

UNIVERSITY OF HOUSTON SYSTEM

ART SERVICES AND ACQUISITION AGREEMENT

Contract No. _____

Account No. _____

THIS ART SERVICES AND ACQUISITION AGREEMENT (this “**Agreement**”), is made this _____ day of _____, 20____, by and between the UNIVERSITY OF HOUSTON SYSTEM (“**University**”), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, and

NAME

ADDRESS

(hereinafter referred to as “**Artist**”).

WHEREAS, University engages Artist in connection with the commission and purchase of an original artwork designated for University by the Board of Regents of University (the “**Board**”).

WHEREAS, Artist agrees to perform the services herein stated, specifically the commission and purchase of original artwork as designated.

NOW, THEREFORE, University and Artist agree as set forth below:

1. DEFINITION OF TERMS. For the purpose of this Agreement:
 - a. The “**Artwork**” means the particular original work(s) of art created by Artist and approved by the Board and further defined and described in the Proposal.
 - b. The “**Project**” is defined in **Section 4.a** below.
 - c. The “**Proposal**” means the final, definitive proposal for the Artwork submitted by Artist and approved by University, a copy of which is attached hereto as Exhibit A.

d. The “**Site**” means that specific location within the campus of the _____ (as described on Exhibit B) where the Artwork will be placed.

e. “**SWAAC**” means University’s System Wide Art Acquisition Committee.

2. OWNERSHIP OF ARTWORK.

a. On final acceptance of the Artwork in accordance with **Section 9**, and final payment to Artist in accordance with **Section 8**, title to the Artwork shall pass to University.

b. If University desires to sell the Artwork during Artist’s lifetime, University will deliver written notice to Artist at Artist’s notice address (in accordance with **Section 18**) of the proposed sale. The notice shall also offer Artist the first and exclusive right to purchase the Artwork on the financial terms of the proposed offer for a period of sixty (60) days following delivery of the notice of the proposed sale.

3. OWNERSHIP AND USE OF DOCUMENTS. Any and all sketches, drawings, models and other materials prepared by Artist shall be the property of Artist whether the Artwork for which they are made is executed or not. University shall be permitted to retain copies, including reproducible copies, of such materials for information and reference in connection with the use of the Artwork. The materials shall not be used by University on other projects, for additions to the Artwork, or for completion of this Artwork by others unless Artist authorizes such use(s) of the materials in writing.

4. ARTIST’S SCOPE OF SERVICES.

a. Artist shall perform all services and furnish all material and equipment necessary for the design, execution, fabrication, transportation and installation of the Artwork at the Site (the “**Project**”).

b. Artist shall determine Artistic expression, scope, design, color, size, material, texture and location of the Artwork, subject to review and acceptance by University, as set forth in this agreement. Artist’s basic services shall consist more specifically as those described under the phases identified below:

i. Schematic Design. Artist shall determine Artistic expression, scope of design, color, size, material, texture and location on the Site of the Project which shall not deviate in any material way from the Proposal.

ii. Design Development. Artist shall prepare and submit to University Design Development Documents based on the Proposal on or before _____

iii. Working Drawings. During the development of the Design Development Documents and Working Drawings, Artist shall work with engineering or architectural consultants to confirm structural and dimensional criteria and to permit said consultants to certify, to the consultants’ knowledge, the Artworks compliance with applicable statutes and ordinances as well as

structural requirements. This work shall be completed on or before _____

- iv. _____
Fabrication and Construction of the Project. Artist shall be responsible for the fabrication and installation of the Artwork at the Site in conformance with the Proposal and the Working Drawings, which work shall be completed on or before _____.
- v. Artist shall inform University when the Artwork has been installed, in conformance with the Proposal.

5. SCOPE OF UNIVERSITY'S RESPONSIBILITIES. University shall:

- a. Provide relevant background information and the plans for the underlying capital project, if any, to Artist within a reasonable time after the execution of this Agreement;
- b. Provide utilities information on the existing Site, and if needed, all surveys so as to advise Artist of any existing constraints on the existing Site.
- c. Advise on changes or modifications in design which may be required because of standards of University during the Schematic Design and Design Development phases.
- d. Provide the services of a project manager ("***Project Manager***") to represent University throughout the Project. The Project Manager will coordinate all work with Artist and will oversee each phase of the Project through its completion. The services of the Project Manager are not part of the Artwork budget contained in **Section 8**.

6. TIME OF PERFORMANCE.

- a. The services required of Artist shall be completed in accordance with the schedule for completion of Artwork contained in **Section 4** and more fully detailed in the Proposal, provided that such time limits may be extended or otherwise modified by written agreement between Artist and University. If completion of the Project is delayed because the Site is not sufficiently complete to reasonably permit installation of the Artwork because of fault attributed solely to University, University shall promptly reimburse Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Artwork. Artist will not ship or deliver the Artwork to the Site until notified by University that the Site is ready.
- b. University shall grant a reasonable extension of time to Artist in the event that there is a delay on the part of University in performing its obligations under this Agreement, or if conditions beyond Artist's control or Acts of God render timely performance of Artist's services impossible or unexpectedly burdensome. University reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any service in connection with this Agreement at

any time upon seven (7) days' written notice to Artist. Artist may terminate this Agreement upon seven (7) days' written notice to University should University substantially fail to perform their obligations under the terms of this Agreement. University's liability in case of early termination will be limited to paying for the work already performed and the expenses already incurred as of the date of the termination, less any and all foreseen or unforeseen damages sustained by University as a result of any default or consequence of termination.

7. WARRANTIES.

- a. Artist represents and warrants that: (a) the Artwork is solely the result of Artistic effort of Artist; (b) except as otherwise disclosed in writing to University, the Artwork is unique and original and does not infringe upon any valid copyright or other proprietary or property right of any person; (c) that the Artwork, or a duplicate thereof, has not been accepted for sale elsewhere; (d) the Artwork contains no libelous, defamatory, or other unlawful material; (e) the Artwork is free and clear of any liens from any source whatever; and (f) Artist will deliver written authorizations for the use of any material owned by a third party and included in the Artwork.
- b. Artist represents and warrants, except as otherwise disclosed to University in writing in connection with submission of the Proposal, that: (a) the execution and fabrication of the Artwork will be performed in a professional and workmanlike manner; (b) the Artwork, as fabricated and installed, will be free of defects in material and workmanship, and (c) reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in Artist's proposal and/or the maintenance recommendation to be submitted by Artist to University. The warranties described in this **subsection 7.b** shall survive for a period of five (5) years after the final acceptance of the Artwork. University shall give notice to Artist of any observed breach with reasonable promptness. At University's request, Artist shall, at its sole cost and expense, cure reasonably and promptly the breach of any such warranty to the satisfaction of University.

8. TERMS OF COMPENSATION AND PAYMENT SCHEDULE. University shall pay Artist a fixed and lump sum fee of _____ which shall constitute full compensation for all services and materials to be performed and furnished by Artist under this Agreement. The fee shall be paid as follows:

- a. _____ shall be due and processed for payment upon receipt of invoice at the completion of Working Drawings of the Artwork; such point of completion being mutually agreed upon by Artist and University to be the receipt of working drawings sufficient to permit bids for fabrication. These shall include the design for the bases for the Artwork produced by a licensed architect/engineer and paid for by Artist.

- b. _____ shall be due and processed for payment upon commencement of installation.
- c. _____ shall be due and processed for payment upon final acceptance.

9. FINAL ACCEPTANCE. Artist shall advise University in writing when all services have been completed in conformity with the Proposal; and University shall notify Artist, in writing, of its final acceptance of the Artwork.

10. COPYRIGHT AND RELATED MATTERS. Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. Sections 101, et. seq., and all other rights in and to the Proposal and the Artwork except for ownership of the Artwork as set for the herein. Artist shall not make duplicates, three-dimensional reproductions of the final Artwork, nor shall Artist grant permission to others to do so except with the written permission of University or its assignee. Artist grant to University and its assignees, an irrevocable and exclusive license to make two-dimensional photographic reproductions of the Artwork for non-commercial purposes provided that these rights are exercised in a tasteful and professional manner. For the purposes of this Agreement, the following are deemed to be reproductions for non-commercial purposes; reproductions in exhibition catalogues, books, slides, postcards and photographs in University publications, art magazines, art books and news sections of newspapers; in general books, and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience, and television from stations operated for educational purposes or on programs for educational purposes from all stations. The parties agree that for the purposes of the copyright law, the Artwork produced hereunder is a work of fine art and Artist is the “*Author*.”

11. ARTIST’S RIGHTS.

- a. Maintenance, Repair and Restoration.
 - i. University shall consider Artist’s written recommendations concerning the maintenance of the Project and shall use reasonable efforts to maintain the Artwork in accordance therewith.
 - ii. University agrees to consult with Artist if the Artwork requires repair or restoration if such impacts the aesthetics of the Artwork.
- b. Alteration of the Artwork or the Site.
 - i. University agrees that it will not intentionally alter, modify or change the Artwork during Artist’s lifetime. It may, however, remove the Artwork if the Site is required for other University purposes.
 - ii. University agrees to consult with Artist should a change of the Site be required, and which impacts the aesthetics of the Artwork, including; but not limited to, benches, planters and lighting.

c. Credit.

- i. University agrees to install a plaque at the Site, which provides Artist's name, year of birth, nationality, date of the Artwork and the title and medium of the Artwork.
- ii. University agrees to use its best efforts to credit Artist in all reproductions of the Artwork.

12. **INDEMNITY.** To the fullest extent permitted by law, Artist shall indemnify and hold harmless the UNIVERSITY OF HOUSTON SYSTEM BOARD OF REGENTS, the UNIVERSITY OF HOUSTON SYSTEM, the UNIVERSITY OF HOUSTON, the UNIVERSITY OF HOUSTON-CLEAR LAKE, the UNIVERSITY OF HOUSTON-DOWNTOWN, and the UNIVERSITY OF HOUSTON-VICTORIA, their agents, employees, officers, administrators, component institutions, successors and assigns from and against all claims, injuries, damages, losses, costs, expenses and liability, including but not limited to reasonable attorneys' fees, whether arising before, during or after completion of Artist's work, caused by or arising out of or resulting from performance of work, of whatever nature, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission by Artist, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, but only to that extent, proportion or degree that the claims, damages, losses and expenses are attributable to the act or omission of Artist or its employees and/or representatives. Artist will promptly repair, at his own expense and to the satisfaction of University, any damage done by him or his employees or agents to University buildings or property while delivering and setting in place the Artwork.

13. **RELATIONSHIP OF THE PARTIES.** It is agreed and understood that Artist is an independent contractor and not an agent or employee of University. Nothing in this Contract shall be construed to create a joint venture, partnership, association, or like relationship between the parties.

14. **SUCCESSORS AND ASSIGNS.** Each of University and Artist binds itself/himself/herself, and its/his/her partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Artist shall not assign, sublet or transfer his interest in this Agreement without written consent of University. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than University and Artist.

15. **COMPLIANCE.** Artist agrees to abide by and perform the work under this Contract in compliance with all applicable City, State of Texas and Federal laws, rules, regulations and policies. While on the premises of the System or its components, Artist agrees to abide by the policies and procedures of the System and its components relative to conduct on its premises.

16. GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Texas (excluding the choice of law provisions thereof). The parties agree that venue of any cause of action under his agreement is proper in Harris County, Texas.

17. NOTICES. All notices to be given or served hereunder whether pursuant to the terms of this Agreement, or any provision of law, shall be in writing signed by the party giving it, and shall be sufficiently given or served if sent by registered mail and addressed as follows:

To University:

Associate Vice Chancellor/Vice President for Administration
Attn: Emily Messa
University of Houston System
E. Cullen Building, Suite 226
Houston, Texas 77204-2162

To Artist:

18. STATUTORY CERTIFICATIONS. By signing this Agreement, Artist certifies as follows: In accordance with Section 231.006 of the Texas Family Code and Sections 2155.004 and 2155.006 of the Texas Government Code, Artist certifies that it is not ineligible to receive this Agreement and payments under this Agreement and acknowledges that University may terminate this Agreement and/or withhold payment if this certification is or becomes inaccurate. Artist acknowledges that, in accordance with Section 403.055 of the Texas Government Code, as applicable, if the Texas Comptroller of Public Accounts is currently prohibited from issuing a warrant to Artist, Artist agrees that payments under this Agreement will be applied to the debt or delinquent taxes owed to the State of Texas until the debt or delinquent taxes are paid in full.

19. BREACH OF CONTRACT CLAIMS. To the extent Chapter 2260 of the Texas Government Code is applicable to this Agreement and not preempted by other law, the dispute resolution process provided by Chapter 2260 and the rules adopted by the Texas Attorney General will be used by the parties to attempt to resolve any claim for breach of contract made by Artist against University that cannot be resolved in the ordinary course of business.

20. AUDIT. Execution of this Agreement constitutes Artist's acceptance of the authority of University, the Texas State Auditor and/or their designated representative (collectively, "**Auditor**") to conduct audits or investigations in connection with this Agreement. Artist agrees to cooperate with the Auditor conducting such audits or investigations and to provide all information and documents reasonably requested.

21. AMENDMENT. This instrument contains the entire agreement between University and Artist with respect to the Artwork and can be modified only by written instrument signed by authorized representatives of University and Artist.

EXECUTED on the dates below but effective as of the year and day first above mentioned.

ARTIST:

Name: _____
Date: _____
Tax I.D. or S.S.N. _____

When invoicing, please refer to Contract No. _____ and Account No. _____.

UNIVERSITY OF HOUSTON SYSTEM

By: _____ Date _____
Name: _____
Title: _____
Office: _____