

ATTACHMENT A2

AGREEMENT BETWEEN THE HOUSTON ARTS ALLIANCE AND [SPECIFY ARTIST] FOR CONCEPTUAL DESIGN PROPOSAL FOR CIVIC ART FOR [PROJECT NAME]

This Agreement is entered into this ____ day of _____, 20__, by and between the **HOUSTON ARTS ALLIANCE**, a Texas nonprofit corporation ("HAA"), and [FULL LEGAL NAME OF ARTIST], a [IF ENTITY, INSERT STATE] [ENTITY OR INDIVIDUAL], located at [ADDRESS], and acting by and through [IF ENTITY, INSERT NAME OF AUTHORIZED SIGNATORY], its duly authorized [TITLE]. The City of Houston has designated the HAA to manage this Agreement on its behalf as authorized by Ordinance _____ approved on _____.

WHEREAS, -----;
ENTER DESCRIPTION OF PROJECT AS NECESSARY

WHEREAS, HAA and Artist wish to set out the terms and conditions under which said Work shall be designed to promote the integrity of Artist's ideas and statements as represented by the Work.

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

ARTICLE I. DEFINITIONS

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

- 1.1. **Agreement** — Means and includes this Agreement between the Houston Arts Alliance and [artist name] for Conceptual Design Proposal of public art for the Site.
- 1.2. **Artist**— Means and includes
- 1.3. **Artist Selection Panel** — Means and includes a panel comprised of arts professionals, community stakeholders, City staff representatives, and others as approved by Director.
- 1.4. **Contract Manager** — Means and includes the Houston Arts Alliance (HAA), a non-profit corporation, and its officers, directors, or employees.
- 1.5. **City** — Means and includes the City of Houston, Texas and its officers, representatives, agents, servants, and employees.
- 1.6. **Effective Date** — Means and includes the date represented in the first paragraph of this Agreement, which shall be the official date of execution of this Agreement.
- 1.7. **Parties** — Means and includes HAA and Artist.

- 1.8. **Conceptual Design Proposal** — Means all preliminary drawings, sketches, narrative descriptions, budget estimates, and the like that are created by Artist in connection with this Agreement between Artist and HAA for the Work.
- 1.9. **Conceptual Design Proposal Deliverables** — Means and includes those items set forth in Article 2.4 of this Agreement that Artist is required to submit to HAA for it's the City's review and approval.
- 1.10. **Project** — Means and includes the capital improvement or public art development undertaking of City for which Artist's services are to be provided pursuant to this Agreement.
- 1.11. **Project Stakeholders** — Means and includes the appropriate City officials and their appointed community representatives and others as may be appropriate by Director.
- 1.12. **Site** — [specify for project], which is further depicted in the attached Exhibit "A."
- 1.13. **Work** — Means and includes the finished object(s) of art and design that are the subject of this Agreement, or any intermediary stage of completion of such work.

ARTICLE 2. PURPOSE SCOPE OF SERVICES AND DELIVERABLES

- 2.1. **Purpose.** The purpose of this Agreement is to solicit a conceptual artwork design proposal from Artist for review by the Artist Selection Panel for this Project and ultimately select an artist to proceed to the next phase of this Project, which may include preliminary and final design development and commission of the Work. HAA does not guarantee that Artist will be selected to proceed to the next phase of the Project and specifically reserves the right to reject all proposals or select more than one proposal.
- 2.2. **Scope of Services.**
 - 2.2.1. Artist shall perform all services and will furnish all supplies, materials, and equipment as necessary for developing a Conceptual Design Proposal of the Work and for providing the Conceptual Design Proposal Deliverables. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
 - 2.2.2 Artist and/or members of their firm shall participate in a one-hour orientation meeting at [specify for project] Time.
 - 2.2.3 Artist shall prepare and present a Conceptual Design Proposal to the Artist Selection Panel in Houston, Texas, at a mutually agreeable date and time and shall participate in a site visit as part of that trip.
 - 2.2.4 Artist shall allow video recording and photography of his/her Conceptual Design Proposal presentation to the Artist Selection Panel.
 - 2.2.5 Two weeks prior to final submittals Artist will meet via conference call with the project manager for the purpose of a design progress report to receive feedback

on their initial concepts and have the opportunity to ask questions.

- 2.2.6 Artist shall make one trip to Houston, Texas for meetings and presentations as indicated above. Additional trips, if required per this Article, may be negotiated and agreed upon in writing by HAA and Artist.

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

2.4. Conceptual Design Proposal Deliverables.

- 2.4.1 Within (8) eight weeks of execution of this Agreement Artist shall provide services and all supplies, materials, and equipment necessary to provide certain deliverables, as set forth in this subsection to HAA for consideration.
- 2.4.2 Conceptual Design Proposal Deliverables shall consist of the following:
 - 2.4.2.1. A written narrative description of the Artist's concept, proposed materials, fabrication and installation methods, timeline for completion and maintenance requirements;
 - 2.4.2.2. Two-dimensional rendering(s) of the Artist's concept, supplied as both high and low resolution digital files; and no more than five examples of relevant projects by the Artist, presented within a power point presentation;
 - 2.4.2.3. Installation diagram showing the concept's relationship to the Site, including approximate weight of the Work, proposed footing and foundation method(s), and location(s) for lighting, if any;
 - 2.4.2.4. A preliminary budget estimate, on the budget form attached hereto as Exhibit "B," for implementation of a final design of the Work in an amount not exceed \$[specify] which includes a \$[specify] contingency and which includes all costs for materials, labor, fabrication, delivery, installation, insurance, transportation, travel, Artist's fee, and all other associated costs for the Work. Budget estimate should also include material or fabrication samples and/or prototype models for the Work that show the size and placement of the Work in relation to the Site, as appropriate.
 - 2.4.2.5. Material sample(s) that illustrate what the proposed Work would be made from, showing durability, texture, color, etc., as appropriate. No models or prototypes shall be presented to the Artist Selection Panel.
- 2.4.3 Artist shall submit an electronic version of his/her initial concept sketches for the Conceptual Design Proposal for the purpose of a design progress report as described in 2.2.e. These sketches shall be submitted to Contract Manager no later than 12:00 Noon (Central Time), at least two days in advance of the progress report date.
- 2.4.4 Artist shall submit a final electronic version of the Conceptual Design Proposal Deliverables to Contract Manager no later than 12:00 Noon (Central Time), at least three days in advance of the presentation date to the Artist Selection Panel.
- 2.4.5 The initial concept sketches and the Conceptual Design Proposal Deliverables shall be sent in one of the following manners:

- 2.4.5.1. Via email to [specify]
- 2.4.5.2. Via an FTP site, such as dropbox.com
- 2.4.5.3. Mailed or hand delivered on a [specify]

2.5. Notification of Selection. The Contract Manager shall notify the Artist, by phone and in writing, of the final outcome of the artist selection process, i.e., whether or not the Artist was selected to proceed to the next phase of the Project, within 15 days of the HAA's approval of the Project artist.

2.6. Alternate Artist. Any artist not selected to proceed to the next phase of the Project may be designated as an alternate for a period of one year from the date the HAA sends final payment to Artist under this Agreement. The Artist shall not receive any additional compensation for such designation; however, such designation does affect ownership rights to the Artist's Conceptual Design Proposal, which is set forth in more detail in Article 5.

ARTICLE 3. COMPENSATION AND PAYMENT SCHEDULE

3.1. Compensation. Total compensation to Artist under the Agreement shall not exceed [specify] which shall constitute full compensation for any and all costs associated with the Agreement, including, but not limited to, all travel expenses and services performed and materials furnished by Artist under this Agreement. Artist and HAA may amend this Agreement to allow for additional payment if additional services are required.

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

- 3.2.1 [specify] within thirty (60) calendar days after Artist submits all of the Conceptual Design Proposal Deliverables required under Article 2.4 of this Agreement and travels to Houston and makes a presentation of the Conceptual Design Proposal to the Artist Selection Panel.
- 3.2.2 [specify] within thirty (60) calendar days after Artist is notified as to the final outcome of the artist selection process (i.e., whether or not the Artist was selected to proceed to the next phase of the Project after HAA's selection of the Project artist).
- 3.2.3. HAA shall reimburse Artist for reasonable travel expenses incurred, as approved by project manager, in order to fulfill the terms of this agreement, including:
 - (i.) Roundtrip airfare to Houston airports of approximately \$[specify] (copy of receipt must be furnished);
 - (ii.) one night lodging not to exceed \$[specify] (copy of receipt must be furnished);
 - (iii.) Meals (excluding alcoholic beverages) and incidentals (copies of receipts must be furnished OR invoiced using ? Meals and Incidental Expenses (M&IE) Breakdown for [specify area], Texas) not to exceed \$[specify];
 - (iv.) Ground transportation, including
 - i. Roundtrip from your home to your local airport OR roundtrip mileage plus airport parking;
 - ii. Roundtrip from Houston airports Airport to Houston hotel; and,
 - iii. Roundtrip from Houston hotel to the Houston Arts Alliance or

alternate panel location, for a total of approximately \$[specify] (copies of receipts must be furnished); Reimbursement payment shall be made within (30) days of the date Artist's invoice (with copies of required receipts attached) is received by project manager for a total amount not to exceed \$[specify].

- 3.3. Sales Taxes.** HAA is a tax-exempt organization and no state or local sales taxes or federal excise taxes shall be due upon the Project. HAA shall supply Artist with the "Texas Certificate of Exemption," in substantially the same form as that attached hereto as Exhibit "C" for use by Artist in the fulfillment of this Agreement.
- 3.4. Artist's Expenses.** Artist shall be responsible for the payments of all expenses incurred during the performance of this Agreement, including, but not limited to, services, materials, mailing/shipping charges and insurance on submissions to City or HAA, cost of all travel, and costs for Artist's agents, consultants, and/or employees necessary for the proper performance of the services required under this Agreement.

ARTICLE 4. TERM AND TERMINATION

- 4.1. Term.** This Agreement shall be in effect from the Effective Date and, unless terminated earlier pursuant to such provisions in this Agreement, shall extend until final payment to Artist by HAA.
- 4.2. Gratuities.** HAA may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by Artist or any agent or representative to any City or HAA official or employee with a view toward securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to this performance of this Agreement.
- 4.3. Termination for Cause.** The HAA may terminate this Agreement for cause in the event Artist fails to perform in accordance with the requirements contained herein. In such event, HAA shall give Artist written notice of Artist's failure to perform, giving Artist seven (7) calendar days to come into compliance with the Agreement. If Artist fails to come into compliance with this Agreement, HAA shall notify Artist in writing, and this Agreement shall be terminated as of the date of such notification. In such event, Artist shall not be entitled to any additional compensation.
- 4.4. Termination for Convenience.**
- 4.1.1 The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) calendar days before termination.
 - 4.1.2 If the termination is for the convenience of HAA, HAA shall pay Artist for services actually rendered up to the effective date of termination.
 - 4.1.3 If termination is for the convenience of Artist, HAA shall have the right, in its sole discretion, to pay Artist for services actually rendered up to the effective date of termination or require the Artist to remit to HAA a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to the effective date of

termination.

ARTICLE 5. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

5.1. Non-Selected Artists.

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

5.2. Selected Artist.

- 5.2.1 If Artist is selected to proceed to the next phase of the Project as the Project artist, then the ownership and intellectual property rights set forth in this subsection shall apply.
- 5.2.2 Upon payment in full to Artist, the Conceptual Design Proposal and all other work product under this Agreement shall become the property of City, without restriction on future use, except as provided below. Artist shall retain copyright and other intellectual property rights in and to the Conceptual Design Proposal and/or Work. Artist grants to the City an exclusive, perpetual, irrevocable, and royalty free license to graphically depict or display the Conceptual Design Proposal and/or Work for any non-commercial purpose whatsoever. For purposes of this limitation, any graphic depiction or display of the Conceptual Design Proposal and/or Work intended to promote or benefit City, its public services or its public purposes, regardless of whether or not a fee is charged to the public, or whether revenue is otherwise received by City, shall be deemed a non-commercial purpose.
- 5.2.3 In view of the intention that the Conceptual Design Proposal and the Work be unique, Artist shall not make any additional exact duplicate reproductions of the

Conceptual Design Proposal or the Work, nor shall Artist grant permission to others to do so except with the express written permission of City. However, nothing herein shall prevent Artist from creating future artworks in Artist's manner and style of artistic expression.

- 5.2.4 Artist reserves every right available under the Federal Copyright Act to control the making and dissemination of copies or reproductions of the Conceptual Design Proposal and/or Work, except as those rights are limited by this Agreement. If Artist is selected to proceed as the Project artist, City may make and disseminate photographs, drawings, and other two-dimensional reproductions of the Conceptual Design Proposal and/or Work and accompanying materials for any municipal purpose. All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: "O date, Artist's name.'
- 5.2.5 Nothing in this Agreement shall prevent the Artist from using images of the Conceptual Design Proposal and/or Work for marketing and promotional purposes in connection with the Artist's business.
- 5.2.6 City is not responsible for any third-party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

ARTICLE 6. WARRANTIES OF TITLE AND COPYRIGHT

6.1 Artist represents and warrants that:

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

ARTICLE 7. ARTIST AS INDEPENDENT CONTRACTOR

- 7.1 Artist shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of HAA. Artist shall have exclusive control

of, and the exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of his/her officers, agents, employees, and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between HAA and Artist, his/her officers, agents, employees and subcontractors, and doctrine of respondent superior has no application as between HAA and Artist.

ARTICLE 8. INDEMNIFICATION

8.1. General Indemnity.

8.1.1. ARTIST COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, CITY FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, ACTIONS, CAUSES OF ACTION, LIENS, LOSSES, EXPENSES, COSTS, FEES (INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, DEMANDS, DAMAGES, LIABILITIES, AND/OR SUITS OF ANY KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY LOSS (INCLUDING, BUT NOT LIMITED TO, WORKERS' COMPENSATION ACT LIABILITY, LOST PROFITS, AND PROPERTY DAMAGE) AND/OR PERSONAL INJURY (INCLUDING, BUT NOT LIMITED TO, DEATH) TO ANY AND ALL PERSONS, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR RESULTING FROM THE ACTS, ERRORS, OR OMISSIONS OF ARTIST AND/OR ARTIST'S SUBARTISTS, CONTRACTORS AND SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, MEMBERS, PARTNERS, AND REPRESENTATIVES IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THIS AGREEMENT.

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

8.1.3 Artist shall require all of its subcontractors to include in their subcontracts a release and indemnity in favor of Contract Manager in substantially the same form as above.

8.2. Intellectual Property.

8.2.1 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. Contract Manager and City expressly assumes no obligations, implied or otherwise, regarding payment or collection of any such fees or financial obligations.

- 8.2.2 Contract Manager and 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.

ARTICLE 9. MISCELLANEOUS

- 9.1 Independent Contractor.** Artist is an independent contractor, and shall perform services provided for in this Contract in such capacity. The City has no control or supervisory powers over the manner or method of Artist or HAA's performance under this Contract. All personnel Artist or HAA uses or provides are its employees or subcontractors and not the City's employees, agents or subcontractors for any purpose whatsoever. Artist is solely responsible for the compensation of all such personnel, for the withholding of income, social security and other payroll taxes, and for all workers' compensation benefits coverage.

9.2 Force Majeure.

- 9.2.1 Timely performance by both parties is essential to this Contract. However, neither party is liable for reasonable delays in performing its obligations under this Contract to the extent the delay is caused by Force Majeure that directly impacts the Artist, City or HAA. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Contract. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or HAA, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle HAA or Artist to extra Reimbursable Expenses or payment.

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

- 9.2.2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force

Majeure to the extent performance is not affected by the Force Majeure;
and

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

9.2.3 The Director will review claims that a Force Majeure that directly impacts the Artist or HAA has occurred and render a written decision within 14 days. The decision of the Director is final.

9.2.4 The HAA may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Contract by the HAA.

9.2.5 If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Contract by giving seven days' written notice to Artist. This termination is not a default or breach of this Contract. **ARTIST WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE CONTRACT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

9.2.6 Artist is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Artist shall employ only fully trained and qualified personnel during a strike.

9.3 Severability If any part of this Contract is for any reason held to be invalid, all other parts remain enforceable unless the result materially prejudices either party.

9.4 Entire Agreement. This Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Contract.

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

9.6 Applicable Laws.

9.6.1 This Contract is subject to all laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

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

9.7 Notices. All notices to either party to the Contract must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Contract or other address the

receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

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

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

9.10 Inspections, Audits and Enforcement.

9.10.1 HAA and City representatives may perform, or have performed, (i) audits of HAA's books and records, and (ii) inspection of all places where work is undertaken in connection with this Contract. The Artist and HAA shall keep its books and records available for this purpose for at least four years after this Contract terminates. This provision does not affect the applicable statute of limitations.

9.10.2 The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract without further authorization. The Artist and HAA shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining HAA's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.

9.11 Ambiguities. If any term of this Contract is ambiguous, it shall not be construed for or against any party hereto on the basis that the party did or did not write it.

9.12 Survival. Artist shall remain obligated to the HAA and City and the HAA shall remain obligated to the Artist under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract; provided, however, the HAA remains obligated to pay for any such services and/or products delivered by Artist hereunder to the extent allowed by law.

9.13 Parties in Interest. This Contract does not bestow any rights upon any third party other than the City, but binds and benefits the Artist and HAA only.

9.14 Remedies Cumulative. Except as otherwise provided herein, the rights and remedies contained in this Contract are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Contract except in accordance with the provisions hereof.

9.15 Non-Waiver. If either party fails to require the other party to perform a term of this Contract, that failure does not prevent the party from later enforcing that terms and all other terms. If either party waives the other party's breach of a term, that waiver does not waive a later breach of this Contract.

BUSINESS STRUCTURE AND ASSIGNMENTS. Neither Artist nor HAA shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in

§9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Artist and HAA shall immediately furnish the HAA and City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Neither HAA nor Artist shall not delegate any portion of its performance under this Contract without the HAA's prior written consent after confirmation from the Director. Any merger or reorganization of HAA pursuant to a City-approved plan shall not be deemed to be an assignment. Such surviving entity shall be deemed to be the legal successor of the HAA.

- 9.16 SUCCESSORS AND ASSIGNS.** This Contract binds and benefits the parties and their legal successors and permitted assigns. However, this provision does not alter the restriction on assignment and disposal of assets set out in **Section 6.16**. This Contract does not create any personal liability on the part of any officer or agent of the City.
- 9.17 No Partnership Created Hereby.** The Artist and the HAA agree that no partnership relationship or joint venture between the parties is created by this Contract.
- 9.18 No City Expenditure.** Nothing in this Contract requires the City to make any expenditure of its funds to the HAA or to any other party.
- 9.19 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.
- 9.20 Artist Debt.** IF ARTIST, AT ANY TIME DURING THE TERM OF THIS CONTRACT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER and HAA IN WRITING. IF THE HAA OR CITY CONTROLLER BECOMES AWARE THAT ARTIST HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY ARTIST IN WRITING. IF ARTIST DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE HAA MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO ARTIST UNDER THIS CONTRACT, AND ARTIST WAIVES ANY RECOURSE THEREFOR.
- 9.21 Anti-Boycott of Israel.** Artist and HAA certify that Artist and HAA are 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.
- 9.22 Zero Tolerance Policy for Human Trafficking and Related Activities.** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. The Artist and HAA have reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. HAA and Artist shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by HAA, Artist or its subcontractors providing services or goods under this Agreement.
- 9.23 Compliance.** Artist shall comply with all Federal, state, and local statutes, ordinances, and regulations applicable to the performance of Artist's services under this Agreement.

ARTICLE 10. NOTICES

10.1 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:

1. HAA: _____

Copies to: Debbie McNulty
Director,
City of Houston

2. ARTIST [ARTIST], [TITLE, IF ENTITY]
[NAME OF COMPANY, IF ENTITY]
[ADDRESS]

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

HAA

ARTIST [IF ENTITY, INSERT NAME]

by: _____

[by:] _____
[ARTIST]
[IF ENTITY, INSERT TITLE]

[IF INDIVIDUAL, REMOVE "BY"]