

HAR06ART

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	HARLAN MOSHER
SUBJECT/PROJECT:	DESIGN, FABRICATE, DELIVER AND INSTALL TWO WORKS OF ART IN THE TWO ROUNDABOUTS AT THE I-70 AND 24 ROAD INTERCHANGE
CITY DEPARTMENT:	PARKS & RECREATION
YEAR:	2006
EXPIRATION DATE:	7/1/07
DESTRUCTION DATE:	1/14

CONTRACT FOR COMMISSION OF ARTWORK
GRAND JUNCTION, COLORADO
24 Road and Interstate-70 Roundabout Artwork

This Agreement is entered into this 19th day of October, 2006 by and between the City of Grand Junction, Colorado (herein after called "the City") and Harlan Mosher, (hereinafter called "the Artist").

Recitals

The City of Grand Junction is completing improvements at the new interchange of I-70 and 24 Road in Grand Junction. The design for landscape enhancements at the site, prepared by Carter & Burgess of Denver, Colorado, includes landscaping of two roundabouts, one at each intersection of 24 Road and the east and west on-off ramps. The design provides opportunities for the installation of public art.

The City has allocated up to \$100,000 in the construction budget in order to include works of art within the central circle of each of the two roundabouts.

The Artist selected for this project was chosen through a selection process determined by and involving the City's Commission on Arts and Culture, the City's Public Works Department, and Carter & Burgess. The Artist is a recognized sculptor whose work and reputation make the Artist uniquely qualified to create the Artwork.

Based on the foregoing recitals and the terms and conditions set forth herein, THE PARTIES AGREE AS FOLLOWS:

Article 1 SCOPE OF SERVICES

1.1 Artist's Responsibility

- A. The Artist shall perform all services and furnish all materials, supplies, and equipment necessary to design, fabricate, deliver, and install two works of art ("Artworks") in the two roundabouts at the I-70 and 24 Road interchange. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- B. The Artist will coordinate with Carter & Burgess and the City to develop designs for the two works of art. The Artist will determine the artistic expression, design, dimensions, and materials of the Artworks, subject to review and acceptance by Carter & Burgess and the City, as set forth in this Agreement. The Artworks will be original metal sculptures.
- C. The Artist is responsible for all costs, expenses, and fees associated with the design, engineering, fabrication, installation, site visits, and insurance for the Artworks.
- D. The Artist will attend design and coordination meetings with Carter & Burgess and the City, as appropriate, to communicate about the Artworks and the design, and to ensure compatibility, integration, and proper installation of the Artworks.

- E. The Artist will prepare the Final Design drawings, including construction details, and a corresponding budget, not to exceed \$100,000.00 for designing, fabricating, transporting, and installing the two works of art, as outlined in Article 2 (C).
- F. The Artist shall complete the design, fabrication, and installation of the Artworks according to the Completion Schedule set forth in Article 5 of this Agreement, in a timely and workmanlike manner.
- G. The Artist shall coordinate the installation of the Artworks with Carter & Burgess and the City. The Artist agrees that installation of the Artworks will leave the site in the same or similar condition as when the Artist began the installation. The Artist agrees to repair and/or replace any damage caused by the Artworks installation at his expense, to the satisfaction of a City designated Representative, as set forth in this Agreement.
- H. The Artist is an independent contractor and not an agent or employee of the City.
- I. In performance of the work described herein, the Artist shall comply with all applicable State and City laws, rules, and regulations, including applicable building and life, health and safety codes.
- J. The Artist shall indemnify and hold the City, the State, and Carter & Burgess harmless from any damage or injury claims made by a third party(ies) as a result of the installation of the Artworks, including harm to himself, to others assisting, to the public, or to the Artworks.
- K. The Artist shall provide the City with written instructions for the maintenance, care, and up-keep of the Artworks, with a description of all materials used, and Certificates of Authenticity for each the Artworks.
- L. The Artist shall bear the risk of loss or damage to the Artwork until the City's final acceptance of the Artwork under Article 3 of this Agreement, and shall take reasonable measures, and provide adequate insurance, to protect the Artwork from loss or damage.
- M. The Artist is solely responsible for the compensation and for the work of every contractor and other person he engages to assist him in discharging the duties under this Agreement. The Artist agrees to engage no person without providing adequate worker's compensation insurance, in amounts required by Colorado law.
- N. The Artist shall secure and provide the required insurance in amounts and limits specified in this section. Before the work is placed on City property for installation, the Artist shall provide the City Risk Manager with a certificate of liability insurance which addresses the period of on-site installation, and includes the following:
- The policy must be an occurrence form; the coverage amount shall be \$1,000,000 for products/completed operations hazard(s); the Comprehensive General Liability insurance shall have combined single limits of \$1,000,000 per

occurrence; and the policy shall not be cancelled, terminated nor not renewed without first giving 30 days advance written notice to the City Risk Manager;

- Neither this agreement nor an insurance policy issued as required by this agreement shall be understood to waive or diminish the effect of the Colorado Governmental Immunity Act protections enjoyed by the City.

1.2 City's Responsibility

- A. The City, by and through Carter & Burgess, is responsible for providing the Artist, at no expense to the Artist, copies of designs, drawings, and other data describing the area in which the art will be placed.
- B. The City is responsible for all site preparation and will prepare the site in accordance with the specifications provided in the approved Final Design, as referenced in Article 2 (C). The City will provide the concrete foundation on which the Artworks will be mounted at no expense to the Artist, which will be installed no later than June 1, 2007, in order for proper curing to take place.
- C. The City will provide the Artist access to the site for installation of the Artworks, subject to the vehicular restrictions, and will arrange for and provide, at the City's expense, traffic control during the installation.
- D. The City, by and through Carter & Burgess, will secure any and all required licenses, permits, and similar legal authorizations, at no expense to the Artist, as may be necessary for the installation.
- E. The City's Engineering Department will review the Final Design and construction drawings for the Artwork, at no cost to the Artist.
- F. The City will provide payment to the Artist in a timely fashion as outlined in the Payment Schedule in Article 6 of this Agreement.
- G. The City will provide the cost of installing electricity and lighting of the Artworks, if lighting features are included in Carter & Burgess' design of the site improvements.
- H. The City will designate three Representatives with whom the Artist should communicate and coordinate when necessary, in addition to representatives from Carter & Burgess. Each City Representative has the authority to make decisions for the City with regard to the matters described herein, including, but not limited to inspection of any work in progress, determining substantial, and final, completion of the Artworks, approving payments to the Artist, approving and coordinating installation, and similar matters. The persons designated as "City Representative" are Don Newton, Public Works Engineering Project Manager, Kent Harbert, Project Engineer, and Allison Sarmo, Commission on Arts and Culture Cultural Arts Coordinator.
- I. The City will provide a plaque on or near the Artworks identifying the Artist and Title of the Artworks.

Article 2 DESIGN OF THE ARTWORKS, DESIGN APPROVAL, AND CHANGES

- A. Concept Drawings: Within 30 days after execution of this Agreement, the Artist shall meet with and submit design drawings to Carter & Burgess for the two works of art, and, if requested by Carter & Burgess or the City, will revise the design drawings to Carter & Burgess' and the City's satisfaction.
- B. Design Approval: The City shall have final approval of the design for the Artworks. If the Artist refuses to revise the design as requested, or fails to adequately revise the design in the judgment of the City, this Agreement shall terminate and the parties will be under no further obligation to each other as of the date of such termination. The effective date of termination will be the date that the City submits written disapproval of the revised design to the Artist which includes a written termination notice pursuant to Article 11 of this Agreement. The Artist is entitled to retain the compensation paid to him prior to the termination date, but shall receive no further payment.
- C. Final Design, Construction Drawings, and Project Budget: Once the design concept has been approved, the Artist shall submit a Final Design drawing for each piece and a schematic structural drawing for each piece detailing the physical features of the construction of the Artworks. The Artist shall submit an accompanying budget for the entire project, not to exceed \$100,000.00, which includes all materials, products, contracted services, artist's fees, transportation, insurance, and any other costs associated with designing, fabricating, delivering, and installing the Artworks. The City Engineering Department shall have final approval of the construction drawings to ensure that the Artworks will be of adequate structural integrity and bear the proper wind load.
- D. Changes: Any change to the Final Design must be approved in writing by the City. The Artist will provide proposed changes in writing or graphic communication to the City for its review and approval. A change is considered to be any alteration which materially affects the approved design, installation, or site preparation.

Article 3 APPROVAL AND ACCEPTANCE OF THE ARTWORKS

The Artist will notify the City and Carter & Burgess in writing when the Artworks have been completely fabricated and are ready for installation (this written notice may be the same document as the invoice required to receive payment following fabrication of the Artworks.) A City Representative or Carter & Burgess will visit the Artist's studio and inspect the Artwork as to conformity with the Final Design. If the completed Artworks differ substantially from the approved design and are not accepted, notification of this shall be given to the Artist in writing, and the Artist will have 30 days to re-fabricate the Artworks to comply with the approved Final Design.

After the Artworks have been approved and installed, they will be deemed to be accepted after the following requirements have been satisfied: The Artworks are completed and installed in accordance with this Agreement and the approved Final Design, and the City has verified this; the Artist has delivered maintenance and care instructions in writing to the City's Public Works

Department; and the Artist has delivered written original signed Certificates of Authenticity to the City's Commission on Arts and Culture.

Article 4 INSTALLATION

Upon inspection and approval of the fabricated Artworks, as being in conformity with the design, the Artist shall transport, deliver, and install the completed Artwork to the site in accordance with the schedule provided in this Agreement. The Artist will coordinate closely with the City and Carter & Burgess to ascertain that the site is prepared to receive the Artworks, and to ensure any necessary traffic control measures and other installation requirements.

Article 5 COMPLETION SCHEDULE

The Artist agrees to complete the Artworks in accordance with the following schedule:

- Initial Design Concepts submitted to Carter & Burgess and the City no later than 30 days from the date of this Agreement;
- Final Design Drawings, Construction Drawings, and Project Budget submitted to Carter & Burgess and the City no later than 30 days after selection of a Final Design concept;
- Fabrication of the Artworks completed no later than June 15, 2007;
- On-site installation of the Artworks no later than July 1, 2007.

Liquidated Damages: If the Artist fails to complete the on-site installation of the two Artworks by July 1, 2007, a late fee of \$25 per day will be levied beginning on July 2, 2007 and continuing at \$25 per day for every day until the day the Artworks are both successfully installed. This late fee will be deducted from the final payment due to the Artist.

The installation date may be extended for up to 30 days only if the Artist is disabled by illness or is otherwise unable to perform the work because of an act of God or similar event beyond the control of the Artist, in which case the Artist shall immediately notify a City Representative. The aggregate of any such extension shall be no more than 30 days unless the parties agree otherwise in writing, as provided by Article 13.

Article 6 PAYMENT SCHEDULE

The City shall pay the Artist a fixed fee of \$100,000.00 which will constitute full and complete compensation for all services performed, materials furnished and for the artistic value provided by the Artist under this Agreement. If the Artist is in compliance with the terms of this Agreement and with the dates of the Completion Schedule in Article 5, the City will pay the Artist as follows:

- First payment of \$10,000 (10%) shall be made when this Agreement is signed by both parties, recognizing that the Artist will invest time and incur expenses in preparing the concept designs set forth in Article 2, Section (A). No invoice from the Artist is required.
- Second payment of \$30,000 (30%) shall be made when the Artist has submitted satisfactory Final Design, construction drawings, and project budget, and Carter & Burgess and the City have approved those documents, recognizing that the Artist will need to purchase materials and supplies. The Artist must provide a City Representative

with a written invoice for this payment. (If requested after the materials are purchased, the Artist will deliver reasonable evidence of such purchases to a City Representative.)

- Third payment of \$20,000 (20%) to the Artist when the Work is 50% fabricated and reasonable proof including on site inspection of this has been provided. The Artist will provide a written invoice for this payment and photographs (print or digital) of the completed Artwork(s).
- Fourth payment of \$20,000 (20%) to the Artist when the Work is 100% fabricated and has been inspected and approved by all City Representatives. The Artist will provide a written invoice for this payment and photographs (print or digital) of the completed Artwork.
- Fifth and final payment of \$20,000 (20% of total) following installation and acceptance of the Artworks by the City, as described in Articles 3 and 4.

The City agrees to mail each payment described above within two (2) weeks of receiving an invoice from the Artist.

Article 7 WARRANTY

- A. The Artist represents and warrants that the design of the Artworks are unique and solely the result of the creative efforts of the Artist, and are wholly original with the Artist and do not infringe upon or violate the rights of any third party.
- B. The Artist warrants that the Artworks are and shall remain free and clear of all liens, including mechanics liens and encumbrances, from any source whatsoever.
- C. The Artist shall not duplicate or offer the same or similar Artwork for sale elsewhere within a 250 mile radius of Grand Junction, Colorado.
- D. The Artist warrants that all work is performed in accordance with professional “workmanlike” standards, and fully guarantees the Artworks to be free from defective materials, products, and workmanship, for one year following the date of the City’s final acceptance of the Artworks, as described above. During this period the Artist agrees to make necessary repairs to the Artworks, in a manner satisfactory to the City Public Works Department, of any failure which is the result of faulty workmanship or materials. If within one year following the date of final acceptance, the Artist is unable or unwilling to make any necessary repairs, the Artist is responsible for reimbursing the City for damages, expenses, or loss incurred by the City as a result of having to complete such repairs. The Artist is not responsible for damage to the Artworks caused by vehicular accidents or vandalism.

Article 8 COPYRIGHT

- A. The Artist expressly reserves the rights under common law or under the federal Copyright Act to control the making and dissemination of copies and reproductions of the Work that a court affords to him. The Artist specifically agrees that the City, and its commissions, agents, divisions, employees and officials may, without further approval from or compensation to the Artist, reproduce the work graphically, in photographs, drawings, or computer generated images for any City business, including advertising,

promotions, visitor and convention activities, economic development activities, etc. The City agrees that such graphic reproductions of the Artworks will include the Artist's name, in such a manner and location as will comply with U. S. copyright law.

- B. The Artist agrees to give credit to the City in substantially the following form: "On display in the City of Grand Junction, Colorado."
- C. The Artist agrees that the City owns all proposal materials submitted by the Artist.
- D. The City acknowledges the existence of a 1990 federal law regarding Artist's rights which limits the City's unilateral ability to modify the Artworks without advance notice to the Artist; however, the Artist agrees that the Artworks, and all components and elements thereof, are the property of the City. The Artist agrees that the City has the right to unilaterally, without Artist's knowledge or consent, repair, remove, relocate, replace, sell, or store the Artworks. While it is the City's intent to permanently retain and maintain the Artworks as described herein, over time future citizens and City Councils may determine that the City should remove it or otherwise dispose of the Artworks, and the City reserves that right. If the City alters, modifies, or changes the Work, it will not thereafter represent the altered work as that of the Artist without his consent.
- E. The Artist agrees to indemnify and hold harmless the City from any and all liability arising out of the Artist's violation or claim of violation by any person of any copyright or trademark infringement whether or not such claim(s) or suit(s) is(are) frivolous.
- F. The Artist has and will retain a first position lien against the title to the Artworks until all payments have been completed in accordance with the terms of this Agreement or termination in accordance with the terms hereof has occurred, at which time the Artist agrees to deliver to the City an executed bill of sale along with other documentation evidencing transfer of title to the Artworks from the Artist to the City, and the originals of all warranties and other descriptive documentation of components of the Artworks.

Article 9 INDEMNIFICATION

The Artist will indemnify and hold the City harmless from all loss and liability (including attorney's fees, court costs, and all other litigation expenses) for any infringement of the patent rights, copyright, trademark, and all intellectual property claims of any person or persons in consequence of the City's acceptance of the Artists work or the use by the City, or any of its officers or agents, of articles or services supplied in the performance of this Agreement, whether or not such claim(s) is(are) frivolous.

Article 10 DEATH OR INCAPACITY

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacitation will not be considered a default of this Agreement on the part of the Artist; however, upon the happening of death or incapacity of the Artist, the City is not obligated to proceed with this Agreement.

In the event of incapacity, the Artist may assign the Artist's obligations and services under this Agreement to another artist of his choosing, but only with written approval of the City. Alternatively, the City may terminate this Agreement.

In the event of the death of the Artist, this Agreement shall terminate. The Artist's executor shall deliver the Artwork, in whatever form and degree of completion it may be at the time, to the City, along with all materials and supplies purchased for the Artworks' fabrication, if not yet completed. The City has the right to have the Artworks completed, fabricated, delivered, and installed by another artist or fabricator of their choosing; however, the Artist's heirs shall retain the copyright to the Artwork and all rights under Article 8.

Article 11 TERMINATION OF AGREEMENT

The City may terminate this Agreement as provided herein if the Artist fails to adequately revise the design when requested by the City of Grand Junction. The City will submit to the Artist a written termination notice advising the Artist that this Agreement has been terminated, notifying the Artist that he is entitled to retain the compensation paid to him prior to the date of termination, and stating that the parties are under no further obligation to each other. The termination notice shall confirm that the Artist retains ownership of all designs, revised designs, and renderings submitted for this project.

The City may terminate this Agreement if the Artist fails without cause to comply with the Completion Schedule set forth in Article 5 or fails to complete, deliver, and install the Artworks as stipulated in this Agreement. In this event, the City will submit a written termination notice to the Artist. The Artist is entitled to retain the 10% design fee paid to him when the Agreement was executed but shall return to the City all other compensation paid to him over and above 10% within 30 days of the date of termination. If the Artist fails to return said City funds, the City shall have the right to take possession of all materials and supplies purchased and obtained by the Artist for these Artworks, and the City has the right to have the Artworks completed, fabricated, delivered, and installed by another artist or fabricator of their choosing. However, the Artist shall retain the copyright to the Artwork and all rights under Article 8.

If the Artist becomes disabled, incapacitated, or otherwise unable to deliver and install the Work, the City may terminate the Agreement, at the City's sole discretion, as set forth in Article 10. If termination is pursuant to that section, the Artist or his heirs shall return all payments made by the City, except amounts paid to or incurred regarding third parties for supplies and materials; the City may take possession of any and all supplies and materials purchased for the Artworks if it so elects.

The exercise of a right to termination under this section shall be in writing and set forth the grounds for termination.

Article 12 WRITTEN NOTICE

The parties agree that any notice required by this Agreement shall be given as follows, including notice of a change of address or change in the Designated Representative:

City: Don Newton, Kent Harbert, or

Allison Sarmo
City of Grand Junction

250 North Fifth Street
Grand Junction, CO 81501
Don 244-1559, Kent 244-1445
Allison 254-3865

Artist: Harlan Mosher
1644 17 Road
Loma CO 81524
(970) 858-4871

E-mail: donn@gjcity.org, kenth@gjcity.org
allisons@gjcity.org

Article 13 ENTIRE AGREEMENT

The terms and provisions of this Agreement, including attachments and any amendments, represent the entire understanding of the parties with respect to the subject matter of this contract. No representations or warranties are made by the Artist or the City except as herein set forth. The terms of this Agreement may only be altered or modified in writing and signed by both parties.

Article 14 LAW AND VENUE

The laws of the City of Grand Junction, Mesa County, Colorado, shall govern this Agreement. Any action arising out of or under this Agreement shall be brought in Mesa County, Colorado.

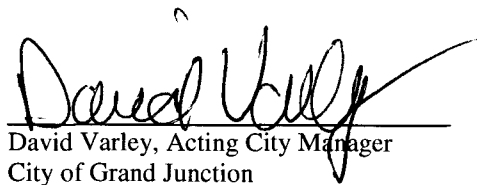
Signed:



Harlan Mosher
1644 17 Road
Loma CO 81524

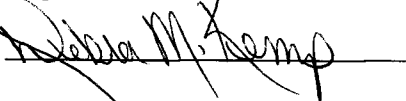
Date Signed:

Attest: 



David Varley, Acting City Manager
City of Grand Junction
250 North Fifth Street
Grand Junction CO 81501

Date Signed: *October 19, 2006*

Attest: 



CERTIFICATE OF LIABILITY INSURANCE

American Family Insurance Company
 American Family Mutual Insurance Company if selection box is not checked.
 6000 American Pky Madison, Wisconsin 53783-0001

Insured's Name and Address
 Harlan Mosher
 1644 17 Rd
 Loma, CO 81524-9435

Agent's Name, Address and Phone Number (Act./Dist.)
 MIKE DANIELS, LUTCF (970) 241-6132
 666 PATTERSON ROAD SUITE G
 GRAND JUNCTION, CO 81506 (124/307)

**This certificate is issued as a matter of information only and confers no rights upon the Certificate Holder.
 This certificate does not amend, extend or alter the coverage afforded by the policies listed below.**

COVERAGES				
This is to certify that policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.				
TYPE OF INSURANCE	POLICY NUMBER	POLICY DATE		LIMITS OF LIABILITY
		EFFECTIVE (Mo, Day, Yr)	EXPIRATION (Mo, Day, Yr)	
Homeowners/ Mobilehomeowners Liability				Bodily Injury and Property Damage Each Occurrence \$,000
Boatowners Liability				Bodily Injury and Property Damage Each Occurrence \$,000
Personal Umbrella Liability				Bodily Injury and Property Damage Each Occurrence \$,000
Farm/Ranch Liability				Farm Liability & Personal Liability Each Occurrence \$,000 Farm Employer's Liability Each Occurrence \$,000
Workers Compensation and Employers Liability †				Statutory ***** Each Accident \$,000 Disease - Each Employee \$,000 Disease - Policy Limit \$,000
<input checked="" type="checkbox"/> General Liability <input type="checkbox"/> Commercial General Liability (occurrence) <input type="checkbox"/>	05-XD3244-04-00	5/10/2006	5/10/2007	General Aggregate \$ 1,000,000 Products - Completed Operations Aggregate \$ 1,000,000 Personal and Advertising Injury \$ 100,000 Each Occurrence \$ 1,000,000 Damage to Premises Rented to You \$,000 Medical Expense (Any One Person) \$ 5,000
Businessowners Liability				Each Occurrence †† \$,000 Aggregate †† \$,000
Liquor Liability				Common Cause Limit \$,000 Aggregate Limit \$,000
Automobile Liability <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Auto <input type="checkbox"/> Nonowned Autos <input type="checkbox"/>				Bodily Injury - Each Person \$,000 Bodily Injury - Each Accident \$,000 Property Damage \$,000 Bodily Injury and Property Damage Combined \$,000
Excess Liability <input type="checkbox"/> Commercial Blanket Excess <input type="checkbox"/>				Each Occurrence/Aggregate \$,000

Other (Miscellaneous Coverages)

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / RESTRICTIONS / SPECIAL ITEMS
 Sculptor -- welder
 Location - I-70 and 24 Road roundabouts

† The individual or partners shown as insured Have Have not elected to be covered as employees under this policy.
 †† Products-Completed Operations aggregate is equal to each occurrence limit and is included in policy aggregate.

CERTIFICATE HOLDER'S NAME AND ADDRESS	CANCELLATION
• Carter & Burgess Atten: Renee Henningfed 707 17 th Street Suite 2300 Denver, Co 80202	<input type="checkbox"/> Should any of the above described policies be cancelled before the expiration date thereof, the company will endeavor to mail *() days) written notice to the Certificate Holder named, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives. *10 days unless different number of days shown. <input checked="" type="checkbox"/> This certifies coverage on the date of issue only. The above described policies are subject to cancellation in conformity with their terms and by the laws of the state of issue.
DATE ISSUED	AUTHORIZED REPRESENTATIVE
8/17/2006	