

REQUEST FOR PROPOSAL
DOWNTOWN ALLEY RENOVATION PROJECTS
CONSTRUCTION MANAGEMENT AND QUALITY ASSURANCE CONSULTANT

The Fort Collins Downtown Development Authority (DDA) is requesting proposals from qualified and experienced construction management and quality assurance consultant teams for the budget, design, bidding, construction management, and quality assurance of multi-phase alley renovations for the following alleys in downtown Fort Collins over a multi-year period:

Phase 1 (Design 2020-Construct 2021):

- West Oak Street to West Olive Street (one block west of South College Avenue)
- Tenney Court Alley extension, North Mason Street to LaPorte Avenue (behind Civic Center Parking Structure)

Phase 2 (Design 2022-Construct 2023):

- Harper Goff Alley (Pine Street to Jefferson Street (behind The Exchange)
- East Laurel Street to E. Myrtle Street (one block east of South College Avenue)
- West Olive Street to West Magnolia Street (one block west of South College Avenue)

Written proposals, seven (7) copies, and one (1) flash drive will be received at the Downtown Development Authority, 19 Old Town Square, Suite 230, Fort Collins, Colorado 80524. **Proposals must be received before 3:00 p.m. (our clock), December 4, 2019 and referenced as Downtown Alley Renovation Projects CM/QA RFP.**

Questions concerning the scope of the project or bid submittal should be directed to Project Manager, Todd Dangerfield at (970) 419-8254 or tdangerfield@fcgov.com.

A copy of the proposal may be obtained as follows: Download the Proposal from the DDA Website, <https://downtownfortcollins.org/what-we-do/rfps-and-rfqs/>

The DDA is subject to public information laws, which permit access to most records and documents. Proprietary information in your response must be clearly identified and will be protected to the extent legally permissible. Proposals may not be marked 'Proprietary' in their entirety. Information considered proprietary is limited to material treated as confidential in the normal conduct of business, trade secrets, discount information, and individual product or service pricing. Summary price information may not be designated as proprietary as such information may be carried forward into other public documents. All provisions of any contract resulting from this request for proposal will be public information.

Collusive or sham proposals: Any proposal deemed to be collusive or a sham proposal will be rejected and reported to authorities as such. Your authorized signature of this proposal assures that such proposal is genuine and is not a collusive or sham proposal.

The DDA reserves the right to reject any and all proposals and to waive any irregularities or informalities.

Sincerely,
Matt Robenalt
Executive Director

**DOWNTOWN ALLEY RENOVATION PROJECTS
CONSTRUCTION MANAGEMENT AND QUALITY ASSURANCE CONSULTANT
SCOPE OF WORK**

I. BACKGROUND

Fort Collins Overview

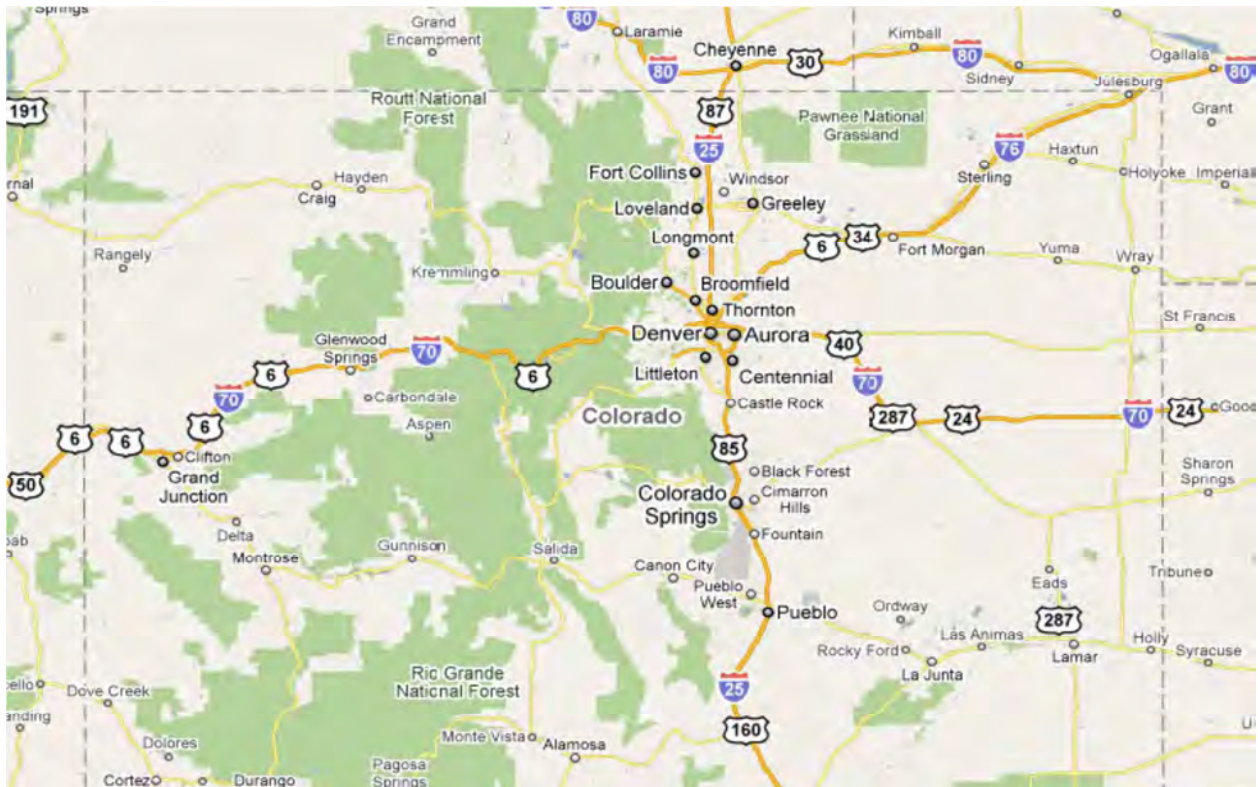
Fort Collins is located in northern Colorado, approximately 60 miles north of Denver. The City of Fort Collins is known for its quality of life, as well as its brewing industry, new energy economy, and high-tech companies. It is anchored by the Colorado State University's campus which is situated just south of the Old Town area.

Fort Collins has gained notoriety for its exceptional community character and is often named as a top spot for living, retiring, and doing business. It is annually ranked as one of the "Best Places to Live" by Money Magazine. It was also recently listed among "Great Place for Entrepreneurs to Retire" (U.S. News, June 2009) and "Best Places for Business and Careers" (Forbes, March 2009).

General population characteristics of Fort Collins include:

- Fort Collins encompasses 57.16 square miles of area and has a total of 1922 street lane miles (City of Fort Collins 2017).
- The current estimated number of housing units in Fort Collins is 68,265 (City of Fort Collins 2017).
- Fort Collins has a population of 171,000 (City of Fort Collins 2018).
- Employment is 154,510 (Bureau of Labor Statistics Occupational Employment and Wage Estimates, 2017)
- Median age is 29.3 years old (American Community Survey, 2011-2015).
- Median household income is \$55,647 (American Community Survey, 2011-2015).
- Approximately 52.5% of the population has completed four or more years of college (American Community Survey, 2011-2015).

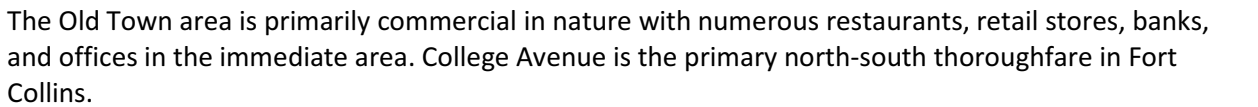
The following map shows Fort Collins' location in northern Colorado, approximately 30 miles south of the Wyoming border. Cheyenne, Wyoming, is approximately 50 miles north of downtown Fort Collins; Estes Park, Colorado, and Rocky Mountain National Park are situated 40 miles southwest of Fort Collins; and as previously stated, Denver, Colorado, is approximately 60 miles south.



Source: Google Maps

Old Town Neighborhood

A neighborhood is a group of complementary land uses; a related grouping of inhabitants, buildings, or business enterprises. The Old Town Fort Collins neighborhood is characterized by historic buildings, some of which provided the inspiration for Main Street at Disneyland. Old Town centers on the intersection of College Avenue and Mountain Avenue. Old Town is primarily defined by Maple Street to the north, Jefferson and Peterson Streets to the east, Mulberry Street to the south, and Meldrum Street to the west. The map below outlines the subject neighborhood.



Downtown Fort Collins serves as the historic, specialty commercial, cultural and governmental center of the City and Larimer County. Unlike many downtown centers, Fort Collins is vibrant and successful as a major community center. The Downtown district typically generates approximately 11 to 14 percent of the city's total annual sales tax revenues, with a market share of approximately 32 percent of total restaurant sales in 2016.

II. PROJECT OVERVIEW

1) Introduction

History and Context

In 1981, the Downtown Development Authority (DDA) Plan of Development identified the alleys in the Downtown area as an untapped opportunity for enhanced pedestrian connections. In 2006, the DDA initiated a pilot project which included improving the pedestrian-only Trimble Court (connecting College Avenue and Old Town Square) and Tenney Court (connecting Mountain Avenue with the Civic Center Parking Structure). The DDA's goal in initiating this project was to enhance the alleys aesthetically and to stimulate increased economic vitality and use of these spaces.

In 2008, the DDA engaged local design firm Russell+Mills Studios to create a master plan of the alleys between CSU, Downtown and the River District. Beginning in 2010, the first phase of alley enhancements began with the construction of two alleys: Montezuma Fuller and Old Firehouse Alleys. These two installations were followed in 2011 by the construction of the Dalzell Alley enhancements and the West Mountain and Old Firehouse East alleys in 2018.

The master plan prioritizes the order of alleys to be enhanced. In October 2019, the DDA Board reviewed the prioritization order of the ten remaining alleys making several adjustments in response to the evolution in adjacent development, business activity that has occurred the past ten years since development of the master plan and the potential for facilitating additional economic opportunities.

The DDA Board has endorsed a new phased approach of “bundling” the design and construction of multiple alleys into separate packages to be released in alternating years utilizing a Construction Manager/General Contractor (CM/GC) contract format to construct. This approach would be used to complete the design and construction of the remaining alleys in the master plan.



D



Desired Qualifications of Consultant

The consultant/consultant team selected through this RFP process will provide support for the DDA beginning upon selection and execution of the DDA standard professional services agreement, which will occur in December 2019. The DDA intends for the public outreach and stakeholder engagement, and alley plan design process to begin in January 2020, continuing through remainder of the year with the intention to solicit for a general contractor during the design-development phase and initiate construction of the first phase of alley renovations in 2021 (see phasing breakout below).

The DDA is soliciting proposals from qualified consultants or consultant teams to oversee the development of construction drawings and specifications, and the installations related to the renovations of two phases of alley renovations over four years beginning in 2020 through 2023:

Phase 1 (Design 2020-Construct 2021):

- West Oak Street to West Olive Street (one block west of South College Avenue)
- Tenney Court Alley extension, North Mason Street to LaPorte Avenue (behind Civic Center Parking Structure)

Phase 2 (Design 2022-Construct 2023):

- Harper Goff Alley (Pine Street to Jefferson Street (behind The Exchange)
- East Laurel Street to E. Myrtle Street (one block east of South College Avenue)
- West Olive Street to West Magnolia Street (one block west of South College Avenue)

The lead consultant shall have broad experience with the following:

- Oversight of master plan design implementation
- Budget development and budget management
- Construction Manager At-Risk and Construction Manager/General Contractor (CM/GC) contract formats
- Construction management/quality assurance oversight related to installation of:

Enhanced pedestrian facilities and streetscapes in an urban context
Civic areas
Urban storm water facilities
Electrical, water, and wastewater utilities
Private utilities

The consultant/consultant team will coordinate a process on behalf of the DDA for the purpose of selecting, through the City of Fort Collins purchasing program, a design team to be hired for the development of the alley plans and related construction documents. The consultant/consultant team will manage the installation of the urban design features that will significantly enhance the alley pedestrian experience, improve both safety and cleanliness and update utility infrastructure.

The alley plans will describe the means by which the DDA, the City of Fort Collins and affiliated stakeholders can achieve a vision for creating an enhanced plaza experience through the identification and improvement of formal and informal pedestrian/vehicle pathways, amenities and related infrastructure. The plan will contain a conceptual design component and estimate of construction costs.

The intent of this RFP is to give prospective consultants the needed information to prepare a proposal for construction management/quality assurance services. The director of the Downtown Development Authority and/or his appointed representative will be available to answer written questions during the proposal process.

2) CM-QA Scope of Work

Under the following phase sections, the listed tasks/elements will require research, analysis and recommendations, including coordination with the DDA staff and Board of Directors, City staff and City Council, property and business owners, municipal and private utilities, and solicitation of input in public sessions.

Proposing consultant/consultant teams should provide a detailed written response to each task, the definition of cost by task, and the key personnel that will be assigned to each task.

Pre-Design Coordination:

1. Develop the RFP package for solicitation of qualified design consultants including all forms, requirements, project specifications, and drawings.
2. Coordinate the solicitation effort with City Purchasing following City Purchasing procedures and protocol including a pre-bid meeting, preparation of addendums, open bids, bid opening meeting, and issuance of a design contract

Budget Management:

1. Develop a budget encompassing all phases of the project.
2. Attend monthly meetings with DDA Financial Coordinator and Project Manager covering budget updates, new commitments, and status.
3. Provide all contractor documentation including but not limited to change order requests, lien waivers, and payment applications to DDA Financial Coordinator.

Design Phases:

1. Attend and assist in coordination of necessary DDA Board subcommittee and monthly Board meetings to facilitate approval of concept, contracts and final design/budget for project.
2. Coordinate and attend all design progress meetings including recording of meeting minutes, and assistance in meeting management.
3. Attend and assist with public outreach including open house events and relevant municipal/boards and commissions meetings.
4. Review and comment on all design submittals for all design phases (Schematic Design-Design Development-Construction Documents phases).
5. Create and maintain a web based or internet-accessible document management site for design/project team access.

6. Assist in the negotiation and acquisition of any easements necessary to facilitate the design and construction of the project including all necessary exhibits for incorporation into the easement agreements and according to City of Fort Collins standards.
7. Coordinate utility installation and relocation with various utility companies utilizing the public right-of-way (ROW) including attending meetings with utility companies to discuss project impacts to their facilities or any upgrades they may have planned as part of this project.
8. Coordinate plan and specification review through the City of Fort Collins following a standard “capital project” review process including routing through various parties and follow-up with comments and coordination meetings to address issues.
9. Support DDA staff in the negotiation and approval of an intergovernmental agreement to construct enhanced alley improvements in City-owned ROW.

Bidding Phase:

1. Prepare general contractor bid packages including Bid Forms, General Conditions, General Requirements, Technical Specifications, and Drawings. Contract format will be Construction Manager At-Risk or Construction Manager/General Contractor (CM/GC).
2. Coordinate the issuance of bid documents through City of Fort Collins Purchasing.
3. Attend pre-bid meetings, coordinate responses to contractor questions and assist in preparation of addendums as necessary.
4. Attend bid openings, review all bids prepare a bid comparison, and coordinate a thorough review of the contractor’s qualification statements. Recommend awards providing detailed qualifications review.
5. Assist in routing contracts and reviewing for appropriate insurance and bonding capacity.

Construction Management Phase:

1. Manage the web-based document management site for all construction phase communications including submittal review, RFIs, meeting minutes, test results, correspondence, and reports.
2. Coordinate, attend and document a pre-construction meeting for the project.
3. Conduct a review of the general contractor’s project schedule to ensure a logical, defined schedule is established with an overall baseline for progress measurement.
4. Conduct weekly progress meetings on site with the general contractor and their subcontractors and provide meeting minutes for all meetings.

5. Review and recommend approval of pay applications to the DDA, review and manage contract changes for approval by the DDA, coordinate responses to RFIs and provide for overall administration of the construction contract.
6. Perform daily site inspections and organize weekly Owner/Architect quality walks to ensure quality construction and conformity to the plans and specifications and field engineering support to address field changes in a timely manner to avoid construction delays.
7. Provide weekly reports documenting work progress.
8. Coordinate project submittal reviews and providing comments directly to the general contractor.
9. Review of all material test reports, respond and make recommendations as necessary, as well as ensure the appropriate number of tests are taken and sampled according to industry standards and project specifications.
10. Create and maintain a photographic and/or video log of the project documenting pre-construction, construction, and post-construction conditions.
11. As needed, coordinate and facilitate work between the DDA, City, general contractor and other outside agencies affected by the project.
12. Maintain project records including contracts, schedules, progress meeting minutes, material test results, weekly reports, correspondence, pay applications, change orders, routine photographs, submittals, permits, commissioning records and post-construction close-out paperwork (punch lists, lien waivers, substantial completion/final acceptance).
13. Organize and conduct contractor punch list walks for various stages of the work.
14. Create and maintain the as-built set of drawings and transmit to designer at project completion.
15. Compile all relevant project-related documentation including design and construction phase drawings, submittals, testing reports, photo and/or video logs and organize into hard copy and electronic deliverables to the DDA.
16. Compile Operations & Maintenance manuals for the project into hard copy and electronic deliverables to the DDA.
17. Conduct both 1-year and 2-year post-construction warranty walks with the general contractor and DDA. Compile and coordinate warranty items to be completed with the general contractor.

III. SITES

Alley locations and boundaries are represented with shading on maps included with this RFP. The scope of work will occur within City owned right-of-way and DDA owned property. Through the design process, any areas of renovation that might occur on adjacent private property will be determined.

IV. SUPPLEMENTAL INFORMATION

Interested parties responding to this request are encouraged to review the following information:

1. Alleys Renovations Proposed Project Timelines Phases 1 & 2 (attached)
2. Fort Collins Downtown Alleys Master Plan Report—December, 2008 online link:
https://www.dropbox.com/s/hvr4n5ws41widp4/MASTER%20PLAN%20REPORT_FINAL.pdf?dl=0

V. SUBMITTAL REQUIREMENTS

The DDA will accept qualifications submitted within the stipulated timeframe. Those that do not comply with all submittal requirements, indicate limited financial capability, or propose an inappropriate concept may be disqualified without further evaluation. The DDA is the sole and final decision-maker regarding selection of the consultant/consultant team, and reserve the absolute right to reject any or all proposals. Individual submittals, except the financial information submitted under separate cover, will not be returned. Please submit clear and concise responses with only the information requested below. Provide a table of contents at the front of the response.

1. Transmittal letter
2. Description of relevant experience
3. Preliminary construction management and quality assurance oversight concept
4. Estimate of fees (separated out by project phase/task description)
5. References
6. Demonstration of financial capacity and related information

1) Transmittal Letter

The transmittal letter should include the following information:

- Name of the submitting company or entity
- Name, title, address, telephone number, and email address of the person designated as the primary contact
- Names and relationships of all companies and entities included in the proposal

2) Description of Relevant Experience

Please provide a brief description of experience with up to five recent projects with a construction value of at least \$5 million managed by the proposing companies, entities or consultant/consultant team. Members of the proposed consultant/consultant team for these alley enhancement projects should have had a significant role in these past projects. For each project, please include the following:

- Project name and location
- Project type (e.g., alley enhancement, pedestrian plaza, utility infrastructure, etc.)
- A description of the amenities (e.g., landscape features, hardscapes) of the comparable projects
- Photos and site plans of the project
- Current status of the project (e.g., construction status or number of years in operation)
- Names and roles of other companies, organizations or partners involved in the project
- Development cost and financing summary

3) Preliminary Management and Quality Assurance Oversight Concept

Describe in brief narrative form and supporting tables within 6 pages or less, the construction management and quality assurance oversight concept proposed for the alley projects. No site-specific plans or illustrations are necessary at this stage.

4) Estimate of Fees

Respondents are to indicate the total fee estimated for consultant services, divided into each of the two phases of alley projects including the following detailed information for each phase:

- Wage rate/hour schedule for key team members
- Estimate of costs for project reimbursables
- Phase/task description summary table including key member participation, estimated hours and costs

5) References

Provide references (including company/organization names, titles, telephone numbers and e-mail addresses) for individuals who can provide information related to the following items:

- Public or Governmental—Identify at least two city or other local public officials who have been involved with a project completed by members of the consultant/consultant team (e.g., downtown development directors, planning directors, economic development directors, redevelopment officials, etc.)
- General—Provide the names of up to two other contacts that could provide information about the experience and capability of members of the consultant/consultant team to complete the proposed project

6) Demonstration of Financial Capacity and Related Information

Provide the following and any other relevant information to demonstrate the financial capacity to undertake and complete the development proposed in the preliminary construction management and quality assurance oversight concept. You may submit this information under a separate cover marked "Privileged and Confidential Information." To the extent allowable by law, the DDA will protect such information from public disclosure.

- List of any current nonperforming or loan defaults in the past five years
- Description of any instances in which a member of the consultant/consultant team or any named individual has been involved in litigation or other legal dispute regarding managed

project during the past five years. Include information regarding the outcome of the litigation or dispute

VI. SELECTION CRITERIA

Emphasis will be placed on the directly relevant qualifications and financial capability of the respondent. In addition to acceptance of basic organization and framework of this proposed consultant/consultant team, submittals will be evaluated based on the following main criteria:

Qualifications and Experience

- Qualifications of team members
- Significant experience in developments similar in scope and quality to the proposed project, including projects involving public-private cooperative partnerships
- Quality and financial performance of past projects
- Completion of past projects in accordance with a fixed schedule

Financial Capability

- Overall financial track record

Preliminary Construction Management and Quality Assurance Oversight Concept

- Compatibility of construction management and quality assurance oversight concept with the adopted plans for Downtown Fort Collins and the DDA's present objectives

Additionally, professional firms will be evaluated on the following criteria. These criteria, coupled with the above, will be the basis for review of the written proposals and optional interview session. At discretion of the DDA, interviews of top rated firms may be held. The rating scale shall be from 1 to 5, with 1 being a poor rating, 3 being an average rating, and 5 being an outstanding rating.

WEIGHTING FACTOR	QUALIFICATION	STANDARD
2.0	Scope of Proposal	Does the proposal show an understanding of the project objective, methodology to be used and results that are desired from the project?
2.0	Assigned Personnel	Do the persons who will be working on the project have the necessary skills? Are sufficient people of the requisite skills assigned to the project?
1.0	Availability	Can the work be completed in the necessary time? Can the target start and completion dates be met? Are other qualified personnel available to assist in meeting the project schedule if required? Is the project team available to attend meetings as required by the Scope of Work?
1.0	Motivation	Is the firm interested and are they capable of doing the work in the required time frame?
2.0	Cost and Work Hours	Do the proposed cost and work hours compare favorably with the Project Manager's estimate? Are the work hours presented reasonable for the effort required in each project task or phase?

2.0	Firm Capability	Does the firm have the support capabilities the assigned personnel require? Has the firm performed previous projects of this type and scope?
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VII. REFERENCE EVALUATION (TOP RATED FIRM)

The Project Manager will check references using the following criteria. The evaluation rankings will be labeled Satisfactory/Unsatisfactory.

QUALIFICATION	STANDARD
Overall Performance	Would you hire this Professional again? Did they show the skills required by this project?
Timetable	Was the original Scope of Work completed within the specified time? Were interim deadlines met in a timely manner?
Completeness	Was the Professional responsive to client needs; did the Professional anticipate problems? Were problems solved quickly and effectively?
Budget	Was the original Scope of Work completed within the project budget?
Job Knowledge	a) If a study, did it meet the Scope of Work? b) If Professional administered a construction contract, was the project functional upon completion and did it operate properly? Were problems corrected quickly and effectively?

VIII. SELECTION PROCESS SCHEDULE

The following is the schedule for the selection process:

RFP issued		November 7, 2019
Email deadline for written questions	5:00pm	November 13, 2019
Presubmittal conference (attendance mandatory)	1:30pm	November 20, 2019
RFP submittals due	3:00pm	December 4, 2019
Interviews	TBD	December 10, 2019
DDA selection of CM/QA consultants		mid-December 2019

IX. PRESUBMITTAL CONFERENCE

Please note that the DDA will host an informational meeting and site tour for interested parties on November 20, 2019 at 1:30 PM. This meeting will be held at the DDA office located at 19 Old Town Square, Suite 230, Fort Collins, 80524. Attendance in person at this informational meeting is mandatory.

X. QUESTIONS AND CORRESPONDENCE

All questions regarding the construction management and quality assurance oversight opportunity or selection process must be addressed in writing to the DDA.

Downtown Alleys Renovation Project CM/QA RFP must appear on all correspondence. All questions can be emailed to tdangerfield@fcgov.com with receipt no later than 5:00 PM on November 13, 2019.

XI. DEADLINE AND DELIVERY

Seven (7) printed copies and one (1) flash drive must be received at the DDA before 3:00 p.m. (our clock), December 4, 2019 and referenced as Downtown Alleys Renovation Project CM/QA RFP .
Deilivery or mailing address is as follows:

Fort Collins Downtown Development Authority
Attn: Todd Dangerfield, Project Manager
19 Old Town Square, Ste. 230
Fort Collins, Colorado 80524

XII. SAMPLE PROFESSIONAL SERVICES AGREEMENT

Upon selection, the top rated firm with enter into a professional services agreement with the DDA. A sample professional services agreement has been attached.

Downtown Alleys Renovation Projects (Phase 1)

Proposed Timeline 2019-2020

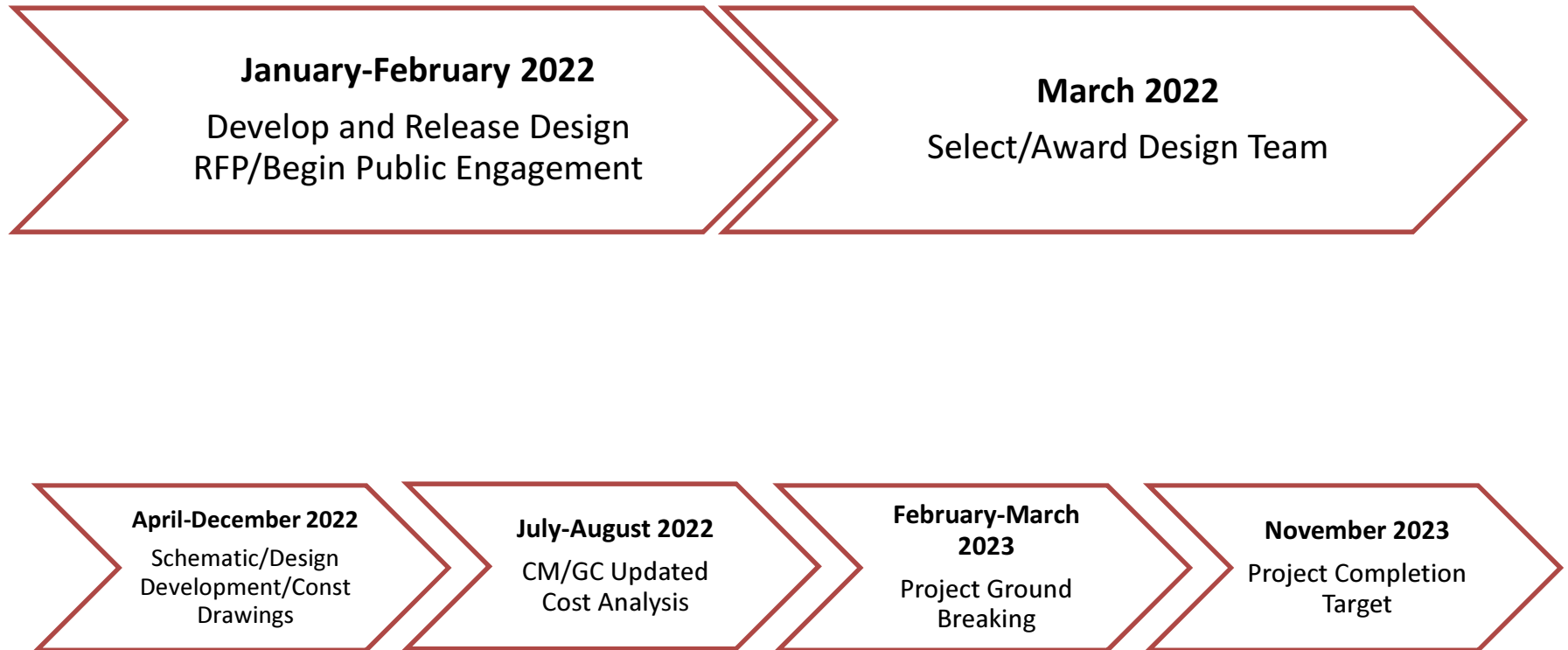


Proposed Timeline 2020-2021



Downtown Alleys Renovation Projects (Phase 2)

Proposed Timeline 2022-2023



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below, by and between THE FORT COLLINS, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic (hereinafter the "DDA"), and _____, (hereinafter the "Professional").

WITNESSETH:

WHEREAS, pursuant to C.R.S. 31-25-807 the DDA is empowered to make and enter into all contracts which are necessary or incidental to the exercise of its powers and performance of its duties;

WHEREAS, the services rendered by the Professional will advance the statutory mission of the DDA; and

WHEREAS, the DDA will be compensating the Professional for providing those services described by Exhibit "____" attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein expressed the receipt and adequacy of which are hereby acknowledged, it is agreed by and between the parties hereto as follows:

1. Contract Period. This Agreement shall commence upon execution hereof and shall continue in full force and effect until _____, 20____, unless sooner terminated as hereinafter provided.

2. Scope of Services. The Professional agrees to provide services in accordance with the scope of services attached hereto as Exhibit "____," consisting of ____ pages, and incorporated herein by this reference.

3. The Work Schedule. The Professional warrants that it is willing and able to perform the Scope of Services during the Term, in accordance with the schedule identified on page ____ thereof, and agrees to perform such services in a diligent and timely manner.

4. Compensation. In consideration of the services to be performed pursuant to this Agreement, the DDA agrees to pay Professional on a time and reimbursable direct cost basis according to the following schedule:

With maximum compensation (for both Professional's time and reimbursable direct costs) not to exceed _____ according to Exhibit ____ consisting ____ pages and incorporated herein by this reference. Monthly partial payments based upon the Professional's billings and itemized statements of reimbursable direct costs are permissible. The amounts of all such partial payments shall be based upon the Professional's verified progress in completing the services to be performed pursuant hereto and upon the DDA's approval of the Professional's reimbursable direct costs.

5. Billing. The Professional shall submit to the DDA detailed monthly invoices which set forth the following: (1) each service rendered; (2) if subconsultants are used, the identity of the party rendering each service; (3) the cost of each service rendered by the Professional or subconsultant(s); and (4) direct costs eligible for reimbursement hereunder. The Professional shall include with the invoice sufficient evidence of direct costs it has incurred for which it seeks reimbursement from the DDA. The Professional's failure to comply with these requirements may, at the DDA's option, suspend processing of payment requests until the Professional's invoice is in compliance with said requirements. The DDA shall be obligated to pay invoices that conform to the requirements contained herein within thirty (30) days of receipt.

6. Use of Subconsultants. All subconsultants that will be performing work hereunder must be approved in writing by the DDA prior to commencing any such work.

7. DDA Representative. The DDA shall designate, prior to commencement of work, its project representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the project (the "DDA Representative"). All communications concerning this Agreement should be directed to the DDA Representative.

8. Early Termination by the DDA. Notwithstanding the time periods contained herein, the DDA has the right to terminate this Agreement at any time without cause by providing written notice of termination to the Professional. 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. In the event of any such early termination by the DDA, the Professional shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of the Professional's obligations under this Agreement. Such payment shall be the Professional's sole right and remedy for such termination.

9. Early Termination by the Professional. Notwithstanding the term hereof, the Professional shall have the right to terminate this Agreement at any time without cause by providing written notice of termination to the DDA. Such notice shall be delivered at least forty-five (45) days prior to the termination date contained in said notice unless otherwise agreed to in writing by the DDA and the Professional. Delivering notice of early termination to the DDA shall not in any way relieve that Professional of its obligation to perform services under this Agreement through the effective date of such early termination, or relieve the DDA of its obligation to pay the Professional for such performance through the effective date of such early termination.

10. Additional Services, Changes to the Scope of Services. The DDA shall have the right during the term hereof to request changes or additions to the Scope of Services through written change order requests. Once the DDA has delivered notice of such change to the Professional, no work related to the requested change shall proceed until the parties have reached agreement regarding changes in price or scheduling requirements related to the requested change, and a written change order documenting the agreed-upon terms is prepared and issued by the DDA. No such changes or additions shall be considered approved, binding, or enforceable until the parties hereto have signed such change order form. The hourly rate to be charged for any changed or added services shall be governed by the wage rate schedule agreed upon.

11. Monthly Report. Commencing thirty (30) days after the date of execution of this Agreement, and continuing every thirty (30) days thereafter for the term hereof, the Professional shall provide to the DDA Representative a written report of the status of the work with respect to the Scope of Services, Work Schedule, and other material information. Failure to provide any required monthly report may, at the option of the DDA, suspend the processing of any partial payment request.

12. Coordination, Quality and Accuracy of Services. The Professional shall be responsible for the coordination of all services between the Professional and its subconsultants. The Professional shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all services rendered by the Professional and its subconsultants, which services shall include, by way of example and without limitation, designs, plans, reports, specifications, and drawings and the Professional shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies.

13. Independent Contractor. The services the Professional will be performing hereunder are those of an independent contractor, and not of an agent or employee of the DDA, nor shall the Professional's employees, agents or subconsultants be considered employees or agents of the DDA. The DDA shall not be responsible for withholding any portion of the Professional's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.

14. Responsibility for Employees and Subconsultants. The Professional shall employ and contract with only those persons or entities that are properly skilled, accredited, certified, and/or licensed, as applicable, to safely and competently perform work of the type and scope which they will be performing. The Professional agrees that it shall be fully responsible for the acts and omissions of its employees and agents and for those of its subconsultants, and any persons either directly or indirectly employed by any subconsultants to the same degree as acts and omissions of persons the Professional directly employs. Nothing contained in this Agreement shall create any contractual relation between any subconsultant and the DDA, except to the extent the DDA is indemnified or insured through requirements upon said subconsultants.

15. Legal Compliance, License and Business Requirements. The Professional shall hold, in the Professional's name, all licenses necessary to perform the Scope of Services, and shall have full authority to do such business in the State of Colorado. The Professional shall at all times during the term hereof have a designated place of business for making and accepting communications with or from the DDA. The Professional warrants to the DDA that it shall exercise the highest degree of competence and care, as determined by accepted standards for work of similar nature, in performing any services or work hereunder, and that such services and work shall be performed in accordance with all applicable laws.

16. Insurance Requirements. The Professional shall provide and maintain during the term hereof, at its own expense, and from insurance companies acceptable to the DDA, the insurance coverage designated hereinafter, and shall require the same of all subconsultants providing services in connection with this Agreement:

A. Employee Insurance. The Professional shall provide for all of its employees engaged in work performed under this Agreement:

- i. *Workers' Compensation.* In accordance with the laws of the State of Colorado.
- ii. *Employer's Liability Insurance.* In an amount not less than One Hundred Thousand Dollars (\$100,000.00) per occurrence, Five Hundred Thousand Dollars (\$500,000.00) aggregate, for each employee.

B. Liability Insurance. The Professional shall provide the following liability insurance coverage:

- i. *Commercial General Liability and Automobile Liability Insurance.* Commercial general liability and commercial automobile liability insurance as will provide coverage for claims for damages resulting from bodily injury and death, as well as for claims for property damage and loss, which may arise directly or indirectly from the performance of work under this Agreement. Amount of coverage for commercial general liability shall be not less than One Million Dollars (\$1,000,000.00) combined single limits, per occurrence, for bodily injury, death and property damage. Amount of coverage for commercial automobile liability shall be not less than One Million Dollars (\$1,000,000.00) combined single limits, per accident, for bodily injury, death and property damage or loss, and coverage shall extend to any vehicle (including owned, hired and non-owned vehicles) used by the Professional, or with the consent of the Professional, in connection with the performance of the Scope of Services. The DDA shall be named on such policy or policies as an additional insured with primary coverage. Such policy or policies shall contain a standard cross-liability endorsement, and shall also contain substantially the following statement:

“The insurance covered by this Certificate shall not be canceled or materially altered, without ten (10) days’ prior written notice to the Fort Collins, Colorado, Downtown Development Authority.”

- ii. *Professional Liability Insurance.* Professional liability insurance covering errors and omissions of the Professional. Amount of coverage shall be not less than One Million Dollars (\$1,000,000.00).
- iii. *Certificates of Insurance.* Prior to commencing work hereunder, the Professional shall furnish the DDA with certificates of insurance for all liability insurance required herein, which show the type, amount, class of operations covered, effective dates and date of expiration of

such policies.

- C. Subconsultant Liability. In the event that any work performed hereunder is performed by a subconsultant, the Professional shall be responsible for any and all liability resulting from, arising out of or in any way connected with the work performed under this Agreement by such subconsultant, which liability is not covered by such subconsultants insurance.
- D. Breach of Insurance Requirements. In the event the Professional breaches its insurance obligations under this Agreement, the DDA shall have the right, but not the obligation, to take out and maintain throughout the term hereof any insurance policy or policies necessary to meet the insurance obligations herein required, and the Professional shall be liable to the DDA for all costs associated with obtaining and maintaining such policy or policies, and the DDA shall further have the right to deduct any and all such costs from payments due, or which may become due, to the Professional.

17. No Assignment. The Professional acknowledges that the DDA enters into this Agreement based upon the unique qualifications and special abilities of the Professional and that this Agreement shall be considered an agreement for personal services. Accordingly, the Professional shall not have the right, power or authority to assign any responsibilities nor delegate any of its duties arising hereunder to any other individual or entity without the prior written consent of the DDA.

18. Modification of Agreement. No subsequent addition to this Agreement, or modification of any term or provision herein contained, shall be valid, binding, or enforceable unless made in writing and signed by the parties hereto.

19. Default. Each and every term and provision contained herein shall be deemed to be a material element of this Agreement. In the event that either party hereto should fail or refuse to perform in accordance with any term or provision of this Agreement, such party may be declared in default.

20. 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 uncured after the ten (10) day period, the party declaring default may elect to: (a) terminate this Agreement and seek damages; or (b) avail itself of any other remedy provided by law or at equity. The election by a party of one form of remedy shall not preclude such party from seeking any other remedy provided by law or at equity. In the event of any such uncured default, the non-defaulting party shall be entitled to and shall be awarded from the defaulting party all reasonable costs and expenses, including attorneys' fees and other legal expenses, incurred by the non-defaulting party in connection with such default.

21. Acceptance Not Waiver. Approval by the DDA of drawings, designs, plans, specifications, reports and incidental work or materials furnished hereunder shall in any way relieve the Professional of responsibility for the quality or technical accuracy of such work. The DDA's approval or acceptance of, or payment for, any services performed hereunder shall not be

construed to operate as a waiver of any rights or benefits provided hereunder.

22. Limitation on Waiver of Breach. The failure of either party hereto to insist, in any one instance or more, upon the performance of any of the duties, obligations, covenants or conditions of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as thereafter waiving any such duties, obligations, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect.

23. Indemnification. The Professional shall indemnify, save and hold harmless the DDA, its officers, directors, employees and agents, from and against any claim, suit, demand, liability, loss, cost, expense or damage, including, attorneys' fees, judgments, or other legal expenses resulting from, arising out of or in any way connected with the Professional's performance hereunder. In any and all claims, suits, or demands against the DDA, or its officers, directors, employees and agents, by any employee or agent of the Professional, or of any the Professional's subconsultants, the indemnification obligation under this Section 23 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Professional or any subconsultant under workers' compensation laws, disability benefit laws or other employee benefit laws provided by law.

24. Notification of Claim. The DDA shall notify the Professional within a reasonable time after receiving notice of any claim for which the indemnity provision contained herein would apply. So long as the Professional promptly and vigorously defends a claim, the Professional shall have control over the defense and settlement of any such claim; provided, however, that the Professional must obtain a complete discharge of all DDA liability through any such settlement. In the event that the Professional fails to promptly and vigorously pursue the defense and/or settlement of such claim, the DDA shall have the right, but not the obligation, to assume the defense and settlement thereof, and the Professional shall be liable for all costs and expenses incurred by the DDA in the pursuit thereof. The DDA shall furnish, at the Professional's reasonable request and expense, information and assistance necessary for such defense.

25. Notice. Except as expressly provided otherwise, any notice required or desired to be given by any party to this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; or sent by a nationally recognized receipted overnight delivery service, including the United States Postal Service, United Parcel Service or Federal Express for earliest delivery the next day. Any such notice shall be deemed to have been given and received as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit with the United States Postal Service, postage prepaid; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses for the mailing or delivering of notices shall be as follows:

If to the Professional:

If to the DDA:

The Fort Collins, Colorado
Downtown Development Authority
ATTN: Executive Director
19 Old Town Square, Suite 230
Fort Collins, CO 80524

With a copy to:

Liley, Rogers & Martell, LLC
ATTN: Lucia A. Liley, Esq.
300 S. Howes Street
Fort Collins, CO 80521

Notice of a change of address of a party shall be given in the same manner as all other notices as hereinabove provided.

26. Work Product. The DDA shall own and retain all right, title, and interest in and to all reports, documents, drawings, specifications, plans, designs, and other information or work product that are produced, created developed, or made by Professional or its subconsultants in connection with the Scope of Services (collectively the “Work Product”), and such Work Product shall be the sole property of the DDA.

27. Project Drawings. Upon conclusion of the project and before final payment, the Professional shall provide to the DDA reproducible drawings of the project containing accurate information on the project as constructed. Drawings shall be of archival, prepared on stable Mylar base material using a non-fading process to provide for long storage and high quality reproduction. A compact disc of the as-built drawings shall also be submitted to the DDA in an

AutoCAD version no older than the established standard.

28. Subject to Annual Appropriation. Any financial obligations of the DDA arising under this Agreement which are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the City Council of the City, in its discretion, and/or the Board of the DDA, in its discretion, as applicable.

29. Successor Entity to the DDA. In the event that the legal existence of the DDA terminates during the term of this Agreement, it is expressly acknowledged by the parties hereto that the City is designated the DDA's successor entity, and all rights and obligations of the DDA set forth herein shall thereupon become the rights and obligations of the City.

30. Governing Law/Venue/Severability. The laws of the State of Colorado shall govern the execution, construction, interpretation and enforcement of this Agreement. Should any party hereto institute legal suit or action resulting from, arising out of or in any way connected with this Agreement, it is agreed by the parties hereto that venue for such suit or action shall be proper and exclusive in the District Court of Larimer County, Colorado. If any term or provision contained herein is held to be illegal, invalid or unenforceable, such term or provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable term or provision had never comprised a part hereof and the remaining terms and provisions contained herein shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or term, or by its severance herefrom.

31. Attorney Fees. In the event that any litigation is commenced by one party hereto against the party hereto, which litigation results from, arises out of, or is in any way connected with this Agreement, the court shall award to the substantially prevailing party all reasonable costs and expenses, including attorneys' fees and other legal expenses.

32. Prohibition Against Employing Illegal Aliens. Pursuant to C.R.S. § 8-17.5-101 et seq., the Professional represents and agrees that:

a. As of the date of execution of this Agreement:

- i. The Professional does not knowingly employ or contract with an illegal alien who will perform work under this Agreement; and
- ii. The Professional will participate in either the e-Verify program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "e-Verify Program") or the Department Program, an employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c) and administered by the Colorado Department of Labor and Employment, Division of Labor, in order to confirm the employment eligibility of all newly hired employees to perform work under this Agreement.

b. The Professional shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subconsultant who knowingly employs or contracts with an illegal alien to perform work under this Agreement.

c. The Professional shall not use the e-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants during the term hereof.

d. If the Professional obtains actual knowledge that a subconsultant performing work under this Agreement knowingly employs or contracts with an illegal alien, the Professional shall:

- i. Notify such subconsultant and the DDA within three days that the Professional has actual knowledge that the subconsultant is employing or contracting with an illegal alien; and
- ii. Terminate the subcontract with the subconsultant if within three days of receiving the notice required pursuant to this Section 38 the subconsultant does not cease employing or contracting with the illegal alien; except that the Professional shall not terminate the contract with the subconsultant if during such three days the subconsultant provides information to establish that the subconsultant has not knowingly employed or contracted with an illegal alien.

e. The Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102 (5).

f. If the Professional violates any provision of this Agreement pertaining to the duties imposed by C.R.S. § 8-17.5-102 the DDA shall have the right to terminate this Agreement. If this Agreement is so terminated, the Professional shall be liable for actual and consequential damages to the DDA arising out of the Professional's violation of C.R.S. § 8-17.5-102.

g. The DDA will notify the Office of the Secretary of State if the Professional violates this provision of this Agreement and the DDA terminates the Agreement for such breach.

33. Integration/Survival. This contract, which includes this Agreement together with any exhibits incorporated herein by reference, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, whether written or oral. All conditions, rights, privileges, duties, covenants, warranties and obligations contained herein shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective successors and assigns, and shall remain in full force and

effect and shall survive, to the maximum extent allowable by law, the termination or expiration of this Agreement.

34. Local, State and Federal Law. The meaning of “local, state or federal law,” shall include any and all relevant acts, statutes, ordinances, rules, regulations, common law doctrines and judicial precedents, which are now in force or which may hereafter be articulated, rendered, adopted, enacted, amended or promulgated.

35. Interpretation. Sections and headings contained herein are for organizational purposes only and shall not affect the interpretation of this Agreement. The terms and provisions contained in the body of this Agreement shall always supersede and control the terms and provisions contained in any attached and incorporated document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below written.

THE FORT COLLINS, COLORADO
DOWNTOWN DEVELOPMENT AUTHORITY, a
body corporate and politic

By: _____
Chairperson

Date: _____

ATTEST:

By: _____
Secretary

PROFESSIONAL

By: _____

Title: _____

Date: _____

ATTEST:

By: _____
Corporate Secretary

(Corporate Seal)