be completed after hours, or on weekends.

Professional/Hired Installers/Labor	\$ _____
Scaffolding or Electric Lift Rental	\$ _____
Installation Equipment	\$ _____
Lighting Fixtures, Bulbs, Installation	\$ _____

Insurance

Auto Liability	\$ _____
General Liability	\$ _____
Workers' compensation	\$ _____

Travel (if not based locally)

Airfare	\$ _____
Car Rental	\$ _____
Lodging & Per Diem	\$ _____

Educational Component

\$ _____

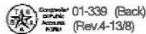
Contingency (5 – 10% of total project budget)

\$ _____

TOTAL PROJECT BUDGET

\$ _____

EXHIBIT C
TAX EXEMPTION CERTIFICATE



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
----------------------	---------------	---------------

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.