

MWA06GCS

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	MARK WAHLBERG
SUBJECT/PROJECT:	COMMISSION OF GEORGE CRAWFORD MEMORIAL SCULPTURE
CITY DEPARTMENT:	ADMINISTRATION
YEAR:	2006
EXPIRATION DATE:	06/25/07
DESTRUCTION DATE:	1/14

CONTRACT TO COMMISSION ARTWORK
GRAND JUNCTION, COLORADO
Grand Junction Founder George Crawford Memorial Sculpture

This Agreement is entered into this 4th day of December, 2006, by and between the City of Grand Junction, Colorado (hereinafter called "the City") and Mark Wahlberg, (hereinafter called "the Artist").

Recitals

The City of Grand Junction will celebrate its 125th anniversary in June 2007, and in honor of this achievement, has allocated funding to establish a permanent memorial sculpture of the City's founder George Crawford.

The Artist selected for this project was chosen through a competitive selection process determined by the City's Commission on Arts and Culture. 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 be responsible for all materials, supplies, and equipment necessary to design, fabricate, deliver, and install a larger than life-sized bronze sculpture (as defined by this Agreement) of City founder George Crawford. The Artist's services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement. The sculpture will be of a standing figure of City founder George Crawford and shall be at least six feet, six inches (6'6") in height, and may include other elements as agreed upon in the Final Design, as set forth in Article 2.
- B. The Artist is responsible for all costs, expenses, and fees associated with the design, engineering, fabrication, installation, site visits, and insurance of the Artwork.
- C. The Artist will coordinate with the Commission on Arts and Culture to develop a design for an original bronze sculpture of George Crawford, as set forth in Article 2. The Artist will prepare and supply photographic documentation of the Final Design model or maquette, including mounting details, and a project budget, not to exceed \$45,500.00 for a 6 foot, 6 inch (6'6") one and one-quarter (1 ¼) life-sized statue, for designing, fabricating, transporting, and installing the sculpture.
- D. The Artist shall complete the design, fabrication, and installation of the Artwork according to the Completion Schedule set forth in Article 5 of this Agreement, in a timely and workmanlike manner.

- E. The Artist shall coordinate the installation of the Artwork with the City. The Artist agrees to repair and/or replace any damage to the Artwork until completion and final acceptance of the installation, at his expense, to the satisfaction of the City designated representative (“City Representative”), as set forth in this Agreement. The person designated as “City Representative” is Allison Sarmo, Cultural Arts Coordinator for the Commission on Arts and Culture.
- F. The Artist is an independent contractor and not an agent or employee of the City.
- G. 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.
- H. 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.
- I. 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, and a Certificate of Authenticity for the Artwork.
- J. 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 insurance, in an amount at least equal to the value of the Artwork, to protect the Artwork from loss or damage.
- K. 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.
- L. 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:
 - (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 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 Artist's approved Final Design, as referenced in Article 2 (C). The City will provide the concrete foundation and plinth on which the Artwork will be mounted at no expense to the Artist. The City agrees to work in coordination with the Artist to design and install plinth.
- C. The City will provide the Artist access to the site for installation of the Artwork, subject to vehicular restrictions, and will arrange for and provide, at the City's expense, traffic control during the installation. The City will, at no charge to Artist, provide the equipment necessary to lift the sculpture into place during installation.
- D. The City 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 will review the Artist's Final Design drawings and proposed mounting details 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 designate a representative with whom the Artist should communicate and coordinate when necessary, and that 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 Artwork, approving payments to the Artist, approving and coordinating installation, and similar matters.
- H. The City will provide, at no charge to Artist, a plaque on or near the Artwork identifying the Artist and Title of the Artwork, and explaining Crawford's significance to the City. The City shall maintain such for so long as the Artwork is displayed.

ARTICLE 2. DESIGN OF THE ARTWORK, DESIGN APPROVAL, AND CHANGES

- A. **Concept Drawings:** Within 30 days after execution of this Agreement, the Artist shall submit design drawings or a maquette or model of the Artwork to the Commission on Arts and Culture, and, if requested by the City, will revise the design to the City's satisfaction.
- B. **Design Approval:** The City shall have final approval of the design for the Artwork. 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, Installation Details, and Project Budget: Once the design concept has been approved, the Artist shall submit photographic documentation of a Final Design maquette or model of the Artwork, at least ten inches in height and details of all the physical features of the construction of the Artwork, and specify how the Artwork will be mounted to the plinth and to the foundation. The Artist shall submit a final price and an accompanying budget for the entire project, not to exceed \$45,500.00 for a six foot, six inch (6'6") one and one-quarter (1 ¼) life-sized statue, which includes all materials, products, contracted services, artist's fees, transportation, insurance, and any other costs associated with designing, fabricating, delivering, and installing the Artwork. The City shall have final approval of the mounting requirements to ensure that the Artwork will be adequately installed.
- 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 ARTWORK

- A. The Artist shall notify the City in writing when the full-sized sculpture has been completed, but prior to transport to Colorado and prior to casting (this written notice may be the same document as the invoice required to receive payment following sculpting of the full-size sculpture of the Artwork), the City Representative may visit the Artist's studio, where the sculpture was sculpted, to inspect the sculpture as to conformity with the Final Design, or the City may require that the Artist provide photographs of the sculpting of the full size sculpture. If the sculpture differs substantially from the approved Final Design and is not accepted, the City may terminate this Agreement as provided in Article 11. The City Representative will inform Artist of the approval or rejection of the sculpture within two weeks of the City's receipt of a notice from Artist that the Artwork is complete.
- B. After the sculpture has been approved and the Artwork installed, it will be deemed to be accepted after the following requirements have been satisfied:
 - (1) the Artwork is completed and installed in accordance with this Agreement and the approved Final Design, and the City has verified this; and
 - (2) the Artist has delivered to the City's Commission on Arts and Culture the following:
 - (a) an executed bill of sale;
 - (b) written maintenance and care instructions; and
 - (c) an original signed Certificate of Authenticity.

ARTICLE 4. INSTALLATION

Upon inspection and approval of the completed Artwork, 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 and at the Artist' sole cost. The Artist will coordinate closely with the City to ascertain that the site is prepared to receive the Artwork, and to ensure any necessary traffic control measures and other installation requirements. The City is responsible for providing, at no cost to Artist, all necessary traffic control and heavy equipment necessary to install the Artwork.

ARTICLE 5. COMPLETION SCHEDULE

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

- A. Initial Design Concepts submitted to the City no later than 30 days from the date of this Agreement;
- B. Final Design Model or Maquette, Mounting Details, and a Project Budget submitted to the City no later than 30 days after selection of a Final Design concept;
- C. Fabrication of the Artwork completed no later than June 1, 2007;
- D. On-site installation of the Artwork no later than June 25, 2007.

Liquidated Damages: If the Artist fails to complete the on-site installation of the Artwork by June 25, 2007, a late fee of \$100 per day will be levied, beginning on June 26, 2007 and continuing at \$100 per day for every day until the day the Artwork is successfully installed. This late fee will be deducted from the final payment due to the Artist. This late fee shall not apply to delays caused by the City or acts of God.

ARTICLE 6. PAYMENT SCHEDULE

The City shall pay the Artist a fixed fee of not more than \$45,500.00 for a 6 foot, 6 inch (6'6") one and one-quarter (1 ¼) statue, 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, then the City will pay the Artist as follows:

- A. First payment of twelve percent (12%) 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 in preparing the concept designs and model set forth in Article 2, Section (A). No invoice from the Artist is required.
- B. Second payment of twenty-eight percent (28%) of the total cost, as determined in the budget submitted by the Artist and referenced in Article 2, Section (C), shall be made when the Artist has submitted photographic documentation of a satisfactory Final Design maquette and project budget, and the City has approved those submittals, for foundry and materials costs. The Artist must provide the City Representative with a written invoice for this payment. (If requested, the Artist will deliver reasonable evidence of such expenses to the City Representative.)
- C. Third payment of thirty percent (30%) of the total cost, as determined in the budget referenced in Article 2, Section (C), to the Artist when the full size sculpture is

completed (but prior to transport to Colorado) and reasonable proof of this has been provided and the sculpture has been approved as provided in Article 3.A. The Artist will provide a written invoice for this payment and photographs (print or digital) of the completed sculpture.

- D. Fourth and final payment of approximately thirty percent (30%) (or the percentage and amount required to reach one hundred percent (100%) of the total cost of the Artwork, as determined in the budget submitted by the Artist and referenced in Article 2, Section (C)), following installation and acceptance of the Artwork 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 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. The parties agree that any piece of art created by Artist that is less than one-fourth (1/4) the height of the Artwork is not the “same or materially similar” to the Artwork.
- 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 that in no event shall exceed \$25,000.00. The Artist is not responsible for damage to the Artwork caused by vehicles, vandalism, acts of God, or moving the Artwork from its initial installation location.

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 the court(s) in the venue of this Agreement afford 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 Artwork 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 Artwork 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 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 7.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.
- D. 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.
- E. The Artist has and will retain a first position lien against the title to the Artwork 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 Artwork from the Artist to the City, and the originals of all warranties and other descriptive documentation of components of the Artwork.

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 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's 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 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. 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 Artwork 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 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 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 Artwork 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 City Representative:

City: Allison Sarmo
City of Grand Junction
1340 Gunnison Avenue
Grand Junction, CO 81501
(970) 254-3865
E-mail: allisons@gjcity.org

Artist: Mark Wahlberg
3590 Greenhill Road
Pasadena, CA 91107
(626) 351-6511
E-mail: jungleharbor@hotmail.com

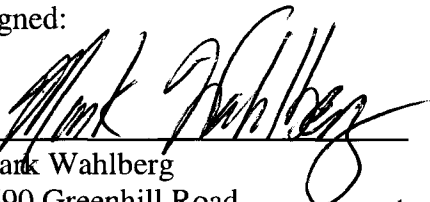
ARTICLE 13. ENTIRE AGREEMENT

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.

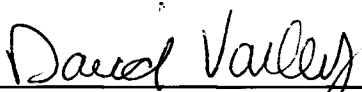
ARTICLE 14. LAW AND VENUE

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:



Mark Wahlberg
3590 Greenhill Road
Pasadena, CA 91107
Date Signed: 12/12/06



David Varley, Acting City Manager
City of Grand Junction
250 North Fifth Street
Grand Junction CO 81501
Date Signed: 12-04-06