

ASSIGNMENT OF INTEREST AGREEMENT

THIS ASSIGNMENT OF INTEREST AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER** (the "City"), and **PARK CREEK METROPOLITAN DISTRICT**, a Colorado political subdivision of the State (the "Assignor"), whose address is 7350 East 29th Avenue, Denver, Colorado 80238.

W I T N E S S E T H:

WHEREAS, the parties entered into an Individual Facilities Development Agreement Art-1 ("IFDA A-1") dated August 9, 2005, whereby the Assignor agreed to enter into contracts with artists under the terms of the District's Art Master Plan, which includes Infrastructure sites that are conveyed upon completion with the site's accompanying art to the City.

WHEREAS, the Assignor entered into an agreement with artist **WALCZAK & HEISS**, a Pennsylvania corporation, whose address is 431 North Howard Street, Allentown, Pennsylvania 18102 (the "Artist") for artwork ("Work") a description of which is attached as **Exhibit A** to be installed at the Stapleton Recreation Center (the "Site") dated May 11, 2010 and amended on January 27, 2011 (collectively the "Artist Agreement"), attached hereto as **Exhibit B** and incorporated herein by this reference, to perform the Work;

WHEREAS, the Artist Agreement has been performed and the Work has been completed and accepted by Assignor;

WHEREAS, the Assignor and the City have agreed to the acceptance of the conveyance of the Site, including the Work;

WHEREAS, the City is ready willing and able to accept the Work into its public art collection and accept the assignment of the Artist Agreement and ownership of the Work for the City.

NOW, THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the adequacy of which is acknowledged, the parties agree as follows:

1. ASSIGNMENT OF MATERIALS: The Assignor does hereby convey, donate, assign, deliver, and forever relinquish to the City for the use and benefit of the people of Denver, and the City does hereby assume, the Artist Agreement, ownership of the Work and all of Assignor's rights, title and interest in and to the Work, including its rights under the Artist Agreement which

Assignor now owns or may hereafter acquire for the purposes of this Assignment of Interest Agreement (“Agreement”) or otherwise. It is understood and agreed by Assignor that the City may display, store, move, relocate, dismantle, remove from public display, deaccession or demolish the Work, at its sole discretion, and the Assignor disclaims any right or interest in the Work in that event. The Assignor shall provide within thirty (30) days of the execution of this Agreement, complete and legible copies or originals of any and all documentation, designs, plans, materials lists, maintenance records, installation contracts, correspondence and any and all other documentation of whatever nature in Assignor’s files related to the Artist Agreement and the Work.

The parties intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, drawings, photographs, specifications, software, data, products, ideas, inventions, or any other work or recorded information created pursuant to the Artist Agreement and conveyed to the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever, shall belong to the City.

2. TERM OF AGREEMENT: The term of the Agreement shall commence upon completed execution of this Agreement and remain in effect perpetually.

3. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any act performed by either party hereunder constitute or be construed to be a waiver by other party of any breach of term, covenant, or condition or any default which may then exist on the part of the defaulting party, and any act or failure to act by either party when any such breach or default shall exist shall not impair or prejudice any right or remedy available to either party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of this Agreement shall be construed as a waiver of any succeeding or other breach.

4. TAXES, PERMITS AND LICENSES: The Assignor represents that it has no knowledge that any lien, mortgage, judgment or execution exists on the Work for any taxes, excises, licenses fees or permit fees of whatever nature. The Assignor further agrees to cooperate with the City in any action for lien, mortgage, judgment, or execution to be filed which will in any way impair the rights of the City under this Agreement, to the extent that such action alleges facts occurring prior to the effective date of this Agreement.

5. VENUE, GOVERNING LAW: Each and every term, condition, or covenant herein

is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the Charter, Revised Municipal Code and regulations of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

6. INDEMNIFICATION AND INSURANCE: Both the Assignor and the City are subject to the "Colorado Governmental Immunity Act:, § 24-10-101, *et seq.*, C.R.S., as now or hereafter amended ("Immunity Act"), and no term or condition shall be deemed a waiver of any provision of the Immunity Act. The parties understand and agree that the liability of the Assignor, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of the Immunity Act.

Assignor shall provide the City with copies of insurance certificates related to the Work or to the Artist Agreement, if any, with liability limits.

7. CONFLICT OF INTEREST: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Assignor further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.9 and 1.2.12.

8. NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Assignor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Assignor that any person or entity other than the City or the Assignor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

9. DISPUTES: All disputes of whatsoever nature between the City and Assignor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure

established by Denver Revised Municipal Code 56-106. For the purposes of that procedure, the City official rendering a final determination shall be the City's Director of Economic Development.

10. TAXES, CHARGES, AND PENALTIES: The City shall not be liable for the payment of taxes, late charges or penalties of any nature except as required by the City's Revised Municipal Code.

11. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

12. NOTICES: All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by certified mail, return receipt requested, postage prepaid, as follows:

If to the City: Arts and Venues Denver
 1245 Champa Street, First Floor
 Denver, Colorado 80204

If to the Assignor: The address first above written.

13. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the Courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

14. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS: The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

15. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:

A. The parties assure and guarantee that the signatory possesses the legal

authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of the parties, do hereby warrant and guarantee that he/she or they have been fully authorized by the respective party to execute this Agreement on behalf of the party and to validly and legally bind the party to all the terms, performances and provisions herein set forth.

16. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Assignor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

17. COUNTERPARTS OF THIS AGREEMENT: This Agreement shall be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

(Remainder of page left intentionally blank.)

Contract Control Number:

Vendor Name:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____


By _____

By _____



Contract Control Number: 201102351

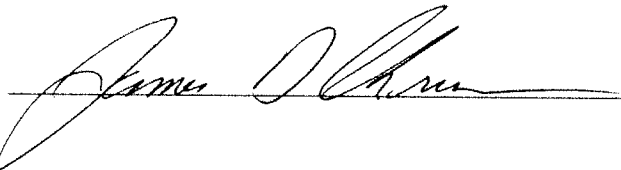
Vendor Name: The Park Creek Metropolitan District

By: 

Name: CHERYL COHEN-VADER
(please print)

Title: First Vice President
(please print)

ATTEST: [if required]

By: 

Name: James D. Chrisman
(please print)

Title: Sec.
(please print)



EXHIBIT A
“Staplefield” Sculpture Contract Re-Assignment
Scope of Work

Overview

Park Creek Metropolitan District (PCMD)/Stapleton Public Art Program commissioned a sculpture installation “Staplefield” an interactive LED light sculpture by artist team Walczak & Heiss, housed at the Central Park Recreation Center. The sculpture is to be conveyed to the City and County of Denver for inclusion into the City's permanent collection.

This sculpture commission was selected in an open, competitive process. The installation is complete and has been inspected by the City and Stapleton public art administrators. The artwork was installed satisfactorily and does not pose a risk or maintenance burden to the City. Because the project is installed on City Property, the City will accept this artwork as a permanent part of the City's public art collection.

The donation has been approved by the City's Public Art Committee and the Denver Commission on Cultural Affairs.

This contract will re-assign the contract rights for “Staplefield” from The Park Creek Metropolitan District to the City of Denver. The artwork will be considered a donated work of art.

This is a no dollar amount contract.

Vendor Name/Address

The Park Creek Metropolitan District
7350 East 29th Avenue
Denver, CO 80238

Persons Name with whom you are negotiating with:

Attn:
Cheryl Cohen-Vader

Roles & Responsibilities

Park Creek Metropolitan District will assign all rights and ownership of sculpture to the City of Denver. The City will be responsible for its maintenance and upkeep from the point of acceptance.

General duties include:

Descriptive of:

Contract beginning/ending date:

Beginning August 1, 2011 with no termination date

Invoice Amount & Payment Schedule

n/a

Exhibit B

PUBLIC ART PROGRAM – CONTRACT FOR COMMISSION

THIS CONTRACT FOR COMMISSION (hereafter "the Agreement"), made this 11th day of MAY, 2010 by and between the Park Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (hereinafter "the Client") and Walczak & Heiss, a Pennsylvania corporation (hereinafter "the Artist Team"), whose address is 431 North Howard Street, Allentown, PA 18102

WHEREAS, the Client has adopted a Public Art Master Plan for the development of Stapleton and funds have been budgeted and otherwise made available for the Central Park Recreation Center Public Art Project at Stapleton (hereinafter the "Project") as hereinafter described; and

WHEREAS, the Artist Team was selected through jury procedures set forth in the Public Art Master Plan for Stapleton and reviewed and adopted by the Public Art Advisory Committee and the Client to design, execute, fabricate and install public art for as described in Section 1.1.a (General) below (hereinafter "the Work") for the Central Park Recreation Center at 9651 East Martin Luther King Boulevard at Stapleton in Denver (hereinafter "the Site"). The Recreation Center is being constructed by the Client and, upon completion, will be transferred and conveyed to the City and County of Denver (the "City"); and

WHEREAS, both parties wish to promote and maintain the integrity and clarity of the Artist Team's ideas and statements as represented by the Work; and

WHEREAS, the Artist Team has visited the Site and familiarized themselves with the local conditions under which they are to work and in which the Work shall remain; and

WHEREAS, the Artist Team will perform, produce and complete the Work in a professional manner;

NOW, THEREFORE, the Client and the Artist Team, for the consideration and under the conditions hereinafter set forth, agree as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1 General:

- a. The Artist Team will design, execute, fabricate, install and document the following Work:

Title: Staplefield (working title)

Dimensions: 8' by 8' by 8' to 10' high

Medium: Colored LED and fiber optic lights with computer-generated, interactive displays and a panoramic camera as more generally described in the proposal of the Artist Team attached hereto as Exhibit A and incorporated herein by reference (the "Proposal")

The permanent location for the Work shall be: The sculpture will be suspended from the ceiling in the stairwell atrium behind the reception desk in the lobby of the Recreation Center.

- b. The Artist Team shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication, transportation and installation of the Work.
- c. The Artist Team shall be responsible for all permits and fees associated with the fabrication and installation of the Work.
- d. The Artist Team will coordinate with the Client or Forest City (The Client's authorized representative) or other parties affected by this project as designated by the Client for site preparation and installation of the Work.–
- e. The Artist Team shall determine the artistic expression, scope, design, color, size, location, material and texture of the Work, subject to review and acceptance by the Client as set forth in this Agreement.

1.2 Execution of the Work

- a. The Artist Team shall complete the fabrication and installation of the Work in substantial conformity with the Proposal as recommended by the Project Selection Committee and approved by the Client.
- c. Prior to implementation of any changes in the Work, the Artist Team shall present to the Client in writing for further review and approval a thorough description of such proposed changes. A significant change is any change affecting the scope, intent, design, color, size, material or location of the work not permitted by, or not in substantial conformity with, the approved design as generally set forth in the Proposal. Significant changes shall also include those affecting the installation, scheduling, site preparation or maintenance for the Work or the concept of the Work as represented in the approved design. Following receipt of the required description of proposed change(s), the Client shall, in its discretion, determine which changes shall be considered "significant," and have the right to approve or disapprove any significant changes suggested by the Artist Team. The Artist Team may implement any significant change only with prior written agreement from the Client.
- d. The Client shall have the right to review the progress of the Work at reasonable times, and, with advance notice, during the fabrication thereof.
- e. In performance of the Work described herein, the Artist Team shall comply with all applicable State and local laws, rules and regulations.
- f. The Artist Team shall complete the work and the installation thereof by January 1, 2011. Upon notification of completion of the Work by the Artist Team according to Section 1.3 (Delivery and Installation) below, the Client shall determine the actual date of installation.
- g. The Artist Team shall provide to the Client a written plan of installation of the Work on site. This written plan shall be provided sixty (60) days prior to the date of initial installation referenced in Section 1.2 (e). The written plan shall include the following information: specifications for installation; and specifications for site preparation, including materials needed for site preparation or any physical alteration of the site as contemplated by the Artist Team. The Artist Team understands and agrees that site preparation and installation are subject to prior approval from the Client.

Assuming timely completion of Site preparations by the Client, the Work and the installation of the Work on the Site shall be completed by the 31st day following the scheduled installation date, except as otherwise authorized in Section 4.3 (Time Extensions) below. In the event that the Work and the installation thereof have not been completed by the 60th day following the scheduled installation date, the

Artist Team shall incur a penalty of five percent (5%) of the balance still remaining due the Artist Team upon completion and installation under this Agreement. For each monthly period that passes thereafter, without completion and installation of the Work, the Artist Team shall incur an additional penalty as follows: (i) for the next monthly period, ten percent (10%) of the remaining balance due; (ii) for the next monthly period, fifteen percent (15%) of the remaining balance due; (iii) for the next monthly period, twenty percent (20%) of the remaining balance due; (iv) for the next monthly period, twenty-five percent (25%) of the remaining balance due; and (v) for each monthly period thereafter, twenty-five percent (25%) of the remaining balance due.

The Artist Team may request an extension of time from the Client up to thirty (30) days before the originally agreed upon installation date. If an extension is granted, a new installation date shall be agreed upon in writing and the above penalty shall apply if the new completion and installation dates are not met.

1.3 Delivery and Installation

- a. The Artist Team shall notify the Client in writing when fabrication of the Work is completed, and the Artist Team is ready to deliver the Work and install it at the Site.
- b. The Artist Team shall deliver and install the completed Work at the Site.
- c. The Client or Forest City shall be responsible for all fees, permits, expenses, labor and equipment to prepare the Site for timely installation of the Work, including landscaping, public access, and spotlighting of the Work, unless through prior written arrangement the Artist Team agrees to assume responsibility for one or more of the costs required for site preparation.
- d. The Client shall notify the Artist Team of construction delays resulting in delays in Site preparation prior to the scheduled delivery date.

1.4 Post-Installation

- a. Within forty-five (45) days after installation of the Work, the Artist Team shall furnish the Client with the following photographs of the Work as installed:
 - (i) two sets of high resolution digital color photographs of the completed Work, one taken from each of three different viewpoints, and labeled as follows: the Artist Team's names, last name first, the title of the Work and the dimensions (height x width x depth) and date of completion and the medium; and
 - (ii) at least three (3) of these images should be suitable for reproduction and print use of the Work as installed. They should also be labeled with the Artist Team's names and the title of the Work.
- b. The Artist Team shall also furnish the Client with a full written narrative description of the Work.
- c. The Artist Team shall provide to the Client, detailed written instructions for appropriate maintenance and preservation of the Work including materials specifications, sources, appropriate cleaning agents and processes and schedules.
- d. The Artist Team shall provide and install an identification plaque for the Work. The written contents of the plaque shall include the following information:

(Title of Work)	(Year)	
(Artist Team)	(Artist Team's City)	(State of Residence)
Commissioned by the Board of the Park Creek Metropolitan District with funding provided by the Denver Urban Renewal Authority.		

The plaque shall be of such medium and design as to be appropriate to the Work itself and the permanent location of the Work.

1.5 Final Acceptance

- a. The Artist Team shall advise the Client in writing when all services required including those described in Section 1.4 (Post Installation) have been completed.
- b. The Client, or an authorized representative, shall then notify the Artist in writing of its final acceptance of the Work
- c. Final acceptance shall be determined solely by the Client and shall constitute the Client's acknowledgement that the Work has been completed, delivered, installed and accepted for all purposes according to the terms of the Agreement.
- d. All risk of loss or damage to the Work shall remain with the Artist Team until final acceptance by the Client.

1.6 Ownership and Reproduction Rights

- a. Title to and ownership of the Work shall pass to the Client upon final acceptance. In addition, the Client may retain all plans, drawings, slides, photographs, submittals, studies, designs, maquettes and models, and other documents submitted to the Client by the Artist Team related to the Work. These items, when submitted, become and are the property of the Client, and the Artist Team expressly licenses the Client to, without restriction and at their sole option and without further approval or compensation to the Artist Team, make use of such documents for educational, public relations, promotional and other non-commercial purposes without further approval of the Artist. The Client, without amendment to this Agreement, shall have the right to negotiate separate license arrangements with the Artist Team for use of such documents for commercial purposes. The Artist Team shall not be liable for any damage which may result from any use of said documents by the Client for purposes other than these described in this Agreement.
- b. The Work. The Artist Team retains all rights under the Copyright Act of 1976, 17 U.S.C. §§101 et seq., except for the Artist Team's rights under 17 U.S.C. §106A(a)(2), 17 U.S.C. §106A(a)(3) and 17 U.S.C. §113(d), which are specifically waived by this Agreement, or otherwise granted to the Client under this Agreement. All other rights in and to the work, including but not limited to all rights in the nature of "Droit Morale" in regard to any continuing interest the Artist Team may have in the maintenance or modification of the

Work, are expressly waived by the Artist Team and, insofar as such rights are transferable, are assigned to the Client.

- c. In view of the intention that the Work in its final dimension shall be unique, the Artist Team shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Work, nor shall the Artist Team grant permission to others to do so except with the written permission of the Client. This restriction shall not apply to the Artist Team's use of photographic reproductions of the Work in portfolio or in critical and scholarly writings. The Artist Team grants to the Client and its respective assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising brochures, media publicity, and catalogues or other similar publications.
- d. Notice. All reproductions by the Client shall contain a credit to the Artist Team and a copyright notice.
- e. Credit to Public Art Program at Stapleton. The Artist Team shall use their best efforts to give a credit reading substantially, "an original work commissioned through the Public Art Program at Stapleton", in any public showing under the Artist Team's control of reproduction of the Work.
- f. Registration. The Artist Team shall, at the team's expense, cause to be registered, with the United States Register of Copyrights, a copyright of the Work in the Artist Team's name.

1.7 Waiver of Artist's Rights

- a. Waiver of Rights under 17 U.S.C. §106A(a). The Artist Team understands and agrees that, as to their rights in the Work, the provisions of this Article shall control over the provisions of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3), and shall constitute a waiver by the Artist Team of any rights in the work set out in or otherwise granted by the provisions of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3).
- b. Waiver of Rights under 17 U.S.C. §113(d). The Artist Team understands and agrees that, as to their rights in the Work, the provisions of this Article shall control over the provisions of 17 U.S.C. §113(d), and shall constitute a waiver by the Artist Team of any rights in the Work set out in or otherwise granted by this provision. The Artist Team acknowledges and represents that the Artist Team has been informed and is aware of the method and location of installation of the Work at the Site and, to the extent that the Work is incorporated into the Site in such a way that removing the Work from the Site will cause the destruction, mutilation, or other modification of the Work, the Artist Team agrees that execution of the Agreement satisfies the requirements for waiver of the requirements of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3).

ARTICLE 2. MAINTENANCE, REPAIR AND RESTORATION

2.1 Maintenance

- a. The Client shall have the right to determine, in its sole discretion when and if maintenance, repairs and restorations to the Work will be made provided, however, that as more fully set forth in Section 9.2 (Assignment) below, the Client intends to assign and transfer its rights, title and interest in the Work to the City, and thereafter the City, not the Client, will exercise all rights and otherwise make all determinations relating to the Work hereunder, including without limitation any action under this Article 2.

- b. Any repairs and restorations shall be made in accordance with the Artist Team's recommendations and recognized principles of conservation.

2.2 Repairs and Restoration

- a. The Client will, if practicable, consult with the Artist Team as to recommendations with regard to all repairs and restoration made during the Artist Team's lifetimes. To the extent practicable and in accordance with recognized principles of professional conservation, the Artist Team, or their representative shall be given the opportunity to accomplish such repairs and restoration and shall, if so agreed by the parties, be paid a reasonable fee for such services.
- b. At any point after delivery and installation of the Work, the Artist Team may inspect the Work and shall notify the Client in writing as to the necessity of any repairs. The Client shall make the final determination of whether repairs are needed.

2.3 Alteration of Work

- a. The Client agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Work without consulting the Artist Team. This stipulation includes outright removal or change in location resulting from public or private opinion regarding the artwork. "Alteration" of the Work includes, but is not limited to, a change in the interrelationship or relative locations of parts of the Work.
- b. In the event of any alteration or damage, whether intentional, accidental, within or without the control of the Client or otherwise, the Artist Team shall have the right to disclaim authorship of the Work; and upon written request of the Artist Team to the Client, the Client shall remove the identification plaque at its own expense. The Artist Team may take such other action as they may choose in order to disavow the Work.

2.4 Alteration of the Site

- a. The Client shall notify the Artist Team of any proposed significant alteration of the Site that would affect the intended character and appearance of the Work. The Client may consult with the Artist Team in the planning and execution of any such alteration.

2.5 Permanent Record

The Client shall maintain on permanent file a record of this Agreement and of the location and disposition of the Work.

2.6 Artist's Address

The Artist Team shall notify the Client of changes in their addresses. The failure to do so, if such failure prevents the Client from locating the Artist Team, shall be deemed a waiver by the Artist Team of the right subsequently to enforce those provisions of Article 2 that require the express approval of the Artist Team. The Client shall make every reasonable effort to locate the Artist Team when matters arise relating to the Artist's rights.

2.7 Removal, Sale, Donation or Destruction

Nothing in this Agreement shall preclude any right of the Client, (1) to remove the Work from public display, (2) to move or relocate the Work to another location selected solely by the Client for public display, (3) to donate the Work, (4) to sell or transfer the Work, (5) to correct any unsafe or hazardous condition of the Work, or (6) to destroy the Work. Any donee, transferee or buyer of the Work shall assume all of the Client's duties toward the Artist Team stated herein, and will take the Work subject to all of the Artist Team's rights as stated herein, and the donee,

transferee or buyer shall be given a copy of this executed Agreement at the time of donation or sale. If the Client shall at any time decide to destroy the Work, it shall by notice to the Artist Team offer the Artist Team no less than ninety (90) days following receipt of notice to take possession of the Work at no cost to the Artist Team, except for an obligation of the Artist Team to indemnify and reimburse the Client for the amount by which the cost to the Client of such recovery exceed the costs to the Client of the proposed destruction as determined solely by the Client. In such event, title to the Work shall pass to the Artist Team at the time that the Artist Team takes possession of the Work.

2.8 Surviving Covenants

The covenants and obligations set forth herein shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the Client's covenants do attach and run with the Work and shall be binding to and until twenty years after the death of each member of the Artist Team. The Client shall give any subsequent owner of the Work notice in writing of the covenants herein and shall cause each such owner to be bound thereby.

2.9 Additional Rights and Remedies

Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the Artist Team under Colorado or federal law which may now or in the future be applicable.

ARTICLE 3. COMPENSATION AND PAYMENT SCHEDULE

3.1 Fixed Fee

The Client shall pay the Artist Team a fixed fee of \$118,250.00 which shall constitute full compensation for all services and materials to be performed and furnished by the Artist Team under this Agreement, including any fees under Section 1.1.c. The fee shall be paid in the following installments, expressed as percentages of such fixed fee, each installment to represent full and final, nonrefundable payment for all services and materials provided prior to the due date thereof:

- a. Twenty (20) percent (\$23,650.00) upon approval by the Client of the Artist's final proposal and signing of this Agreement by all parties.
- b. Sixty-five (65) percent (\$76,863.00) upon completion of design development of light field structure and submitting documentation of this design.
- c. Fifteen (15) percent (\$17,737.00) after final acceptance of the installed Work and receipt of the photo documentation, final Work description and maintenance instructions by the Client, as described in Section 1.4 (Post Installation).

In order to receive all except the initial payment which will be made automatically after all parties have signed this Agreement, the Artist Team shall submit a written billing or invoice to the Client when each of the last two stages outlined above has been reached. The invoice shall be signed by the Artist Team, contain photographs documenting that the required work has been completed and include a signed payment request form. The Client shall have sole responsibility for determining when the Work has reached a given state of completion. The parties agree that no interest or other costs shall accrue on the fixed fee at any time during the operation of this Agreement.

ARTICLE 4. TIME OF PERFORMANCE

4.1 Construction Delays

If, when the Artist Team completes fabrication of the Work and notifies the Client that the Work is ready for installation, the Artist Team is delayed from installing the Work more than (60) days from the date specified in Section 1.2 of this Agreement, and the Client finds that this delay was caused as a result of the Client's failure to complete construction or preparation of the Site to permit installation of the Work herein, the Client shall reimburse the Artist Team for reasonable transportation and storage costs incurred for the period between the date provided in Section 1.2 (Execution of the Work) for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Work. However, this clause shall not go into effect if the Client has issued an extension of time as contemplated in Section 1.3 (d).

4.2 Early Completion of Artist Services

The Artist Team shall bear any transportation and storage costs resulting from the completion of their services hereunder prior to the time provided in Section 1.2 for installation.

4.3 Time Extensions

The Client shall grant a reasonable extension of time to the Artist Team in the event there is a delay on the part of the Client in performing its obligations under this Agreement, or if conditions beyond the Artist Team's control or Acts of God render timely performance of the Artist Team'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 obligations shall be suspended only for the duration of such conditions.

ARTICLE 5. WARRANTIES

5.1 Warranties of Title

The Artist Team represents and warrants that:

- a. the Work is solely the result of the artistic and creative efforts of the Artist Team;
- b. except as otherwise disclosed in writing to the Client, the Work is unique and original and does not infringe upon on any copyright;
- c. the Work has not been accepted for exhibition, sale or lease elsewhere; and
- d. the Work is free and clear of any liens from any source whatever.
- e. all software incorporated into the Work (the "Software") will conform to applicable specifications, will operate in compliance with applicable documentation, and will be free from deficiencies and defects in materials, workmanship, design and/or performance;
- f. it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the Client all rights with respect to all Software and services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party;
- g. there are no pending or threatened lawsuits, claims, disputes or actions (i) alleging that any Software and services infringe, violate or misappropriate any third party rights or (ii) adversely affecting any Software, services, or supplier's ability to perform its obligations hereunder;

- h. the Software contains no malicious or disabling code that is intended to damage, destroy or destructively alter any software, hardware, systems or data;
- i. the media on which all Software is furnished are and will be, under normal use, free from defects in materials and workmanship; and
- j. use of the Software and services by the Client contemplated hereunder will not infringe, violate, or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party.

5.2 Warranties of Quality and Condition

The Artist Team represents and warrants that:

- a. the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
- b. reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist Team to the Client according to the Section 1.4 (Post-Installation).

The warranties described in this Section 5.2 shall survive for a period of five (5) years after the final acceptance of the Work. The Client shall give notice to the Artist Team of any observed breach with reasonable promptness. The Artist Team shall, at the request of the Client, and at no cost to the Client, cure reasonable and promptly the breach of any such warranty, which is curable by the Artist Team and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Work).

ARTICLE 6. ARTIST AS INDEPENDENT CONTRACTOR

The Artist Team agrees to perform all work under this Agreement as an independent contractor and not as an agent or an employee of the Client. The Artist Team as an independent contractor shall furnish all supervision, labor, materials, equipment, supplies other incidentals, as well as transportation, shipping and installation of the Work. The Artist Team shall not be supervised by any employee or official of the Client, nor shall the Artist Team exercise supervision over any employee or official of the Client.

ARTICLE 7. INSURANCE

The Artist Team, as independent contractor, is responsible for complying with city, state and federal requirements pertaining to Workmen's Compensation insurance and employee liability insurance. The Artist Team is required to carry general liability insurance coverage of at least \$600,000.00. This policy shall name the Park Creek Metropolitan District, Forest City Enterprises, its subsidiaries and affiliates, the City and County of Denver and the Denver Urban Renewal Authority as additional insureds. The Artist Team may, at their expense, insure the Work during fabrication and installation; the Client shall have no responsibility to insure the Work at any time.

ARTICLE 8. ASSIGNMENT OF WORK

8.1 Assignment by Artist Team

The work and services required of the Artist Team are personal and shall not be assigned, sublet or transferred. This shall not prohibit the Artist Team from employing qualified personnel who shall work under their supervision.

8.2 Assignment by Client

The Client may transfer and assign any or all of its rights, title and interest in and to the Work hereunder to the City. The general form of assignment (which may be used or modified hereafter) is attached hereto as Exhibit B. The Artist Team hereby acknowledges and consents to an assignment to the City. The Client shall have no responsibility for any performance or other obligation hereunder after (i) payment of all compensation due to the Artist Team and (ii) the acceptance and transfer of the Work to the City.

ARTICLE 9. TERMINATION

9.1 Termination

The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) days before termination, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.

- a. If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the defaulting party its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured then this Agreement shall terminate. In the event of default by the Client, the Client shall promptly compensate the Artist Team for all services performed by the Artist Team prior to termination. In the event of default by the Artist Team, the Artist Team shall remit to the Client a sum equal to all payments (if any) made to the Artist Team pursuant to this Agreement prior to such default.
- b. If such termination is for the convenience of the Client, the Artist Team shall, if the fee set forth in Section 3.1 has not been fully paid, have the right to an equitable adjustment in the fee (without allowance for anticipated profit or unperformed services), in which event the Client shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or prepared for submission to the Client by the Artist Team under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the Client.
- c. If such termination is for the convenience of the Artist Team, the Artist Team shall remit to the Client a sum equal to all payments (if any) made to the Artist Team pursuant to this Agreement prior to termination.

9.2 Event of Artist's Default or Incapacity

- a. In the event of default by the Artist Team, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist Team under this Agreement shall at the Client's sole option become its property, including the right to fabricate or execute the Work. Notwithstanding the previous sentence, the Artist Team shall not be relieved of liability to the Client for damages sustained by the Client by virtue of any breach of this Agreement by the Artist Team, and the Client may reasonably withhold payments to the Artist Team until such

time as the exact amount of such damages due the Client from the Artist Team is determined, or exercise all of its other rights hereunder.

- b. In the event of incapacity or death of either member of the Artist Team, such event will not be deemed a breach of this Agreement or a default on the part of the Artist Team. The Artist Team has the right to appoint a successor artist to complete the Work in the event of incapacity or death. The successor artist shall, however, be subject to approval of the Client at the time of the signing of the Agreement and shall be bound to complete the Work under the same terms, including compensation set forth in Article 3; however, the successor artist shall be automatically given an extension of sixty (60) days added to the timeline. Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death with remaining payments to be made to the successor artist. The Work shall pass to the Client and all copyright described under this Agreement shall remain with the original Artist Team. The Artist Team shall provide a copy of this Agreement to the successor artist and the successor artist shall provide a written acknowledgement to the Client of the successor artist's agreement to abide by the terms of this Agreement.
- c. In the event of incapacity or death of either member of the Artist Team, where no successor artist has been appointed or where an appointed successor artist does not complete the Work, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist Team under this Agreement shall at the Client's sole option become its property. If the Work was at mid-point of fabrication or beyond at time of death or incapacity, and no successor is appointed, the Client retains the rights to select a successor artist to finish the Work at the Client's expense. If the Work was not at mid-point of fabrication or beyond at time of death or incapacity, and no successor is appointed, the Client retains possessory rights to the Work as then in existence and to exhibit the Work with the designation that it is "unfinished." Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death. In the event of incapacity or death, where no successor artist has been appointed, all copyright described under this Agreement shall remain with the original Artist Team.

ARTICLE 10. MEDIATION

If, prior to final acceptance of the Work, its installation and subsequent acceptance, there arises a major disagreement between the Artist Team and the Client, both parties will make every effort to affect a mutually satisfactory resolution of the disagreement. Before terminating this contract or pursuing any other legal remedy in connection with this contract, either party must notify the other party in writing of their intent to terminate or pursue such legal remedy and take whatever steps may be reasonably necessary to mediate the underlying dispute.

ARTICLE 11. MODIFICATION

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

ARTICLE 12. CONFLICT WITH LAW

Any provision of this Agreement which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States or the State of Colorado shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution. Venue for any action or proceeding hereunder shall be in the

District Court for the City. Colorado law shall govern the interpretation and enforcement of this Agreement.

ARTICLE 13. DEFENSE AND INDEMNIFICATION

13.1 General Indemnity

The Artist Team shall defend, indemnify, reimburse and hold harmless the Client and the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the Client or the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the Client and the City for any acts or omissions of the Artist Team or their subcontractors either passive or active, irrespective of fault, including the Client or the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the Client or the City.

13.2 Intellectual Property Indemnity

The artist team will further indemnify, defend and hold the Client and the City harmless from any claims, losses, damages, liabilities or expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from any third party claim that the Work, when used by the Client or the City in accordance with this Agreement, infringes, misappropriates or violates any United States patent issued as of the date hereof, copyright, trademark, trade secret or other intellectual or proprietary right of any third party. If any injunction or order is obtained against the Client or the City's use of the Work by reason of a claim of the type described above, or if in the Artist Team's opinion the Work is likely to become the subject of such claim, the Artist Team may, at their option and expense: (i) procure for the Client and the City the right to continue using the Work, (ii) modify or replace the Work with compatible, functionally equivalent work that is not subject to any claims, or (iii) negotiate with the Client to terminate this Agreement, including without limitation appropriate reimbursement of any compensation paid hereunder. The Artist Team shall have no liability for any claim that arises out of or results from use of the Work other than as specified in this Agreement.

13.3 Defense of Actions

The Artist Team's duty to defend and indemnify the Client and the City shall arise at the time that a written notice of a claim is first provided to the Artist Team. The duty to defend and indemnify the Client and the City shall arise even if the Client or the City is the only party sued by a claimant and/or such claimant alleges that the Client or the City's negligence or willful misconduct was the sole cause of such claimant's damages.

13.3 Costs of Defense

The Artist Team will defend any and all claims which may be brought or threatened against the Client or the City and will pay any expenses incurred by reason of such claims, including without limitation court costs and attorney fees incurred in defending and investigating such claims or seeking to enforce this indemnity obligation. Such payments shall be in addition to any other legal remedies available to the Client and the City and shall not be considered the Client or the City's exclusive remedy. The Artist Team shall obtain, at their own expense, any insurance that they deem necessary to cover any risk hereunder.

ARTICLE 14 EFFECTIVE DATE

The effective date of this Agreement shall be the date of execution by the Client.

PARK CREEK METROPOLITAN DISTRICT

By: *[Signature]*

Title: First Vice President

Date: May 27, 2010

ARTIST TEAM:

Signature: *[Signature]*

Name: MAREK WALCZAK
(Please Print)

Signature: *[Signature]*

Name: BRIAN WESLEY HEISS
(Please Print)

Social Security or FEIN #: 27-2397052

Date: 11 MAY 2010

5/6/10

CONTRACT AMENDMENT

THIS AMENDMENT, made this 27th day of January 2011, by and between the Board of The Park Creek Metropolitan District (hereinafter "the Client") and Walczak & Heiss (hereinafter "the Artist team).

FACTUAL RECITALS

The parties entered into a contract dated May 11, 2010 for creation and installation of a sculpture entitled *Staplefield* for the Central Park Recreation Center at 9651 East Martin Luther King Boulevard at Stapleton.

The original deadline for the installation of this sculpture, January 1, 2011, is no longer feasible because of unavoidable delays created by severe winter weather that hindered travel and prevented necessary equipment from being delivered to Denver on time. There was also an unforeseen change of personnel in the software design team. The Artist team requests additional time for completing the programming for the *Staplefield* sculpture and testing and refining their light programming functions in response to the activity in the building before the installation is complete.

A deadline acceptable to each party for installation of this sculpture, *Staplefield*, and delivery of required documentation would be March 31, 2011.

NOW THEREFORE, it is hereby agreed that

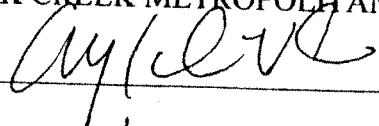
1. Consideration for this amendment to the original contract consists of the payments which will be made pursuant to this amendment and the promises and agreements herein set forth.
2. It is expressly agreed by the parties that this amendment is supplemental to the original Contract dated May 11, 2010 referred to as the "original contract," which is, by this reference, incorporated and made a part hereof, and all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this amendment as though they were expressly rewritten, incorporated, and included herein.
3. It is agreed the original contract is and shall be modified, altered, and changed in the following respect only:
 - a. Article I. Scope of Services, 1.2f shall be changed to read: The Artist Team shall complete the work and the installation thereof, including programming, by March 31, 2011. Upon notification of completion of the

Work by the Artist Team according to Section 1.3 (Delivery and Installation) below, the Client shall determine the actual date of installation.

4. The effective date of this amendment is ^{27 CC-V} January 13, 2011. _{wt}
5. In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this amendment and any of the provisions of the original contract, the provisions of this amendment shall in all respects supersede, govern and control.

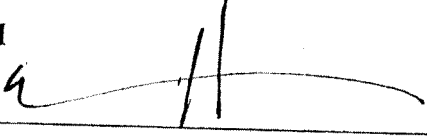
IN WITNESS WHEREOF, the parties hereto have executed this amendment on the day first above written.

THE PARK CREEK METROPOLITAN DISTRICT

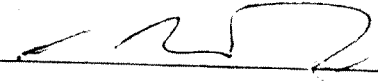
By: 

Date: Jan 27, 2011

ARTIST TEAM

Signature: 

Name: WESLEY HEISS
(Please Print)

Signature: 

Name: MARZEN WALCZAK
(Please Print)

Social Security or FEIN Number: 27-2397052

Date: 3/5/11