

Houston Infusion

Request for Proposals

- ISSUE DATE: February 18, 2016
- DUE DATE: **11:59 p.m. on March 23, 2016** (“Submission Deadline”)
- SUBMISSION: Artist applications must be submitted online no later than the Submission Deadline. <https://houstonfirst.submittable.com/submit/15f3ab8e-08b4-4e61-be9f-0bb69e4bbe86>
Proposals submitted by mail or email will be rejected.
- CONTACT INFO: Questions concerning this RFP must be sent by e-mail to bids@houstonfirst.com no later than **noon on March 10, 2016**. Questions will be answered collectively, in the form of a Letter of Clarification, and made available online.

OVERVIEW. Houston First Corporation (“HFC”) is pleased to issue this Request for Proposals (“RFP”) from professional artists (each an “Artist” and collectively, “Artists”) capable of designing, fabricating and installing original, creative visual works of art at eight locations within the George R. Brown Convention Center, and two additional sites in the elevator lobby of the adjacent, newly-constructed Partnership Tower, in accordance with the requirements of this RFP.

Artists may propose a design for one or more project sites and be considered independently, as part of a team, or both.

BACKGROUND. HFC is a local government corporation created by the City of Houston to facilitate economic growth through the promotion of the greater Houston area and the business of conventions, meetings, tourism, and the arts.

HFC is responsible for management and operation of more than ten city-owned buildings and plazas, including the George R. Brown Convention Center (“GRB”), Jones Hall, Wortham Theater, Miller Outdoor Theatre, Talento Bilingue de Houston, and outdoor facilities such as Jones Plaza, Sesquicentennial Park, Ray C. Fish Plaza, Root Memorial Square, and several other landscaped properties and parking facilities.

Spanning more than five city blocks in downtown Houston, the iconic GRB is a nationally-prominent convention and trade show facility. Ranked among the nation’s largest convention centers, the facility features over one million square feet of dedicated meeting space, including seven ground-floor exhibit halls with 547,000 square feet of exhibit space, a 3,600 tier-seated amphitheater, a level-three exhibit hall featuring telescopic arena-style seating, meeting rooms, and a 31,500 square-foot ballroom. Currently undergoing substantial renovations, the GRB will soon include retail sites, restaurants, a contiguous ground-floor lobby, and a grand central entrance to the facility.

Partnership Tower, scheduled to open in mid-2016, is a 10-story office building that will house Houston First Corporation, the Greater Houston Convention & Visitors Bureau and the Greater Houston Partnership. The sleek new building features a modern glass façade and retail space on the ground floor.

PROJECTS. HFC has perceived a need to compliment the redesign of the GRB as well as the lobby of the new Partnership Tower with original works of visual art in the manner set forth in this RFP.

Pre-determined honorariums (ranging from \$2,500 to \$12,000) have been established for each project location – inclusive of Artist fees all project costs and expenses of any kind or type (labor, materials, travel, insurance, shipping, etc.) to design, fabricate and install each work in accordance with the Professional Artist Service Agreement included below.

Payment terms will be 50% within 21 calendar days of contract signature and 50% within 21 calendar days of installation and acceptance of each work by HFC.

Artists may submit conceptual designs of original works for as many or as few project locations as they feel inspired to propose. There are ten specific project sites, summarized as follows:

	Project Site	Description	Quantity
Convention Center	Welcome Wall Insets	Installation within an inset wall pocket surrounded by pre-determined wood paneling, which also includes an existing low bench along the bottom edge.	2
	L-shaped Large Columns	Installation to cover plywood walls in a unique manner.	2
	Charging Work Stations	Installation within an inset wall pocket to be used as charging stations featuring varied numbers of outlets and a high counter.	4
Partnership Tower	Lobby Interior Wall	Installation on a corner lobby wall partition visible from the street through the front window of the building.	1
	Garage Elevator Lobby	Installation on a stand-alone wall partition. May or may not be in coordination with Lobby Interior Wall.	1

Artists are advised that installations will be in areas frequented by large numbers of people. Works must be durable and **not** contain sharp edges/points or detachable pieces. Additional Project-site details are provided below in Attachment “A”.

Artworks may be traditional, non-traditional, experimental or collaborative; designs may incorporate one or more of the following themes:

- Promotion of Houston as a premier destination
- Historical aspects of the Greater Houston area
- Houston’s diversity and multi-cultural citizenry
- Global trade and commerce
- Space exploration and discovery
- Use of recycled materials “The Brown is Green”

HFC will consider design-specific requests from Artist, such as equipment or special access required to accomplish fabrication and installation.

SUBMITTAL FORMAT. Visit <https://houstonfirst.submittable.com/submit/15f3ab8e-08b4-4e61-be9f-0bb69e4bbe86>, follow the instructions and complete of all the form fields. A log in is required. Artists who do not have a log in may create one at www.submittable.com at no charge. Although HFC prefers substance over form, Artists are required to provide all of the following information to be considered responsive:

- Contact information
- Specific installation site
- A current resume (for partnerships or collaborations, please include all as one document)
- Design concept, including names of artists, partners or collaborators, title and written description
- Examples of prior works (up to 15 digital images in .jpg format)

MANNER OF SELECTION. Proposals will be reviewed by a panel of stakeholders and evaluated, in equal measure, based on the creativity and uniqueness of design as proposed; suitability for project site in light of RFP requirements; artistic excellence of prior works; and anticipated durability and maintainability of finished work.

HFC reserves the right to select or reject all or part of any proposal, waive minor technicalities, and select proposals in the manner and to the extent that they serve the best interests of HFC. This RFP does not commit HFC to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a proposal in response to this RFP. HFC reserves the right to request clarifications/additional information, and/or best-and-final offers from some or all Artists prior to making a final selection.

Selection is expected to be complete by April 15, 2016, though the actual date (or dates) will depend on a variety of factors, including the volume of proposals received.

RESTRICTIONS ON COMMUNICATIONS. From the date issued until the Submission Deadline, Artists are directed not to communicate with HFC through bids@houstonfirst.com HFC reserves the right to reject proposals due to any violation of this provision.

LETTERS OF CLARIFICATION. Answers to questions timely received and revisions incorporated into this RFP, if any, will be confirmed in a letter issued posted on www.houstonfirst.com/Do-Business and the submittable.com page no later than 48 hours prior to the Submission Deadline ("Letter of Clarification"). When issued by HFC, Letters of Clarification become part of this RFP automatically and supersede any previous specifications or provisions in conflict therewith.

PRE-SUBMITTAL CONFERENCE. A pre-submittal conference will not be held as part of this RFP Artists may (but are not required to) schedule a site visit by submitting their request in writing by email to bids@houstonfirst.com prior to the Submission Deadline.

FORM OF AGREEMENT. By submitting a proposal, Artists represent that, if selected by HFC, they shall enter into the Professional Artist Services Agreement provided below as Attachment "B". If an Artist takes exception to any portion of such agreement, then such Artist must submit a list of such exceptions as part of its transmittal letter in response to this RFP; provided, however, that HFC reserves the right to reject proposals including substantive objections without further review or consideration. Additionally, preprinted or standard terms submitted by an Artist shall not be included in the resulting contract.

PUBLIC INFORMATION. As HFC is subject to the Texas Public Information Act ("TPIA"), all information submitted by Artists is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Artists will be advised of any request for public information that implicates their materials and will have the opportunity to raise objections to disclosure with the Texas Attorney General at their cost and expense.

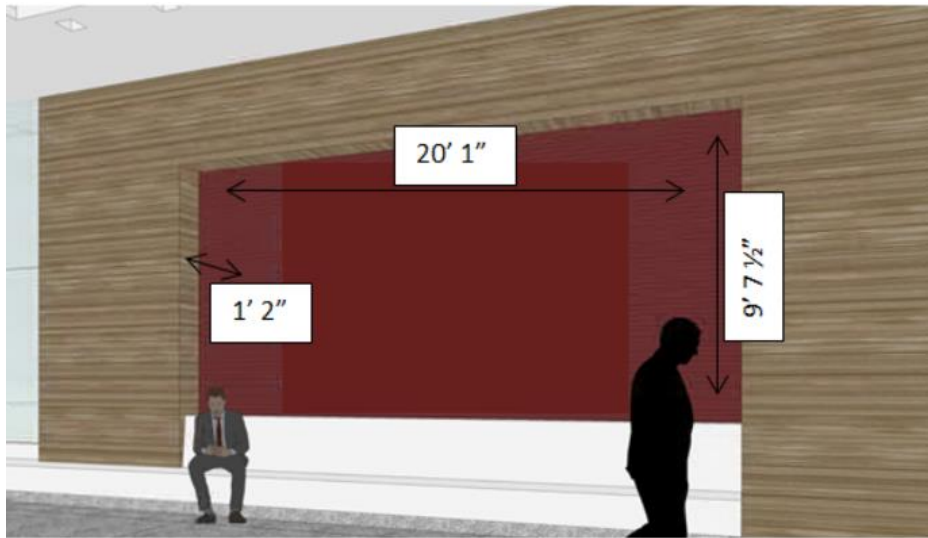
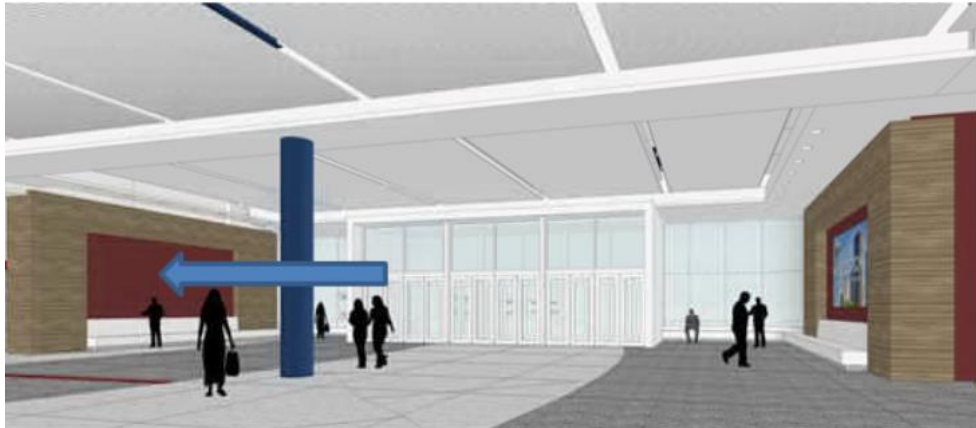
CONFLICTS OF INTEREST. Artists are advised that they have an obligation to disclose any affiliation or business relationship that might cause a conflict of interest with HFC. Those who need the disclosure form may find it online at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a proposal, Artists represent that they are in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

WITHDRAWAL; ERROR. Proposals may be withdrawn due to errors or for any other reason online or by submitting a written request to bids@houstonfirst.com prior to the Submission Deadline.

RFP PACKET. A complete copy of this RFP, including the attachments and any Letters of Clarification, is available on-line at www.houstonfirst.com/Do-Business.

ATTACHMENT "A" SUMMARY OF PROJECTS

Welcome Wall Insets (Qty. 2)



Description: Installation within an inset wall pocket surrounded by pre-determined wood paneling, which also includes an existing low bench along the bottom edge.

Surface: 3/4" plywood backed drywall (gypsum board) with Level 5 finish

Dimensions: Approximately 9'7 1/2" L x 20'1" W x 1'2" D

Area: Approximately 230 sq. ft.

Work Restrictions and Special Concerns:

- Installation may not extend from the wall more than 12" or hinder visitors from sitting on the bench at the foot of the pocket.
- These installations are in the main entrance into the GRB and are possibly the visitor's first impression of the space.
- Each installation will be opposite a wall with a large LED video screen.
- On-site fabrication and installation is limited to **July 11-29, 2016**.

Honorarium: \$6,000 per installation

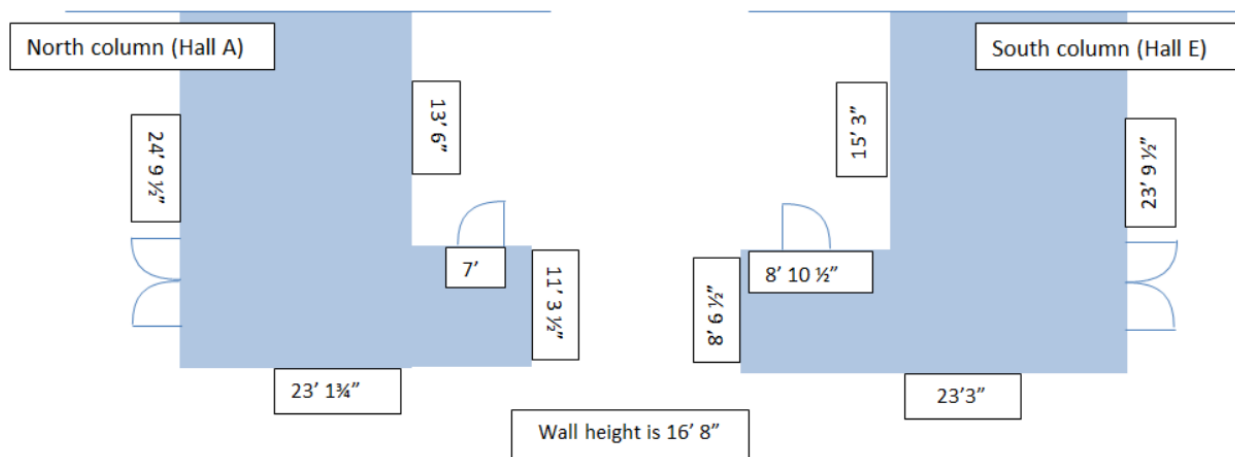
L-shaped Large Columns (Qty. 2)



Description: Opportunity to cover plywood walls with painted murals, repurposed/recycled materials or other design in a unique manner.

Surface: 3/4" painted plywood (not primed)

Dimensions: see diagrams below



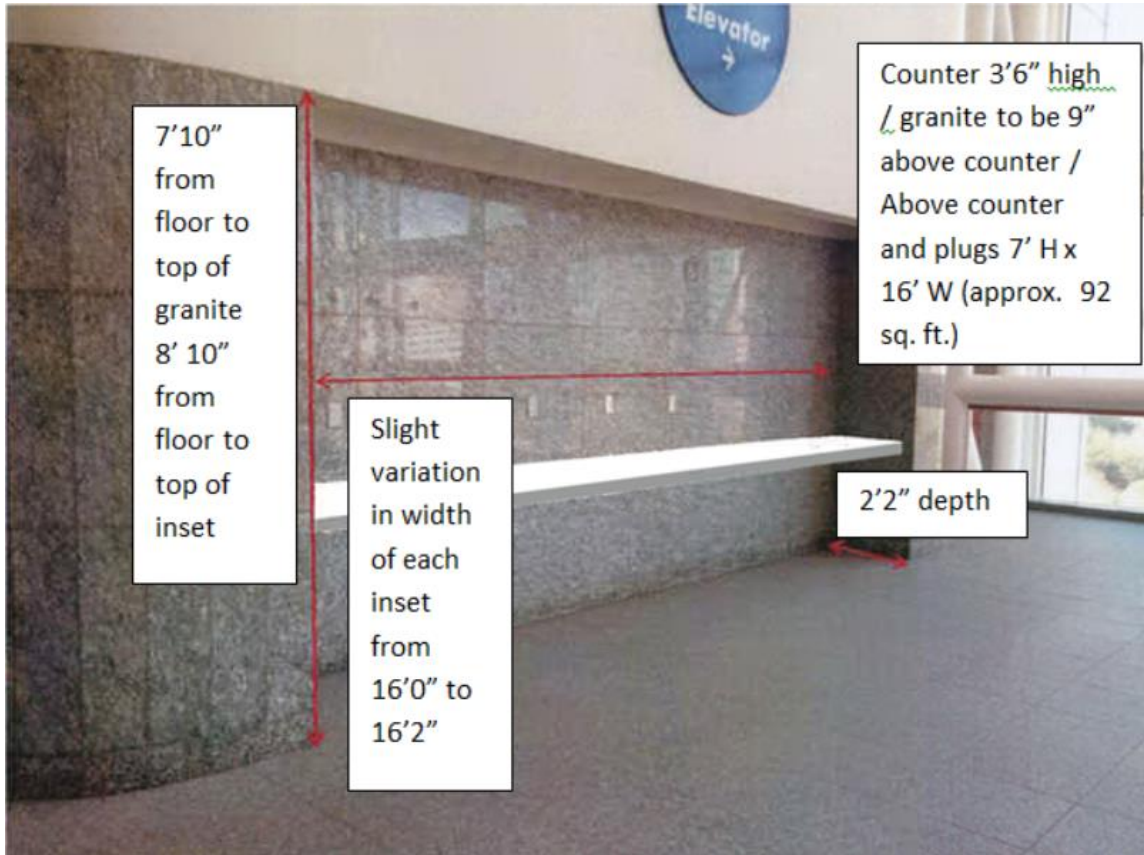
Area: Approximately 1330 sq. ft.

Work Restrictions and Special Concerns:

- Installation may not extend from the wall more than 12".
- If the design includes doors, then such doors must be functional and allow access into the closet.
- On-site fabrication and installation is limited to **July 1-August 12, 2016**.

Honorarium: \$12,000 per installation

Charging Work Stations (Qty. 4)



Description: Installation within an inset wall pocket to be used as charging stations featuring varied numbers of outlets and a high counter

Surface: Polished granite or if unable to install on top or front of granite, granite may be removed and wall will be covered in 5/8" drywall (gypsum board).

Dimensions: Varying – see below

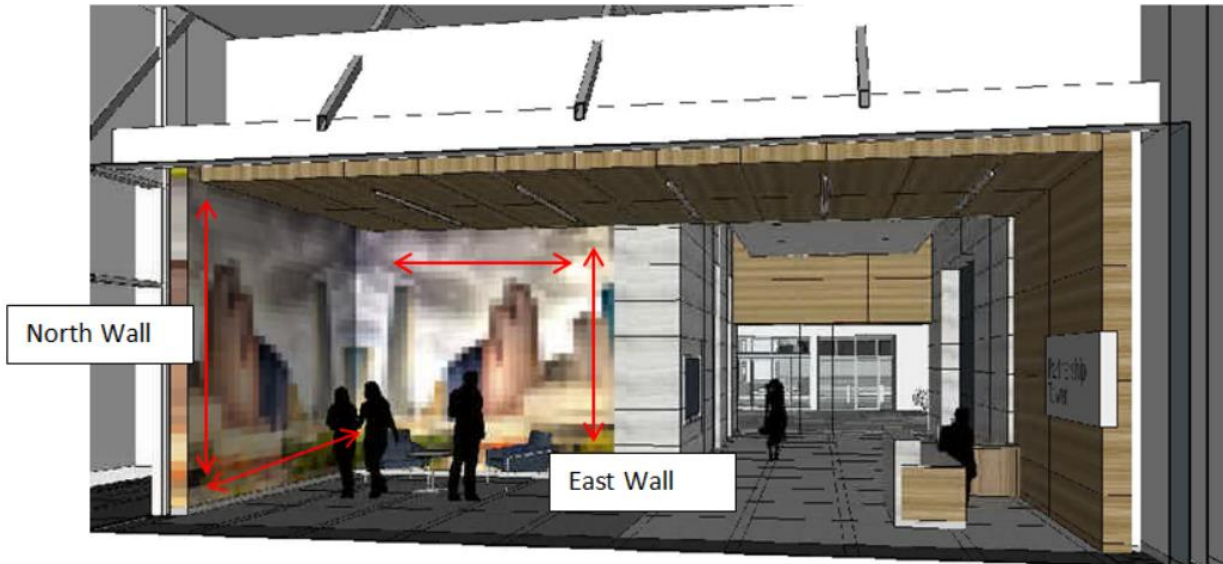
Area: Approximately: 180 total sq. ft. per station (92 sq. ft., if only utilizing area above shelf and plugs)

Work Restrictions and Special Concerns:

- Installation may not extend from the wall more than 12" or hinder visitor use of the station.
- On-site fabrication and installation is limited to **July 19-August 13, 2016**.

Honorarium: \$2,500 per installation

Partnership Tower – Lobby Interior Wall (Qty. 1)



Description: Installation on a corner lobby wall partition visible from the street through the front window of the building.

Surface: 3/4" plywood backed drywall (gypsum board)

Dimensions: East Wall – 15' 8" H x 14' 10 3/4" W / North Wall – 13' 8" H x 13' 1 1/2" (approx.)

Area: Approximately 415 sq. ft.

Work Restrictions and Special Concerns:

- Work will be visible from the street
- On-site fabrication and installation is limited to **May 1-June 1, 2016.**

Honorarium: \$10,000

Partnership Tower – Garage Elevator Lobby (Qty. 1)



Description: Installation on a stand-alone wall partition. May or may not be in coordination with Lobby Interior Wall described above.

Surface: 3/4" plywood backed drywall

Dimensions: 14' H x 21'6" W

Area: Approximately 300 total sq. ft.

Work Restrictions and Special Concerns:

- On-site fabrication and installation is limited to **May 1-June 1, 2016.**

Honorarium: \$10,000

ATTACHMENT “B”

PROFESSIONAL ARTIST SERVICES AGREEMENT

This agreement for professional artist services (“Agreement”) is made by and between Houston First Corporation, a Texas local government corporation (“HFC”) whose address is 1001 Avenida de las Americas, Houston, Texas 77010 and [TBD] (“Artist”), whose address is [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Basic Definitions

1.1 The term “Artwork” means the original artistic work created solely by Artist for HFC entitled “[TBD]”, being more particularly described in the **Approved Concept and Design** document attached hereto as Exhibit “[TBD]” and made a part hereof for all purposes.

1.2 The term “Facility” means the [George R. Brown Convention Center/Partnership Tower], located at [1001/1007], Avenida de las Americas, Houston, Texas 77010.

1.3 The term “Project Site” means the original artistic work created solely by Artist for HFC entitled “[TBD]”,

1.4 The term “Services” means all labor, materials, tools, equipment and services provided or performed by Artist necessary for the fabrication, delivery and installation of the Project by Artist in accordance with the terms and conditions of this Agreement.

2. Obligations of Artist

2.1 The entirety of Artist’s Services shall accurately reflect and serve to advance the approved concept and design included in the attached exhibit, and Artist shall ensure that the Artwork shall not deviate from the Approved Concept and Design unless a non-conforming change is pre-approved in a writing signed by both parties.

2.2 Artist shall commence, carry on and complete the Services in a good and workmanlike manner, on a timely basis and in accordance with all applicable federal, state and local laws, statutes, ordinances, regulations, and lawful orders of public authorities.

2.3 Artist shall perform and direct the Services using Artist’s best skill and attention. Artist shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures and for coordinating all portions of the Services, except to the limited extent other, specific instructions concerning such matters are set forth in this Agreement.

2.4 Artist shall secure and pay for any permits or licenses necessary for proper execution and completion of the Services.

2.5 Execution of this Agreement by Artist is a representation that Artist has visited the Facility, become familiar with the conditions under which the Services are to be performed, and correlated personal observations with the requirements of this Agreement.

2.6 Artist shall ensure that only trained and skilled persons having substantial experience and under Artist’s direct supervision perform any portion of the Services. Artist shall enforce strict discipline and good order among such persons.

2.7 Artist shall perform the Services in accordance with applicable safety rules and regulations, such as OSHA standards and directives for setting-up and utilizing platforms, lifts, ladders, scaffolding, safety lines and belts, and operating other, similar equipment. Artist shall ensure that all persons performing the Services use personal protective equipment, safety harnesses, fall protection equipment, and other equipment in the manner and to the extent required to perform the Services safely.

2.8 Artist shall, on a daily basis or as requested by HFC, clean the Project Site and any adjacent areas affected by the Services and promptly remove and dispose of debris in a safe, environmentally responsible manner.

2.9 HFC is not responsible for storage of Artist's tools, equipment or materials and Artist shall not leave same unattended at the Project Site or Facility for any duration of time.

2.10 Artist is responsible for delivery of the Artwork to the Project Site and for all services and expenses associated with the delivery and installation of the Artwork. All risk of destruction, loss or damage to the Artwork or any part thereof from any cause whatsoever shall be the sole responsibility of Artist until the Date of Final Completion.

2.11 The performance of Services by Artist shall take into account scheduled events and activities at the Facility. Artist shall take all precautions to minimize dust, noise, and fumes, and to prevent power outages or the disturbance of utilities, fire suppression equipment, plumbing systems, and any other equipment or systems connected to the Facility and acknowledges that Services may be interrupted due to such scheduled events and activities.

2.12 Artist shall promptly notify HFC in writing once all Services are complete. HFC shall inspect the Artwork with Artist and confirm in writing that the Services are complete and the Artwork is accepted by HFC ("Date of Completion").

2.13 Prior to the Date of Completion, Artist shall provide HFC with detailed, written maintenance and conservation recommendations for the Artwork in a form approved by HFC. Artist shall provide one training session to HFC personnel to implement the Maintenance requirements and procedures. Maintenance of the Artwork and/or repairs shall be made, at HFC's sole option, with or without Artist's approval or consultation.

2.14 Neither HFC approval of fabrication nor acceptance of the installation, nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Artist shall be and remain liable to HFC in accordance with applicable law for breach of contract and for all damages to HFC caused by the Artist's negligent performance of any of the services furnished under this Agreement.

3. Obligations of HFC

3.1 HFC agrees to pay Artist a fixed lump sum fee of [TBD] ("Fee") for completion of the Services, title to the Project and all rights granted HFC under this Agreement, due and payable in the following installments: (a) 50% within 21 days of the Effective Date; and (b) 50% within 21 days of the Date of Final Completion.

3.2 Artist acknowledges that the Fee represents the entire amount due Artist under this Agreement; there shall be no reimbursable expenses of any kind or type.

3.3 HFC will provide existing plans, drawings and other data in HFC's possession which, in the opinion of HFC, are required for the performance of Services under this Agreement.

3.4 HFC will examine documents submitted by Artist and render decisions pertaining to same within a reasonable time and without unnecessary delay.

3.5 HFC will provide reasonable access to the Facility as required and allowed by law in order to facilitate Artist's Services under this Agreement.

3.6 HFC shall have the right to inspect the Artwork during fabrication at the Project Site at any time and, if elsewhere, periodically upon prior notice to Artist; provided, however, that HFC shall make all commercially reasonable efforts not to materially interfere with the performance of Artist's Services.

4. Representations and Warranties

4.1 Artist represents and warrants to HFC that: (a) the Artwork is the unique creation of the Artist and an edition of one; (b) no identical or greatly similar Artwork has been created by Artist; (c) Artist shall not make any identical or greatly similar Artwork in the future, nor shall Artist grant permission to others to do so; (d) the Artwork does not infringe upon any copyright, trademark, or any other property or personal right; (e) the Artwork does not contain libelous, defamatory, or other unlawful content; (f) the Artwork is free and clear of liens or encumbrances from any source whatsoever; (g) Artist knows of no adverse claims to the Artwork; and (h) neither the Artwork nor any portion thereof is in the public domain.

4.2 Artist further represents and warrants to HFC that: (a) the Services shall be performed in accordance with all applicable federal, state and local laws, statutes, ordinances, regulations, and lawful orders of public authorities; (b) design, fabrication, delivery and installation Services shall be performed in a good and workmanlike manner; (c) the Artwork, as fabricated and installed, shall be free of defects in material and workmanship, including any defects consisting of inherent vice, defined for purposes of this Agreement as qualities within one or more materials comprising the Artwork that, either alone or in combination, cause or accelerate deterioration of the Artwork; and (d) maintenance of the Artwork shall not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by Artist under this Agreement.

4.3 If, within five years of the Date of Completion, HFC finds that workmanship or materials do not conform to the requirements of this Article and HFC notifies Artist of same in writing, then Artist shall correct such non-conforming workmanship or materials to the satisfaction of HFC within 30 calendar days at no cost to HFC. Nothing in this Section is intended nor shall it be construed as establishing a period of limitation with respect to any other obligations of Artist under this Agreement. The period for correction of non-conforming workmanship or materials as described herein relates only to the specific obligation of Artist to correct same, and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Artist's liability.

5. Results of Artist's Services

5.1 Artist grants sole ownership and full right and title to the Artwork to HFC, effective for all purposes as of the Date of Final Completion.

5.2 As a material inducement to HFC to enter this Agreement, Artist has agreed to and hereby does grant HFC certain rights to exploit the Artwork and waives statutory any other moral rights related to the Artwork in the manner and to the extent set forth in Exhibit "[TBD]" attached to this Agreement and made a part hereof for all purposes.

6. Insurance

6.1 With no intent to limit Artist's liability under indemnification provisions herein, Artist shall procure and maintain in full force and effect, for the duration of the Services, at least the following insurance and limits of liability:

- | | |
|-----------------------------------|--|
| a. Commercial General Liability | Combined single limit of \$1,000,000 per occurrence, subject to a general aggregate of \$2,000,000 |
| b. Automobile Liability Insurance | \$1,000,000 combined single limit including Owned, Hired, and Non-Owned and Auto Coverage |
| c. Workers' Compensation | Statutory amounts for Workers' Compensation (Artist is not allowed to self-insure Workers' Compensation) |
| d. Employer's Liability | Bodily Injury by accident \$1,000,000 (each accident);
Bodily Injury by disease \$1,000,000 (policy limit); and
Bodily Injury by disease \$1,000,000 (each employee) |

6.2 Insurance may be in one or more policies of insurance, the form of which is subject to approval by HFC. It is agreed, however, that nothing HFC does or fails to do with regard to reviewing the foregoing insurance policies relieves Artist from its duties to provide required coverage and HFC's actions or inactions will never be construed as waiving HFC's rights.

6.3 Each policy, except those for Workers' Compensation, must include an endorsement naming HFC and the City of Houston as additional insureds.

6.4 Each policy except must include an endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against HFC and the City of Houston.

6.5 The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or be an eligible non-admitted insurer in the State of Texas and have an A.M. Best rating of at least A- with a financial size category of Class VI or better.

6.6 If Artist is a sole proprietorship and Services are to be performed by Artist exclusively, then in lieu of some or all of the insurance policies and amounts required otherwise by this Article, HFC will agree to accept a signed waiver and release in a form approved by HFC's General Counsel.

7. Limitation of Liability

7.1 ARTIST AGREES TO AND SHALL RELEASE HFC AND THE CITY OF HOUSTON, THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, "INDEMNITEES") 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 INDEMNITEES' CONCURRENT NEGLIGENCE AND/OR INDEMNITEES' STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY AND INCLUDING ALL LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY ARTIST UNDER THIS AGREEMENT.

7.2 ARTIST AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC AND THE CITY OF HOUSTON, INCLUDING THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS,

AND AGENTS, (COLLECTIVELY, “INDEMNITEES”) HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, FINE, LIABILITY, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO ARTIST AND/OR ITS AGENTS’, EMPLOYEES’, VOLUNTEERS’, OR CONTRACTORS’ (COLLECTIVELY, “ARTIST’S”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES’ AND ARTIST’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER ARTIST IS IMMUNE FROM LIABILITY OR NOT; INDEMNITEES’ AND ARTIST’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER ARTIST IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY ARTIST UNDER THIS AGREEMENT.

7.3 ARTIST SHALL DEFEND, INDEMNIFY, AND HOLD INDEMNITEES HARMLESS FROM THE EFFECTIVE DATE UNTIL FOUR YEARS AFTER THE DATE OF FINAL COMPLETION. ARTIST SHALL NOT INDEMNIFY INDEMNITEES FOR THEIR SOLE NEGLIGENCE.

7.4 UNDER NO CIRCUMSTANCES SHALL HFC BE LIABLE TO ARTIST FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS (DIRECT OF INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF HFC HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

8. Force Majeure

8.1 Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by an occurrence of Force Majeure.

8.2 For purposes of this Agreement, the term “Force Majeure” shall mean fires, floods, hurricanes, tornadoes, explosions, war, terrorism, and the acts of a superior governmental or military authority. The term Force Majeure does not include strikes, slowdowns or other labor disputes; 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.

8.3 Relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the notice describing the actual delay or non-performance incurred within ten calendar days after the Force Majeure ceases. An occurrence of Force Majeure shall not extend the Term.

9. Termination

9.1 Either party may terminate this Agreement for cause if the other party defaults and fails to cure the default after receiving notice thereof. Default occurs if a party fails to perform one or more of its material duties under this Agreement.

9.2 If a default occurs, then the injured party may, in addition to any other available right or remedy, deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 calendar days after receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, then the proposed termination shall be ineffective. If, however, the defaulting party does not cure the default before the proposed termination date, then the injured party may terminate this Agreement on the termination date.

9.3 Should Artist die, become ill, injured or otherwise incapacitated such that Artist is unable to work for any consecutive or non-consecutive period exceeding 21 days, then HFC may, at its sole option, undertake to complete and install the Artwork in Artist's absence, so long as the final Artwork is substantially similar to the Approved Concept and Design. If HFC undertakes to complete the Artwork, then Artist may disclaim authorship of the Artwork and any compensation paid or payable to Artist shall be reduced by the costs and expenditures incurred by HFC to complete the fabrication, delivery and installation of the Artwork.

10. Miscellaneous Provisions

10.4 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or, if earlier, on the third day following deposit with the United States Postal Service by registered or certified mail, return receipt (or electronic return receipt) requested, Federal Express, UPS, or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in 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.

10.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives, assigns, and all other persons claiming by, through or under them. Artist shall not assign, in law or otherwise, sublet or transfer any interest in this Agreement without the prior written consent of HFC. HFC shall have the right to assign this Agreement and any rights granted hereunder in its sole discretion without notice to Artist.

10.6 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

10.7 Independent Contractor. The relationship of Artist to HFC shall be that of an independent contractor. Artist has the authority to select the means, methods and manner of providing services subject to the terms, conditions, and specifications in this Agreement. No principal/agent, partnership, joint venture, joint employer, or other relationship, other than an independent contractor relationship, is created or intended by this Agreement. Artist is not an agent of HFC and is not authorized to transact business, enter into agreements, or otherwise make commitments in the name of or on behalf of HFC. Artist is solely responsible for payment for all taxes of any kind or type assessed or collected by any governmental entity on amounts paid Artist under this Agreement, as none will be withheld or paid by HFC.

10.13 Severability. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, then the validity and enforceability of the remaining provisions of this Agreement to another person or circumstance shall not be affected thereby.

10.8 Survival. Artist shall remain obligated to HFC under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of the term of this Agreement.

10.9 Governing Law/Venue. The Agreement shall be governed by the laws of the State of Texas, without regard to any conflict of law provisions. Litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas.

10.10 Extent of Agreement. This Agreement, including any exhibits which are made a part hereof, represents the entire and integrated agreement between HFC and Artist and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may not be altered or amended except in writing executed on behalf of all of the parties.

[Signature page to follow in final agreement]

**EXHIBIT “[TBD]”
WAIVER AND LICENSE**

_____, an individual (“Artist”), as the author of the work of visual art to be installed on or about the George R. Brown Convention Center in Houston, Texas, known as _____ (the “Artwork”) recognizes the existence of moral rights of artists set forth in the Visual Artists’ Rights Act of 1990, as amended (“VARA”) and, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, grants to Houston First Corporation (“HFC”) certain rights as set forth herein.

TO THE EXTENT THE ARTWORK IS PROTECTED BY VARA AND/OR ARTIST IS ENTITLED TO PROTECTION THEREUNDER, ARTIST EXPRESSLY WAIVES ANY AND ALL CLAIMS AGAINST HOUSTON FIRST CORPORATION, ITS SUCCESSORS AND ASSIGNS. ARTIST FURTHER WAIVES ANY RIGHTS ARISING UNDER FEDERAL, STATE OR LOCAL LAW, OR THE LAWS OF ANY OTHER COUNTRY ESTABLISHING OR PURPORTING TO PROVIDE RIGHTS OF THE SAME OR SIMILAR NATURE AS THOSE CONVEYED UNDER VARA, OR ANY OTHER TYPE OF MORAL RIGHT WITH RESPECT TO THE ARTWORK 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 ARTWORK AS MAY BE DEEMED NECESSARY BY HOUSTON FIRST CORPORATION OR ITS SUCCESSORS AND ASSIGNS IN THEIR SOLE AND ABSOLUTE DISCRETION. ARTIST EXPRESSLY RECOGNIZES AND ACKNOWLEDGES THAT THE NATURE OF THE ARTWORK MAY SUBJECT THE ARTWORK TO DESTRUCTION, DISTORTION, MUTILATION OR OTHER MODIFICATION BY REASON OF REMOVAL OR RELOCATION OF ALL OR ANY PORTION OF THE ARTWORK. HFC shall have no obligation to pursue claims against third parties for damage or modifications to the Artwork done without authorization of HFC; provided, however, that if HFC elects to pursue claims against third parties for damage or unauthorized modifications to the Artwork, then Artist agrees to cooperate with HFC in support of such claims.

Artist hereby grants to HFC an irrevocable, royalty-free license to create, use, reproduce, display, exhibit, publish, transmit, and distribute photographs, images, recordings, models, and other multi-dimensional physical or digital representations of the Artwork (including derivative works), or any portions thereof, in any commercial or non-commercial form, media or medium, now known or hereafter devised, throughout the universe in perpetuity, including, without limitation, in advertising, merchandise of any kind or type, marketing materials, webpages, broadcasts, banners, billboards, posters, postcards, calendars, kiosks, e-mails, and publications. Artist represents to HFC that Artist has full right and authority to grant the foregoing rights and warrants that this agreement does not violate the rights of any person or organization.

Artist agrees that the potential remedies of Artist shall be limited to an action at law for money damages for breach of contract and in no event shall same have any right to seek or obtain any form of equitable relief or to rescind or terminate this agreement or any of the rights granted to HFC hereunder.

Artist agrees that HFC may assign, sublicense or otherwise transfer any right granted herein without prior consent or notice. Artist agrees that this agreement shall be construed in accordance with the laws of the State of Texas and any litigation in connection herewith shall be in a court of competent jurisdiction in Harris County, Texas.

[Signature block to follow in final agreement]