

MIL07ART

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	CORWIN (CORKY) MILLER
SUBJECT/PROJECT:	ORCHARD MESA POOL ARTWORK
CITY DEPARTMENT:	PARKS AND RECREATION
YEAR:	2007
EXPIRATION DATE:	12/04/08
DESTRUCTION DATE:	01/15

CONTRACT TO COMMISSION ARTWORK
GRAND JUNCTION, COLORADO
Orchard Mesa Community Center Mural and Mobile Artwork

This Agreement is entered into this 4th day of December 2007 by and between the City of Grand Junction, Colorado (hereinafter called "the City") and Corwin ("Corky") Miller, 1515 North 18th Street, Grand Junction, Colorado 81501 (hereinafter called "the Artist").

Recitals

The City of Grand Junction is installing a water slide at the Orchard Mesa Community Center indoor swimming pool in December 2007. The City has allocated funding through the Grand Junction Commission on Arts and Culture's budget (\$9,000) and also as specified by the 1% for the Arts program (\$1,500) to acquire artwork for the Orchard Mesa pool. The Artist was selected through a competitive process by the Commission on Arts and Culture Selection Committee to create an appropriate work of art for the Orchard Mesa Community Center.

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 be responsible for all expenses, materials, supplies, and equipment necessary to design, fabricate, deliver, create, paint, and install Artwork consisting of a mural and suspended mobile plastic or acrylic pieces. The painted elements include an ocean-themed mural on the west wall 20 feet high by 24 feet wide, plus a "ribbon" of water, fish, or plants painted around the room on the west, east, and north walls and between the new mural and the existing mural. The second component of the Artwork consists of colorful plastic water drops and fish suspended from the upper beams on the south wall, as described in the Artist's proposal submitted to and approved by the Commission on Arts and Culture on October 24, 2007. The Artist's proposal is attached hereto and made a part of this Agreement.
- B. The Artist's services shall be performed in a professional, timely, and workmanlike manner, and in strict compliance with all terms and conditions in this Agreement.
- C. The Artist shall coordinate creation and completion of the Artwork with the City. The Artist agrees to repair and/or replace any damage to the Artwork which may occur during installation until completion and final acceptance of the Artwork, at his expense, to the satisfaction of the City designated representative ("City Representative"), as set forth in this Agreement. The persons designated as "City Representatives" are Allison Sarmo, Cultural Arts Coordinator for the Commission on Arts and Culture, and Tina Ross, Aquatics Coordinator.

- D. The Artist is an independent contractor and not an agent or employee of the City.
- E. In performance of the work described herein, the Artist shall comply with all applicable federal, State and City laws, rules, and regulations, including but not limited to, applicable copyright, building and life, health and safety codes.
- F. The Artist shall indemnify and hold the City harmless from any damage or injury claims made by a third party(ies) arising during the installation process and caused, or claimed to be caused, by such process, including harm to himself, to others including the public, or to the Artwork.
- G. The Artist shall provide the City with written instructions for the maintenance, care, and up-keep of the Artwork, with a description of all materials used.
- H. 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.
- I. The Artist shall secure and provide insurance for the on-site installation period in amounts and limits specified in this section. 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:
 - (1) 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;
 - (2) 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 will provide the Artist access to the site for installation of the Artwork, subject to restrictions necessitated by swimming lessons, public swim times, school use, or City insurance requirements.
- B. The City will provide payment to the Artist in a timely fashion as outlined in the Payment Schedule in Article 6 of this Agreement.
- C. The City will designate two representatives (see Article 1, Section 1.1 C above) with whom the Artist should communicate and coordinate when necessary, and either 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 at the Artist's studio or fabrication location, determining substantial and final completion of the Artwork, approving payments to the Artist, approving and coordinating installation, and similar matters.

- D. The City will provide, at no charge to Artist, a plaque on or near the Artwork identifying the Artist and Title of the Artwork.

ARTICLE 2. DESIGN CHANGES

Any significant change to the design of the Artwork, as described in Article 1 Section 1.1(A) and depicted in the Artist's proposal attached to and made part of this Agreement, must be approved in writing by the City. The Artist shall provide proposed changes in writing or graphic communication to the City for review and approval. A significant change is considered to be any alteration which materially affects the approved design or installation.

ARTICLE 3. COMPLETION DATE

The Artist agrees to complete, deliver, and install the Artwork no later than April 30, 2008.

ARTICLE 4. ACCEPTANCE OF THE ARTWORK

The Artwork will be deemed to be accepted by the City after the following requirements have been satisfied:

- (1) The Artwork is completed, delivered, and installed in accordance with this Agreement and the approved design, and the City has verified this; and
- (2) The Artist has delivered to the Commission on Arts and Culture the following:
 - (a) An executed bill of sale; and
 - (b) Written maintenance and care instructions

ARTICLE 5. PAYMENT SCHEDULE

The City shall pay the Artist a fixed fee of \$10,500 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, then the City will pay the Artist as follows:

- A. First payment of \$3,500 (one-third or 33-1/3% of the total cost of the Artwork) shall be made when this Agreement is signed by both parties, recognizing that the Artist will invest time and incur expenses preparing designs and purchasing materials as set forth in Article 1, Section 1.1(A). No invoice from the Artist is required.
- B. Second payment of \$3,500 (one-third or 33-1/3% of the total cost) shall be made to the Artist when the Artwork is 50% completed and reasonable proof of this has been provided. The Artist will provide a written invoice for this payment.
- C. Third and final payment of \$3,500 (one-third or 33-1/3% of the total cost) following completion and acceptance of the Artwork by the City, as described in Article 4.

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

ARTICLE 6. WARRANTY

- A. The Artist represents and warrants that the design of the Artwork is unique and solely the result of the creative efforts of the Artist, and is wholly original with the Artist and does not infringe upon or violate the rights of any third party.
- B. The Artist warrants that the Artwork is and shall remain free and clear of all liens, including mechanics liens and encumbrances of the Artist.
- C. The Artist shall not duplicate or offer the same or materially similar Artwork for sale elsewhere within a 100 mile radius of Grand Junction.
- D. The Artist warrants that all work is performed in accordance with professional “workmanlike” standards, and fully guarantees the Artwork to be free from defective materials, products, and workmanship, for one year following the date of the City’s final acceptance of the Artwork, as described above. During this period the Artist agrees to make necessary repairs to the Artwork, in a manner satisfactory to the City, of any defect 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 Artwork caused by vandalism, acts of God, or City employees or contractors.

ARTICLE 7. 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 the court(s) in the venue of this Agreement afford to him, except as specified in Article 6 Section C. 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 Artwork graphically, in photographs, drawings, or computer generated images for any City business, including advertising, promotions, visitor and convention activities, and economic development activities. The City agrees that whenever appropriate such graphic reproductions of the Artwork will include the Artist’s name, in such a manner and location as will comply with U. S. copyright law.
- B. The City acknowledges the existence of a 1990 federal law regarding Artist’s rights which limits the City’s unilateral ability to modify the Artwork without advance notice to the Artist; however, the Artist agrees that the Artwork, and all components and elements thereof, are the property of the City. The Artist agrees that after the warranty period described in 6.D. expires, the City has the right to unilaterally, without Artist’s

knowledge or consent, repair, remove, relocate, replace, sell, or store the Artwork. While it is the City's intent to permanently retain and maintain the Artwork as described herein, over time future citizens and City Councils may determine that the City should remove it or otherwise dispose of the Artwork, and the City reserves that right. If the City alters, modifies, or changes the Artwork, it will not thereafter represent the altered work as that of the Artist without his consent.

- C. The Artist agrees to indemnify and hold the City harmless 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.

ARTICLE 8. 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 9. DEATH OR INCAPACITY

If the Artist becomes unable to complete the terms of 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 Artwork' fabrication, if not yet completed. The City has the right to have the Artwork 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 10. TERMINATION OF AGREEMENT

The City may terminate this Agreement if the Artist fails without cause to complete, deliver, and install the Artwork as stipulated in this Agreement. The exercise of a right to termination under this section shall be in writing and set forth the grounds for termination. If this Agreement is terminated under this section, the Artist is entitled to retain \$1,000 as a design fee, but shall return to the City all other compensation paid to him under the terms of this Agreement 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 the Artwork, in whatever form and degree of completion it may be at the time, and all materials and supplies purchased and obtained by the Artist for the Artwork,

and the City has the right to have the Artwork 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 7.

ARTICLE 11. 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 City Representative:

City: Allison Sarmo, Arts Commission City of Grand Junction 1340 Gunnison Avenue Grand Junction, CO 81501 (970) 254-3865 E-mail: allisons@gjcity.org	Artist: Corwin ("Corky") Miller 1515 North 18 th Street Grand Junction, CO 81501 (970) 241-5860 (home) (970) 245-2838 (work)
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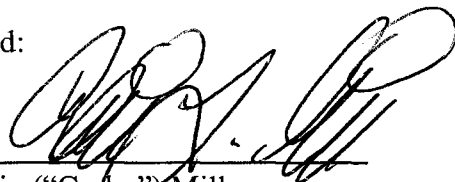
ARTICLE 12. ENTIRE AGREEMENT

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.

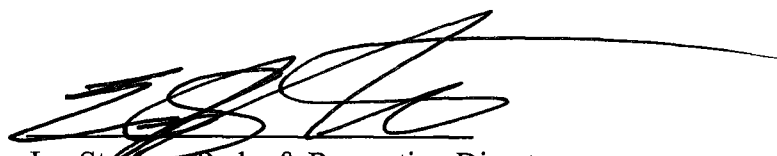
ARTICLE 13. LAW AND VENUE

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:



Corwin ("Corky") Miller
1515 North 18th Street
Grand Junction, CO 81501
Date Signed: _____



Joe Stevens, Parks & Recreation Director
City of Grand Junction
1340 Gunnison Avenue
Grand Junction CO 81501
Date Signed: 12-10-07

May 2, 2008

Corwin ("Corky") Miller
1515 North 18th Street
Grand Junction, CO 81501

Dear Corky,

Please let this letter serve as an Amendment to the CONTRACT FOR COMMISSION OF ARTWORK dated December 4, 2007 between the City of Grand Junction, Colorado and yourself for creation of mural and mobile works of art for the Orchard Mesa Community Pool.

The purpose of this Amendment is to change the COMPLETION DATE in the original Agreement, which stipulated that the artwork and installation would be completed no later than April 30, 2008 (Article 3). The Contract shall be amended to allow an additional two months to finish and install the artwork, with a new Completion Date of no later than June 30, 2008.

In consideration for granting this extension, the City, the Parks and Recreation Department, and the Commission on Arts and Culture also amend the Contract to include a liquidated damages provision as follows: LIQUIDATED DAMAGES – if the Artist fails to complete the on-site installation of the Artwork by June 30, 2008, a late fee of \$25 per day will be levied beginning on July 1, 2008 and continuing at \$25 per day for every day until the day the Artwork is successfully and completely installed. This late fee will be deducted from the final payment due to the Artist.

In the December 4th Contract, the Commission on Arts and Culture increased your fee from the originally proposed \$6,800 to \$10,500 (an additional \$3,700) in order to have you paint a ribbon of fish around the room. While Allison Sarmo has discussed the Arts Commission's overall expectations with you, in order to avoid any potential confusion, the City, the Parks and Recreation Department, and the Commission want to clearly state in writing our expectations for what constitutes the completed artwork, as offered in your original proposal (which is an attachment and part of the Contract) and also as stipulated in the Contract, Article 1, 1.1 A.

The original proposal pictured the large new mural (20 feet by 24 feet) plus a total of 25 additional fish on the wall between the two murals and on either side of the murals, plus approximately 30 plastic geometric and fish shapes suspended from the south wall ceiling beams. The Commission/Parks/City's expectation by increasing your fee over 50% for the ribbon of fish around the entire pool area is that the west side mural wall will obviously still contain at least 25 fish, as pictured in your proposal although not necessarily identical to the picture, and that the three other walls will have at least twice that many fish (50 fish, grouped or individually) in the ribbon around the room on the other three walls. There should also be at least 30 plastic geometric and fish shapes in the mobile element, as pictured in the original proposal.

The terms of the original Agreement may be extended or modified in writing and signed by both parties, as executed below, and all other provisions of the original Agreement remain unchanged.

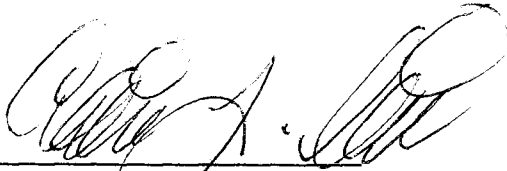
Would you please sign this letter and return it in the enclosed envelope. Thank you so much. The new mural is an outstanding addition to the Orchard Mesa Community Center Pool and we look forward to the completion of this project.

Signed:



Joe Stevens, Parks & Recreation Director
City of Grand Junction
1340 Gunnison Avenue
Grand Junction CO 81501

Date Signed: _____



Corwin ("Corky") Miller
1515 North 18th Street
Grand Junction, CO 81501

Date Signed: MAY 6, '08

cc: Allison Sarmo, Cultural Arts Coordinator
Tina Ross, Aquatics Coordinator