

ART IN PUBLIC PLACES CONSTRUCTION AGREEMENT Transformer Cabinet Murals

THIS AGREEMENT is made and entered into this 2nd day of June, 2015, by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (hereinafter referred to as "the City"), and Poudre Community Academy- Art and the Community Learning Opportunity Program, by and through its representative Kirstan Chalfant, (hereinafter referred to as "Artist").

In consideration of the mutual covenants and obligations herein expressed, the parties agree as follows:

1. Scope of the Work. The Artist must furnish all of the materials and perform all of the work for the 2015 Transformer Cabinet Mural Project as shown on the drawings and described in the specifications attached as Exhibit "A" and incorporated by reference into this Agreement (the "Project"). The Project consists in general terms of the design, construction, signage and installation of a painted mural on one transformer cabinet. The Artist's work must be of high quality, in compliance with generally accepted standards of workmanship, and in conformity with this Agreement.
2. Time of Completion. The City will issue a Notice to Proceed. Artist must begin the Project promptly upon receipt of the Notice to Proceed and must fully complete the Project by July 31, 2015. Any extensions of this time limit must be agreed upon in writing by the parties. The City will grant the Artist a reasonable extension of time if there is a delay on the part of the City in performing its obligations under this Agreement or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible.
3. Capital Project Management Control System. In order to ensure that the Project is consistent with its authorized scope and schedule, the Artist must provide an approximate schedule for the completion of all unit work items covered by the Agreement. The Artist must submit the initial schedule to the City prior to beginning the work.
4. City Representative. On or before the date the City issues its Notice to Proceed the City will designate its project representative who will make all necessary and proper decisions with reference to the Project within the scope of his or her authority. The Artist must direct all requests for contract interpretations, change orders, or other clarification or instruction to the City representative.
5. Changes to Scope of Work.
 - A. Changes by Artist. The Artist cannot change the Project specifications and drawings in Exhibit "A" without advance written approval from the City.
 - B. Changes by the City. The City may request changes in the design and construction of the Project through written Change Order Requests. The Artist and the City will then negotiate in good faith to reach agreement on any necessary changes in price or scheduling requirements. Once the parties have reached agreement, the City will issue a written Change Order documenting the agreed upon terms. The Artist must

not proceed with work related to the requested change until the City issues the Change Order.

6. Formal Acceptance and Ownership of the Project. The Artist must notify the City when the Project is fully installed and complete. No more than thirty (30) days after receiving such notice, the City will provide the Artist a verbal or written response, informing the Artist that either:
 - (1) the City agrees that the Project is fully installed and is complete consistent with the terms of this Agreement, all other related work is completed in accordance with this Agreement, and the City formally accepts the Project as completed (“Letter of Acceptance”); or
 - (2) the City does not consider the Project to be completed due to unresolved issues or defects that remain, and describing the outstanding issues or defects which the Artist must then cure before the City will issue a Letter of Acceptance.

The Project is not finally complete for purposes of this Agreement until the City has issued a Letter of Acceptance. Once the City has issued a Letter of Acceptance the City will be the sole owner of the Project, and the Artist will have no further obligations under this Agreement, except as set forth in paragraph 11.

7. Ownership of Works Created.
 - A. Assignment of Copyright. The Artist hereby assigns, transfers, and conveys to the City all right, title and interest in and to the Project together with the copyright therein and the right to secure copyright registration therefore, in accordance with Sections 101, 204, and 205 of Title 17 of the United States Code, the Copyright Law of the United States. This assignment, transfer and conveyance includes, without limitation, any and all features, sections, and components of the Project, any and all works derived therefrom, the United States and worldwide copyrights therein, and any renewals or extensions thereof, and any and all other rights that the Artist now has or to which the Artist may become entitled under existing or subsequently enacted federal, state, or foreign laws, including, but not limited to the following rights: to reproduce, publish, and display the Project publicly, to prepare derivative works of and from the Project, to combine the Project with other materials, and to otherwise exploit and control the use of the Project. As additional consideration for this assignment, the City agrees that all reproductions of the Project by the City shall credit the Artist.
 - B. License Back to Artist of Certain Rights. The City hereby grants to Artist the following rights in and to the Project:
 - (i) the non-exclusive right to make two-dimensional reproductions of the Project for non-commercial, promotional purposes, provided that any such reproduction clearly states the location of the Project, acknowledges the City and the Art in Public Places Program, and contains a copyright notice; and
 - (ii) the exclusive right to create and reproduce derivative artworks depicting characters, images and/or themes that are similar, but not identical, to those depicted in the Project, in any form and for any purpose except to the extent prohibited by paragraph 12, below.

With the exception of the rights granted above, the Artist must not make or knowingly permit others to make reproductions of the Project for any purposes without the written permission of the City.

C. Rights under the Visual Artists' Rights Act. To the extent the uses or removal of the Project under this Contract affect any rights Artist may have under the provisions of federal or state law, including the 1990 Visual Artists' Rights Act, the Artist hereby knowingly waives any rights of preservation of the Project provided by those laws.

8. Maintenance. The City is responsible for maintenance of the completed Project.

9. Contract Sum. The City will pay Artist the sum of Four Hundred, and Fifty Dollars (\$450) to be used for materials and supplies for the Project. Artist is donating Artist's time for this Project:

The City agrees to pay the Artist under the following schedule:

A. \$350 upon full execution of this Agreement;

B. \$100 or any remaining amounts due under this Agreement, upon the City's final approval and acceptance of the Project as complete.

10. Failure to Complete. If Artist becomes ill, dies, or is otherwise unable or unwilling to complete the Project in accordance with the Agreement, any work already done on the Project will be the City's property. The City will be entitled to withhold any sums not yet paid to Artist, and may use any such sums toward completion of the Project in any manner the City deems appropriate.

11. Project as Unique. Artist represents and warrants that the Project is artistically unique,

12. Governing Law. This Agreement is governed by the laws of the State of Colorado.

13. Notice. Any notice or other communication given by either party to the other related to this Agreement must be hand delivered; sent by a commercial carrier; or sent by mail, addressed to the party at its address as set forth below. The notice or other communication will be effective on the date it is delivered or on the third business day after being sent, whichever comes first.

If to the Artist:
Poudre Community Academy
Kirstan Chalfant
2540 Laporte Ave., Mod 5A
Fort Collins, CO 80521

If to the City:
Ellen Martin
Lincoln Center
417 West Magnolia
Fort Collins, CO 80521

14. Termination/Default.

A. Termination. The City may terminate this Agreement on no less than seven (7) days written notice to the Artist. In such event the City will compensate Artist for all services performed to the date Artist receives the notice of termination, together with reasonable expenses then due, unless the parties agree otherwise in writing.

- B. Default. Each and every term and condition of this Agreement is deemed to be a material element of this Agreement. If either party fails or refuses to perform according to the terms of this Agreement; it may be declared in default thereof. If Artist defaults or neglects to carry out the work in accordance with this Agreement, the City may elect to make good such deficiencies and charge Artist therefor.
- C. Remedies Upon Default. If one party declares the other in default of this Agreement and performance is possible within the completion time established herein, the defaulting party has a period of five (5) days within which to cure the default. If the defaulting party fails to correct the default (or timely performance is not possible), the party declaring default may elect to: (1) immediately terminate the Agreement; (2) treat the Agreement as continuing and require specific performance; and/or (3) avail itself of any other remedy at law or equity. If either party elects to terminate the agreement for default, termination will be effective upon the mailing, by the terminating party, of written notice of termination to the defaulting party.
15. Assignment. Artist understands that the City enters into this Agreement based on the special abilities of Artist and that the City considers this Agreement to be an agreement for personal services. Accordingly, Artist must neither assign any responsibilities nor delegate any duties arising under this Agreement, except to volunteers as described in paragraph 19 below, without the prior written consent of the City.
16. Artist -- Independent Agent. The Artist performs all work under this Agreement as an independent agent and is not an agent of the City, nor are the Artist's Subcontractors, volunteers or employees subagents of the City.
17. License and Business. The Artist must hold, in the Artist's name, all necessary licenses and permits to perform the work. The Artist must have full authority to do business in the State of Colorado, and have a designated place of business for making and accepting communications with or from the City. The Artist must maintain a current address and telephone number with the City throughout the term of this Agreement.
18. Superintendence. Before starting work the Artist must designate an authorized representative who has complete authority to represent and act for the Artist. The Artist must keep competent supervisory personnel on the work during its progress and provide efficient supervision of the work, using Artist's best skill and attention. The Artist is solely responsible for all construction means, methods, techniques, and procedures, and for providing adequate safety precautions and coordinating all portions of the work.
19. Employees and Volunteers. The Artist must employ only competent, skillful workers and/or use volunteers to complete the work. Artist is responsible for supervision of its employees and volunteers. If any person acts in a disorderly or improper manner, the City may require Artist to remove such person from work, and Artist agrees to promptly remove such person from the work.
- The Artist is fully responsible to the City for the acts and omissions of its employees and volunteers. Artist will ensure that each volunteer aged 18 and over signs a liability waiver in the form attached as Exhibit B (1 page), and that each volunteer under the age of 18 and the parent or legal guardian of each volunteer under the age of 18 signs a liability waiver in the form attached as Exhibit C (2 pages), before participating in the Project on City property. Artist must submit all such waivers to the City's representative.

20. Prosecution of the Work. The time of beginning, rate of progress, and time of completion of the work are the essence of this Agreement. The Artist must do the work at such time, and in such order, as will result in successful completion of the Project during the time specified in the Agreement and the approved construction schedule. The Artist must furnish tools and equipment for the Project in sufficient quantity and of a capacity and type that will safely perform the work specified without delay in the progress of the work.
21. Safety. The City will ensure that the transformer cabinets that are the site for the Project are safe to work on. Artist is otherwise responsible for maintaining a safe work area and protecting the safety and welfare of Artist's employees, volunteers, and the general public, including without limitation area residents, motorists, bicyclists, pedestrians, and children from work area hazards. If the City determines that work area safety control devices such as barricades and safety fences are necessary, the City will provide such devices at the City's expense.
22. Work and Property. The Artist must use best efforts at all times to safely guard the Project, the City's property and adjacent property from damage, injury or loss in connection with the Project. The Artist must protect the Project and related materials from damage due to the nature of the work, the elements, carelessness of the Artist, or from any foreseeable cause whatever until the completion and acceptance of the Project by the City. The Artist assumes all risk of loss or damages arising out of the nature of the work to be done under this Agreement, or from any unforeseen obstructions or defects which may be encountered in the prosecution of the work, or from the action of the elements or other damage, except damage proximately caused by the City, its employees, agents or other contractors, until final acceptance of the Project by the City
23. Indemnity. The Artist indemnifies and holds harmless the City, its officers, agents and employees, from and against all claims, damages, losses, expenses, and legal fees including attorney's fees, arising out of or resulting from the Artist's performance under this Agreement.

In any and all claims against the City, or any of its officers, agents, or employees by any employee, subcontractor or agent of the Artist, the Artist's indemnification obligation are not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Artist or any subcontractor under Workmen's Compensation laws, Disability Benefit laws, or other employee benefit laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

DocuSigned by:
Gerry Paul
BY: _____
A9D0A054C8CB45D...
Gerry Paul
Purchasing Director

ATTEST:

DocuSigned by:
Wanda K. Nelson

90AD7570EFE74BC...
City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Cyril Videngar

0E52A89A45EB481...
Assistant City Attorney

ARTIST: POUFRE COMMUNITY ACADEMY
Art and the Community Learning Opportunity
Program

DocuSigned by:
Kristen Chalfant

737D67A62E6E4E2...
Kristen Chalfant

EXHIBIT A SCOPE OF SERVICES

Transformer Cabinet Mural Project 2015
Artist: Poudre Community Academy & Kirstan Chalfant
Location: 223 W. Myrtle St., Fort Collins



Our theme and plan for our cabinet this year goes along with the theme of CommUnity and Art Experimentation. We decided that we wanted to do a large Zentangle, focusing on lines and shapes with a focus on abstract imagery in black with different color schemed splatter paint in the background for each side. Our black zentangle image came together with the hands of many PCA students putting forth their skills to fill and connect each of their parts they drew together. The images of splatter paint for the background will vary with the color schemes we choose. We will then project the abstract pictures onto the splatter background and paint in the zentangle.





Artist team will paint all four sides and the top of the cabinet. Artist is required to create a busy, active surface with either composition or paint layering, with strong contrast, to deter graffiti. Artist team will not be able to use a marker/Sharpie to create the mural.

Artists are required to keep the working area clean from any paint splatters, or will clean area immediately. Artist mentor will update APP Project Managers with images & progress, weekly while painting cabinet(s).

Exhibit B – Volunteer Waiver – Age 18 and Over

RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND HOLD HARMLESS

In consideration of my participation in the City of Fort Collins Transformer Cabinet Mural Project (hereafter, the “Project”), the undersigned agrees as follows:

1. I understand that my participation in the Project may include, without limitation, the following risks and hazards: outdoor activities in the public right-of-way, use of tools or equipment, exposure to paint and/or other chemicals and physical exertion, any of which may result in damage to property, bodily injury or death. I am aware of the risks and hazards inherent in my participation in the Project, and recognizing those risks and hazards, I wish to participate in the Project.

2. On behalf of myself, my heirs, executors, administrators, personal representatives and assigns, I hereby release the City of Fort Collins, and its officers, employees, volunteers, and agents (collectively, “Releasees”) from any and all liability for any and all claims and causes of action which I may hereafter have on account of any and all injuries and/or damage that I may sustain, or any loss of any other sort, arising out of or relating to my participation in or attendance at the Project, or incidental thereto, whether caused by the negligence of the Releasees or any other person. In addition, I covenant and agree not to sue any of the Releasees, and agree to forever hold them and each of them harmless, from any liability, claims, demands, actions, or causes of action whatsoever arising from my participation in the Project, whether such liability, claims, demands, or actions are the result of the negligence of the Releasees or any other person. This waiver, release, discharge, indemnification and hold harmless shall not be applicable to actions constituting gross negligence, recklessness or willful and wanton behavior on the part of the Releasees. However, these exceptions shall not be construed as a waiver of sovereign immunity or the protections of the Colorado Governmental Immunity Act. This release of liability, covenant not to sue, and hold harmless agreement shall be binding upon me, my heirs, executors, administrators, personal representatives, and assigns, and shall inure to the benefit of the Releasees and their successors and assigns.

3. I hereby agree to indemnify the Releasees and to assume and be responsible for all harm, injury or damage caused by me to any of the Releasees, the Releasees’ property or equipment, other persons or other personal property used in conjunction with the Project.

Signature

Date

Printed name

Address

Exhibit C – Minor Volunteer Waiver

**PARENTAL CONSENT, RELEASE OF LIABILITY, COVENANT NOT TO SUE,
AND HOLD HARMLESS**

In consideration of my child’s participation in City of Fort Collins Transformer Cabinet Mural Project (the “Project”), the undersigned agrees as follows:

1. I am the parent or legal guardian of _____, who is under the age of eighteen (18) years. I understand that my child’s participation in the Project may include, without limitation, the following risks and hazards: outdoor activities in the public right-of-way, use of tools or equipment, exposure to paint and/or other chemicals and physical exertion, any of which may result in damage to property, bodily injury or death. I am aware of the risks and hazards inherent in my child’s participation in the Project, and recognizing those risks and hazards, I hereby give my consent and approval to my child’s participation in the Project.

2. On behalf of my child (pursuant to section 13-22-107, Colorado Revised Statutes) and myself, I hereby release the City of Fort Collins, and its officers, employees, volunteers, and agents (collectively, “Releasees”) from any and all liability for any and all claims and causes of action which I or my child may hereafter have on account of any and all injuries and/or damage that I or my child may sustain, or any loss of any other sort, arising out of or relating to my child’s or my participation in or attendance at the Project, or incidental thereto, whether caused by the negligence of the Releasees or any other person. In addition, on behalf of my child and myself, I covenant and agree not to sue any of the Releasees, and agree to forever hold them and each of them harmless, from any liability, claims, demands, actions, or causes of action whatsoever arising from my child’s or my participation in the Project, whether such liability, claims, demands, or actions are the result of the negligence of the Releasees or any other person. This waiver, release, discharge, indemnification and hold harmless shall not be applicable to actions constituting gross negligence, recklessness or willful and wanton behavior on the part of the Releasees. However, these exceptions shall not be construed as a waiver of sovereign immunity or the protections of the Colorado Governmental Immunity Act. This release of liability, covenant not to sue, and hold harmless agreement shall be binding upon me, my child, my heirs, and/or my child’s heirs, executors, administrators, personal representatives, and assigns, and shall inure to the benefit of the Releasees and their successors and assigns.

3. I hereby agree to indemnify the Releasees and to assume and be responsible for all harm, injury or damage caused by me or my child to any of the Releasees, the Releasees’ property or equipment, other persons or other personal property used in conjunction with the Project.

Signature of Parent or Legal Guardian Date

Printed name of Parent or Legal Guardian

Address

JUVENILE ACKNOWLEDGMENT OF RISK AND CONSENT TO PARTICIPATE

I, _____, the undersigned, state that I am under the age of eighteen (18) years and that I desire to participate in the City of Fort Collins Transformer Cabinet Mural Project (the "Project") which participation may include, without limitation, the following risks and hazards: outdoor activities in the public right-of-way, use of tools or equipment, exposure to paint and/or other chemicals and physical exertion, any of which may result in damage to property, bodily injury or death.

I am aware of the risks and hazards inherent in my participation in the Project, and recognizing those risks and hazards, I hereby give my consent and approval to my participation in the Project. I voluntarily assert that it is my desire to participate in the Project with full understanding of and having taken into consideration all such risks of loss, damage or injury to me or my property, which may be sustained during or incidental to my participation in the Project.

Signature of Juvenile Participant

Date: _____

Printed Name of Juvenile Participant