

DESIGN CONSULTANT AGREEMENT
Water Reclamation Facility Project

THIS AGREEMENT is made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and TRACTOR BEAM COLLECTIVE, a Colorado corporation,(hereinafter referred to as "Design Consultant").

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services and Work Schedule. The Design Consultant agrees to provide services in accordance with the scope of services and work schedule attached hereto as Exhibit "A", consisting of two (2) pages, and incorporated herein by this reference (the "Project").
2. Time of Commencement and Completion of Services. Design Consultant will initiate the services to be performed pursuant to this Agreement within seven (7) days following execution of this Agreement. Time is of the essence. Any extensions of the time limits set forth in this Agreement or Exhibit "A" must be agreed upon in writing, signed by the parties.
3. Contract Period. This Agreement shall commence upon the date of execution shown on the signature page of this Agreement and shall continue in full force and effect for two (2) years, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for an additional period of one (1) year at the rates provided with written notice to the Design Consultant mailed no later than thirty (30) days prior to contract end.
4. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Design Consultant must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.
5. Early Termination by City/Notice. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Design Consultant. Such notice shall be delivered at least fifteen (15)

days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when hand delivered, sent by overnight commercial courier, or mailed, postage prepaid and sent to the following addresses:

City:

Ellen Martin
Lincoln Center
417 W. Magnolia Street
Fort Collins, CO 80521

Design Consultant:

Tractor Beam Collective
Todd Kundla
527 N. Loomis Ave.
Fort Collins, CO 80521

In the event of early termination by the City, the Design Consultant shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Design Consultant's obligations under this Agreement. Such payment shall be the Design Consultant's sole right and remedy for such termination.

6. Contract Sum. The City shall pay the Design Consultant for the performance of this Contract, subject to additions and deletions provided herein, a design fee of Fifty Dollars (\$50.00) per hour for time spent on the Project, excluding travel time, and reasonable cost of design materials. The total contract sum for the Project shall not exceed the total sum of One Thousand, Five Hundred Dollars (\$1,500). The Design Consultant will submit to the APP Coordinator monthly, detailed invoices.
7. City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.
8. Independent Service Provider. The services to be performed by Design Consultant are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Design Consultant's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.
9. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Design Consultant, and accordingly, the Design Consultant shall neither assign any primary creative responsibilities nor delegate any primary creative duties

arising under the Agreement to any other person, without the prior written consent of the City.

10. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.
11. Warranty.
 - (a) Design Consultant warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.
 - (b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
12. Ownership of Works Created.
 - (a) Final Designs. The Design Consultant hereby assigns irrevocably to the City any and all rights to works designed or created and in any way related to the Services to be provided by Design Consultant under this Agreement, which works are developed to the Final Design stage as described in Exhibit A. This assignment of rights applies whether any one or more of the Final Designs are implemented by the City or not. The City hereby licenses back to the Design Consultant the non-exclusive right to make and use two-dimensional images or representations of the Final Designs or any aspects of the Project that are fabricated and installed. However, any such reproduction must credit the City of Fort Collins Art in Public Places program and contain a copyright notice. With the exception of publicity pieces, the Design Consultant must not knowingly permit others to make reproductions of the Final

Designs or the completed Project for commercial purposes without the written permission of the City.


- (b) Other Designs. Any ideas, concepts, sketches, drawings or other work done by Design Consultant as part of the Project that are not incorporated into or developed as part of the Final Designs remain the property of the Artist.
 - (c) Rights under the Visual Artists' Rights Act. To the extent the City's use or removal of any artwork created pursuant to this Agreement affect any rights Artist may have under the 1990 Visual Artists' Rights Act, the Artist hereby knowingly waives such rights.
 - (d) Project as Unique. Design Consultant represents and warrants that the work done for the Project is artistically unique, and agrees not to create or be involved in the creation of an artwork that is identical or substantially similar to the Final Designs within 150 miles of Fort Collins, Colorado.
13. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement; such party may be declared in default thereof.
14. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail him or herself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable legal fees, including attorney fees and costs, incurred because of the default.
15. Entire Agreement/Binding Effect. This Agreement, along with all exhibits or other documents incorporated herein, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.
16. Indemnity/Liability.
- (a) The Design Consultant agrees to indemnify and save harmless the City, its officers, agents and employees against and for reasonable-damages arising from accidents to

persons or property occasioned by the negligent acts of Design Consultant, its agents or employees in the performance of the work hereunder.


(b) The Design Consultant shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

17. Law/Severability. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

THE CITY OF FORT COLLINS, COLORADO


DocuSigned by:

BY: _____
A3D8A054C8CB45D...
Gerry Paul
Purchasing Director
Date: 11/24/2018

ATTEST:

DocuSigned by:


DA04696740DA4BA...
City Clerk

APPROVED AS TO FORM:

DocuSigned by:


33281E95903C47A...
Assistant City Attorney II

DESIGN CONSULTANT:
TRACTOR BEAM COLLECTIVE
A Colorado corporation

DocuSigned by:

By: _____
E304270EBAD2420...
Todd Kundla, President

EXHIBIT A

Water Reclamation Facility Project CITY OF FORT COLLINS ART IN PUBLIC PLACES PROGRAM Design Consultant Scope

The Design Consultant will collaborate with the Project Manager/Team which includes the Water Reclamation Facility Committee in the development of the overall **Conceptual Plan** and **Concepts for Artwork** for the Water Reclamation Facility Project (the "Project").

The City of Fort Collins APP program is working with the Project Team. The Design Consultant will be required to visit the site and meet with the Project Team to get acquainted with the Project and the design process. The Design Consultant will act as part of the Project Team. The Design Consultant's responsibility is:

- To identify opportunities for public art and aesthetic elements within the determined goals for the Project and Project site.
- To work with the Project Team to identify and create possible themes for the site.
- To provide ideas for design treatments, materials to be used, and possible locations that could incorporate artful ideas into the Project.
- Artist will use approved recycled materials from the site to create the artwork.
- If the initial ideas are approved, to coordinate with the Project Team and to develop "Final Designs", which will include detailed renderings/illustrations and descriptions of possible art options for this site.
- To attend Project Team meetings or community meetings/open houses when requested.
- To keep the APP Coordinator informed as to Project progress, by notifying her of upcoming meetings and copying her on all email communications.

1. DESIGN PHASE

The Design Consultant will work with the Water Reclamation Facility Project Team, the City of Fort Collins Project Manager, City staff, and community members during the design phase of the Project, under the general direction of the APP Coordinator.

A. Design and Planning Services:

The Design Consultant shall participate in conceptual and perhaps Final Design of artworks for the Project. The Design Consultant shall consult with the design team in formulating the design proposal and to identify a site(s) for the artwork(s) as applicable.

B. Design:

The Design Consultant shall submit a preliminary proposal for the Project to the APP Coordinator and then, upon approval, one or more Final Designs. The Final Design(s) shall be deliverable in the form of an illustrated conceptual drawing and description of the proposed artwork and shall include the designation of elements of the Project design to be addressed by the Design

Consultant, ideas for design treatments and materials to be used, specifications, budget, time line, and the designation of proposed sites.

C. Consultation:

The Design Consultant will consult as necessary with the City of Fort Collins' Project Manager (or Project Team and/or sub-consultants) in order to complete the tasks outlined in this Scope of Work. The Project Team will review the Design Consultant's work to assure that it conforms to safety, material and code standards. Should the City of Fort Collins find that the Design Consultant's work does not conform to safety, material and code standards, the Design Consultant shall be required to make the necessary changes at the Design Consultant's own expense.

D. Community Involvement:

In addition to design meetings, the Design Consultant may be asked to attend meetings with community representatives/user groups designated by the APP program or the City of Fort Collins to present the proposed artwork.

E. Approval of Proposal Design:

Upon completion of the Final Design(s) the Design Consultant shall submit them to the Project Team and APP program for review. The APP Board will then make a recommendation to accept or reject the proposed artwork. If the project is over \$30,000, the selected Final Design for the artwork will then be subject to approval by the Fort Collins City Council.

F. Time of Completion

1. Conceptual Design Phase: The Design Consultant shall work with the Project Team to create a conceptual design by: **December 28, 2018**
2. Presentation: The Design Consultant shall present the Final Design(s) to the APP Board by no later than **January 16, 2019**

2. ACKNOWLEDGMENT

The Design Consultant shall acknowledge APP's role in funding the artwork in all public presentations and written, printed or electronic publication of information regarding the artwork.