

AGREEMENT FOR PERMANENT TRANSFER OF ARTWORK

THIS AGREEMENT FOR THE PERMANENT TRANSFER OF ARTWORK (this “Agreement”) is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the “City”), a home-rule city of the State of Texas principally situated in Harris County, and **JOE INCRAPERA** (“Artist”), a Texas resident. City and Artist are hereinafter referred to individually as “Party” and jointly as the “Parties.”

ARTICLE 1: RECITALS

- 1.1 The City and Artist share mutual goals relating to fostering an environment in the City of Houston in which art and culture flourish for the sharing a benefit of all residents of and visitors to Houston.
- 1.2 In December 1999, the City of Houston City Council adopted an ordinance establishing the City’s Civic Art Program, which integrates artwork into public spaces and allows for acceptance of artwork into the City Art Collection. One such artwork is *Christopher Columbus Explorer/Map Maker*, a bronze sculpture depicting Christopher Columbus that was commissioned from Houston native Joe Incrapera by the Federation of Italian American Organizations and the Italian Cultural Community Center in celebration of the 500th anniversary of Columbus’s landfall (“Statue”), which is depicted and described in more detail in **Exhibit A**. Artist along with the Federation of Italian American Organizations and the Italian Cultural Community Center donated Statue to the City on October 11, 1992.
- 1.3 In 2017, in response to the active movement to remove monuments and symbols of the Confederacy in the United States and in the wake of the 2015 white supremacist massacre at Emanuel A.M.E. Church in Charleston, South Carolina and the 2017 white nationalist rally in Charlottesville, VA, Mayor Sylvester Turner asked his senior staff members to study whether statues related to the Confederacy and/or subjects with ties to the Civil War or slavery should be removed from City of Houston property. In response to this request, the Mayor’s Office convened and facilitated at Task Force that made recommendations on the handling of specific Confederate Items in the City’s possession. After the release of the Task Force’s Final Report in March 2018 and after repeated incidents of vandalism of Statue, the Mayor considered and approved a recommendation that Statue should not be displayed on public property as it was unsuitable for public display due to the repeated vandalism of Statue and because of Christopher Columbus’s history as a slave owner, but that it should not be destroyed. The Artist and original donors supported the removal of Statue and its transfer to Artist who created the Statue. Thus, in September 2021, the City removed Statue and subsequently delivered it to Artist.
- 1.4 The City and Artist are entering into this agreement to formalize the transfer of Statue to Artist so that Artist may facilitate the maintenance of and prevention of vandalism of Statute, which shall be paid by Artist.

ARTICLE 2: DUTIES OF THE CITY

- 2.1. The City permanently conveys to Artist all right, title, possession of, and interest in and to Statue for the purpose of maintenance and vandalism prevention.
- 2.2. In transferring Statue, the City has made no determination of the value of Statue and makes or presentations or assurances as to the value of Statue.

ARTICLE 3: DUTIES OF ARTIST

- 3.1. Artist accepts Statue "AS-IS," in its present condition for the purpose of maintenance and vandalism prevention. Artist acknowledges that the City has made no statements or representations inconsistent with the transfer of Statue "AS-IS."
- 3.2. Artist acknowledges that loss or damage to Statue beyond normal wear and tear is the responsibility of Artist.
- 3.3. Artist grants the City an irrevocable license to graphically reproduce an image of the Statue for non-commercial, public purposes. "Non-commercial purposes" mean the reproduction of an image of the Statue in books, slides, photographs, 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 purposes or on programs for educational or informational purposes from all stations.
- 3.4. **ARTIST AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. ARTIST HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**
- 3.5. **ARTIST AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**
 - (1) **ARTIST'S AND/OR HIS HEIRS, EXECUTORS, ADMINISTRATORS, AND ASSIGNS (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "ARTIST") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

- (2) THE CITY’S AND ARTIST’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER ARTIST IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY’S AND ARTIST’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER ARTIST IS IMMUNE FROM LIABILITY OR NOT.

ARTIST SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. ARTIST’S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. ARTIST SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

ARTICLE 4: MISCELLANEOUS

- 4.1. *Relationship of the Parties.* City and Artist agree that no partnership relationship between the Parties hereto or joint venture is created by this Agreement, and Artist is not made the agent or representative of City for any purpose or in any manner whatsoever. The provisions of this section are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 4.2. *No City Expenditure.* Nothing in this Agreement shall be construed to require that City make any expenditure of City funds to Artist or to any other party.
- 4.3. *Severability.* If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.
- 4.4. *Entire Agreement.* Upon execution of this Agreement by both Parties, this Agreement shall constitute the entire agreement between the Parties for the transfer of ownership of Statue.
- 4.5. *Written Amendment.* Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City and Artist. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.
- 4.6. *Governing Law and Venue.* This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.
- 4.7. *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, 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 below 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.

<u>City of Houston</u>	<u>Artist</u>
Director, Houston Parks and Recreation Department 2999 South Wayside Drive Houston, Texas 77023	Joe Incrapera <u>Joe Incrapera</u> <u>19302 winter canyon Tomball tx 77377</u>

4.8. *Publicity.* Artist shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

SIGNATURES

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

ARTIST

DocuSigned by:
By: Joe Incrapera
Name: Joe Incrapera

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

DocuSigned by:
[Signature]
Director, Houston Parks and Recreation
Department

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

DocuSigned by:
Rachel Grier
Senior Assistant City Attorney II

L.D. File No. LD-CON-000000467



EXHIBIT A

DEPICTION OF *CHRISTOPHER COLUMBUS* *EXPLORER/MAP MAKER* STATUE

Christopher Columbus

Title: Christopher
Columbus,
Explorer/Map Maker
Artist: Joe Incrapera
Date: 1992 **Type:** Statue **Medium:** Bronze
Location: Bell Park
Dimensions: 80 x 57 x 31 in.
Concrete Base: 9 1/2 x 42 in.

The bronze statue, by Houston native Joe Incrapera, was commissioned by the Federation of Italian American Organizations and the Italian Cultural Community Center in celebration of the 500th anniversary of Columbus's landfall. The statue was donated to the City on October 11, 1992 and sited in Bell Park.

After the release of the City of Houston Confederate Items Task Force Final Report in March of 2018, and after repeated incidents of vandalism, and because of his history as a slave-owner, the statue was determined to be unsuitable for public display. The statue was removed from public display in September 2021 and has since been transferred to the artist, Joe Incrapera.

The artist and the original donors supported the move and transfer of the artwork.