

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- Funds have been encumbered out of funds previously appropriated for such purpose.
- Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.

Other - Grant Funds Available

Ronald C. Gresham
General Polk

Date: 9-8, 2014

City Controller of the City of Houston, Texas

FUND REF: 8011-2800-520140 **AMOUNT:** \$1,056,000.00 **ENCUMB. NO.:** 3-3376

M.A.S.
of OA 46-12910
FMBB#3-16421 City of Houston, Texas Ordinance No. 2014-825

AN ORDINANCE APPROVING AND AUTHORIZING A CONTRACT BETWEEN THE CITY OF HOUSTON AND THE HOUSTON ARTS ALLIANCE FOR PROFESSIONAL CIVIC ART AND CONSERVATION ADMINISTRATION SERVICES FOR THE HOUSTON AIRPORT SYSTEM; PROVIDING A MAXIMUM CONTRACT AMOUNT; PROVIDING FUNDING FOR CONTINGENCIES; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents. The sum of **\$1,056,000.00** is allocated for Civic Art Program purposes for services under this Contract from previous appropriations for the Civic Art Program as follows: The sum of **\$1,054,000.00** is appropriated for basic and additional services and reimbursable expenses for the project described in the title and the sum of **\$2,000.00** is appropriated for contingencies.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. The total allocation for the contract, agreement, or other undertaking approved and authorized hereby shall never exceed **\$1,056,000.00**, unless and until this sum is increased by ordinance of City Council.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 10th day of September, 2014.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is SEP 16 2014.


City Secretary

THE STATE OF TEXAS §

COUNTY OF HARRIS §

CONTRACT FOR PROFESSIONAL CIVIC ART AND CONSERVATION
ADMINISTRATION SERVICES HOUSTON AIRPORT SYSTEM

1.0 PARTIES

1.1. Address

THIS CONTRACT FOR PROFESSIONAL CIVIC ART AND CONSERVATION ADMINISTRATION SERVICES ("Contract") in connection with the City of Houston Civic Art Program for the HOUSTON AIRPORT SYSTEM ("Department") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a home-rule city of the State of Texas, and the HOUSTON ARTS ALLIANCE, a Texas nonprofit corporation ("HAA").

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

City

Director
Houston Airport System
P.O. Box 60106
Houston, Texas 77205-0106

HAA

Houston Arts Alliance
3201 Allen Parkway
Houston, Texas 77019-1800

1.2. Table of Contents

The City and HAA hereby agree to the terms and conditions of this Contract. This Contract consists of the following sections:

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- Exhibit A Artist Agreement
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- Exhibit B Civic Art and Conservation Projects
- Exhibit C City Equal Employment Opportunity
- Exhibit D MWBE Subcontract Terms

1.3. Parts Incorporated

The above-described exhibits are incorporated into this Contract.

1.4. Controlling Parts

If a conflict among the articles or exhibits arises, the articles control over the exhibits.

1.5. Signatures

The City and HAA have executed this Contract in multiple copies, each of which is an original.

ATTEST/S



Carrie Felps Banuelos

Carrie Felps Banuelos
Notary

HOUSTON ARTS ALLIANCE

By: *Jonathan Gus*

Name: Jonathan Gus
Title: CFO
Tax Identification No.: 74-1946756

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

City Secretary

By: _____
Mayor

APPROVED:

COUNTERSIGNED BY:

JB
8/26/14
(Signature)

Director, Houston Airport System

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED

Sr. Assistant City Attorney
LD File No. 0041400133001

2.0 DEFINITIONS

As used in this Contract, the following terms have the meanings set out below.

- 2.1. "Additional Services" are those professional services described in Article 3.7 to be performed by HAA upon receipt of a written LOA signed by the Director detailing the specific services to be rendered by HAA under the terms and conditions of this Contract.
- 2.2. "Architect/Engineer" means, for each Project, the entity or entities to which the City awards the contract(s) for the design of the CIP having a Civic Art Project as a component of the CIP.
- 2.3. "Artist(s)" means those persons or entities selected for the design, fabrication and installation of Civic Art Projects and who have an executed agreement with HAA for such services.
- 2.4. "Basic Services" are those professional program management services defined in Article 3.6 to be performed by HAA.
- 2.5. "Capital Improvement Plan" or "CIP" means the Department's capital improvement plan as from time to time approved by City Council.
- 2.6. "City" is defined in Article 1.1 of this Contract.
- 2.7. "City Collection" has the meaning assigned in the current Civic Art Ordinance.
- 2.8. "Civic Art and Design Director" means the senior professional assigned by the HAA who is responsible for overseeing all Civic Art and Conservation activities for the City, including, but not limited to, coordination with the Director, the Architect/Engineer, and the Contractor.
- 2.9. "Civic Art" or "Civic Art Project" has the meaning set forth in the current Civic Art Ordinance.
- 2.10. "Civic Art Cost" means the direct actual cost to the City of all management, coordination, administration, programming, planning, design, acquisition, fabrication, construction and installation costs and conservation costs for Civic Art Projects and Conservation Projects.
- 2.11. "Civic Art Documents" are those documents prepared or approved by HAA for the purpose of obtaining Artist/Conservator proposals, selecting Artists and Conservators and guiding the design, acquisition, fabrication and installation of the Civic Art Projects and conservation under Conservation Projects as further defined in Article 3.0.
- 2.12. "Civic Art Ordinance" means City Ordinance Number 2006-731 relating to the Civic Art Program for the City.
- 2.13. "Civic Art Plan" has the meaning assigned in the Civic Art Ordinance.

2.14. "Civic Art Program Implementation Procedures" means procedures for the implementation of the Civic Art Program developed by HAA in conjunction with the Director.

2.15. "Civic Art Project" has the meaning assigned in the Civic Art Ordinance.

2.16. "Civic Art Project Budget" is the total amount of money, including any stipulated contingencies, that may be expended by the City for construction of a Civic Art Project as determined by the Director in his or her sole discretion.

2.17. "Conservation/Conservation Project" has the meaning assigned in the current Civic Art Ordinance.

2.18. "Conservation Project Budget" is the total amount of money, including any stipulated contingencies, that may be expended by the City for conservation services and supplies for a Conservation Project as determined by the Director in his or her sole discretion.

2.19. "Contractor" means the entity or entities to which the City awards the contract(s) for construction of a CIP having a Civic Art Project as a component of the CIP.

2.20 "Director" means the Director of the Department or the person he or she designates by written notice to HAA to administer this Contract on behalf of the City.

2.21. "Eligible Project" has the meaning assigned in the current Civic Art Ordinance.

2.22. "HAA" is defined in Article 1.1 of this Contract.

2.23. "Letter of Authorization (LOA)" means a document prepared by the HAA and signed by the Director authorizing performance of and payment for a defined scope of Additional Services that are necessary and related to the purposes of this Contract.

2.24. "Reimbursable Expenses" are defined in Article 3.10.

2.25 "Scope of Work" means Basic Services and Additional Services set forth in this Contract and in LOA's that are consistent with the terms of this Contract.

2.26. "Subcontract Cost" means the ordinary and reasonable cost of subcontracts, without mark-up, made by the HAA and approved in advance, in writing by the Director.

3.0 DUTIES OF HAA

3.1. Services in General

HAA agrees to provide prompt and efficient Civic Art Project and Conservation Project administration services herein described for the fees specified herein. HAA shall not issue duplicate invoices to different City departments for the same work performed on a project that may overlap between departments. HAA shall not issue

invoices under this Contract for the same work performed on a non-City project. HAA shall coordinate all of its performance under this Contract with the Director and such other person(s) as the Director may specify. HAA shall keep said person(s) currently advised of developments relating to the performance of this Contract on a periodic basis as requested by the Director, and HAA shall at all appropriate times advise and consult with the Director. HAA shall make periodic written reports and recommendations to the Director relating to the services to be performed under this Contract and shall attend meetings as requested by the Director.

3.2. Warranties

3.2.1. HAA represents and warrants that it shall faithfully perform under this Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature in providing Civic Art Projects and Conservation Projects and services relating thereto.

3.2.2. The HAA represents and warrants that (i) the execution and fabrication of the works of Civic Art and Conservation will be performed in a workman-like manner; (ii) the Civic Art Projects, as fabricated and installed, will be free of material defects in materials and workmanship, including any defects consisting of qualities which cause or accelerate deterioration of the Civic Art Project and Conservation Project in excess of that which is reasonably expected by professionals knowledgeable of the materials and construction procedures authorized for such project; and (iii) reasonable maintenance of the Civic Art Projects will not require procedures materially in excess of those described in the Maintenance recommendations to be submitted by the HAA to the Director hereunder; provided, however, when selecting Civic Art Projects, the HAA shall take into account the proposed materials including issues of structural and surface integrity, protection against theft, vandalism, public safety, environmental impact and an analysis of long term maintenance needs.

3.2.3. The HAA represents that (i) neither it or anyone acting on its behalf will reproduce any Civic Art Project except as may constitute fair use under applicable statutes or as may be granted expressly in writing by the Director and the relevant Artist(s), and (ii) the Civic Art Project and its use does not infringe any patent, copyright, or proprietary right.

3.3. Civic Art and Conservation Project Reports

HAA shall submit a combined Civic Art Project and Conservation Project report and periodic progress updates at regular intervals in a uniform format as required by the Director.

3.4. Time of Performance

Subject to the provisions of this Contract regarding termination (Article 5.0) and allocation of funds (Article 4.2), on the date the Contract is countersigned by the City Controller. HAA shall commence services, as directed by the Director, and continue such services until expiration or termination of this Contract, unless sooner terminated under Article 5.0. Time is of the essence in this Contract.

3.5. Civic Art and Design Director

Prior to commencing services under this Contract, HAA shall designate in writing to the Director a Civic Art and Design Director for the Director's approval. The Civic Art and Design Director shall be in charge of Civic Art and Conservation for HAA and shall have full authority to act on behalf of HAA in all respects. HAA shall not replace the Civic Art and Design Director so designated without the prior written approval of the Director. If the Director is at any time dissatisfied with the designated Civic Art and Design Director's services or any replacement thereof, he or she shall have the right to notify HAA in writing and demand that the designated Civic Art and Design Director (or any replacement) be removed from providing further services under this Contract. Within fourteen (14) days of receipt of any such notice, HAA shall designate in writing to the Director an acting or replacement Civic Art and Design Director unless the Director (in the Director's sole judgment) states in writing that the Civic Art and Design Director (or any replacement) should not be removed from this Contract. The Civic Art and Design Director shall have the necessary planning, design and management skills required to administer this Contract and, if a full-time employee of the HAA rather than a contract employee, hold at least a director level position with the HAA.

3.6. Basic Services

3.6.1. Scope of Basic Services

For and in consideration of the payment by the City of the fees provided in this Contract, the HAA agrees to perform civic art and conservation administration Basic Services for the Department required by this Contract and the current Civic Art Ordinance, which is incorporated herein by reference, for a lump sum fee of \$14,407.50 per month. HAA's performance shall begin on the date this Contract is countersigned by the City Controller. HAA shall replace personnel or subcontractors whose work product is unsatisfactory to the Director.

Basic Service fees are calculated per project the total amount which is paid over the contract year (See Exhibit B). If the fees have been paid for a project but the project has not been commenced or completed, HAA remains obligated to perform the Basic Services necessary to complete the project and the City shall not make further allocation.

Basic Services include the following:

3.6.1.1. Civic Art Planning and Design Administration

The HAA shall, in cooperation and coordination with the Director and such other persons as the Director may specify, provide administration, monitoring, guidance, coordination and direction of the programming, planning and design work associated with the Department's Civic Art Plan and Civic Art Projects, including, but not limited to, the following:

1. Prepare, in coordination with the Director, the Department's annual Civic Art Plan on a timely basis, but no later than March 1 of each year for submission to the Director for incorporation into the proposed CIP, including prioritizing the Department's Civic Art Projects to be commenced during each fiscal year; developing Civic Art Project Budgets for such Civic Art Projects; and presenting the plan to the HAA's Board of Directors for approval and to City

Council for approval. In order for HAA to provide planning assistance in a timely manner, the Director shall inform HAA in advance of City deadlines and established processes for the approval of plans, projects, budgets and other related deadlines established by the City for Capital Improvement Projects.

2. Develop planning and design criteria and standards for incorporating Civic Art Projects into the Department's planned projects, to be carried out in coordination with the Director, Architect/Engineer(s) and Contractor.
3. Formulate and perform Artist solicitation and selection procedures for Civic Art Projects.
4. Coordinate with graphic designers, printers, mailing houses, distribution systems and all other professionals requested to create and execute an appropriate Artist solicitation. Expenses related to fees paid to designers, printers, mailing houses, distribution systems and other professionals are not part of Basic Services.
5. Subject to the Director's approval, place advertisements for proposals to Artists for Civic Art Projects. Recommend publications to attract proposing Artists. Coordinate with graphic design professionals and others to create appropriate advertisements. Expenses related to the fees paid for advertisements are not part of Basic Services.
6. Perform pre-design or pre-programming necessary to define the scope of the programming effort for Civic Art Projects (usually, but not always, one per project).
7. Prepare and maintain Civic Art Cost estimates (usually, but not always, one per project) in consultation with the Artist, Director and the Architect/Engineer.
8. Identify and define design, acquisition, fabrication, construction and installation packages for Civic Art Projects in coordination with the Director and the Architect/Engineer.
9. Coordinate responses to Artist proposal inquiries.
10. Organize and conduct no more than two pre-proposal conferences for Artists for each Civic Art Project in coordination with the Director. This includes defining responsibilities, scheduling, reporting, and developing and implementing procedures.
11. Facilitate reviews, evaluation and interviews of Artists and their proposals. These may include the use of panels or third parties as described in the Civic Art Program Implementation Procedures, as amended from time to time. Document and distribute outcomes; provided, however, that in the event the Department decides to pursue a Civic Art Project without the assistance of the HAA, the HAA shall have no responsibilities, duties, obligations or liabilities with respect thereto.

12. Secure waivers from Artists of their rights under the Visual Artists Rights Act prior to implementation of the Project and execution of an Artist's Contract. The Civic Art Project shall not proceed without such waiver.
13. In consultation with the Director, develop the Scope of Work for and execute contracts relating to Civic Art. Obtain required documentation such as the Release of Claims and Certificates of Insurance; provided, however, the HAA may not provide legal assistance to Artists, but Artists shall have the right to seek independent legal representation on such matters. Legal counsel for Civic Art matters related to the City shall be provided by the office of the City Attorney.
14. Assist the Director in the preparation for and participation in briefings for the Mayor and City Council and Department heads pertaining to new art acquisitions or other art within the City Collection and Civic Art Projects, if requested.
15. Report annually to the Mayor and City Council as to the City's prior fiscal year's activities related to the Civic Art Plan approved by City Council the previous year, including a detailed accounting of expenditures by the HAA for Civic Art and administrative expenses. The report must be submitted by September 30 of each year.
16. Develop policies and procedures to assure that public projects into which Civic Art is to be incorporated can be designed, bid and constructed in such a manner that the incorporation of Civic Art does not adversely affect the design, bids or construction of such public projects, subject to the approval of the Director. These policies and procedures are subject to the review and approval of the directors of the City departments with which HAA contracts.
17. The HAA shall examine all works of art or designs or models of same that are proposed for permanent or long term placement on City property or that are to become the property of the City by purchase, gift or otherwise (other than those works to be placed in a museum or gallery), and make recommendations to the Board of Directors of the HAA regarding the proposed location and suitability of such works of art. Prior to recommendation to the Board of Directors HAA shall submit the recommendation to the director of the department having jurisdiction over the site upon which the work of art will be placed for his review and comments. The Board of Directors of HAA will review such recommendations and, upon approval thereof, HAA will recommend appropriate action thereon to the Mayor and City Council.
18. Maintain civic art project files on each project including but no limited to; correspondence, solicitation or invitation information, insurance certificates, all material specifications, all technical and engineering specifications; permits,

artist VARA waiver, transmittals with signed receipts and any other document required to be created or maintained pursuant to this agreement or the Artist Agreement attached as Exhibit A. A copy of the file shall be submitted to the Director with close out documentation.

19. Providing the artist(s) with all technical, design, engineering and architectural specifications for each project. HAA shall insure artist's compliance with all laws, statutes, ordinances including but not limited to building codes and permits.
20. Insure that the artist(s) complies with all City polices and procedures including security, coordinating work schedules so as no to disrupt City business.

3.6.1.2 Fabrication, Installation and Maintenance of Civic Art

The HAA, in cooperation and coordination with the Director and such other persons as the Director may specify, shall provide the following services:

1. During fabrication and installation, oversee and inspect Artists' activities to verify that their work complies with their proposals, drawings and specifications for Civic Art Projects.
2. Coordinate with the Director, the Architect/Engineer and Contractor with respect to the fabrication, construction and installation of Civic Art Projects.
3. Conduct final inspections of each Civic Art Project to verify that the work complies with the Scope of Work and recommend acceptance or rejection to the Director in a timely manner.
4. Assist in the evaluation and negotiation of any Artist change order items for Civic Art Projects.
5. The HAA shall have no authority to approve or authorize change order items or time extensions for the Artists; however, the HAA shall identify potential changes and time extensions, shall request and expedite Artists' requests for change order items and/or time extensions, shall review and confirm adequacy of these requests, and shall make substantiated recommendations to the Director for approval, rejection and/or modification. Final approval of change order items or time extensions shall rest with the Director.
6. Analyze field problems, discussing solutions with each Artist, the Architect/Engineer and, if appropriate, the Contractor and provide clarifications as appropriate. When required, refer problems requiring further engineering analysis to the Architect/Engineer.
7. Review and submit to Director all close out documentation including but not limited to drawings and renderings, material specifications, installation procedures and note of any alterations made in the field and warranties.

8. Review and submit to the Director a written operations and maintenance report for each new Civic Art Project within 14 days of acceptance of a Civic Art Project.

3.6.1.3 Conservation Administration

The HAA shall, in cooperation and coordination with the Director and such other persons as the Director may specify, provide administration, monitoring, guidance, coordination, and direction of work associated with the Department's Conservation Plan and Conservation Projects, including, but not limited to, the following:

1. Prepare, in coordination with the Director, the Department's annual Conservation Plan on a timely basis, including prioritizing the Department's Conservation Projects to be commenced during each fiscal year; developing Conservation Project Budgets for such Conservation Projects; and presenting the plan to HAA's Board of Director's for approval and to City Council for approval. HAA will develop and initiate condition assessments at intervals appropriate to the artwork and review previous assessments and conservation reports in order to prioritize Conservation Projects. In order to facilitate this process, on or before the execution of this Contract, the Director shall provide to the HAA a complete listing of all works contained in the City Collection within the jurisdiction of its Department and other departments for whom it is acting.
2. Identify and define the scope of work for all Conservation Projects and execute contracts relating to Conservation. Administer, oversee, direct, coordinate, and monitor professional conservation treatment of all Conservation Projects.
3. Obtain from the Conservator of each Conservation Project, complete documentation of the conservation procedures performed and future maintenance recommendations in writing supported by photographic documentation. Provide the original documents to the Director within 14 days of completion of a Conservation Project and archive copies of each Conservation Project documentation.
4. Develop and initiate a maintenance program for works of art within the responsibility of the Department. Assist the Department in implementing the maintenance program based on existing recommendations by the artists; provided, however, HAA shall not be responsible for the actual maintenance of the City Collection.
5. Formulate conservation treatment options and perform appropriate Conservator solicitation and selection for professional conservation services for Conservation Projects in conjunction with the Department. HAA will utilize the American Institute for Conservation of Historic and Artistic Works (AIC), Save Outdoor Sculpture (SOS), and other conservation organizations' guidelines for conservation and qualifications for Conservators.

6. Include the following criteria in determining the qualifications and selection of Conservators:
 - Extent and length of experience and expertise in the documentation and conservation of comparable artworks
 - Type, scope, and location of the Conservator's practice
 - Type and extent of the Conservator's training and continuing education
 - Conservation and assessment projects completed or underway, including brief descriptions of treatment methods
 - Names of previous clients whose work is comparable
 - Response to art historical importance and aesthetic considerations of outdoor sculpture
 - Demonstrated commitment to the highest standard of work through adherence to the Code of Ethics and Guidelines for Practice of the American Institute for Conservation of Historic and Artistic Works

If the Artist of the work of art being conserved is available, he or she should be utilized as a paid consultant with regard to the methods and materials utilized in the Conservation Project whenever feasible.

7. Train Department personnel periodically on regularly scheduled maintenance care of the works of art within the Department; provided, however, HAA may, but shall not be obligated to conduct more than two (2) training sessions per year.
8. Coordinate with graphic designers, printers, mailing houses, distribution systems and all other professionals requested to create and execute an appropriate Conservator solicitation, when appropriate. Expenses related to fees paid to designers, printers, mailing houses, distribution systems and other professionals are not part of Basic Services.
9. Place advertisements for proposals to Conservators for Conservation Projects, when appropriate. Recommend publications to attract proposing Conservators. Coordinate with graphic design professionals and others to create appropriate advertisements. Expenses related to the fees paid for advertisements are not part of Basic Services.
10. Define the Scope of Work for Conservation Projects in coordination with the Director.
11. Consult with the Conservator, to prepare Civic Art Cost estimates (usually, but not always, one per project).
12. Organize and conduct no more than two pre-proposal conferences for Conservators for Conservation Projects in coordination with the Director. This includes defining responsibilities, scheduling, reporting, and developing and implementing procedures.

13. Review, evaluate, and interview potential Conservators and their proposals in conjunction with the Director.
14. Obtain required documentation from the Conservator such as maintenance recommendations, the Release of Claims, and Certificates of Insurance.
15. Assist the Director in the preparation for and participation in briefings for the Mayor and City Council and Department heads pertaining to Conservation Projects, if requested.
16. Report annually to the Mayor and City Council as to the City's prior fiscal year's activities related to the Conservation Plan approved by City Council the previous year, including a detailed accounting of expenditures for Conservation and administrative expenses. The report must be submitted by September 30th of each year.
17. Coordinate with the Conservator, the Artist, if applicable, and the Director with respect to performance of the Conservation Project.
18. Oversee and inspect Conservator's work throughout the Conservation Project to verify that the work complies with the Scope of Work.
19. Conduct final inspections of each Conservation Project to verify that the work complies with the Scope of Work and recommend acceptance or rejection to the Director in a timely manner.
20. Evaluate and negotiate any changes to the Conservation Project Scope of Work, subject to the approval of the Director and, if applicable, City Council.
21. Develop Conservation policies and procedures for contracting with Conservators and implementing Conservation Projects, subject to the approval of the Director.

3.6.1.4. Limitations of Authority of HAA

The HAA shall not be authorized to engage in any of the following services:

1. Reject or accept any Civic Art Project or Conservation Project work, except as authorized in writing by the Director. However, HAA shall recommend to the Director acceptance or rejection of Civic Art Projects and Conservation Projects.
2. Approve or authorize changes, change orders or time extensions for the Artists or Conservators, only as authorized in writing by the Director.
3. HAA shall report immediately to the Director any performance, safety, quality control or compliance issues of Artists or Conservators. Further, the HAA is not undertaking the Building Code inspection duties of the City, nor the duties of the Architect/Engineer, or other City consultants or coordinators.

3.7. Additional Services

3.7.1 Letter of Authorization

The HAA shall perform the following Additional Services if and when requested by the Director in an LOA. HAA shall not be obligated to perform any Additional Services, nor shall the City be obligated to pay for

any Additional Services, unless such Additional Services are requested in an LOA and a sufficient sum of money to pay for the requested Additional Services has been appropriated and allocated by the City for such purpose.

An LOA must include the following:

1. Contract number and the HAA's name, address, and telephone number;
2. LOA number and date, with each LOA being numbered consecutively;
3. A Scope of Services specifically identifying the services to be performed;
4. Duration of performance, including a project schedule if required by the Director;
5. A not-to-exceed number of hours to be utilized on a Project by category of employee and a not to exceed amount for services to be performed by the HAA;
6. A not-to-exceed amount for services to be performed by each Subcontractor;
7. A not-to-exceed amount for Reimbursable Expenses of the HAA;
8. A not-to-exceed amount for Reimbursable Expenses of each Subcontractor;
9. Supporting documentation showing the basis of the not-to-exceed amounts for services and Reimbursable Expenses of the HAA and Subcontractor including position classifications to perform the services, estimated hours and the fixed hourly rate as defined in this Contract;
10. Balance of unobligated funds remaining in the appropriation for Additional Services;
11. Identification of the estimated amount of services to be performed by MWBEs;
12. Deliverables due upon completion of the services;
13. The basis of payment to the HAA and each Subcontractor, either HAA Cost plus Reimbursable Expenses and Subcontract Cost, or a lump sum amount; and
14. Any other information requested by the Director.

Upon the HAA's written request, the Director, in his or her sole discretion, may grant extensions for completion of services for delays caused by the City or other agencies with which the work must be coordinated and for other reasonable causes over which the HAA has no control. The Director's approval of the extension must be in writing. LOA's continue in effect until all requirements have been met and a written acceptance of the services performed has been made by the Director or until the HAA receives written notification from the Director to discontinue services.

In addition to the Civic Art and Design Director, the HAA shall assign the number and type of personnel to perform the services required pursuant to this Contract, subject to the written approval of the Director. Personnel assigned by the HAA shall be experienced in performing the services required pursuant to this Contract. The HAA shall take all necessary steps to assure that all services performed under this Contract are consistent with the quality of services rendered by a competent professional civic art and art conservation consultant.

3.7.2 Scope of Additional Services

The Additional Services to be performed, in cooperation and coordination with the Director and such other persons as the Director may specify, are as follows:

1. Assist the City as an expert witnesses and/or factual witnesses in any legal proceedings or litigation arising from the development, design, permitting, fabrication or installation of Civic Art Projects or work under a Conservation Project. The witnesses shall be designated by and at the sole discretion of the City Attorney of the City.

2. Assist and prepare data for the City regarding claims made by Artists or Conservators relating to categories of work not included in the construction contract document or an approved change order, or a Conservator's contract.
 3. Perform services related to Civic Art and Art Conservation not included in Basic Services, if requested in writing by the Director, and within the area of the HAA's expertise.
 4. Prepare special surveys, studies and submissions not required in Article 3.6 that are necessary for approvals of governmental authorities or others having jurisdiction over the Civic Art Projects and Conservation Projects.
 5. Provide detailed estimates of Civic Art Cost beyond the requirements of Article 3.6 and provide analyses of maintenance and operating costs, or detailed quantity surveys or inventories of material, equipment and labor not otherwise required in Article 3.6.
 6. Provide consultation concerning replacement of any work damaged or destroyed during or after construction by a casualty or any other cause not under HAA's control, and furnish services as may be required in connection with the repair or replacement of such work.
 7. Provide services made necessary by the default of an Artist or Conservator, by major defects or deficiencies in the work of an Artist or Conservator or by failure of performance of either the City, Artist, or Conservator under a contract for Civic Art or Art Conservation.
 8. Provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, and preparation of operation and maintenance manuals.
 9. Provide Graphic design performed by Subcontractors.
 10. Except for those services provided under Basic Services, purchase and deliver professional artist services to provide Civic Art and Conservation to the City either directly or under a subcontract. If services are performed under a subcontract, they must be procured in accordance with City ordinances and applicable state law. HAA shall provide all of the technical, administrative, professional and other labor and all supplies; materials; equipment; vehicles; office and storage space; facilities; testing and analysis; and any other resources necessary to complete the Work. HAA shall also be responsible for the Work performed by its subconsultants for artistic, conservation, architectural, engineering, and all other professional services performed in connection with this Agreement. Any subcontracts with artists must be in form as attached hereto as Exhibit "A", unless a modified form is agreed upon by the City of Houston City Attorney or his designee. Contracts with Conservator's must be substantially in the same form as attached hereto as Exhibit "A-1", unless a modified form is agreed upon by the City of Houston City Attorney or his designee. Civic Art and Conservation Projects currently planned and funded for delivery by HAA are attached hereto as Exhibit "B."
 11. Provide any other mutually agreed upon services requested and authorized in writing by the Director that are directly related to Civic Art Projects and Conservation Projects and not otherwise included in Basic Services or other Additional Services.
- 3.8. Payment of Subcontractors

HAA shall make timely payments to all persons and entities supplying labor, materials or equipment for the execution of this Contract. HAA AGREES TO PROTECT, DEFEND, AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF ITS FAILURE TO MAKE SUCH PAYMENTS, UNLESS SUCH FAILURE TO PAY RESULTS FROM FAILURE OF THE CITY TO TIMELY PAY HAA'S APPROVED INVOICES.

3.9. Insurance.

HAA shall maintain in effect certain insurance coverage, which is described as follows:

3.9.1. Minimum Insurance Requirements. HAA shall maintain the following insurance coverage in the following amounts:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
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: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence and \$1,000,000 aggregate
Automobile Liability Insurance (for vehicles HAA uses in performing under this Contract, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

3.9.2. Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves HAA from its duties to provide the required coverage under this Contract. The Director's actions or inactions do not waive the City's rights under this Contract.

3.9.3. Issuers of Policies. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.

3.9.4. Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.

- 3.9.5. Deductibles. HAA shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- 3.9.6. Cancellation. HAA shall provide the Director 30 days' advance written notice prior to any insurance policy required under this Agreement being canceled, materially modified, or nonrenewed. HAA shall give written notice to the Director within five days of the date on which total claims by any party against HAA reduce the aggregate amount of coverage below the amounts required by this Contract. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Contract.
- 3.9.7. Subrogation. Each policy, except Professional Liability (if any), must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- 3.9.8. Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract.
- 3.9.9. Liability for Premium. HAA shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- 3.9.10. Subcontractors. HAA shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. HAA shall provide copies of insurance certificates to the Director.
- 3.9.11. Proof of Insurance.
- (a) Prior to execution of this Contract, HAA shall furnish the Director with Certificates of Insurance, along with an Affidavit from HAA confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, HAA shall furnish the City with certified copies of HAA's actual insurance policies.
- (b) HAA shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If HAA does not comply with this requirement, the Director, at his or her sole discretion, may:
- (1) immediately suspend HAA from any further performance under this Contract and begin procedures to terminate this Contract for default, or
 - (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to HAA under this Contract.

The City shall never waive or be estopped to assert its right to terminate this Contract because of its acts or omissions regarding its review of insurance documents.

- 3.9.12. Other Insurance. If requested by the Director, HAA shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to HAA's operations under this Contract.
- 3.10. Expenses and Reimbursement

3.10.1. The City shall pay HAA for Reimbursable Expenses upon receipt and approval of an itemized invoice.

3.10.2. HAA shall propose a maximum amount for each Reimbursable Expense at the time the goods and/or services generating the Reimbursable Expenses are requested from the Director. The Director must approve Reimbursable Expenses before the expenses are incurred. The compensation for Reimbursable Expenses shall never exceed this agreed-upon maximum amount. Reimbursable Expenses are to be paid in addition to the compensation for Basic and/or Additional Services and include actual expenditures without mark-up as follows:

1. The reasonable cost of convening and conducting panel reviews or other third party reviews of Artist and Conservator proposals for Civic Art Projects and Conservation Projects.
2. Travel to or from points outside Houston and its extraterritorial jurisdiction, if such travel is reasonably necessary to accomplish a task under this Contract and approved in advance in writing by the Director. Travel costs shall include common carrier fares, ground transportation expenses, and for overnight trips, the reasonable cost of lodging and meals, not to exceed the amount established under the City's then current travel reimbursement policy for employees. Reservations must be made as far in advance as feasible. Travel costs for artists responding to a request for qualifications are excluded and shall be paid as additional services.
3. The reasonable cost of reproductions, postage, printing, bulk mailings and distributions of more than 20 at a time other than via e-mail and websites, advertising and handling of documents under Section 3.7.2.3, excluding reproductions for the office use of HAA and HAA's subcontractors.
4. Other Reimbursable Expenses approved in advance by the Director in the LOA.
5. The reasonable cost of photographic production under Section 3.7.2.13.

3.11. Compliance with Laws

HAA shall comply with all applicable state and federal laws and regulations and all provisions of the City of Houston Charter and Code of Ordinances.

3.12. Compliance with Equal Opportunity Ordinance

HAA shall comply with all provisions of the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

3.13. Minority and Women Business Enterprises (M/WBE)

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement.

The Houston Arts Alliance will continue its history of employing small, women and minority business enterprises. The Houston Arts Alliance will encourage contractors to utilize MWBEs as well as encourage artists and subcontractors to certify as an MWBE with the City.

HAA shall make good faith efforts to award subcontracts and supply agreements in at least 10% of this Contract to MWBEs. The City's policy does not require HAA to in fact meet or exceed this goal, but it does require HAA to objectively demonstrate that it has made good faith efforts to do so. To this end, HAA shall maintain records showing:

- (1) subcontracts and supply agreements with Minority Business Enterprises,
- (2) subcontracts and supply agreements with Women's Business Enterprises, and
- (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. HAA shall submit periodic reports of its efforts under this Section to the Office of Business Opportunity Director in the form and at the times he or she prescribes.

3.14. Drug Detection and Deterrence

3.14.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by HAA while on City Premises is prohibited. HAA shall comply with all the requirements and procedures set forth in the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.

3.14.2. Before the City signs this Contract, HAA shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (1) a copy of its drug-free workplace policy,
- (2) the Drug Policy Compliance Agreement substantially in the form required by the CCODT, together with a written designation of all safety impact positions and,
- (3) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form required by the CCODT.

If HAA files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Contract or on completion of this Contract if performance is less than 6 months, a Drug Policy Compliance Declaration in a form approved by the CCODT. HAA shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Contract. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day HAA begins work under this Contract.

3.14.3. HAA also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to HAA's employee work force.

3.14.4. HAA shall require that its subcontractors comply with the Executive Order, and HAA shall secure and maintain the required documents for City inspection.

3.15. Conflicts of Interest

If a potential or actual conflict of interest arises between the City's interests and the interests of other clients of HAA, HAA shall immediately notify the City Attorney by fax transmission or hand delivery and request consent. The City shall be deemed to consent to the conflict unless the City Attorney sends a written notice that the City declines to consent within 3 business days after the City receives the original notice. If the City does not consent, HAA shall immediately take steps to resolve the conflict.

3.16 Release

HAA AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY GROUP") 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 GROUP'S CONCURRENT NEGLIGENCE AND/OR THE CITY GROUP'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, EXCLUDING, HOWEVER, INJURY, DEATH, DAMAGE OR LOSS CAUSED BY THE CITY GROUP'S SOLE OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

3.17 Indemnification

HAA AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY GROUP 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) HAA'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "HAA GROUP") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY GROUP'S AND HAA GROUP'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER THE HAA GROUP IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) THE CITY GROUP'S AND HAA GROUP'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER HAA GROUP IS IMMUNE FROM LIABILITY OR NOT.**

HAA SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. HAA'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE AND IN THE AGGREGATE. HAA SHALL NOT INDEMNIFY THE CITY GROUP FOR THE CITY GROUP'S SOLE NEGLIGENCE.

3.18 Indemnification Procedures

(1) Notice of Claims. If the City or HAA receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that HAA is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. HAA may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. HAA shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, HAA must advise the City as to whether or not it will defend the claim. If HAA does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If HAA elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. HAA may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that HAA does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.19 Pay or Play

The requirements and terms of the City of Houston Pay or Play program as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

4.0 DUTIES OF CITY

4.1. Payment Terms

HAA acknowledges and agrees that any services it provides to the City after this Contract has been terminated, will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion. HAA shall have no duty, responsibility or obligation to provide any products or services on or after the termination of this Contract unless and until a new contract has been entered into between the City and the HAA.

4.1.1. Fees, In General

Subject to all the terms and conditions of this Contract, the City shall pay fees to the HAA as specified in Article 4.0 for all services rendered by the HAA in accordance with the terms and conditions of this Contract, but subject to Article 4.2 hereof relating to appropriations and allocations made by the City.

If HAA receives payment from the City for work performed by any subcontractor or for materials provided by any supplier and HAA withholds or has withheld payment to the subcontractor or supplier on account of a deficiency in the quality or quantity of that subcontractor's or supplier's work or materials, City may withhold the amount associated with such work or materials from any pending or future payments to HAA until the next regular payment to HAA occurring after the City receives reasonable documentation that the deficiency has been remedied.

4.1.2. Basic Services Fees: Method of Payment

1. The City shall pay a Lump Sum Fee of \$12,750.00 per month plus Reimbursable Expenses to the HAA for Basic Services rendered by the HAA in accordance with the terms and conditions of this Contract.
2. The City shall pay such monthly fee on the basis of monthly invoices submitted by the HAA and approved by the Director. The Basic Services portion of the invoices must show the following: (i) a summary of the services performed for each Civic Art Project during the period covered by the invoice; (ii) the amount due for the services; and (iii) the amount due for itemized Reimbursable Expenses.
3. Basic Service fees are calculated per project the total amount which is paid over the contract year (See Exhibit B). If the fees have been paid for a project but the project has not been commenced or completed, HAA remains obligated to perform the Basic Services necessary to complete the project and the City shall not make further allocation.

4.1.3. Additional Services Fees; Method of Payment

1. The City shall pay (a) Civic Art Administration Cost, plus Reimbursable Expenses attributable thereto approved by the Director and Subcontract Costs approved by the Director or (b) a lump sum that does not exceed an estimate of (a), for those Additional Services set forth in Section 3.7, which the HAA or its employees directly perform, if authorized in advance by the Director.
2. To receive payment for Additional Services, the HAA must submit invoices which will set forth Additional Services performed and not previously invoiced. The Additional Services portion of the invoice must include itemizations supporting the Civic Art Administration Costs. The itemization must include, where applicable:
 - i. A breakdown of the type and cost of each item of Reimbursable Expenses;
 - ii. A breakdown of the individual expenditures allowable as travel costs;
 - iii. The actual invoice cost of Subcontract Cost, including a copy of the invoice; and
 - iv. A breakdown of the work performed in the lump sum items and a percentage of the total that is completed.
3. The Additional Services fees incurred shall be paid by the City in the manner specified in Section 4.1.5. below.

4.1.4. Payment of Invoices

1. All invoices must be approved by the Director. The invoices will be paid within 30 days after receipt and approval by the Director. All payments must be made by check. The

checks will be payable to the HAA. Payments will be mailed to the address specified in Article 1.1. The Director will not unreasonably delay or withhold payment or approval of any invoice. Neither partial payments made nor approval of invoices or services by the Director constitute final acceptance or approval of the HAA's services to which the partial payment or approval relates. The payments do not relieve the HAA of any of its obligations under this Contract.

2. If the Director disputes any items in an invoice HAA submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify HAA of the dispute and request remedial action. HAA shall promptly resolve the dispute, provide clarification and/or remedial action and resubmit the invoice. City shall promptly pay the revised invoice, upon review and approval by the Director.

4.2. Limit of Appropriation

The City's duty to pay money to Civic Art Administrator for any purpose under this Contract is limited in its entirety by the provisions of this Section.

In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated only \$153,000.00 to pay for Basic Services, only \$900,000.00 to pay for Additional Services, only \$2,000.00 to pay for contingencies, and only \$1,000.00 to pay for Reimbursable Expenses under this Contract (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Contract, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.

The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

The Original Allocation plus all supplemental allocations are the "Allocated Funds". The City shall never be obligated to pay any money under this Contract in excess of the Allocated Funds. Civic Art Administrator must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are

exhausted, Civic Art Administrator's only remedy is suspension or termination of its performance under this Contract and it has no other remedy in law or in equity against the City and no right to damages of any kind.

The Director may authorize the transfer of funds among Projects within Additional Services necessary to continue services, provided that the total amount does not exceed the amount appropriated by City Council for Additional Services. However, under no circumstances may funds be transferred among Projects within Additional Services when the Artist or Conservator has agreed to perform such services for a lump sum or not-to-exceed price when the transfer would result in increasing such agreed upon lump sum or not-to-exceed price, without a corresponding increase in services."

4.3. Access to Civic Art Project and Conservation Project Sites

HAA is granted the unlimited lawful right to ingress to and egress from Civic Art and Conservation Project sites, without charge. HAA and its employees may use, in common with other duly authorized users, the common areas and roadways of the premises where a Civic Art Project or Conservation Project is located and the appurtenances thereto, together with all facilities, equipment, improvements, and services that have been or may hereafter be provided at or in connection with the premises for common use. This excludes parking for HAA's personnel. HAA shall repair to a condition acceptable to the Director any damage caused by HAA as a result of HAA's use of the common areas.

4.4. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. HAA's invoices to the City shall not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to HAA if requested.

4.5. Access to Data

The City shall, to the extent permitted by law, allow HAA to access and make copies of documents in the possession or control of the City that are reasonably necessary for HAA to perform under this Contract.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for HAA's use.

4.6. Program

The City shall work collaboratively with HAA to provide information regarding requirements of the Civic Art Plan and the Civic Art Projects and the Conservation Plan and the Conservation Projects.

4.7. Civic Art Budget

The Director and HAA shall establish and update when necessary, an overall budget for the Department's Civic Art Plan and each Civic Art Project, and its Conservation Plan and each Conservation Project, which may include contingencies for bidding, changes in work during construction, and other costs which are the responsibility of the City, including those described in this Article 4.0. The preliminary Civic Art and Conservation Projects and budget is attached hereto as Exhibit "B".

4.8. City's Representative

The Director shall designate a representative authorized to act on the City's behalf with respect to each Civic Art Project and Conservation Project. The Director's authorized representative shall examine the Documents submitted by the HAA and shall render and obtain decisions pertaining thereto promptly to avoid unreasonable delay in the HAA's services.

4.9. Laboratory Testing

Subject to an appropriation being made therefore, the City shall pay for quality control testing and other laboratory tests, inspections or reports with respect to Eligible Projects and Civic Art Projects as required by law or the Civic Art Documents or Conservation requirements.

4.10. Defects

If either party observes or otherwise becomes aware of any fault or defect in any Civic Art Project or non-conformance with the Civic Art Documents or Conservation Scope of Work, prompt written notice thereof shall be given to the other party. Failure to provide such notification does not waive the defect or any rights the parties may have to pursue remedies for such defect.

4.11. Approvals

The Director shall furnish required information and services and shall render or obtain approvals and decisions by the City as expeditiously as necessary for the orderly progress of the HAA's services.

5.0 TERM AND TERMINATION

5.1. Term

This Contract is effective on the Countersignature Date and remains in effect for one year, unless sooner terminated under this Contract.

5.2. Termination for Convenience by the City

The Director may terminate this Contract at any time by giving 30 days written notice to HAA. Upon receiving notice, HAA shall, unless the notice directs otherwise, immediately discontinue all services under this Contract and cancel all existing orders and subcontracts that are chargeable to this Contract. As soon as practicable after receiving the termination notice, HAA shall submit an invoice showing in detail the services performed under this Contract up to the termination date. The City shall then pay the fees to HAA for services actually performed, but not already paid for, together with any third party penalties or restocking charges resulting from such early termination in the same manner as prescribed in Article 4.0, unless the fees exceed the allocated funds remaining under this Contract.

TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE HAA'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. HAA WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS ARTICLE), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.3. Termination by the City for Cause

If HAA defaults under this Contract, the Director may either terminate this Contract or allow HAA to cure the default as provided below. The City's right to terminate this Contract for HAA's default is cumulative of all rights and remedies which exist now or in the future. Default by HAA occurs if:

- (1) HAA fails to perform any of its duties under this Contract;
- (2) HAA becomes insolvent;
- (3) all or a substantial part of HAA's assets are assigned for the benefit of its creditors; or

(4) a receiver or trustee is appointed for HAA.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to HAA describing the default and the termination date which shall, in any event, be no sooner than thirty (30) days after the date of the written notice. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows HAA to cure the default and HAA does so to the Director's reasonable satisfaction before the termination date, then the termination is ineffective. If HAA does not cure the default before the termination date, then the Director may terminate this Contract on the termination date, at no further obligation of the City other than payment for services rendered by the HAA through the date of termination which have not yet been paid.

To effect final termination, the Director must notify HAA in writing. After receiving the notice, HAA shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

5.4. Termination by the HAA

HAA may terminate its performance under this Contract only if the City defaults and fails to cure the default within thirty (30) days after receiving a written notice of it. Default by the City occurs if the City fails to perform any of its material duties under this Contract. If a default occurs, HAA may deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. HAA, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then HAA may terminate its performance under this Contract on the termination date.

6.0 MISCELLANEOUS

6.1. Independent Contractor

HAA 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 HAA's performance under this Contract. All personnel HAA uses or provides are its employees or subcontractors and not the City's employees, agents or subcontractors for any purpose whatsoever. HAA 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.

6.2. Force Majeure

6.2.1. 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 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 to extra Reimbursable Expenses or payment.

6.2.2. This relief is not applicable unless the affected party does the following:

- (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
- (2) provides the other party with prompt written notice of the cause and its anticipated effect.

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

6.2.4. The City 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 City.

6.2.5. If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Contract by giving 7 days' written notice to HAA. This termination is not a default or breach of this Contract. **HAA 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.**

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

6.3. 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.

6.4. 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.

6.5. Written Amendment

Unless otherwise specified elsewhere in this Contract, this Contract may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by City Council) and HAA. The Director is only authorized to perform the functions specifically delegated to him or her in this Contract.

6.6. Applicable Laws

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.

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

6.7. 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.

6.8. 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.

6.9. Acceptance and Approval

An approval by the Director, or by any other employee or agent of the City, of any part of HAA's performance does not waive compliance with this Contract or establish a standard of performance other than required by this Contract or by law. The Director is not authorized to vary the terms of this Contract.

6.10. Inspections, Audits and Enforcement

City representatives may perform, or have performed, (1) audits of HAA's books and records, and (2) inspection of all places where work is undertaken in connection with this Contract. The 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.

The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract without further authorization. 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.

6.11. 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.

6.12. Survival

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

6.13. Parties In Interest

This Contract does not bestow any rights upon any third party, but binds and benefits the City and HAA only.

6.14. 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.

6.15. 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.

6.16. Business Structure and Assignments

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, HAA shall immediately furnish the 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. HAA shall not delegate any portion of its performance under this Contract without the Director's prior written consent. 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.

6.17 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 6.16. This Contract does not create any personal liability on the part of any officer or agent of the City.

6.18 No Partnership Created Hereby

The City and the HAA agree that no partnership relationship or joint venture between the parties is created by this Contract, and the HAA is not the agent or representative of the City for any purpose whatsoever.

6.19 No City Expenditure

With the exception of Article 4.0, nothing in this Contract requires the City to make any expenditure of its funds to the HAA or to any other party.

6.20 Rights to Use Property

The rights granted to the HAA 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.

6.21 HAA Debt

IF HAA, 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 IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT HAA HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY HAA IN WRITING. IF HAA DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO HAA UNDER THIS CONTRACT, AND HAA WAIVES ANY RECOURSE THEREFOR.

EXHIBIT "A"
ARTIST AGREEMENT

EXHIBIT "A"

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

PROFESSIONAL ARTIST SERVICES AGREEMENT

For

Project _____

ARTICLE I. PARTIES

1.1. Address

1.1.1 THIS AGREEMENT FOR PROFESSIONAL ARTIST SERVICES at

_____ ("Agreement") is made on the Countersignature Date between the **HOUSTON ARTS ALLIANCE ("HAA")**, a Texas non-profit corporation, and _____ ("Artist").

1.1.2 The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

HAA

Artist

Houston Arts Alliance
3201 Allen Parkway
Houston, Texas 77019-1800

The Parties agree as follows:

1.2. Table of Contents

1.2.1 This Agreement consists of the following sections:

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EXHIBITS

- A. PROJECT
- B. PRELIMINARY PERFORMANCE SCHEDULE
- C. SITE LOCATION FOR PLACEMENT OF PROJECT
- D. EQUAL EMPLOYMENT OPPORTUNITY
- E. REIMBURSABLE EXPENSES OF ARTIST AND SUBCONSULTANTS
- F. WAIVER OF CLAIMS

1.3. Parts Incorporated

1.3.1 The above-described sections and exhibits are incorporated into this Agreement.

1.4. Controlling Parts

1.4.1 If a conflict among the sections and exhibits arises, the sections control over the exhibits.

1.5. Signatures

1.5.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

WITNESS (if not a corporation):

By: _____

Name:

Title:

ATTEST/SEAL

By: _____

Name:

Title:

_____ ("Artist")

By: _____

Name:

Title:

HOUSTON ARTS ALLIANCE

Signed by:

Name:

Title:

ARTICLE II. DEFINITIONS

As used herein, the following words or phrases have the meaning stated:

- 2.1 "Agreement". This contract between the Parties, including all exhibits and any written amendments authorized by HAA and the Artist.
- 2.2 "Approved Budget". The budget, including any contingency amounts, for the Project prepared by the Artist and approved by the CEO or designee and incorporated as Part II of Exhibit "A" hereto.
- 2.3 "Art Documents". Detailed drawings, specifications, and other documents and information developed by the Artist for purposes of fabrication and/or installation of the Project by the Artist under Type 2 Services.
- 2.4 "Artist Costs". All fees and expenses, overhead, and profit of the Artist necessary to provide the Work to produce the Project, excluding Reimbursable Expenses. Artist Costs may be based on the following as established in the Approved Budget:
- .1 Negotiated hourly rates of the Artist;
 - .2 Negotiated daily rates of the Artist; and/or
 - .3 Negotiated lump-sum amounts.
- 2.5 "Artist". The Artist defined in Article I of this Agreement and includes its successors, assigns, and Subconsultants.
- 2.6 "CEO". Chief Executive Officer of HAA.
- 2.7 "City". The City of Houston, Texas.
- 2.8 "Conservation". The treatment of the Project for deterioration or damage to approximate, as nearly as possible, its original form, design, color, and function with minimal further sacrifice of aesthetic and historic integrity.
- 2.9 "Construction Contractor". The City of Houston's prime contractor(s), including any subcontractors, responsible for fabrication and installation of the Project, if applicable.
- 2.10 "Construction Documents". Detailed drawings, specifications, and other documents developed by the Artist under Type 1 Services for purposes of fabrication and/or installation of the Project by the Construction Contractor.
- 2.11 "Countersignature Date". The date shown as the date countersigned by HAA on the signature page of this Agreement.

- 2.12 "Design Development Documents". Documents, as further described in the Agreement, that develop the approved art concept in preparation for final design. The Design Development Documents must be approved by the CEO or Designee before the Artist can commence with construction of the final design.
- 2.13 "HAA". Houston Arts Alliance, a non-profit corporation.
- 2.14 "Maintenance". Actions taken to retard or prevent deterioration or damage to the Project by control of the environment and/or treatment of the Project, and to maintain the Project in as unchanging a state as possible.
- 2.15 "Notice to Proceed (NTP)". A written communication from the CEO or Designee to the Artist instructing the Artist either (1) to begin performance of services specified in Exhibit A in accordance with the Schedule set forth in Exhibit "B", or (2) provide the Additional Services described in the Notice to Proceed.
- 2.16 "Parties". All the entities set out in Article I who are bound by this Agreement.
- 2.17 "Project". The completed civic art, as further described in Exhibit "A", resulting solely from the Artist's Work or the Artist's Work in conjunction with work by the Construction Contractor.
- 2.18 "Reimbursable Expenses". Those costs, listed in Exhibit "E", that are reimbursed to the Artist based on actual expenditures, without mark-up.
- 2.19 "Subconsultant". Subcontractors, fabricators, and suppliers of the Artist actually performing services and providing materials and equipment pursuant to this Agreement, each of whom must be approved in advance in writing by the CEO or Designee.
- 2.20 "Type 1 Services". Basic or Additional Services by the Artist necessary to produce Construction Documents and to facilitate fabrication and/or installation of all or part of the Project by the Construction Contractor.
- 2.21 "Type 2 Services". Basic or Additional Services by the Artist necessary to produce Art Documents, and to fabricate and/or install all or part of the Project as a "turn key" Civic Art Project.
- 2.22 "Work". All Type 1 Services and/or Type 2 Services by the Artist necessary to provide a completed Project in accordance with the terms and conditions of this Agreement.

ARTICLE III. DUTIES OF ARTIST

3.1 Services in General

3.1.1 In consideration of the payment of fees by the HAA under this Agreement, the Artist shall provide all of the technical, administrative, professional and other labor and all supplies; materials; equipment; vehicles; office and storage space; facilities; testing and analysis; and any other resources necessary to complete the Work. The Artist shall also be responsible for the Work performed by its Subconsultants for artistic, architectural, engineering, and other professional services performed in connection with this Agreement.

3.1.2 The Artist shall perform services in connection with the Project only in response to a Notice to Proceed signed by the CEO or Designee.

3.1.3 The Artist shall complete Basic Services in accordance with the schedule set forth in Exhibit "B" unless such schedule is modified by Letter(s) of Authorization.

3.1.4 The Artist shall do the following :

- .1 Provide prompt and efficient professional artistic, architectural, and engineering services for the Work.
- .2 Determine the artistic expression, scope, design, color, size, material, texture, and location on the site of the Project (refer to Exhibit "C"), subject to review and acceptance by the CEO or Designee and a City representative as set forth in this Agreement.
- .3 Coordinate performance with the CEO or Designee, City consultants, and City personnel designated by the CEO or Designee, and all governmental entities having jurisdiction over the Project.
- .4 Make periodic written reports, meeting notes, and recommendations to the CEO or Designee with respect to conditions, transactions, situations, or circumstances encountered by it, Subconsultants, or City consultants relating to services under this Agreement.
- .5 Attend meetings with representatives from the City, HAA, or other agencies required by the CEO or Designee.
- .6 Provide copies of written materials prepared by the Artist, if requested.

- .7 Be responsible for the professional quality, technical accuracy, and coordination of the Construction Documents under Type 1 Services;
- .8 Correct or revise all inaccuracies or incompleteness of the Construction Documents under Type 1 Services as directed by the CEO or Designee. No compensation will be paid for corrections or revisions due to the errors and omissions of the Artist.

3.2 Basic Services

3.2.1 Programming and Planning.

- .1 The Artist acknowledges that the exact scope of Design, Fabrication and Installation services will not be known until Programming and Planning is complete. The Artist and CEO or Designee will mutually agree in writing on the application of Type 1 Services, Type 2 Services, or a combination of Type 1 and Type 2 Services in completing Design and Fabrication and Installation services.
- .2 Programming and Planning services include, but are not limited to:
 - (1) Identify potential concept(s) for the Project.
 - (2) Recommend the method of implementation (Type 1 or Type 2 Services or a combination) for each concept.
 - (3) For each of no more than three (3) concepts most favored by HAA and the City representative:
 - a. Develop the budget for the Artist's Work for each concept.
 - b. Develop an estimate of the capital, Maintenance, and operating costs for each concept.
 - c. Develop implementation schedule for each concept.
 - d. Identify impacts of each concept on existing or future facilities.
 - (4) Conduct presentations to the HAA Board of CEO or Designees and others as required by the CEO or Designee.
 - (5) Present the concept(s) to the CEO or Designee and the City representative for selection and/or approval. Allow 30 days for selection and/or approval.

- (6) The CEO or Designee may request revisions by providing a written statement of the nature and reasons for the revisions. The Artist shall resubmit the concept(s) and associated estimates and schedules within 30 days of the CEO or Designee's written statement. The Artist shall continue to resubmit the concept(s) as described above until written approval of a concept is issued by the CEO or Designee, or until this Agreement is terminated.

3.2.2 Design.

- .1 Services shall be performed for each Design Phase only after receipt of written acceptance of the preceding Phase, Notice to Proceed with performance, and assurance that adequate funds have been allocated.
- .2 Phase I - Preliminary Design.
 - (1) Prepare and submit to the CEO or Designee the following Design Development Documents:
 - a. Appropriate drawings and/or other presentation materials showing relevant views in plan, section, and elevation; details; and materials, as applicable. Additional information may be requested by CEO or Designee;
 - b. A complete specification describing the material characteristics, including size, quantity, area, color, and level of quality;
 - c. A list of any material, equipment, process or procedure protected under patent, trademark or copyright law that Artist intends to use in creating the Project;
 - d. Maintenance and Conservation requirements and procedures;
 - e. A detailed cost estimate for the Project, including Maintenance and Conservation costs; and,
 - f. Outline specifications for Type 1 Services.
 - (2) Allow three weeks for CEO or Designee's review of the complete preliminary design. Make revisions stipulated by the CEO or Designee and resubmit as required.

3 Phase II - Final Design.

(1) Type 1 Services:

a. Based upon approved Preliminary Design and any further adjustments in the scope or quality of the Project authorized by the CEO or Designee, Phase II services include but are not limited to the following:

1. Prepare, or, if so directed by the CEO or Designee, work with the applicable City departmental CEO or Designee or his or her designee to prepare detailed Construction Documents based on guidelines provided by the CEO or Designee. Specifications must conform to HAA and City standards.
2. Inform the CEO or Designee of any adjustments to previous estimates of the Project.
3. As applicable, prepare and submit the required Construction Documents to obtain approval of all governmental authorities having jurisdiction over the Project design or operation and all public and private utilities, including pipeline transmission and railroad companies affected by the Project; obtain the signatures of representatives of these governmental authorities and public and private utilities; obtain the signatures of City officials indicated by the HAA's standard title block for drawings.
4. Coordinate with the applicable City departmental CEO or Designee or his or her designee to design the Project in compliance with the requirements of applicable laws, codes, and regulations, including the City Building Code and DOT, FAA and Airport regulations (if applicable) in effect at the time the Work is performed; coordinate with the applicable City departmental CEO or Designee or his

or her designee to make revisions to the Construction Documents necessary to provide clarifications or to correct discrepancies; and provide the CEO or Designee with documents necessary for obtaining a City building permit and other required permits for the Project. The Construction Documents must conform to applicable federal and state regulations.

- b. Deliver to the CEO or Designee:
 - .1 Construction Documents and a cost estimate, appropriate to the detail of documents, at the 50%, 95% and 100% completion stages of Phase II;
 - .2 copies, as directed, of all reports, recommendations, analyses, specifications, plans, and drawings (including working drawings); and
- c. Allow two weeks for review of each satisfactory and complete progress submission. Make revisions stipulated by the CEO or Designee and resubmit as needed to attain the specified percentage of completion.
- d. Assist the HAA and the City in securing bids for the construction of the Project based on the Construction Documents; attend pre-bid conferences; and, assist the HAA and the City in evaluating the bid proposals.
- e. Before bids are scheduled to be received, coordinate with the applicable City departmental CEO or Designee or his or her designee to prepare all required addenda to revise the Construction Documents to provide clarifications; correct discrepancies; or correct errors or omissions.

(2) Type 2 Services:

- a. The Artist shall provide the CEO or Designee detailed Art Documents demonstrating the precise layout of the components of the Project.

3.2.3 Fabrication and Installation

- .1 Type 1 Services. The Artist shall provide professional services during construction to assist in obtaining a completed Project in accordance with the purpose and intent of the Construction Documents. Services include, but are not limited to, the following:
 - (1) Participate in pre-construction conferences related to the Project as required by CEO or Designee and the applicable City departmental CEO or Designee or his or her designee.
 - (2) Attend construction meetings as determined necessary by the CEO or Designee and the City representative.
 - (3) Make visits to the Project sites during construction as determined necessary by the CEO or Designee to:
 - a. observe and report on the progress and the quality of the Project,
 - b. assist HAA, the City and the Construction Contractor with fabrication and installation of the Project.
 - (4) Submit written reports in a timely manner informing the CEO or Designee of deviations from the Construction Documents observed by or brought to the attention of the Artist.
 - (5) Review and approve or take other appropriate action on the shop drawings, samples, and other submissions furnished by the Construction Contractor and submitted to the Artist. The Artist shall determine if the shop drawings, samples, and other submissions conform to the Design concept of the Project and the requirements of the Construction Documents. The Artist must notify the CEO or Designee if the shop drawings, samples, or other submissions do not conform to the design concept of the Project. These actions must be taken within 14 calendar days of receipt from the Construction Contractor or CEO or Designee, as applicable, unless otherwise approved in advance in writing by the CEO or Designee.

- (6) Work with the applicable City departmental CEO or Designee or his or her designee to prepare supporting data and provide other services (including revisions to Construction Documents) in connection with change orders when such change orders are required either to (i) make clarifications or to correct discrepancies, errors, or omissions in the Construction Documents, or (ii) conform the Construction Documents to the requirements of all applicable laws, codes, and regulations, including the City Building Code in effect during design of the Project.
- (7) Work with the applicable City departmental CEO or Designee or his or her designee to review laboratory, shop, and mill tests of material and equipment for general conformance with Construction Documents requirements and report findings to the CEO or Designee as required.
- (8) Provide design clarifications and recommendations to assist the HAA and the City in resolving field problems relating to the construction.
- (9) Evaluate Construction Contractor change and cost proposals and substitutions and recommend either approval or disapproval.
- (10) Visit the construction site with HAA and City representatives to determine the dates of substantial and final completion of the Project.
- (11) Provide continuing counsel to the CEO or Designee throughout the construction of the Project. The Artist does not have the authority or responsibility to reject work done by the Construction Contractor, or to require special inspections or tests, unless approved in writing by the CEO or Designee. The CEO or Designee and the City, as applicable, are responsible for the general administration of the construction contract.
- (12) Provide reproducible "record drawings" showing significant changes made during the construction of the Project. Such revisions shall be based on marked-up "record drawings" prints, field sketches, and other data furnished to the Artist by the HAA and the Construction

Contractor and upon change orders issued during construction. "Record drawings" must be furnished as an electronic data file.

- (13) Subject to the requirements of Section 3.2.3. herein, the Artist is not otherwise responsible for the means, methods, techniques, sequences or procedures of construction selected by the Construction Contractor(s) or the safety precautions and programs incident to the work of the Construction Contractor(s). However, if the Artist observes any unsafe conditions or unsafe practices, by the Construction Contractor, it shall notify the CEO or Designee immediately. The Artist shall report to the CEO or Designee any of the Construction Contractor's work known or observed by the Artist to be non-compliant with the Construction Documents.

.2 Type 2 Services.

- (1) Fabrication.

- a. The Artist shall fabricate the Work in accordance with the approved Art Documents. The Artist shall be solely responsible for providing any required drawings or documentation to fabricators contracted directly to the Artist or who otherwise may be providing sub-components to the Artist or who are actually fabricating the Work by direction of the Artist. The Artist is nevertheless required to provide to the CEO or Designee for review all fabrication documentation and other information useful in communicating complete design intent, including those drawings not directly prepared by the Artist. Upon completion of the fabrication of the Work, the Artist will notify the CEO or Designee.

- (2) Installation and Final Acceptance.

- a. The Work shall be delivered and installed by the Artist in cooperation and coordination with the CEO or Designee, and the City's other contractors, at the location described in attached

Exhibit "C". The Artist shall bear all cost of labor and materials for the installation unless otherwise approved by the CEO or Designee.

- b. After delivery of the Work to City property, the CEO or Designee and City representative will inspect the Project for damage. If the Project has been delivered in an undamaged condition and in proper packaging, the CEO or Designee will preliminarily accept delivery and authorize the Artist in writing to install the Project. Such acceptance shall not relieve the Artist from any warranties or obligations of this Agreement.
- c. The City or its Construction Contractor shall be responsible for all expenses necessary to prepare the installation location described in Exhibit "C" for the installation of the Work, unless otherwise specified in the Scope of Work. The Artist shall notify the CEO or Designee of actions the Artist knows the City should take to prepare the installation location.
- d. Prior to final acceptance of the Project, the Artist shall provide the CEO or Designee and City representative with lien and/or claim releases from any Subconsultant and shall certify the compliance of the Project with applicable statutes, ordinances, and regulations.
- e. Prior to final acceptance of the Project, the Artist shall provide the CEO or Designee and the City representative with detailed, written Maintenance and Conservation requirements and procedures. The Artist shall provide one training session to City personnel to implement the Maintenance requirements and procedures.
- f. The Artist shall conform to the safety standards established by City.

- g. The Artist shall keep the area where the Project will be installed and the surrounding area free from accumulation of debris and trash.
- h. The Artist shall be responsible for initiating, maintaining and supervising all safety precautions, including all those required by law (and HAA and the City) in connection with performance of this Agreement. The Artist shall promptly remedy damage and loss to property caused in whole or in part by the Artist, or by anyone for whose acts the Artist may be liable.
- i. Within ten days after the Artist notifies the CEO or Designee that the Project is complete, the CEO or Designee and the City representative will inspect the Work for final acceptance and will inspect for proper installation, undamaged condition, and compliance with the approved Art Documents. If the CEO or Designee and the City representative are satisfied that the Project complies with this Agreement, they shall notify the Artist in writing of final acceptance of the Project.
- j. The risk of loss or damage to the Project shall be borne by the Artist until the Project has been finally accepted by the CEO or Designee.

3.3 Additional Services

3.3.1 The Artist shall perform Additional Services only in response to a Notice to Proceed signed by the CEO or Designee. Additional Services include services described below:

- .1 Make revisions to Construction Documents (other than those that may be necessary in Section 3.2.2.4 herein), prepare addenda and prepare change orders to reflect Project scope changes that:
 - (1) the CEO or Designee requests in writing;
 - (2) are required to address changed conditions that the Artist could not have reasonably anticipated;
 - (3) are a change in direction the CEO or Designee previously approved;

- (4) are mandated by changing governmental laws, codes, regulations, or other statutory requirements; or
 - (5) are necessitated by the HAA's and City's acceptance of substitutions by the Construction Contractor.
- (2) Consult with the HAA and the City representative concerning replacement of any Work damaged by casualty and furnish services required in connection with the replacement;
 - (3) Assist the HAA and the City in making arrangements for the Project to proceed if the City declares the Construction Contractor in default for any reason;
 - (4) If this Agreement is terminated, provide services necessary to preserve partially finished Work products and to record Work products in a particular manner (including record prints of drawings, etc.);
 - (5) Assist the HAA in obtaining any special licenses or permits which may be required for completion of the Project, excluding any licenses or permits required under Section 3.9 herein. The HAA shall pay for these special licenses or permits;
 - (6) If the Construction Contractor exceeds the time stated in the construction contract for the Project by more than 90 days due to actions other than the Artist's, continue the services required during construction;
 - (7) Equitable adjustment to the Artist Costs and Reimbursable Expenses due to delays exceeding 90 days caused solely by City or its contractors; and,
 - (8) Provide any other mutually agreed upon services requested and authorized in writing by the CEO or Designee that are related to the Project.

3.4 Completion Date

3.4.1 The services set forth in this Agreement shall be performed and completed by Artist in accordance with the schedule attached hereto as Exhibit "B" or such schedule as the CEO or Designee may direct the Artist to follow in writing.

3.4.2 The Artist understands that time is of the essence in the performance of the Agreement. The Artist acknowledges that maximum cooperation and coordination between the CEO or Designee and the Artist and between the Artist and other contractors is necessary.

3.4.3 The Artist must anticipate in its scheduling that the Project may be interfered with or delayed from time to time by the acts or omissions of the City or its other contractors. The Artist shall fully cooperate and coordinate the Project with the CEO or Designee and other contractors and subcontractors to the maximum extent reasonably possible to avoid or mitigate any delay or hindrance of each other's projects. The CEO or Designee may make an equitable adjustment to the Artist's Costs, Reimbursable Expenses, and schedule for performance if there is a delay or more than 90 days caused solely by City or its contractors. The CEO or Designee may make an equitable adjustment of the Artist's schedule of performance as the Artist's sole compensation for delay caused by other conditions beyond the Artist's reasonable control, or force majeure as set forth in Section 6.2.

3.4.4 If any part of the Artist's Work depends for proper execution or results upon the work of the City or of one of the City's other contractors, or affects the work of another contractor, the Artist shall monitor and keep itself informed of the progress and details of such work of the contractor or the City by attendance at project coordination meetings held by the City or HAA and communication with other contractors as necessary or as directed by the CEO or Designee. The Artist shall promptly report in writing to the CEO or Designee apparent discrepancies or defects in such other work that render it unavailable, defective or unsuitable for the Artist to properly install the Work. Failure by the Artist to promptly report discrepancies shall constitute an acceptance of the work by others as fit, proper and ready for integration with the Work.

3.5 Inspection

3.5.1 The CEO or Designee and City representative shall have the right to inspect the Artist's Work in progress, at reasonable times and upon reasonable notice, provided that such right of inspection shall not materially interfere with the Artist's efforts to create and complete the Work.

3.6 Insurance

3.6.1 Artist shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All

policies except Workers' Compensation shall be primary to any other insurance and shall name the HAA and the City as additional insureds. The issuer of any policy shall have (1) a Certificate of Authority to transact insurance business in Texas or (2) be an eligible non-admitted insurer in Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the current edition Best's Key Rating Guide.

3.6.2 Artist shall maintain the following insurance coverages in the following amounts:

- .1 If the Work requires the presence of the Artist on City property at any time during performance of the Work Commercial General Liability insurance including Contractual Liability insurance: \$500,000 per occurrence; \$1,000,000 aggregate.
- .2 Workers' Compensation including Broad Form All States endorsement: Statutory amount or waiver substantially in the form of Exhibit "F" hereto, for sole proprietors not having subcontracts and employees.
- .3 If the Work requires the presence of the Artist on City property at any time during performance of the Work, Automobile Liability insurance: \$1,000,000 combined single limit per occurrence.
- .4 Property and Casualty Coverage: "All causes of loss" through final acceptance of the Project.

3.6.3 Defense costs are excluded from the face amount of the policy.

3.6.4 Aggregate Limits are per 12-month policy period unless otherwise indicated.

3.6.5 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the HAA and the City, and that it shall give 30 days written notice to the HAA and the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Artist shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Artist does not comply with this requirement, the CEO or Designee, at the CEO or Designee's sole discretion, may immediately suspend Artist from any further performance under this Agreement and begin procedures to terminate for default, or purchase the required insurance with HAA funds and deduct the cost of the premiums from amounts due to Artist under this Agreement.

3.7 Release

3.7.1 ARTIST AGREES TO AND SHALL RELEASE THE HAA AND THE CITY, THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "HAA GROUP") 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 HAA GROUP'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE HAA GROUP'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

3.8 Indemnification

3.8.1 ARTIST AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE HAA GROUP 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 AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', CEO OR DESIGNEES', CONTRACTORS', SUBCONTRACTORS' OR SUBCONSULTANTS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "ARTIST GROUP") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- .2 THE HAA GROUP'S AND ARTIST GROUP'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER ARTIST IS IMMUNE FROM LIABILITY OR NOT; AND**
- .3 THE HAA GROUP'S AND ARTIST GROUP'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT**

STATUTORY LIABILITY, WHETHER ARTIST IS IMMUNE FROM LIABILITY OR NOT.

- .4 ARTIST SHALL DEFEND, INDEMNIFY, AND HOLD THE HAA GROUP HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. ARTIST'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. ARTIST SHALL NOT INDEMNIFY THE HAA GROUP FOR THE HAA'S SOLE NEGLIGENCE.**

3.8.2 Indemnification Procedures

- .1 If the HAA, the City or Artist receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other parties within ten days. The notice must include the following:
 - (1) a description of the indemnification event in reasonable detail,
 - (2) the basis on which indemnification may be due, and
 - (3) the anticipated amount of the indemnified loss.
- .2 This notice does not estop or prevent the HAA or the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the HAA or the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Artist is prejudiced, suffers loss, or incurs expense because of the delay.
- .3 Artist may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the HAA and the City. Artist shall then control the defense and any negotiations to settle the claim. Within ten days after receiving written notice of the indemnification request, Artist must advise the HAA and the City as to whether or not it will defend the claim. If Artist does not assume the defense, the HAA and/or the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- .4 If Artist elects to defend the claim, the HAA and the City may retain, at their own expense, separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Artist may settle the claim without the consent or agreement of the HAA and the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the HAA and/or the City to comply with restrictions or limitations that adversely affect the HAA or the City, (ii) would require the HAA or the City to pay amounts that Artist does not fund in full, or (iii) would

not result in the HAA's and the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.9 Licenses and Permits; Compliance with Laws

3.9.1 Artist shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

3.9.2 Artist shall comply with all applicable state and federal laws and regulations, the City of Houston Charter, and the City of Houston Code of Ordinances.

3.10 Compliance with Equal Opportunity Ordinance

3.10.1 Artist shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "D".

3.11 Non-Discrimination

3.11.1 Artist shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 C.F.R. Part 21, and 49 C.F.R. Part 21, Appendix C(a)(1). These provisions are inclusive of any amendments which may be made to such regulations.

3.12 Airport Security

3.12.1 Artist shall comply with all HAS, TSA, FAA and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for Artist's non-compliance with the provisions of 49 CFR 1540 and 1542, as amended from time to time, or by other agencies for noncompliance with laws or regulations applicable to Artist's operations. Within 10 days of notification in writing, Artist shall reimburse the City for any fine or penalty assessed against the City because of Artist's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

3.13 Results of Artist's Work.

3.13.1 In consideration of the City of Houston, Texas providing and directing HAA to pay Artist for services rendered related to the Project, title to the Project shall pass to the City upon final acceptance of the Project by the CEO or Designee and the City of Houston departmental CEO or Designee having jurisdiction over the Project. However, the Artist shall retain the copyright to the Project, provided that the City is hereby granted an irrevocable license to

graphically reproduce (through photography or other two dimensional means) the image of the Project, Art Documents and Construction Documents, and to loan the Project to third parties as it deems necessary. Such reproductions of the Project may only be used for educational, public relations, arts promotion, or other noncommercial purposes. For the purposes of this Agreement, the noncommercial purposes mean reproduction in exhibit catalogues, books, slides, photographs, postcards, 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 are of an educational, historical or critical nature; slides and film strips not intended for mass audience; and television from stations operated for educational purposes or on programs for educational purposes from all stations; and on the Internet.

3.13.2 The Artist hereby grants the City of Houston the exclusive right to display the Project and the right to deaccession the Project in accordance with the City's current or future Deaccession Policy.

3.13.3 All references to the Project and all reproductions (as practical) may credit the Project to the Artist; provided, however, the Artist shall have the right, upon written request to the HAA, to have attribution of the Project to the Artist removed if the Project is altered, mutilated or otherwise changed without the prior written consent of the Artist..

3.13.4 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"). **THE ARTIST REPRESENTS TO HAA AND THE CITY THAT 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 OR DESIRABLE BY THE CITY OF HOUSTON. 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.

3.14 Representations of the Artist

3.14.1 The Artist Represents and warrants to the City of Houston and HAA that the Project is unique and an edition of one and does not infringe upon any copyright, and that the Artist will not execute or authorize another to execute another work of art of the same design, dimensions or materials as the Project commissioned under this Agreement. For purposes of this warranty, if the dimensions of another exceed 75% of the dimensions of the Project, the other work shall be deemed to be of the same dimensions as the Project. This warranty shall continue in effect for the life of the Artist plus 50 years and shall be binding on the Artist's heirs and assigns.

3.14.2 The Artist represents and warrants that he/she shall faithfully perform under this Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the Project.

3.14.3 The Artist represents and warrants that (i) the execution and fabrication of the Work will be performed in a workman-like manner; (ii) the Project, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of qualities which cause or accelerate deterioration of the Project; and (iii) reasonable Maintenance of the Project will not require procedures materially in excess of those described in the Maintenance recommendations to be submitted by the Artist to the CEO or Designee hereunder.

3.14.4 The Artist represents that it or anyone acting on its behalf will not reproduce the Project except as may expressly be granted in writing by the CEO or Designee of the City of Houston Department having jurisdiction over the Project; and the Project and its use does not infringe any patent, copyright, or proprietary right except to the extent expressly stated in this Agreement.

3.15 Artist Invoices

3.15.1 The Artist shall submit invoices no more frequently than monthly.

3.15.2 Each invoice must be numbered consecutively.

3.15.3 The Artist shall provide a signed summary statement for each invoice affirming that all amounts in the invoice are true and accurate. The statement shall identify the time period covered by the invoice and shall list the following information in the invoice:

- .1 Total amount authorized under the Contract.
- .2 Total amount invoiced to date.
- .3 Payment amount due for the current invoice.

3.15.4 Following the summary statement, the Artist shall provide the following detailed information as applicable:

- .1 Negotiated hourly rates, multiplied by the number of actual hours worked on the Project by the Artist during the period covered by the invoice.
- .2 Negotiated daily rates, multiplied by the number of actual days (or fractions of days) worked on the Project by the Artist during the period covered by the invoice.
- .3 Artist's assessment of percentage of work complete for each negotiated lump-sum amount, minus percentage complete on previous invoices, times the negotiated lump-sum amount.
- .4 Itemized list of each Reimbursable Expense organized by type of expense as shown in Exhibit "E".
- .5 Copy of vendor receipt(s) for each Reimbursable Expense.

3.16 Payment of Subconsultants

3.16.1 Artist shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **ARTIST SHALL DEFEND AND INDEMNIFY THE HAA AND THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF ARTIST'S FAILURE TO MAKE THESE PAYMENTS.**

ARTICLE IV. DUTIES OF HAA

4.1 Payment

4.1.1 General

- .1 The HAA shall pay fees to the Artist for all services the Artist renders in accordance with the terms and conditions of this Agreement.
- .2 If the Artist receives payment from the HAA for work performed by any Subconsultant or for materials provided by any supplier, and the Artist withholds payment to the Subconsultant or supplier because of a deficiency in the quality or quantity of the work or materials, the HAA may withhold a corresponding amount from any pending or future payments to the Artist until the next regular payment to the Artist occurring after the HAA receives reasonable documentation that the deficiency has been remedied and the Subconsultant or supplier has been paid.
- .3 The amount due to the Artist for services performed under this Agreement, including Additional Services, is payable no more frequently than monthly based on invoices the Artist submits to the HAA.
- .4 If any items in any invoice submitted by the Artist are disputed by the CEO or Designee for any reason, including lack of supporting documentation, the CEO or Designee shall promptly notify the Artist of the dispute and request clarification and/or remedial action. The Artist shall promptly resolve the dispute, provide clarification and/or remedial action, and resubmit the invoice. The CEO or Designee may, at the CEO or Designee's sole discretion, remove any disputed portion(s) of any invoice submitted by the Artist and process the balance of the invoice for payment. The HAA shall notify the Artist of any removed portion(s). The HAA shall promptly pay the revised invoice approved by the CEO or Designee.
- .5 The CEO or Designee will approve all invoices, that are complete and accurate, within 30 days after receipt. All payments are made by check or wire transfer at the HAA's sole discretion, payable to the Artist. Payments

will be mailed to the address specified in Article I. The CEO or Designee will not unreasonably delay or withhold payment or approval of any invoice; provided, however, that HAA has received from the City funds attributable to this Agreement. Neither partial payments made nor the CEO or Designee's approval of invoices or services constitute final acceptance or approval of that part of the Artist's services to which the partial payment or approval relates. The payments do not relieve the Artist of any of its obligation under this Agreement.

4.1.2 **Basis for Payment**

- .1 Payment for all Basic Services and Additional Services performed under this Agreement will be based on Artist Costs approved by the CEO or Designee and as allowed by this Agreement.
- .2 Payment for Reimbursable Expenses will be based on actual expenditures as evidenced by vendor receipts, without markup.

4.2 **Coordination of Performance with Artist**

4.2.1 In addition to its other duties under this Agreement, the HAA shall perform the following services:

- .1 Provide information to the Artist concerning the requirements for the Project;
- .2 Provide existing plans, maps, field notes, statistics, computations, and other data in the HAA's possession which in the CEO or Designee's opinion will assist the Artist in performing services under this Agreement;
- .3 Examine the documents the Artist submits and render decisions pertaining to them within a reasonable time to avoid unnecessary delay.
- .4 Provide reasonable access to HAA and City facilities as required and allowed by law in order to facilitate the Artist's performance under this Agreement.

4.3 **Taxes**

4.3.1 The HAA is exempt from Texas Limited Sales and Use Tax. The Artist's invoices to the HAA must not contain assessments of any of these taxes, unless the taxes are legally applicable. The CEO or Designee will furnish the HAA's exemption certificate and federal tax identification number to the Artist if requested.

4.4 Repair and Restoration of the Project

4.4.1 Maintenance of the Project shall be the responsibility of the City. HAA shall conserve the Project and/or make repairs without the Artist's approval or consultation, provided such work is performed in accordance with recognized principles of conservation as determined by HAA. HAA and the City of Houston may consult with the Artist regarding repairs and conservation which are undertaken during the Artist's lifetime when that is practicable. To facilitate consultation, the Artist will notify the HAA of any changes in the Artist's permanent address.

ARTICLE V. TERM AND TERMINATION

5.1 Term

5.1.1 This Agreement is effective on the date of execution by both parties and shall continue, unless sooner terminated under the terms of this Agreement, until the later of:

- .1 the final day of performance set forth in Exhibit "B" or as the schedule in Exhibit "B" is adjusted by a Notice to Proceed approved by the CEO or Designee;
- .2 the HAA's final acceptance of the Construction Contractor's work associated with Type 1 Services; or
- .3 the HAA's and City's final acceptance of the Artist's Work under Type 2 Services.

5.2 Termination by the HAA for Convenience

5.2.1 The CEO or Designee may terminate this Agreement at any time by giving 14 days' written notice to Artist. Artist shall, unless the notice directs otherwise, immediately discontinue all services and cancel promptly all existing orders and subcontracts chargeable to this Agreement. Within 14 days of receiving the notice of termination, Artist shall submit an invoice showing in detail services performed under this Agreement to the date of termination. After receipt of all items produced under this Agreement prior to the date of termination, the HAA shall then pay the fees to Artist for services actually performed under this Agreement up to the date of termination, but not already paid for, in the same manner as prescribed in Article V. Any installments will be prorated in accordance with the progress of the Project at the date of

termination. Artist may submit invoices for vendor and subcontractor charges incurred before the notice of termination and received by Artist after its initial termination invoice.

5.2.2 Termination of performance and receipt of payment for services rendered as set out above are Artist's only remedies for termination for convenience by the HAA. Such termination by the HAA shall not constitute a default or breach of this Agreement, and Artist waives any claim (other than its claim for payment as specified in this section), it may have now or in the future for financial losses or other damages arising out of the HAA's termination for convenience.

5.3 Termination by the HAA for Artist's Default

5.3.1 The HAA may terminate this Agreement if Artist fails to perform its obligations and does not cure the default after receiving notice, as provided in this Section. Default by Artist occurs if Artist:

- .1 Fails to observe or perform its duties under this Agreement;
- .2 Becomes insolvent, or if all or a substantial part of its assets are assessed for the benefit of Artist's creditors;
- .3 Assigns this Agreement in law or otherwise; or
- .4 A receiver or trustee is appointed for Artist.

5.3.2 If a default occurs, the CEO or Designee will deliver a written notice to Artist describing the default and the proposed date of termination. The date may not be sooner than the 14th day after receipt of the notice. The CEO or Designee may extend the proposed termination date. If Artist cures the default to the CEO or Designee's satisfaction before the proposed date of termination, then the termination is ineffective. If Artist does not cure the default before the proposed date of termination, then the HAA may terminate this Agreement on the termination date.

ARTICLE VI. MISCELLANEOUS

6.1 Independent Contractor

6.1.1 Artist is an independent contractor and is not an employee, agent, representative or subcontractor of the HAA. No partnership or joint venture is created by this Agreement.

6.2 Force Majeure

6.2.1 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 HAA or Artist. 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 HAA, the City or Artist, 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 Artist to extra Reimbursable Expenses or payment.

- .2 This relief is not applicable unless the affected party does the following:
 - (1) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - (2) provides the other party with prompt written notice of the cause and its anticipated effect.
- .3 The CEO or Designee will review claims that a Force Majeure that directly impacts the HAA or Artist has occurred and render a written decision within 14 days. The decision of the CEO or Designee is final.
- .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 Agreement by the HAA.
- .5 If the Force Majeure continues for more than 7 days from the date performance is affected, the CEO or Designee may terminate this Agreement by giving 7 days' written notice to Artist. This termination is not a default or breach of this Agreement by the HAA. **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.**

- .6 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.

6.3 Severability

- 6.3.1 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.

6.4 Entire Agreement

- 6.4.1 This Agreement, including all Exhibits, is the entire agreement of the Parties, and there are no other representations, conditions, covenants, or other terms pertaining to this Agreement (expressed or implied) not incorporated in writing in this Agreement.

6.5 Written Amendment

- 6.5.1 No amendment of this Agreement is valid unless it is in writing and signed on behalf of the HAA and Artist. The CEO or Designee is authorized to perform only the functions specifically delegated to him or her in this Agreement.

6.6 Governing Law

- 6.6.1 This Agreement and any disputes or controversies arising under it are governed by the laws of the State of Texas, with venue in Harris County. Nothing in this Agreement creates any new cause of action against the HAA or the City or waives any immunity or limitation of liability in favor of the City or HAA existing now or in the future under common law, state or federal regulations, or statutes (including, but not limited to, the Texas Tort Claims Act).

6.7 Notices

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

6.8 Captions and Headings

6.8.1 The captions and headings at the beginning of the Articles and Sections of this Agreement are guides and labels to assist in locating and reading the Articles and Sections, and, therefore, will be given no effect in construing this Agreement. Any reference to gender shall include the masculine, feminine and neutral.

6.9 Inspections, Audits and Enforcement

6.9.1 Representatives of the HAA and the City shall have the right to perform, or cause to be performed, (1) audits of the books and records of Artist pertaining to this Agreement, and (2) inspections of all places where Work is undertaken in connection with this Agreement. Artist shall be required to keep such books and records available for such purpose for at least three years after the ceasing of its performance under this Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

6.9.2 HAA or the HAA's designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Artist shall provide to the HAA all documents and records that the HAA deems necessary to assist in determining Artist's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.10 Ambiguities

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

6.11 Survival

6.11.1 Artist shall remain obligated to the HAA under all clauses of this Agreement that expressly or by their nature extend beyond and survive the expiration or termination of this Agreement, including without limitation, Sections 3.7, 3.8, 3.13, and 3.14.

6.12 Non-Waiver

6.12.1 If either party fails to require the other to perform any term of this Agreement, that failure shall not prevent such party from later enforcing that term and all other terms. If either

party waives the other's breach of a term, that waiver shall not waive a later breach of this Agreement.

6.13 Business Structure and Assignments

6.13.1 Artist shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the CEO or Designee'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 shall immediately furnish the HAA 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.

6.13.2 Artist shall not delegate any portion of its performance under this Agreement without the CEO or Designee's prior written consent.

6.14 HAA Expenditure

6.14.1 Except for Article IV, nothing in this Agreement requires the HAA to pay Artist or any other party for services rendered or Reimbursable Expenses.

6.15 Successors

6.15.1 This Agreement shall bind and benefit the Parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the HAA.

6.16 Remedies Cumulative

6.16.1 Except as otherwise provided herein, the rights and remedies contained in this Agreement shall not be exclusive, and are cumulative of all rights and remedies now or hereafter existing by statute, at law, or in equity. Neither party may terminate its duties under this Agreement except in accordance with its terms.

EXHIBIT "B"
PRELIMINARY PERFORMANCE SCHEDULE

**Exhibit B - Contract #
Houston Airport System 2014**

Facility	Project	Purchase of. New Art or Conservation Treatment	Contingency Funding for Additional Services	Reimbursables	Basic Services HAA Project Management Based on Additional Services (\$)
William P. Hobby Airport - New art acquisitions	TBD	\$650,000.00			\$110,500.00
William P. Hobby Airport - New art acquisitions	Portable Works Collection	\$250,000.00			\$42,500.00
William P. Hobby Airport - Contingency for additional services	Contingency		\$2,000.00		\$0.00
William P. Hobby Airport - Reimbursables	Reimbursables			\$1,000.00	\$0.00
Totals		\$900,000.00	\$2,000.00	\$1,000.00	\$153,000.00
Total Additional Services (Acquisitions & Conservation)		\$900,000.00			
Total Basic Services (HAA Project Management)					
Contingency Funding for Additional Services					
Reimbursables					
Total Expenditure					

* Contingency Funding for Additional Services - The cost of the project is estimated in the contract but actual costs are determined in the condition assessment of the first phase of the project. The actual cost could possibly be more or less than has been the estimated additional services.

EXHIBIT "C"
SITE LOCATION FOR PLACEMENT OF PROJECT

EXHIBIT "D"
EQUAL EMPLOYMENT OPPORTUNITY

1. The Artist, subconsultant, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Artist, subconsultant, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Artist, subconsultant, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the HAA setting forth the provisions of this Equal Employment Opportunity Clause.
2. The Artist, subconsultant, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.
3. The Artist, subconsultant, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the Artist's and subconsultant's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Artist, subconsultant, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the City for purposes of investigation to ascertain and effect compliance with this project.
5. The Artist, subconsultant, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the Artist, subconsultant, vendor, supplier, or lessee.
6. In the event of the Artist's, subconsultant's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the Artist, subconsultant, vendor, supplier, or lessee may be declared ineligible for further HAA contracts funded by the City in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The Artist shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Artist will take such action with respect to any subconsultant or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Artist becomes involved in, or is threatened with litigation with a subconsultant or vendor as a result of such direction by the contracting agency, the Artist may request the United States to enter into such litigation to protect the interests of the United States.
8. The Artist shall file and shall cause Subconsultants, if any, to file compliance reports with the HAA in the form and to the extent as may be requested. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the Artist and each subconsultant.

EXHIBIT "E"
REIMBURSABLE EXPENSES OF ARTIST AND SUBCONSULTANTS

1. Telephone long distance charges.
2. The ordinary and reasonable cost of travel and per diem to and from points outside Houston by Artist, not to exceed the amount established under the HAA's current travel reimbursement policy for its employees, if the travel is reasonably necessary to accomplish a task and authorized in advance by the CEO or Designee. "Outside Houston" means outside a 40-mile radius from the Project site described in Exhibit "C".
3. Outside reproduction of Art Documents, Design Development Documents, Construction Documents and progress review documents, reports, and other deliverable products required under the Agreement. Excludes day-to-day correspondence and invoices, reports, etc. required for the administration of the Agreement
4. Renderings and models.
5. Security badge fees paid to City, if any.
6. CADD expenses.
7. Other reimbursable expenses within the scope of the Project, approved in advance in writing by the CEO or Designee, and authorized by LOA.

EXHIBIT "F"

STATE OF TEXAS §
COUNTY OF HARRIS §

WAIVER OF CLAIMS

_____, President of _____, a sole proprietorship (Contractor), intends to _____ (Project). Contractor represents that it does not have any employees and will not retain any sub-contractors to perform any of the services required on the Project. Contractor does not maintain workers' compensation coverage because it is a sole proprietorship. Contractor represents that it desires to waive any and all injury claims that may occur on the Project.

I, THE UNDERSIGNED, FOR AND ON BEHALF OF MYSELF, MY HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS, DO HEREBY RELEASE, ACQUIT AND FOREVER DISCHARGE (I) THE HOUSTON ARTS ALLIANCE, TOGETHER WITH ITS FORMER AND PRESENT EMPLOYEES, OFFICERS, CEO OR DESIGNEES, LEGAL REPRESENTATIVE, AGENTS, VOLUNTEERS, SUCCESSORS AND ASSIGNS AND (II) THE CITY OF HOUSTON, TEXAS, TOGETHER WITH ITS FORMER AND PRESENT ELECTED AND APPOINTED OFFICIALS, LEGAL REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES (IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES), VOLUNTEERS, SUCCESSORS AND ASSIGNS AND ALL AFFILIATED PERSONS AND ENTITIES (HEREINAFTER COLLECTIVELY THE RELEASED PARTIES) OF, FROM AND AGAINST ANY AND ALL LIABILITIES OF EVERY KIND, CLAIMS, CAUSES OF ACTION, LOSSES, JUDGMENTS, FINES, DEMANDS, DAMAGES, LOSS OF USE OR SERVICES, OR INJURIES TO REAL AND/OR PERSONAL PROPERTY AND/OR PERSONS (INCLUDING DEATH), KNOWN AND UNKNOWN, (COLLECTIVELY CLAIMS) CAUSED BY, ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN ANY WAY TOUCHING UPON ANY EVENT, CIRCUMSTANCE OR TRANSACTION RELATING TO MY PERFORMANCE AND/OR PARTICIPATION IN THE PROJECT AND/OR THE PRESENCE, MALFUNCTION, MAINTENANCE, ADDITION OR SUBSTITUTION OF ANY TANGIBLE PERSONAL OR REAL PROPERTY OWNED, LEASED, OPERATED, OR UTILIZED BY THE RELEASED PARTIES IN CONNECTION WITH THE PROJECT EVEN IF THE CLAIM IS THE RESULT OF THE ACTUAL OR ALLEGED SOLE NEGLIGENCE OF THE RELEASED PARTIES AND/OR THE ACTUAL OR ALLEGED CONCURRENT OR JOINT NEGLIGENCE OF THE RELEASED PARTIES AND ANY OTHER PERSON OR ENTITY, AND/OR THE ACTUAL OR ALLEGED GROSS NEGLIGENCE OF THE RELEASED PARTIES AND/OR THE ACTUAL OR ALLEGED STRICT, STATUTORY OR CONSTITUTIONAL LIABILITY OF THE RELEASED PARTIES.

By: _____
Name: _____
Title: _____
Address: _____

STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____, 200_, by _____.

Notary Public, State of Texas

(NOTARY SEAL)

EXHIBIT "A-1"
CONSERVATION AGREEMENT

EXHIBIT "A-1"

AGREEMENT FOR
PROFESSIONAL ART RESTORATION AND CONSERVATION SERVICES
BETWEEN
HOUSTON ARTS ALLIANCE AND CONSERVATOR

THIS AGREEMENT is entered into on the date executed by Houston Arts Alliance ("HAA"), a Texas non-profit corporation, and _____ ("Conservator"), a _____, doing business in Harris County, Texas, and located at _____. The HAA and Conservator are sometimes collectively referred to as the "Parties."

WITNESSETH THAT:

WHEREAS, HAA desires to restore and conserve the _____ by Artist, _____, described in Exhibit "A", attached hereto and incorporated herein for all purposes, ("_____"), and located at _____ ("Site"); and

WHEREAS, HAA desires that the Conservator be retained to restore and conserve the _____; and

WHEREAS, the Conservator is ready, willing, and able to provide the services;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLE 1.0 SCOPE OF WORK

- 1.1 Work will be performed on the _____ on Site, or at the Conservator's studio in accordance with the Scope of Work in Exhibit "A". The Conservator shall perform all services, supervise all subcontractors, and furnish all of the technical, administrative, professional and other labor; all supplies, materials, equipment, and vehicles, office and storage space; facilities testing and analysis and any other resources necessary to complete the restoration and conservation of the _____ ("Work"). The Conservator shall also be responsible for the Work performed by its Subconsultants for restoration, and for conservation, and other professional services. The Work shall be coordinated with HAA.
- 1.2 Conservator is granted the unlimited lawful right of ingress and egress from the Site, without charge. Conservator and its employees, agents, and subcontractors shall have the right to use, in common with other duly authorized users, the common areas and roadways of the Site, together with all facilities, equipment, improvements, and services that have been or may hereafter be provided at or in connection with the Site for common use. This includes parking for Conservator, its employees, agents and

subcontractors, at its expense. Conservator shall repair to a condition acceptable to the HAA Civic Art Collections Manager/Conservator ("Manager") and the City of Houston ("City") representative any damage caused by Conservator or its employees, agents or subcontractors as a result of Conservator's use of such common areas.

1.3 The Manager shall provide a notice to proceed to the Conservator, via facsimile transmission or hand delivery with the dates and times for the Conservator to commence work on the _____ ("Date of Commencement").

1.4 Upon completion of the Work on the _____ and at the time Conservator delivers his final invoice to HAA, Conservator shall deliver to Manager, a Report on Condition and Scope of Work. Such report shall provide a detailed description of the _____ at the time the Work began, and the Work that was performed. Conservator shall include within the Report written instructions to HAA for appropriate maintenance and preservation of the _____.

ARTICLE 2.0 APPROVAL AND NOTICE

2.1 Within ten days after the Conservator notifies the Manager that the _____ is complete, the Manager and a City of Houston representative will inspect the _____ for final acceptance and will inspect for proper installation, undamaged condition, and compliance with the approved plans, fabrication and elevation drawings, specifications and other art documents. If the Manager and the City of Houston representative are satisfied that the _____ complies with this Agreement, they shall notify the Conservator in writing of final acceptance of the _____.

ARTICLE 3.0 TIME OF PERFORMANCE

3.1 Conservator shall commence and complete the Work in accordance with the notice to proceed and the Schedule contained in Exhibit "C", attached hereto and incorporated herein for all purposes. Such Schedule may be changed by mutual agreement in writing signed by Conservator and Manager. Conservator's services shall proceed diligently from commencement to completion. The Work performed on Site shall commence within seven working days following execution of this Agreement by HAA, or as agreed in writing by the Manager and Conservator. The Date of Commencement shall be established in the notice to proceed sent by the Manager to Conservator. Commencement of Work shall be subject to receipt by the Conservator of any and all permits required for access to the Site.

3.2 All Work shall be completed within the time limits set forth in Exhibit "C". The Schedule may be amended by mutual written agreement of the Manager and Conservator in accordance with Section 3.3.

3.3 Manager, at his or her sole discretion, may grant written extensions of Time of Performance of Work up to a total of three months without the need to amend this Agreement to permit completion of the Work in accordance with Exhibit "C." Time of Performance of Work shall be extended in accordance with a schedule for completion of such services approved by Manager.

3.4 The Conservator agrees that time is of the essence of this Agreement, and further agrees to perform the Work in accordance with the Schedule.

ARTICLE 4.0 RELEASE OF CLAIMS

4.1 The Conservator shall furnish HAA an affidavit that all bills for labor, materials, and equipment, invoices, claims, wages, and all known indebtedness connected with the Work have been paid. Such affidavit shall be a condition of payment of fees as provided in Article 6.0.

ARTICLE 5.0 INSURANCE

5.1 The Conservator shall maintain in effect, insurance coverage, and shall furnish an original certificate of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Workers' Compensation shall be primary to any other insurance and shall name the HAA and the City as additional insureds. The issuer of any policy shall have (1) a Certificate of Authority to transact insurance business in Texas or (2) be an eligible nonadmitted insurer in Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the current edition Best's Key Rating Guide. Conservator shall maintain the following insurance coverages in the following amounts:

(a) Commercial General Liability insurance including Contractual Liability insurance:

- \$500,000 per occurrence; \$1,000,000 aggregate

(b) Workers' Compensation including Broad Form All States endorsement:

- Statutory amount.

(c) Automobile Liability Insurance

- \$1,000,000 combined single limit

(d) Property and Casualty Coverage if the _____ is moved from its site:

- "All causes of loss" through final acceptance of the _____.

5.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the HAA and the City, and that it shall give 30 days written notice to HAA before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Conservator shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Conservator does not comply with this requirement, the

Manager, at the Manager's sole discretion, may immediately suspend Conservator from any further performance under this Agreement and begin procedures to terminate for default, or purchase the required insurance with HAA funds and deduct the cost of the premiums from amounts due to Conservator under this Agreement.

Defense costs are excluded from the fact amount of the policy.

Aggregate Limits are per 12-month policy period

unless otherwise indicated

ARTICLE 6.0 FEES AND PAYMENTS

- 6.1. Subject to all the terms and conditions of this Agreement, HAA shall pay, and Conservator agrees to accept, a lump sum fee in the amount of \$_____ as set forth in Exhibit "B," which is attached hereto and incorporated herein by reference. Such lump sum fee shall be full compensation for all services performed and expenses incurred under this Agreement.
- 6.2. HAA shall make partial payments of the fees on the basis of monthly invoices submitted by Conservator and approved by the Manager. The invoices must show the following: (1) the percentage of the total services completed in the preceding month, (2) a summary of the services performed during the period covered by the invoice, and (3) the amount due for such services. HAA shall pay Conservator within 30 days of receipt and approval of the invoices.
- 6.3. The amount of partial payment due for services shall be a percentage of the lump sum equal to the percentage of the total services performed during the period covered by the invoice.
- 6.4. Conservator shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONSERVATOR SHALL DEFEND AND INDEMNIFY HAA AND THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSERVATOR'S FAILURE TO MAKE THESE PAYMENTS.
- 6.5. If any item in any invoice submitted by Conservator is disputed by HAA for any reason, including lack of supporting documentation, the Manager shall temporarily delete the disputed item and pay the remaining amount of the invoice. The Manager shall promptly notify the Conservator of the dispute and request clarification and/or remedial action. After any dispute is settled, the Conservator shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- 6.6. HAA is exempt from Texas Limited Sales and Use Tax. The Conservator's invoices to HAA must not contain assessments of any of these taxes, unless the taxes are legally applicable. HAA will furnish HAA's exemption certificate and federal tax identification number to the Conservator if requested.

ARTICLE 7.0 CONSERVATOR'S WARRANTY

7.1 The Conservator represents and warrants that it and its subcontractor, if any, shall faithfully perform under this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature. The Conservator represents and warrants that the execution of the Work will be performed in a workman like manner, the Work will be free of defects in materials and workmanship, including any defects consisting of qualities or materials that cause or accelerate deterioration of the _____; and reasonable maintenance recommendations for the _____ will not require procedures materially in excess of those described in the maintenance recommendations to be submitted by the Conservator to the Manager.

ARTICLE 8.0 CHANGES

8.1 The Conservator and Manager may agree in writing to changes in the Work that are within the general scope of this Agreement, subject to the maximum lump sum amount set forth in Article 6.0 and in Exhibit "B".

ARTICLE 9.0 RELEASE AND INDEMNIFICATION

9.1 RELEASE

CONSERVATOR AGREES TO AND SHALL RELEASE HAA, AND THE CITY, THEIR 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 HAA'S SOLE OR CONCURRENT NEGLIGENCE AND/OR HAA'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

9.2 INDEMNIFICATION

CONSERVATOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HAA AND THE CITY, THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "HAA") 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:

- (a) CONSERVATOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONSERVATOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (b) HAA'S AND CONSERVATOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONSERVATOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (c) HAA'S AND CONSERVATOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONSERVATOR IS IMMUNE FROM LIABILITY OR NOT.
- (d) CONSERVATOR SHALL DEFEND, INDEMNIFY, AND HOLD HAA HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONSERVATOR'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONSERVATOR SHALL NOT INDEMNIFY HAA FOR HAA'S SOLE NEGLIGENCE.

9.3 Indemnification Procedures

- (a) If HAA, the City or Conservator receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within ten days. The notice must include the following:
 - (i) a description of the indemnification event in reasonable detail,
 - (ii) the basis on which indemnification may be due, and
 - (iii) the anticipated amount of the indemnified loss.
- (b) This notice does not estop or prevent HAA or the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HAA or the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Conservator is prejudiced, suffers loss, or incurs expense because of the delay.
- (c) Conservator may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HAA and the City. Conservator shall then control the defense and any negotiations to settle the claim. Within ten days after receiving written notice of the indemnification request, Conservator must advise HAA and the City as to whether or not it will defend the claim. If Conservator does not assume the defense, HAA and/or the City

shall assume and control the defense, and all defense expenses constitute an indemnification loss.

- (d) If Conservator elects to defend the claim, the HAA and the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Conservator may settle the claim without the consent or agreement of the HAA and the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the HAA and/or the City to comply with restrictions or limitations that adversely affect the HAA or the City, (ii) would require the HAA or the City to pay amounts that Conservator does not found in full, (iii) would not result in the HAA's and the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE 10.0 TERM AND TERMINATION

10.1 Term

This Agreement is effective on the date executed by HAA and the Conservator and remains in effect, unless sooner terminated under the terms of the Agreement, until HAA and the City's final acceptance of the Conservator's Work.

10.2 Termination by HAA for Convenience

HAA may terminate this Agreement at any time by giving 14 days' written notice to Conservator. Conservator shall, unless the notice directs otherwise, immediately discontinue all services and cancel promptly all existing orders and subcontracts chargeable to this Agreement. Within 14 days of receiving the notice of termination, Conservator shall submit an invoice showing in detail services performed under this Agreement to the date of termination. After receipt of all items produced under this Agreement prior to the date of termination, the HAA shall then pay the fees to Conservator for services actually performed under this Agreement up to the date of termination, but not already paid for, in the same manner as prescribed in Article 6.0. Any installments will be prorated in accordance with the progress of the Work at the date of termination. Conservator may submit invoices for vendor and subcontractor charges incurred before the notice of termination and received by Conservator after its initial termination invoice.

- 10.2.2 Termination of performance and receipt of payment for services rendered as set out above are Conservator's only remedies for termination for convenience by the HAA. Such termination by the HAA shall not constitute a default or breach of this Agreement, and Conservator waives any claim (other than its claim for payment as specified in this section), it may have now or in the future for financial losses or other

damages arising out of the HAA's termination for convenience.

10.3 Termination by HAA for Conservator's Default

10.3.1 The HAA may terminate this Agreement if Conservator fails to perform its obligations and does not cure the default after receiving notice, as provided in this Section. Default by Conservator occurs if Conservator:

- .1 Fails to observe or perform its duties under this Agreement;
- .2 Becomes insolvent, or if all or a substantial part of its assets are assessed for the benefit of Conservator 's creditors;
- .3 Assigns this Agreement in law or otherwise; or
- .4 A receiver or trustee is appointed for Conservator.

10.3.2 If a default occurs, HAA will deliver a written notice to Conservator describing the default and the proposed date of termination. The date may not be sooner than the 14th day after receipt of the notice. HAA may extend the proposed termination date. If Conservator cures the default to the HAA's satisfaction before the proposed date of termination, then the termination is ineffective. If Conservator does not cure the default before the proposed date of termination, then the HAA may terminate this Agreement on the termination date.

ARTICLE 11.0 WAIVER

11.1 The Conservator recognizes the existence of moral rights of Conservators set forth in the Visual Conservators' 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 CONSERVATOR IS ENTITLED TO PROTECTION THEREUNDER, THE CONSERVATOR 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 OR DESIRABLE BY THE CITY. THE CONSERVATOR 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.**

ARTICLE 12.0 INSTALLATION AND FINAL ACCEPTANCE

- 12.1 The _____ shall be delivered and installed by the Conservator in cooperation and coordination with the Manager, at the current location of the _____ at _____.
- 12.2 After delivery of the _____ to City property, the Manager and a City representative will inspect the _____ for damage. If the Work has been delivered in an undamaged condition and in proper packaging, the Manager and City representative will preliminarily accept delivery and authorize the Conservator in writing to install the _____. Such acceptance shall not relieve the Conservator from any warranties or obligations of this Agreement.
- 12.3 Prior to final acceptance of the _____, the Conservator shall certify the compliance of the _____ with applicable statutes, ordinances, regulations, approved plans, specifications, fabrication and elevation drawings, if any, and other art documents.
- 12.4 Prior to final acceptance of the _____, the Conservator shall provide the Manager with detailed, written maintenance and conservation requirements and procedures.
- 12.5 The Conservator shall conform to the safety standards established by the City of Houston and federal and state laws and regulations.
- 12.6 The Conservator shall keep the area where the _____ will be installed and the surrounding area free from accumulation of debris and trash caused by it or its Subconsultant.
- 12.7 The Conservator shall be responsible for initiating, maintaining and supervising all safety precautions, including all those required by law (and the City and HAA) in connection with performance of this Agreement. The Conservator shall promptly remedy damage and loss to property caused in whole or in part by the Conservator, or by anyone for whose acts the Conservator may be liable.
- 12.8 The risk of loss or damage to the _____ shall be borne by the Conservator if it is moved from the Site until the _____ has been finally accepted by the Manager and City representative.
- 12.9 The Manager and City representative shall have the right to inspect the Conservator's _____ in progress, at reasonable times and upon reasonable notice, provided that such right of inspection shall not materially interfere with the Conservator's efforts to create and complete the _____.

ARTICLE 13.0 MISCELLANEOUS

13.1 Independent Contractor

Conservator is an independent contractor and is not an employee, agent, representative or subcontractor of

the HAA. No partnership or joint venture is created by this Agreement.

13.2 Force Majeure

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 HAA or Contractor. 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 HAA, the City or Contractor, 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 Contractor to extra Reimbursable Expenses or payment.

.2 This relief is not applicable unless the affected party does the following:

(1) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

(2) provides the other party with prompt written notice of the cause and its anticipated effect.

.3 The Manager will review claims that a Force Majeure that directly impacts the HAA, the City or Contractor has occurred and render a written decision within 14 days. The decision of the Manager is final.

.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 Agreement by the HAA.

.5 If the Force Majeure continues for more than 7 days from the date performance is affected, the Manager may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR 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.

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

13.3 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.

13.4 Entire Agreement

This Agreement, including all Exhibits, is the entire agreement of the Parties, and there are no other representations, conditions, covenants, or other terms pertaining to this Agreement (expressed or implied) not incorporated in writing in this Agreement.

13.5 Written Amendment

No amendment of this Agreement is valid unless it is in writing and signed on behalf of the HAA and Conservator. The Manager is authorized to perform only the functions specifically delegated to him or her in this Agreement.

13.6 Governing Law

This Agreement and any disputes or controversies arising under it are governed by the laws of the State of Texas, with venue in Harris County. Nothing in this Agreement creates any new cause of action against the HAA or the City or waives any immunity or limitation of liability in favor of the City existing now or in the future under common law, state or federal regulations, or statutes (including, but not limited to, the Texas Tort Claims Act).

13.7 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, 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 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. The initial addresses of the parties, which one party may change by given written notice to the other party, are as follows:

HAA

Conservator

13.8 Captions and Headings

The captions and headings at the beginning of the Articles and Sections of this Agreement are guides and labels to assist in locating and reading the Articles and Sections, and, therefore, will be given no effect in construing this Agreement. Any reference to gender shall include the masculine, feminine and neutral.

13.9 Inspections, Audits and Enforcement

13.9.1 Representatives of the HAA and the City shall have the right to perform, or cause to be performed, (1) audits of the books and records of Conservator pertaining to this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Conservator shall be required to keep such books and records available for such purpose for at least three years after the ceasing of its performance under this Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

13.9.2 The City Attorney or the City Attorney's designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Conservator shall provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Conservator's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

13.10 Ambiguities

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

13.11 Survival

Conservator shall remain obligated to the HAA and to the City under all clauses of this Agreement that expressly or by their nature extend beyond and survive the expiration or termination of this Agreement, including without limitation, Article 7, Article 9.0, and Article 11.0.

13.12 Non-Waiver

If either party fails to require the other to perform any term of this Agreement, that failure shall not prevent such party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver shall not waive a later breach of this Agreement.

13.13 Business Structure and Assignments

13.13.1 Conservator shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Manager'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, Conservator shall immediately furnish the HAA 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.

13.13.2 Conservator shall not delegate any portion of its performance under this Agreement without the Manager's prior written consent.

13.14 No City Expenditure

Except for Article 4.0, nothing in this Agreement requires the HAA to pay Conservator or any other party for services rendered or Reimbursable Expenses.

13.15 Successors

This Agreement shall bind and benefit the Parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the HAA.

13.16 Remedies Cumulative

Except as otherwise provided herein, the rights and remedies contained in this Agreement shall not be exclusive, and are cumulative of all rights and remedies now or hereafter existing by statute, at law, or in equity. Neither party may terminate its duties under this Agreement except in accordance with its terms.

13.17 Licenses and Permits; Compliance with Laws

13.17.1 Conservator shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

13.17.2 Conservator shall comply with all applicable state and federal laws and regulations, the City of Houston Charter, and the City of Houston Code of Ordinances.

13.18 Compliance with Equal Opportunity Ordinance

Conservator shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "D".

13.19 Non-Discrimination

Conservator shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 C.F.R. Part 21, and 49 C.F.R. Part 21, Appendix C(a)(1). These provisions are inclusive of any amendments which may be made to such regulations.

13.20 Airport Security

Conservator shall comply with all HAS, TSA, FAA and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for Conservator's non-compliance with the provisions of 49 CFR 1540 and 1542, as amended from time to time, or by other

agencies for noncompliance with laws or regulations applicable to Conservator's operations. Within 10 days of notification in writing, Conservator shall reimburse the City for any fine or penalty assessed against the City because of Conservator's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple copies. Each executed copy shall be deemed an original.

ALLIANCE HOUSTON ARTS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

WITNESS:

ATTEST/SEAL:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "A"
SCOPE OF WORK

EXHIBIT "B"
FEEES FOR WORK

	LUMP SUM FEE

EXHIBIT "C"
WORK SCHEDULE

___ days following the Date of Commencement.

EXHIBIT "D"
EQUAL EMPLOYMENT OPPORTUNITY

1. The Conservator, subconsultant, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Conservator, subconsultant, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Conservator, subconsultant, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The Conservator, subconsultant, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.
3. The Conservator, subconsultant, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the Conservator's and subconsultant's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Conservator, subconsultant, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contract Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this project.
5. The Conservator, subconsultant, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the Conservator, subconsultant, vendor, supplier, or lessee.
6. In the event of the Conservator's, subconsultant's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the Conservator, subconsultant, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The Conservator shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Conservator will take such action with respect to any subconsultant or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Conservator becomes involved in, or is threatened with litigation with a subconsultant or vendor as a result of such direction by the contracting agency, the Conservator may request the United States to enter into such litigation to protect the interests of the United States.
8. The Conservator shall file and shall cause subconsultants, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the Conservator and each subconsultant.

EXHIBIT B

CIVIC ART AND CONSERVATION PROJECTS

Facility	Project	Purchase of New Art or Conservation Treatment	Contingency Funding for Additional Services	Reimbursables	Basic Services HAA Project Management Based on Additional Services (\$)
William P. Hobby Airport - New art acquisitions	TBD	\$650,000.00			\$110,500.00
William P. Hobby Airport - New art acquisitions	Portable Works Collection	\$250,000.00			\$42,500.00
William P. Hobby Airport - Contingency for additional services	Contingency		\$2,000.00		\$0.00
William P. Hobby Airport - Reimbursables	Reimbursables			\$1,000.00	\$0.00
Totals		\$900,000.00	\$2,000.00	\$1,000.00	\$153,000.00
Total Additional Services (Acquisitions & Conservation)		\$900,000.00			
Total Basic Services (HAA Project Management)			153,000.00		
Contingency Funding for Additional Services			2,000.00		
Reimbursables			1,000.00		
Total Expenditure			\$1,056,000.00		

* Contingency Funding for Additional Services - The cost of the project is estimated in the contract but actual costs are determined in the condition assessment of the first phase of the project. The actual cost could possibly be more or less than has been the estimated additional services.

EXHIBIT "C"

CITY EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"

MWBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled **"THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
3. Within 5 business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration must be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
 - e. All arbitrations shall be conducted in Houston, Texas, unless the parties agree to another location in writing.