

UNIVERSITY OF HOUSTON SYSTEM
Office of Facilities Planning and Construction

ART SERVICES AND ACQUISITION AGREEMENT

Contract No. _____

Account No. _____

THIS AGREEMENT, made this ____ day of _____, 20__, by and between the UNIVERSITY OF HOUSTON SYSTEM (hereinafter referred to as "University"), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, and,

(hereinafter referred to as "Artist")

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

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

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

1. DEFINITION OF TERMS:

For the purpose of this Agreement:

- A. The term "Artwork" shall be defined to mean the particular work(s) of art created by Artist and approved by the Board of Regents and further defined and described in the Artist's proposal (Exhibit B) and location of the site (Exhibit C);

- B. The term "Site" shall be defined to mean that specific place located on the campus of the _____ which the Artwork is to be placed.
- C. The term "SWAAC" shall be defined to mean the System Wide Art Acquisition Committee.

2. OWNERSHIP OF ARTWORK:

- A. On final acceptance of the Artwork, as set forth in paragraph 9, and final payment to the Artist, as set forth in paragraph 8, title to the Artwork shall pass to the University.
- B. If University desires to sell the Artwork during the Artist' lifetime, University will inform the Artist of the sale; and will be offered the first and exclusive right to purchase the Artwork for a period of sixty (60) days following notice of the University's intention to sell the Artwork. The notice shall be effected in writing under the provisions of paragraph 13 of this Agreement.

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. The 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 the University on other projects, for additions to this Artwork, or for completion of this Artwork by others unless Artist authorizes the use of the materials in writing.

4. ARTISTS' SCOPE OF SERVICES:

- A. The 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.

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

(i) Schematic Design Phase

The Artist shall determine the 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 (Exhibit B) previously submitted to and approved by University.

(ii) Design Development

After the University approves the Proposal, the Artist shall prepare and submit to the University, Design Development Documents based on the approved Proposal on or before (time to complete).

(iii) Working Drawings

During the development of the Design Development Documents and Working Drawings, the 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 (time to complete).

(iv) Fabrication and Construction of the Project

The Artist shall be responsible for the fabrication and installation of the Project at the Site in conformance with the approved Proposal and the Working Drawings, which shall be completed on or before (time to complete).

- (v) The Artist shall inform the University when the Artwork has been installed, in conformance with the approved Proposal.

5. SCOPE OF UNIVERSITY'S RESPONSIBILITIES:

The 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 the University during the Design Proposal and Design Development Phases.
- D. Provide the services of a project manager ("Project Manager") to represent the University throughout the Project. The Project Manager will coordinate all work with the Artist and will oversee each phase of the Artwork through its completion. The services of the Project Manager are not part of the Artwork Budget contained in paragraph 8.

6. TIME OF PERFORMANCE:

- A. The services required of the Artist shall be completed in accordance with the schedule for completion of Artwork contained in paragraph 4 and more fully detailed in the attached Proposal as proposed by the Artist and approved by the University, provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the University. If, when the Artist complete fabrication or

procurement of the Artwork in accordance with the approved schedule and notifies the University that the Artwork is ready for installation, the Artist are delayed from installing the Artwork within the time specified in the schedule as a result of the Site not being sufficiently complete to reasonably permit installation of the Artwork therein because of fault attributed solely to the University, the University shall promptly reimburse the 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 the Artwork until notified by University that the site is ready.

- B. The University shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the University in performing its obligations under this Agreement, or if conditions beyond the Artists' control or Acts of God render timely performance of the Artists' services impossible or unexpectedly burdensome. The 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 days (7) written notice to the Artist. The Artist may terminate this Agreement upon seven days (7) written notice to the University should the University substantially fail to perform their obligations under the terms of this Agreement. The 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 the University as a result of any default or consequence of termination.

7. WARRANTIES:

- A. The Artist represents and warrants that: (a) the Artwork is solely the result of the artistic effort of the Artist; (b) except as otherwise disclosed in writing to the 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) the Artist will deliver written authorizations for the use of any material owned by a third party and included in the Artwork.

- B. The Artist represent and warrant, except as otherwise disclosed to the 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 the Artist to the University. The warranties described in this subparagraph B shall survive for a period of five (5) years after the final acceptance of the Artwork. The University shall give notice to the Artist of any observed breach with reasonable promptness. At the University's request, the Artist shall, at its sole cost and expense, cure reasonably and promptly the breach of any such warranty to the satisfaction of the University.

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

- A. _____ percent 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 the Artist.

B. _____ percent shall be due and processed for payment upon commencement of installation.

D. _____ percent shall be due and processed for payment upon final acceptance.

9. FINAL ACCEPTANCE: The Artist shall advise the University in writing when all services have been completed in conformity with the Proposal; and the University shall notify the 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 the Artist grant permission to others to do so except with the written permission of the University or its assignee. Artist grant to the 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 _____ is the "Author."

11. ARTIST'S RIGHTS:

A. Maintenance, Repair and Restoration.

- (i) The 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) The 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) The University agrees that it will not intentionally alter, modify or change the Artwork during the Artist's lifetime. It may, however, remove the Artwork if the Site is required for other University purposes.
- (ii) The University agrees to consult with the 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) The University agrees to install a plaque at the Site, which provides the Artist's name, year of birth, nationality, date of the Artwork and the title and medium of the Artwork.
- (ii) The University agrees to use its best efforts to credit the Artist in all reproductions of the Artwork.

12. **INDEMNITY:** To the fullest extent permitted by law, the 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 the 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 the 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 the Artist or its employees and/or representatives. Artist will promptly repair, at his own expense and to the satisfaction of the University, any damage done by him or his employees or agents to the University buildings or property while delivering and setting in place the Artwork.

13. **RELATIONSHIP OF THE PARTIES:** It is agreed and understood that the Artist is an independent contractor and not an agent or employee of the 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:** The University and Artist each binds himself, and his 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. The Artist shall not assign, sublet or transfer his interest in this Agreement without written consent of the University. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the University and Artist.

15. CORPORATE FRANCHISE TAX: Artist (or "Seller" or other designation of contracting party) certifies that, upon the effective date of this agreement, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of such taxes. Artist (or other designation of contracting party) agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and the University shall be entitled to terminate this Agreement upon written notice thereof to Artist (or other designation).

16. 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 it's components relative to conduct on its premises.

17. VENUE: It is mutually agreed by the parties that if litigation should arise concerning all or any part of this contract, venue shall lie in Harris County, Texas.

18. TERMS OF NOTICE: 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 the University:

Office of the Associate Vice Chancellor for
Administration and Finance
University of Houston System
E. Cullen Building, Suite 224
Houston, Texas 77204-2162

To the Artist:

19. PROPOSAL: The Proposal submitted by Artist under the Letter of Intent dated_____the proposed location of Artwork and description/drawing of proposed Artwork are attached as Attachments B and C and are incorporated herein and shall be considered a part of part of this Agreement for all purposes.

20. MISCELLANEOUS:

(a.) The Artist agrees to execute the attached affidavit regarding Child Support Certification (Attachment A).

(b.) Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the University. It is agreed by the University and the Artist that this Agreement is intended for the benefit of University and Artist only and not for the benefit of architects, engineers, contractors, subcontractors, including suppliers or any of their employees or agents, or any other person.

(c.) 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.

(d.) This instrument contains the entire Agreement between the University and the Artist and can be modified only by written instrument signed by authorized representatives of the University and the Artist.

EXECUTED in the year and day first above mentioned.

UNIVERSITY OF HOUSTON SYSTEM:

By_____

Date

ARTIST:

Date: _____

Tax I.D. or S.S.N. _____

Account No.: _____

FOR REFERENCE FOR INVOICING, USE NO. _____

Attachment: Child Support Certification

OGC Form No. S-99-20

Approved for use as a Standard Agreement by
the University of Houston System Office of General Counsel on 6/3/99

Note: Modification of this Form requires approval of OGC.

¹ Please consult University of Houston System Board of Regents Policy No. 47.01, System Administrative Memorandum 01.B.05 and specific Chancellor delegation(s) to determine the appropriate official(s) with authority to bind the University of Houston System.

ATTACHMENT A

**AFFIDAVIT
CHILD SUPPORT CERTIFICATION**

**TEXAS FAMILY CODE, SECTION 231
INELIGIBILITY TO RECEIVE STATE GRANTS, LOANS, OR RECEIVE PAYMENT
ON STATE CONTRACTS**

“A child support obligor who is more than 30 days delinquent in paying child support, and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials or services; or receive a state - funded grant or loan until:

1. All arrears have been paid; or
2. The obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

CERTIFICATION STATEMENT

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledge that this contract may be terminated and payment may be withheld if this certification is inaccurate.

I, the undersigned, hereby certify that I am in compliance with the Texas Family Code, Section 231.006.

<i>Applicable Signatures</i>	<i>% Owned</i>	<i>Social Security Number</i>	<i>Date</i>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____