

TOWN OF SUPERIOR  
RESOLUTION NO. R-76  
SERIES 2022

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING THE PURCHASE OF "DANCING STICKS" BY ARTIST REVEN SWANSON


NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. The Art Purchase Agreement between the Town of Superior and China Cat Sunflower, LLC is hereby approved in substantially the same for attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 24<sup>th</sup> day of October, 2022.

  
\_\_\_\_\_  
Clint Folsom, Mayor

ATTEST:

  
\_\_\_\_\_  
Lydia Yecke, Town Clerk



**ART PURCHASE AGREEMENT**

THIS ART PURCHASE AGREEMENT (the "Agreement") is made and entered into this 24 day of October, 2022 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town"), and China Cat Sunflower, LLC, a limited liability company with an address of 2616 Eudora Street, Denver, CO 80207 (the "Artist") (each a "Party" and collectively the "Parties").

WHEREAS, the Town engaged Artist to create and to place art installations within the Town for a period of 12 months ("Loan Period");

WHEREAS, the Loan Period expired on October 9, 2022; and

WHEREAS, the Town wishes to purchase Artist's artwork.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. ARTWORK**

The Town agrees to purchase the seven-piece, steel sculpture with lighted glass orbs series titled "Dancing Sticks" (the "Art") from Artist, which are currently installed as a part of the ARTery Project and are located at the entrance to the Community Center parking lot off of Coalton Road, as depicted on Exhibit A.

**II. COMPENSATION**

The Town shall pay Artist a total fee of \$12,000 for the purchase of the Art in compliance with this Agreement. The fee shall constitute full compensation for the purchase of the Art.

**III. WARRANTIES**

A. Artist warrants to the Town that Artist has created the Art and possesses unencumbered title to the Art.

B. Artist guarantees all parts and workmanship for the Art and Artist shall replace any defective parts or rework any defective craftsmanship in a timely fashion at no cost to the Town.

C. Artist warrants that the Art and any materials used in creating the Art, or made a part of the Art, or placed permanently in the Artwork, are not currently known to be harmful to public health and safety and are durable to withstand swings in temperature and winds up to 90 miles per hour.

**IV. INDEMNIFICATION**

Artist hereby indemnifies and holds harmless the Town, its officers, agents, and representatives from any claim by any third party for injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss

or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Art or Artist's activities pursuant to this Agreement.

## **VI. REPRODUCTION RIGHTS**

Artist reserves all rights to the reproduction of the Art except that Artist grants to the Town an irrevocable license to make photographic reproductions of the Work without compensation to Artist, provided that these rights are exercised in a tasteful and professional manner, and Artist is duly credited. The Town is not responsible for any third-party copyright infringement or for protecting the intellectual property rights of the Artist. Artist holds the Town and its officers, employees, representatives, and agents harmless from any claim of copyright infringement pertaining to the Art.

## **VII. MISCELLANEOUS**

A. Notice. Any notice required by this Agreement shall be deemed to have been given upon the mailing of said notice by U.S. first-class mail, postage prepaid, to the address set forth on the first page of this Agreement.

B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

C. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

D. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

E. Third Parties. There are no intended third-party beneficiaries to this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys, and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys, or employees.

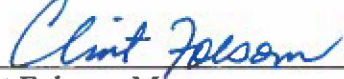
J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Independent Contractor. Artist is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Artist to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Artist for all purposes. Artist shall make no representation that it is a Town employee for any purposes.

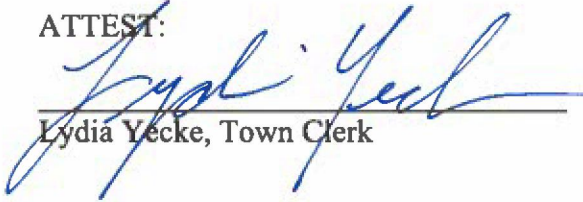
L. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF SUPERIOR, COLORADO**

  
\_\_\_\_\_  
Clint Folsom, Mayor

ATTEST:

  
\_\_\_\_\_  
Lydia Yecke, Town Clerk

**CHINA CAT SUNFLOWER, LLC**

DocuSigned by:  
 11/2/2022  
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\_\_\_\_\_  
By: Reven Marie Swanson



## EXHIBIT A ARTWORK

### DANCING STICKS by artist Reven Swanson

