

RMS08ART

TYPE OF RECORD: NON-PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF CONTRACTOR: REVEN MARIE SWANSON, CHINA CAT
SUNFLOWER LLC

SUBJECT/PROJECT: ARTWORK FOR THE FIFTH STREET AND
RIVERSIDE PARKWAY INTERCHANGE

CITY DEPARTMENT: PARKS AND RECREATION

YEAR: 2008

EXPIRATION DATE: 04/30/2009

DESTRUCTION DATE: 01/01/2016

**CONTRACT TO COMMISSION ARTWORK
GRAND JUNCTION, COLORADO
Riverside Parkway at Fifth Street Artwork**

This Agreement is entered into this 9th day of December 2008 by and between the City of Grand Junction, Colorado (hereinafter called "the City") and Reven Marie Swanson, China Cat Sunflower LLC, 2616 Eudora Street, Denver, Colorado 80207 (hereinafter called "the Artist").

Recitals

In conjunction with improvements and additions to the City's Neighborhood Services and Fleet Services building completed during 2008, the City has allocated funding as specified by the 1% for the Arts program in the amount of \$13,000, plus an additional \$5,000 from the Grand Junction Commission on Arts and Culture's budget, to acquire artwork which will be created and installed at the Fifth Street and Riverside Parkway interchange. The Artist was selected through a competitive process by the Commission on Arts and Culture Selection Committee.

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, and install Artwork consisting of a "grove" or grouping of stylized steel aspen trees with brightly colored "leaves" at the end of wire "branches", which will move in the wind.
- 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 installation of the Artwork with the City. The Artist promises that installation of the Artwork will leave the area in the same condition as when the Artist began the installation. The Artist agrees to repair any damage to the area and the landscaping which may occur during installation, at her expense, whether caused by the Artist or by anyone the Artist engages to assist her, 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.
- D. The Artist is an independent contractor and not an agent or employee of the City.

- E. The Artist shall secure any necessary engineering work and obtain a licensed engineer's certification to ensure the safety, stability, and permanence of the Artwork, and shall to provide specifications and drawings to the City for the concrete or subsurface base on which each "tree" will be installed, with an engineer's stamp.
- F. 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.
- G. 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 herself, to others including the public, or to the Artwork.
- H. 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.
- I. The Artist is solely responsible for the compensation and for the work of every contractor and other person she engages to assist her 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.
- J. 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.
- 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 a representative (see Article 1, Section 1.1 C above) with whom the Artist should communicate and coordinate when necessary, and the 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, and approving and coordinating installation.
- 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

- A. Final Design Proposal – Following execution of this contract, the Artist will, in consultation with City staff when necessary, develop her original proposal into a Final Design Proposal which includes: 1.) A working drawing or rendition of the proposed Artwork and the site and a description of the materials to be used in the sculpture; and 2.) Cost estimates for the design, fabrication, engineering, transportation, installation, and insurance. The Commission on Arts and Culture, or a committee thereof, shall review and approve the final design prior to execution.
- B. Any significant change to the design of the Artwork, as approved pursuant to Article 2, Section 2.1 above, 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. Minor changes do not require written approval.

ARTICLE 3. COMPLETION DATE

The Artist agrees to complete, deliver, and install the Artwork no later than April 30, 2009.

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 an executed bill of sale and written maintenance and care instructions.

ARTICLE 5. PAYMENT SCHEDULE

The City shall pay the Artist a fixed fee of \$18,000 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 \$6,000 (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 \$6,000 (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, such as digital photographs, has been provided. The Artist will provide a written invoice for this payment.
- C. Third and final payment of \$6,000 (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 her 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 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 \$2,000 as a design fee, but shall return to the City all other compensation paid to her 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: Reven Marie Swanson
China Cat Sunflower
2616 Eudora Street
Denver, CO 80207
(303) 322-4034
chinacatsunflwr@earthlink.net

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:



Reven Marie Swanson
China Cat Sunflower
2616 Eudora Street
Denver, CO 80207

Date Signed: 12-28-08



Rob Schoeber, Parks & Recreation Director
City of Grand Junction
1340 Gunnison Avenue
Grand Junction CO 81501

Date Signed: 12/9/08