

**ADAMS COUNTY
PROFESSIONAL SERVICE AGREEMENT**

THIS AGREEMENT ("Agreement") is made this 8th day of July 2016, by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and Towers Painting, LLC, located at 7771 Hollywood Street, Commerce City Colorado 80022, hereinafter referred to as the "Contractor." The County and the Contractor may be collectively referred to herein as the "Parties".

The County and the Contractor, for the consideration herein set forth, agree as follows:

1. SERVICES OF THE CONTRACTOR:

- 1.1. Contractor, in conjunction with the public art for the Clear Creek @ Federal Station, will coordinate and collaborate with Carl Addison Kelm, to extend the mural from the station ramp system west to Federal Boulevard along the RTD Gold Line tracks on the south side of Gateway Park (hereinafter "Site"), consistent with the work described more fully in the "Public Art Proposal: Gateway Park" May 8, 2016, of Phase 1, and attached hereto and incorporated herein by reference as Exhibit A (hereinafter "Work").
- 1.2. Should there be any discrepancy between Exhibit A and this Agreement the terms and conditions of this Agreement shall prevail.
- 1.3. Emergency Services: In the event the Adams County Board of County Commissioners declares an emergency, the County may request additional services (of the type described in this Agreement or otherwise within the expertise of the Contractor) to be performed by the Contractor. If the County requests such additional services, the Contractor shall provide such services in a timely fashion given the nature of the emergency, pursuant to the terms of this Agreement. Unless otherwise agreed to in writing by the parties, the Contractor shall bill for such services at the rates provided for in this Agreement.

2. Design, Fabrication, Delivery and Installation

- 2.1. Contractor will be solely responsible for the creation, transportation, delivery and installation of the Work at Contractor's expense. Contractor will be responsible for all costs and expenses such as surface preparation, permits, liability insurance, Worker's Compensation insurance, project documentation, travel expenses, consultant's fees, Contractor's fees, subcontractors, unexpected expenses, and any other costs of any kind. Any extra ordinary requirements will be at Contractor's expense.
- 2.2. Work requires no maintenance apart from occasional routine cleaning. Contractor will provide cleaning instructions to County described in Exhibit A.
- 2.3. The Contractor shall guarantee that all subcontractors and suppliers have been fully compensated pursuant to their respective agreements. Adams County shall withhold final payment until waivers of lien stating that all bills, wages and claims have been paid from the Contractor and all subcontractors and suppliers have been received.

2.4. Contractor will deliver and install the Work at Site no later than the opening of the Gold RTD Line. Time is of the essence. The Contractor shall not make any additional exact duplicate, two or three-dimensional reproductions of the final work, nor shall the Contractor grant permission to others to do so except with the written permission of Adams County. This restriction shall not apply to the Contractor's use of photographic reproductions or three dimensional maquettes of the Work in portfolio or in critical and scholarly writings, or other commercial digital or printed purposes. Thus, the Contractor may have un-restricted digital usage rights for the artwork for personal or promotional purposes.

3. Post-Installation

- 3.1. Contractor has provided the County written instructions for appropriate maintenance and preservation of the Work in Exhibit A.
- 3.2. Contractor will provide and install an identification plaque for the Work, which will include information, such as appropriate names, approved by the County. The plaque will be of such medium and design as to be descriptive of and appropriate to the Work itself and the permanent location of the Work.
- 3.3. Contractor will advise County in writing or e-mail when all services required for the design, painting, delivery, installation and post-installation as contained in this paragraph and paragraphs numbered 1 through 5 of Subsection A, above, have been completed.
- 3.4. All preliminary drawings, models, sketches and work incidental to the production of the Work will remain the property of the Contractor. Upon final acceptance, clear and free title to and ownership of the Work shall pass to Adams County. The Contractors will remain the sole owner of copyright over the images painted for this mural project. The Contractors will retain copyright ownership after the termination of the contract. Adams County reserves the right to graphically reproduce images of the Work for promotional and/or educational limitations only - noncommercial usage. As referenced by "SECTION VI"

4. RESPONSIBILITIES OF THE COUNTY:

- 4.1. Because the mural and work area are located on RTD property, the County will coordinate with RTD to provide access and a safe working environment to the Site for the Contractor, to the extent possible, to enable Contractor's performance under this Contract.
- 4.2. County shall pay Contractor according to the Compensation and Payment Schedule set forth in Section 6 below.
- 4.3. County shall notify Contractor in writing of its final acceptance of the Work. Acceptance shall be determined solely by County and shall constitute County's acknowledgement that the Work has been completed according to the terms of this Contract.

5. TERM:

- 5.1. Term of Agreement: The Term of this Agreement shall be for one-year from the date of this Agreement.
- 5.2. Extension/Renewal Option: The County, at its sole option, may offer to extend or renew this Agreement as necessary for up to two, one year extensions/renewals providing satisfactory service is given and all terms and conditions of this Agreement have been fulfilled. Such extensions or renewals must be mutually agreed upon in writing by the County and the Contractor.
- 5.3. Contractor fully understands that time is of the essence for the design, engineering, fabrication, painting, powder coating, delivery, and satisfactory installation of the Work. In the event the Work is not delivered and installed by the opening of the Gold RTD Line, or any time extension approved under this Section, the Contractor shall pay to the County as and for liquidated damages, not as a penalty, the sum of Fifty dollars (USD \$50) per day for each and every calendar day the Work is not delivered and fully installed.
- 5.4. County shall grant a reasonable extension of time to Contractor in the event there is a delay on the part of County in performing its obligations under this Contract or if conditions beyond Contractor's control or act of God render timely performance of Contractor's services impossible. Failure to fulfill contractual obligations due to conditions beyond the reasonable control of either party will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

6. PAYMENT AND FEE SCHEDULE: The County shall pay the Contractor for services furnished under this Agreement, and the Contractor shall accept as full payment for those services, the sum of: Twenty Four Thousand Dollars (USD \$24,000).

- 6.1. Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of County funds for the purposes hereof. In the event that funds become unavailable, as determined by the County, the County may immediately terminate this Agreement or amend it accordingly.
- 6.2. The fee described in paragraph A, above, shall be paid in the following installments, expressed as percentages of such fee:
- 6.2.1. Forty Per cent (USD \$9,600) upon execution of this Agreement by County and Contractor;
- 6.2.2. Thirty Per cent (USD \$7,200) upon completion of community outreach and photos;
- 6.2.3. Thirty Per cent (USD \$7,200) after final installation and acceptance by the County.

6.3. The first payment will be made after all parties have signed this Agreement. Contractor shall submit a billing or invoice to County after completion of each stage outlined in subsection 6.2. Final payment will be made upon determination by County that there has been full compliance with the terms of this Agreement.

7. **INDEPENDENT CONTRACTOR:** In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of the County. The Contractor shall be solely and entirely responsible for his/her acts and the acts of his/her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Contractor shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by law. **Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, the Contractor understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. The Contractor further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**

8. **NONDISCRIMINATION:**

8.1. **The Contractor shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause. Adams County is an equal opportunity employer.**

8.1.1. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. **INDEMNIFICATION:** The Contractor agrees to indemnify and hold harmless the County, its officers, agents, and employees for, from, and against any and all claims, suits, expenses, damages, or other liabilities, including reasonable attorney fees and court costs, arising out of damage or injury to persons, entities, or property, caused or sustained by any person(s) as a result of the Contractor's performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' performance or failure to perform pursuant to the terms of this Agreement.

10. **INSURANCE:** The Contractor agrees to maintain insurance of the following types and amounts:

10.1. **Commercial General Liability Insurance:** to include products liability, completed operations, contractual, broad form property damage and personal injury.

10.1.1. Each Occurrence: \$1,000,000

- 10.1.2. General Aggregate: \$2,000,000
- 10.2. Comprehensive Automobile Liability Insurance: to include all motor vehicles owned, hired, leased, or borrowed.
- 10.2.1. Bodily Injury/Property Damage: \$1,000,000 (each accident)
- 10.2.2. Personal Injury Protection: Per Colorado Statutes
- 10.3. Workers' Compensation Insurance: Per Colorado Statutes
- 10.4. Professional Liability Insurance: to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, as applicable.
- 10.4.1. Each Occurrence: \$1,000,000
- 10.4.2. This insurance requirement applies only to the Contractors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals.
- 10.5. Adams County as "Additional Insured": The Contractor's commercial general liability, and comprehensive automobile liability, insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured" and shall include the following provisions:
- 10.5.1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.
- 10.5.2. The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums due or for any assessments under any form of any policy.
- 10.5.3. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
- 10.6. Licensed Insurers: All insurers of the Contractor must be licensed or approved to do business in the State of Colorado. Upon failure of the Contractor to furnish, deliver and/or maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.
- 10.7. Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.
- 10.8. Proof of Insurance: At any time during the term of this Agreement, the County may require the Contractor to provide proof of the insurance coverage or policies required under this Agreement.

11. WARRANTY:

11.1. The Contractor warrants and guarantees to the County that all work, equipment, and materials furnished under the Agreement are free from defects in workmanship and materials for a period of one year after final acceptance by the County. The Contractor further warrants and guarantees that the plans and specifications incorporated herein are free of fault and defect sufficient for Contractor to warrant the finished product after completion date. Should the Contractor fail to proceed promptly in accordance with this guarantee, the County may have such work performed at the expense of the Contractor. This section does not relieve the Contractor from liability for defects that become known after one year.

Warranties of Title

11.2. Contractor represents and warrants that:

11.2.1. Work is solely the result of the Contractor and creative effort of Contractor;

11.2.2. Except as otherwise disclosed in writing to County, Work is unique and original and does not infringe upon any copyright; and

11.2.3. Work has not been accepted for sale elsewhere; and

11.2.4. Work is free and clear of any liens from any source whatsoever.

Warranties of Quality and Condition

11.2.5. Contractor represents and warrants that:

11.2.6. Work, as completed, will be free of defects in materials and workmanship, including inherent vice. "Inherent vice" refers to any quality within the material or materials which comprise Work which, whether alone or in combination, results in the tendency of Work to destroy itself;

11.2.7. Reasonable maintenance of Work will not require procedures substantially in excess of those described in the maintenance recommendations submitted by Contractor to County according to subparagraph 3.1 of Section B of this Agreement.

Warranty Breach/Expiration

11.2.8. The warranties described in Section V of this Contract shall survive for a period of ten (10) years after the final acceptance of the Work by the County. The County shall give notice to the Contractor of any observed breach with reasonable promptness. The Contractor shall, at the request of the County, and at no cost to the County, remedy reasonably and promptly the breach of any such warranty consistent with professional conservation standards (including, for example, repair or re-fabrication of the Work).

12. TERMINATION:

12.1. For Cause: If, through any cause, the Contractor fails to fulfill its obligations under this

Agreement in a timely and proper manner, or if the Contractor violates any of the covenants, conditions, or stipulations of this Agreement, the County shall thereupon have the right to immediately terminate this Agreement, upon giving written notice to the Contractor of such termination and specifying the effective date thereof.

12.2. For Convenience: The County may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated by the County, the Contractor will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services the Contractor was to perform under this Agreement, less payments previously made to the Contractor under this Agreement.

13. MUTUAL UNDERSTANDINGS:

13.1. Contractor may place a copyright notice on the Work in the form and manner required to protect copyrights in the Work under United States copyright law. If the copyright is registered with the United States Copyright Office, Contractor shall provide County with the copy of the application for registration, the registration number, and the effective date of registration. Contractor retains all rights under the Copyright Act of 1976, 17 U.S.C. Section 101 et seq., and all other rights in and to Work except ownership and possession.

13.2. If a copyright is perfected and registered, all publications by County concerning the Work shall contain a credit to Contractor and a copyright notice substantially in the following form: "Copyright, Towers, LLC, (date of publication)."

13.3. County recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work and will assume responsibility for regular routine maintenance according to the instructions provided by Contractor to County in Exhibit A. County shall reasonably protect and maintain Work against the ravages of time, vandalism and the elements.

13.4. Should the long-term maintenance of the artwork be conveyed to the Regional Transportation District (RTD) within one (1) year of the execution of the Agreement Contractor agrees to accept the terms and conditions in the contractual agreement the Contractor has with RTD at the Clear Creek @ Federal Station.

13.5. The costs associated with repairs and restoration outside of the warranties provided in Section V in this Agreement shall be borne by County. County shall consult with Contractor as to recommendations with regard to all repairs and restoration made during Contractor's lifetime. Following the death or incapacity of Contractor, County shall consult with the director of conservation appointed by Contractor if Contractor or his estate has advised County of such appointment, or if County has not been notified of such appointment, secure a bona-fide expert in conservation relative to the scale and media of the artwork in question. To the extent practicable and in accordance with recognized principles of professional conservation, Contractor, or his representative, shall be given the opportunity to accomplish such repairs and restoration and shall be paid a reasonable fee for material costs, travel within the continental U.S., plus labor .

- 13.6. At any point after delivery and installation of Work, Contractor may inspect Work and shall notify County in writing of the necessity of any repairs. After consulting with Contractor, County shall make the final determination of whether repairs are needed.
- 13.7. County shall not intentionally alter, modify, change, destroy or damage the Work without consulting Contractor.
- 13.8. In the event of any alterations or damage to the Work, whether intentional, accidental, within or without the control of County, or otherwise, Contractor shall have, in addition to any other remedies he may have in law or equity under this Agreement, the right to disclaim authorship of Work, and upon written request of Contractor to County, County shall remove any identification plaques at its own expense. Contractor may take such other actions he may choose in order to disavow the Work.
- 13.9. County shall notify Contractor of any proposed significant alteration of Site that would affect the intended character and appearance of the Work. County shall consult with Contractor in the planning and execution of any such alteration.
- 13.10. Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be with Adams County, Colorado.
- 13.11. Compliance with Laws: During the performance of this Agreement, the Contractor agrees to strictly adhere to all applicable federal, state, and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with § 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, , the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, and that no violation of such provisions are present. The Contractor warrants that it is in compliance with the residency requirements in §§ 8-17.5-101, et seq., C.R.S. Without limiting the generality of the foregoing, the Contractor expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 13.12. OSHA: The Contractor shall comply with the requirements of the Occupational Safety and Health Act (OSHA) and shall review and comply with the County's safety regulations while on any County property. Failure to comply with any applicable federal, state or local law, rule, or regulation shall give the County the right to terminate this agreement for cause.
- 13.13. Record Retention: The Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by authorized Federal, State, or County personnel.
- 13.14. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Contractor without the prior

written consent of the County.

- 13.15. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.
- 13.16. Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 13.17. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: 1) Three (3) days after the same shall have been mailed by certified mail, return receipt requested; 2) Immediately upon hand delivery; or 3) Immediately upon receipt of confirmation that an E-mail was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Department: Adams County Manager's Office
Contact: ATTN: Jeanne M. Shreve
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, CO 80601
Phone: 720.523.6847
E-mail: jshreve@adcogov.org

Department: Adams County Purchasing
Contact:
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone:
E-mail:

Department: Adams County Attorney's Office
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720.523.6116
E-mail:

Contractor: Towers Painting, LLC.
Contact: Diana Torres
Address: 7771 Hollywood St.
City, State, Zip: Commerce City, CO. 80022
Phone: (720)236-6326
Email: Diana.c.torres@outlook.com

- 13.18. Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.

- 13.19. Severability: If any provision of this Agreement is determined to be unenforceable or

invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

13.20. Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

13.21. Confidentiality: All documentation related to this Agreement will become the property of Adams County. All documentation maintained or kept by Adams County shall be subject to the Colorado Open Records Act, C.R.S. 24-72-201 *et seq.* ("CORA"). The County does not guarantee the confidentiality of any records.

14. AMENDMENTS, CHANGE ORDERS OR EXTENSIONS:

14.1. Amendments or Change Orders: The County may, from time to time, require changes in the scope of the services of the Contractor to be performed herein including, but not limited to, additional instructions, additional work, and the omission of work previously ordered. The Contractor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Solicitation, or, if no provision exists, pursuant to the terms of the Amendment or Change Order.

14.2. Extensions: The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

15. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08: Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended May 13, 2008, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

15.1. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.

15.2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

15.3. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

15.4. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.

15.5. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.

- 15.6. If the Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the County within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 15.7. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 15.8. If Contractor violates this Section, of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the County.

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CONTRACTOR'S CERTIFICATION OF COMPLIANCE

Pursuant to Colorado Revised Statute, § 8-17.5-101, *et seq.*, as amended 5/13/08, as a prerequisite to entering into a contract for services with Adams County, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, *et. seq.* in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Towers Painting LLC
Company Name

7/7/16
Date

[Signature]
Signature

Diana Torres Bushillos
Name (Print or Type)

Owner
Title

Note: Registration for the E-Verify Program can be completed at: <https://www.vis-dhs.com/employerregistration>. It is recommended that employers review the sample "memorandum of understanding" available at the website prior to registering