

[PROJECT NAME]
ATTACHMENT A3 - AGREEMENT FOR FABRICATION AND INSTALLATION SERVICES

This **AGREEMENT FOR COMMISSION FABRICATION AND INSTALLATION** (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, Artist has prepared the Final Design attached hereto as **Exhibit A** (as hereinafter defined) for the Project (as hereinafter defined), and HAA desires to have the Project constructed in exchange for Compensation (as hereinafter defined) payable from the Civic Art Appropriations; and

WHEREAS, the Mayor's Office of Cultural Affairs has reviewed and approved the Final Design; and

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

WHEREAS, HAA and Artist wish to set out the terms and conditions required under this Agreement by which the Fabrication and Installation 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:

Acceptance has the meaning assigned to it in Section 2.7(a) of this Agreement.

Agreement means this Fabrication and Installation 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 open.

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 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.

Commencement Date means, [], the earliest date that construction of the Project may commence.

Compensation means \$[•] 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 means the completion of construction and installation of the Project.

Completion Date means [], the date on which construction and installation of the Project at the Site must 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.

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

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 services of the Project as set forth in the Scope of this Agreement.

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

Fabrication and Installation Services has the meaning assigned to it in Section 2.1 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 Fabrication and Installation Services in accordance with the requirements set forth in **Exhibit G**.

Milestone Date means each date on the Scope on which a portion of the Fabrication and Installation Services must be completed by Artist.

Performance Schedule means the schedule provided by Artist to HAA pursuant to Section 2.2 of this Agreement.

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

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

Scope means the scope of services as described in **Exhibit B**, attached hereto.

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

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 FABRICATION AND INSTALLATION SERVICES AND SCOPE

Section 2.1. Generally. The Fabrication and Installation Services shall include the submission of certain deliverables and the completion of the Project in accordance with the Scope and by the dates set forth in **Exhibit B** (as may be modified in accordance with the terms of this Agreement).

Section 2.2. Planning of Project 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 Fabrication and Installation 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. 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 prior written 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. In the event Artist believes that such Modifications will entitle Artist to an adjustment in Compensation, either Milestone Date 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(s), 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. The revised scope of work shall be effective upon execution by the Artist. If the Artist commences 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.

Section 2.4. Commencement of the Project. The construction of the Project shall not be commenced by the Artist until the Commencement Date set forth in this Agreement. Commencing construction shall include procurement of any supplies, materials, and equipment needed for completion of the Project. If the Artist begins performance of the Fabrication and Installation Services prior to such date, the Artist proceeds at its own risk and

shall bear all responsibility therefor and all costs attributable thereto, including without limitation all costs associated with design professionals, and be liable for all damages caused thereby. The Artist acknowledges that HAA has no liability to or obligation to pay the Artist for any costs or expenses incurred in connection with constructing the Project prior to the Commencement Date.

Section 2.5. Delivery and Installation.

- (a) The Artist shall notify HAA in writing when fabrication of the Project is completed and ready for its delivery and installation at the Site.
- (b) The Artist shall deliver and install the completed Project at the Site in compliance with the Performance Schedule; provided, however, that Artist has received prior written approval of HAA to begin delivery and installation activities at the Site.
- (c) Should Artist complete the Project before the Site has been prepared, Artist shall store the Project at no expense to the City until such a time as the Site is completed and the Director notifies the Artist that installation may commence.
- (d) The Artist, individually and through its subcontractors, including its fabricator, shall take all necessary precautions to protect and preserve the integrity of the Site while delivering and installing the Project. The Artist shall repair any damage to the Site due to delivery, installation, or Artist's negligence or the negligence of Artist's subcontractors.
- (e) Prior to installation of the Project, Artist shall consult with a qualified art conservator, and provide to the Director written instructions for appropriate maintenance and preservation of the Project on the form attached hereto as **Exhibit D** (Catalog and Maintenance Record). The appropriate maintenance and preservation instructions shall not be substantially different from the maintenance and preservation anticipated and conveyed to City for the Project in the Final Design phase for the Project.

Section 2.6. Post Installation. The Artist shall be available at such time or times as may be agreed between the HAA and the Artist to attend any inauguration or presentation ceremonies relating to the of the Project to the City. The HAA shall use its best efforts to arrange for publicity for the completed Project in such art publications and otherwise as may be determined between the HAA and the Artist as soon as practicable following installation.

Section 2.7. Acceptance.

- (a) The Artist shall notify the Contract Manager in writing when all Fabrication and Installation Services have been completed in substantial conformity with Design Phase Services.
- (b) The HAA shall notify the Artist in writing of its acceptance of the Project ("Acceptance").
- (c) Acceptance shall be effective as of the date of the HAA's written notification of Acceptance.

**ARTICLE 3.
DUTIES OF THE ARTIST**

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

Section 3.2. Standard of Care. All Fabrication and Installation Services shall be of good quality and shall be performed in a professional manner. The Standard of Care for all Fabrication and Installation 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. Fabrication and Installation

- (a) Artist shall schedule Progress Meetings, upon HAA's reasonable request and at the interval requested by HAA, to discuss the Fabrication and Installation Services.
- (b) Artist shall submit an updated Performance Schedule each time there is accelerated progress, nonprogress, or slow 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 Fabrication and Installation 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 Fabrication and Installation 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. Correction of Fabrication and Installation Services. If Artist fails to comply with the Standard of Care, in addition to such other rights and remedies as HAA may have under this Agreement, at law or in equity, Artist shall, without additional compensation, be responsible for the damages suffered or incurred by HAA due to such failure by Artist, and the costs, fees and expenses of correcting its Fabrication and Installation Services, including but not limited to, when applicable:

- (a) The cost of correcting and replacing any affected design documents, including reproducible drawings; and/or
- (b) The additional costs of consultants to HAA, if any, arising out of such defective Fabrication and Installation Services.

In the event that Artist is either not capable of performing the corrections or not capable of performing such corrections in time to meet HAA's requirements, HAA may have the Services performed and any defective Fabrication and Installation Services corrected by a third party and Artist shall reimburse HAA for the fees, costs and expenses of such performance or correction or HAA may offset such amount in accordance with this Agreement or otherwise in accordance with applicable law.

Section 3.6. Site Clean-Up. Artist shall remove any waste, trash, debris and any Artist's goods, materials and/or equipment from the Site and shall clean the Site in a good and workmanlike manner. If applicable, Artist shall place all excess or unused material at points or places designated by HAA. If Artist fails to remove Artist's goods, materials and/or equipment and clean up the Site within fifteen (15) days after Completion or within fifteen (15) days after it receives a written request from HAA to do so, HAA shall have the right to remove the goods, materials and/or equipment and clean up the Site at Artist's expense and may

deduct and/or offset HAA's costs from sums that HAA owes Artist, if any, and invoice Artist for any amounts owed over and above said amount.

Section 3.7. Pollution, Health and Environment. ARTIST SHALL EXERCISE ALL NECESSARY DILIGENCE TO CONDUCT ITS OPERATIONS IN A MANNER THAT SHALL PREVENT POLLUTION OR CONTAMINATION AND ARTIST SHALL COMPLY WITH, AND SHALL CAUSE ITS SUBCONTRACTORS TO COMPLY WITH, ALL APPLICABLE LAWS, ORDINANCES, PERMITS, RULES, REGULATIONS AND LEASE OR OTHER APPLICABLE AGREEMENT PROVISIONS REGARDING POLLUTION, THE ENVIRONMENT AND HEALTH. ARTIST SHALL NOT PERMIT TRASH, WASTE OIL, BILGE WATER OR OTHER POLLUTANTS TO BE DISCHARGED OR TO ESCAPE INTO THE EARTH, WATERWAYS, OR SEA. ARTIST SHALL TAKE ALL REASONABLE MEASURES TO INSTRUCT ITS PERSONNEL AND SUBCONTRACTORS IN SUCH MATTERS AND TO PREVENT POLLUTION OR CONTAMINATION AND SHALL CLEAN UP ANY POLLUTION CAUSED IN THE COURSE OF OPERATIONS UNDER THE AGREEMENT. ARTIST WARRANTS AND GUARANTEES THAT SLUDGE, SPILLS, RELEASES, TRASH, DEBRIS OR OTHER WASTE SHALL BE DISPOSED OF IN ACCORDANCE WITH ALL FEDERAL, STATE AND OTHER GOVERNMENTAL LAWS, RULES AND REGULATIONS, ENVIRONMENTAL OR OTHERWISE. ARTIST SHALL OBTAIN ALL NECESSARY, VALID PERMITS AND LICENSES FOR THE HANDLING, TRANSPORTING AND DISPOSING OF HAZARDOUS SUBSTANCES ENCOUNTERED PER THIS SECTION, AND SHALL USE, STORE, AND DISPOSE OF ANY SUCH HAZARDOUS SUBSTANCES IN STRICT COMPLIANCE WITH SUCH PERMITS AND LICENSES AND WITH APPLICABLE LAWS, ORDINANCES, PERMITS, RULES, REGULATIONS, AND LEASE OR OTHER APPLICABLE AGREEMENTS. ARTIST WARRANTS THAT ARTIST SHALL REPORT USAGE OF ALL TOXIC CHEMICALS, SHALL OBTAIN MATERIAL SAFETY DATA SHEETS ("MSDS") FOR ALL HAZARDOUS MATERIALS OR SUBSTANCES UTILIZED HEREUNDER AND SHALL PROVIDE HAA WITH COPIES OF THE MSDS AND MAKE SAME AVAILABLE AT ALL TIMES AT THE SITE IN WHICH SUCH HAZARDOUS MATERIALS OR SUBSTANCES ARE USED OR STORED.

Section 3.8. Risk of Loss. The risk of loss or damage to the Project shall be borne by the Artist prior to Acceptance, and the Artist shall take such measures as are necessary to protect the Project from loss or damage until Acceptance, including but not limited to the purchase of property loss insurance.

ARTICLE 4. DUTIES AND RIGHTS 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. Identification. HAA shall cause credit to the Artist to be included on the public art websites and on a permanent plaque located on the Site.

Section 4.3. Site Access. HAA shall cause the Artist to have access to the Site or Sites to the extent necessary for the performance of the Fabrication and Installation 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 4.4. Request for Information. HAA shall furnish all information and materials required by Artist for the performance of the Fabrication and Installation Services to the extent that such materials are available. HAA shall also provide correct scaled drawings of the Site, if available.

Section 4.5. 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 E** for use by Artist in the fulfillment of this Agreement.

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 G** 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) Fabrication and Installation Services that are defective or not in compliance with this Agreement or any failure of Artist to perform the Fabrication and Installation 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 F**; 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 Fabrication and Installation Services. The provisions of this Section 5.3 shall apply even if there are no defects with the Fabrication and Installation 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 Fabrication and Installation 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 written notification of such notice.
- (b) Upon termination of this Agreement pursuant to this Section, Artist shall:
 - (1) Immediately stop work on the Fabrication and Installation Services;
 - (2) Immediately leave the Site and clear the Site of all materials and equipment used in the Fabrication and Installation Services, as directed by HAA; and
 - (3) Take such further action regarding the termination of the Fabrication and Installation 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 Fabrication and Installation 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 Fabrication and Installation Services if it elects to do so.

Section 7.3. Termination for Convenience.

- (a) The Fabrication and Installation 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 Fabrication and Installation 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 Fabrication and Installation 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, HAA 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 Project, in the event of termination under this Section 7.4, the Contract Manager shall have the right to complete the Project. 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. Title. Title to the Project, including all documents, models and/or drawings which constitute or are components of the Project, shall pass to City upon Acceptance of the Project. These documents, models and/or drawings will be retained for archival and presentation purposes. Artist's Final Design and all other work products under this Agreement shall become the property of City, without restriction on future use, except as provided below.

Section 9.2. Copyright Ownership. Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. Section 101 et seq., as the sole author of the Project for the duration of the copyright.

Section 9.3. Reproduction Rights.

- (a) In view of the intention that the Project be unique, Artist shall not make any additional exact duplicate reproductions of the Project, nor shall Artist grant permission to others to do so except with the express written permission of City. However, nothing herein shall prevent the Artist from creating future artworks in the Artist's manner and style of artistic expression.
- (b) By execution of this Agreement, Artist grants to City a perpetual, irrevocable license to graphically depict or display the Project for any non-commercial purpose whatsoever; for purposes of this limitation, any graphic depiction or display of the Project intended to promote or benefit City, its public services or its public purposes, regardless of whether or not a fee is charged to the public, or whether revenue is otherwise received by City, shall be deemed a non-commercial purpose. Notwithstanding the above limitation, Artist agrees and understands that nothing in this paragraph shall affect or limit City's absolute, unrestricted rights incidental to City's full ownership of the Project to alter, change, modify, destroy, remove, move, replace, operate, maintain, transport, sell or transfer, in whole or in part, the Project when City deems it necessary within its discretion, in order to otherwise exercise City's powers and responsibility in regard to public works and improvements, in furtherance of City's operations or for any other reason.
- (c) All reproductions by City shall contain a credit to Artist and a copyright notice substantially in the following form: "© Artist Name, Artwork Title, Year."
- (d) Unless notified otherwise by the City, Artist shall use Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to City in substantially the following form: "an original artwork commissioned by and in the public art collection of the City of Houston, Texas."
- (e) Artist shall, at Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Project in the Artist's name.
- (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. Warranties of Title. The Artist represents and warrants that:

- (a) the Project shall be the original product of the Artist's sole creative efforts.
- (b) the Project is and will be unique and original, and does not infringe upon any copyright or the rights of any person;
- (c) the Project (or duplicate thereof) has not been accepted for sale elsewhere;
- (d) the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Project or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- (e) the Project is free and clear of any liens from any source whatsoever;
- (f) the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- (g) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc., and with all necessary care, skill and diligence;
- (h) the Artist shall assume the defense of, and **INDEMNIFY AND HOLD HARMLESS, THE CITY, HAA, and Contract Manager, ITS OFFICERS, EMPLOYEES, AGENTS, AND ARTISTS FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, ACTIONS OR EXPENSES OF EVERY TYPE AND DESCRIPTION, INCLUDING ATTORNEY'S FEES, TO WHICH THEY MAY BE SUBJECTED ARISING OUT OF THE CITY'S USE OR POSSESSION OF THE FABRICATION AND INSTALLATION SERVICES BY REASON OF AN ALLEGED OR ACTUAL COPYRIGHT VIOLATION OR OTHER LACK OF OWNERSHIP, AUTHORSHIP, OR ORIGINALITY.**

Section 10.2. Warranties of Quality and Condition.

- (a) Artist represents and warrants that all Fabrication and Installation Services will be performed in accordance with the Standard of Care and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Project) for one year after the date of Final Acceptance.
- (b) Artist represents and warrants that the Project and the materials used are not currently known to be harmful to public health and safety.
- (c) If within one year HAA observes any breach of warranty described in this Section that is curable by the Artist, the Artist shall, at the request of the Contract Manager, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to City or HAA shall give notice to Artist of such breach with reasonable promptness.
- (d) If after one-year HAA observes any breach of warranty described in this Section that is curable by the Artist, Contract Manager shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during Artist's lifetime. Artist shall have the right of first refusal to make or supervise repairs or restorations. Should Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, Contract Manager may seek the services of a qualified restorative conservator and maintenance expert.
- (e) If within one year HAA observes any breach of warranty described in this Section that is not curable by the Artist, Artist is responsible for reimbursing Contract Manager for damages, expenses and loss incurred by Contract Manager as a result of the breach. However, if Artist disclosed the risk of this breach in the initial conceptual design proposal and Contract Manager accepted that it may occur, it shall not be deemed a breach for purposes of this Section.

- (f) Acceptable Standard of Display. Artist represents and warrants that:
- (1) General routine cleaning and repair of the Project and any associated working parts and/or equipment will maintain the Project within an acceptable standard of public display.
 - (2) Foreseeable exposure to the elements and general wear and tear will cause the Project to experience only minor repairable damages and will not cause the Project to fall below an acceptable standard of public display.
 - (3) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Project will not experience irreparable conditions that do not fall within an acceptable standard of public display, including, but not limited to mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
 - (4) **Manufacturer's Warranties.** To the extent the Project incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to City.
- (g) The foregoing warranties are conditional and shall be voided by the failure of City to maintain the Project in accordance with Artist's specifications and the applicable conservation standards. If City fails to maintain the Project in good condition, Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Project as the Artist's creation and request that all credits be removed from the Project and reproductions thereof until the Project's condition is satisfactorily repaired.

Section 10.3. Survival of Representations and Warranties. These representations and warranties shall survive the termination or other extinction of this Agreement.

ARTICLE 11. INDEPENDENT CONTRACTOR; SUBCONTRACTING

Section 11.1. Independent Contractor. Artist shall perform all Fabrication and Installation 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.

Section 11.2. Subcontractor. The Artist may subcontract portions of the Fabrication and Installation Services at the Artist's expense, provided that said subcontracting shall not adversely affect the design, appearance or visual quality of the Project and shall be carried out under the personal supervision of the Artist. Any subcontract entered into under this Agreement shall be expressly subject to the terms of this Agreement. Artist shall provide HAA and the City information regarding all subcontractors, including its fabricator, along with a copy of the subcontract between Artist and each subcontractor.

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, and cause each subcontractor to maintain, insurance coverage in the amounts listed on the attached **Exhibit G**.

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

Section 13.6. 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 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 13.7. 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 13.8. 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 13.9. 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 13.10. 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 13.11. 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 13.12. 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 13.13. 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 13.14. 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 those 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 13.15. 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 13.16. 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 13.15. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Section 13.17. 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 13.18. 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 13.19. 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 13.20. 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 13.21. 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 13.22. 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.

Section 13.23. Equal Opportunity. The Artist shall not discriminate against any employee or applicant for employment because of disability, familial status, race, color, religion, sex, sexual orientation, or national origin. The Artist shall take affirmative action to ensure that employees are treated equally during employment, without regard to their disability, familial status, race, color, religion, sex, sexual orientation and national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, transfer, recruitment or pay or other forms of compensations, and selection for training, including apprenticeship.

- (a) The Artist shall state in all solicitation or advertisements for employment placed by or on behalf of the Artist that all qualified applicants shall receive consideration for employment without regard to disability, familial status, race, color, religion, sex, sexual orientation, or national origin.
- (b) The Artist shall furnish all information and reports requested by the Director, and shall permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such rules and regulations.
- (c) If the Artist's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Artist may be debarred from further agreements with the Director on behalf of the City of Houston.

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, 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: Alton DuLaney, Chief Curator
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
APPROVED DESIGN PHASE PACKAGE
[Attached]

EXHIBIT B
SCOPE OF SERVICES

Total Compensation: \$[]

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

Milestone Date 1 (I 1): 25% of Total Compensation or \$[]

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

Milestone Date 2 (I 1): 40% of Total Compensation or \$[]

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

Milestone Date 3 (I 1): 25% of Total Compensation or \$[]

- Contract Manager's verification of 50% completion of fabrication
- Updated installation schedule
- Signed Invoice

Milestone Date 4 (I 1): 10% of Total Compensation or \$[]

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

EXHIBIT C
SITE LOCATION

Project:

Address:

Council District:

EXHIBIT D

CITY OF HOUSTON CIVIC ART PROGRAM CATALOG AND MAINTENANCE RECORD

This form is to be completed as part of the Artist deliverables for the acquisition of commissioned or portable artworks. The information provided by the artist will be used as a record as well as to provide maintenance directives. Please complete this form and add all required attachments.

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

Birth State or Province:		Birth Country:	
Death Date (if deceased):		Place of Death (City, ST, Country)	
Artist race and/or ethnic identity? (Check all that apply):			
☐ White or European ☐ African American or Black ☐ Native American or Alaskan Native ☐ Native Hawaiian or other Pacific Islander ☐ Hispanic or Latino/x ☐ Other American Indigenous (non-U.S.)		☐ East Asian ☐ South Asian ☐ Middle Eastern or North African ☐ Multi-racial, including White/Caucasian ☐ Prefer not to answer ☐ Other Click or tap here to enter text.	
2. Artwork Title:			
3. Year Created:			
4. Dimensions (inches):	Height:	Width:	Depth:
5. Framed Dimensions:	Height:	Width:	Depth:
Additional Dimensions: Provide additional dimension info if object has multiple components Ex: Sculpture: 50" x 30" x 20" Base: 10" x 30" x 20"			
6. Medium/Materials (Please be as specific as possible):			
7. Material Finish (Fixatives, retardants, glazes, tool patterns, patina, surface sealers - include brand names):			
8. Support (base, plinth, shelf, etc.) if any:			

9. Technique: (example: Painting, Drawing, Photography, Ceramic, Carving, assemblage, textile, etc.)			
10. Signed? ☐ Yes ☐ No		11. Location of Signature:	
12. Recommended maintenance:			
13. Artist's Website:			
14. Instagram:			
15. Twitter:			
16. Other Social Media:			
17. If represented by a commercial Gallery, please provide the name and contact information:			
Gallery Name:			
Contact Name:			
Phone:		Email:	
Street Address:			
City, State, ZIP:			
Website:			

Please submit the following to [PROJECT MANAGER EMAIL] in one consolidated document:

18. Artist Biography

19. Artist Statement

20. Specific Statement about the artwork or series, 150 – 500 words.

Please attach the following separate from the document but in the same email:

21. High Resolution Digital Images of Artwork

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

EXHIBIT E
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: -----

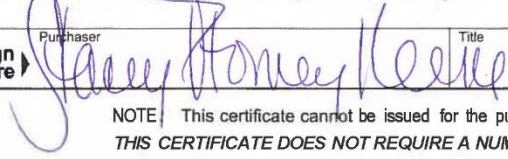
Description of items to be purchased or on the attached order or invoice:

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

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

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

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

EXHIBIT F
INVOICE REQUIREMENTS

- 1) Artist will submit signed Invoices to the Director via email, attached with all required 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 is in receipt of funds from the City of Houston sufficient to pay the Artist's Invoice in full. 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 shall be addressed to "Houston Arts Alliance" and 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 included deliverables
 - g. Artist's signature
 - h. Each Invoice to be numbered consecutively
- 3) The Artist will submit each Invoice with the required deliverables (as listed under each Milestone Date in **Exhibit B**) in one email to the Director. The HAA may request other materials be submitted to process payment.

EXHIBIT G
INSURANCE REQUIREMENTS

1. 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) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

2. 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.
3. 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.
4. 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 H
WAIVER AND LICENSE

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

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

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

ARTIST

By: _____

Name: _____

Date: _____