

PUBLIC ART PROGRAM AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the “City,” and **POETIC KINETICS INC.**, a Colorado corporation, whose address is 12060 Woodlake Road, Elbert, CO 80106, hereinafter referred to as the “Artist.”

RECITALS

1. The City has allocated funds to include artwork to be integrated into the construction of the 16th Street Mall project as part of the City’s Public Art Program under D.R.M.C. §§ 20-85 through 20-88.

2. The Artist has been selected by the City to design, execute, fabricate, deliver and install a work of art consisting of three kinetic steel and glass sculptural Aspen Trees (the “Work”), such Work to be integrated into the 16th Street Mall (the “Site”), after consultation with Denver Arts and Venues (DAV), Site designers, and Department of Transportation and Infrastructure personnel.

3. Both parties wish to reasonably promote and maintain the integrity and clarity of the Artist’s ideas and statements as represented by the Work.

4. The Artist was selected via an open Call for Entry by an independent expert panel.

5. The City believes the Artist to be well able to undertake and perform such services for the City and County of Denver, and desires to contract with the Artist for the performing of such services.

6. The Artist is ready, willing and able to render such services as an independent contractor.

AGREEMENTS

In consideration of the premises and the mutual covenants herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto hereby agree as follows:

1. **WORK TO BE PERFORMED:**

1.1 General.

a. As used in this Agreement, unless the context otherwise requires: “Work” means the work of art as ultimately conceived, designed, fabricated, transported, delivered, engineered for installation, and ultimately installed by the Artist, after consultation with the Site designers and others. The Work includes all physical components of the complete artwork including but not limited to associated foundations, landscaping material and hardscape, bases, or mounting brackets or devices, electronic components, video components and all other miscellaneous components necessary to complete the fabrication and installation of the artwork.

b. The Artist shall perform all services and furnish all supplies, material and equipment as necessary for the design, execution and fabrication of the Work, including but not limited to, payments for all necessary taxes, insurance, small tools, Artist consultants, rental equipment, and all other items incidental to producing a complete and acceptable Work, and shall, either directly or through qualified sub-consultants, undertake the transportation and installation of the Work at the Site.

c. The Artist shall determine the artistic expression, scope, design, color, size, material, texture, and location on the Site of the Work, subject to review and acceptance by the City as set forth in this Agreement.

1.2 Artist’s Scope and Preliminary Design.

The Artist will submit an initial proposal and develop the design for the Work, in accordance with the Scope of Work, a copy of which is attached hereto and incorporated herein as Exhibit A. The Artist will, under this Agreement, prepare the final design and perform the other services specified herein.

1.3 Preliminary Design Review.

a. Within sixty (60) days after receipt by the Artist of Notice to Proceed issued to the Artist by the Director of DAV, the Artist shall prepare and submit to the City detailed preliminary working drawings of the Work and the Site, together with such other graphic material as may reasonably be requested by the City in order to permit the City to carry out preliminary design review and to certify the compliance of the Work with the finally approved preliminary design of the Work. Upon request by the Artist, the City shall promptly furnish all readily available information and assistance required by the Artist in connection with said submission. However, the City does not guarantee its information, materials and assistance,

and assumes no liability therefore. The Artist shall be solely responsible for designing the Work in compliance with all applicable City, State and/or Federal statutes, ordinances, and/or regulations.

b. During the preliminary design review, the City may also require the Artist to make such revisions to the design as are necessary for the Work to comply with the finally approved conceptual design of the Work.

c. The City may also request revisions for other practical and/or non-aesthetic reasons.

d. After its receipt of the Artist's submission(s) pursuant to this Section 1.3, the City shall notify the Artist of its approval (or disapproval) of such submission and budget and of all revisions made in the initial proposal as a result thereof. The City's approval shall be in its sole discretion. Revisions made pursuant to this Section 1.3 become a part of the Preliminary Design. The Preliminary Design Proposal ("Initial Proposal") will be incorporated herein as Exhibit B.

1.4 Final Design Review.

a. Within sixty (60) days after the date of approval of the preliminary design by the City, the Artist shall prepare and submit to the City detailed working drawings of the Work and the Site, together with such other graphic material as may reasonably be requested by the City in order to permit the City to carry out final design review and to certify the compliance of the Work with applicable statutes, ordinances, and regulations. Upon request by the Artist, the City shall promptly furnish all readily available information and assistance required by the Artist in connection with said submission. However, the City does not guarantee its information, materials and assistance, and assumes no liability therefore. The Artist shall be solely responsible for designing, fabricating, constructing, delivering and installing the Work in compliance with all applicable city, state and/or federal statutes, ordinances, and/or regulations. It is expressly understood that the Artist shall have the final design reviewed and stamped as approved as to structural integrity by a professional engineer licensed to practice in the State of Colorado.

b. The submission shall also include a budget, not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00), as described herein, that includes all costs for

design, engineering, execution, fabrication, transportation, delivery, installation, insurance, contingencies, consultant fees, fees and permits, and any other costs associated with the Work, and the Artist's fee.

c. The submission shall also include a written statement detailing anticipated regular and routine maintenance, such maintenance to be provided by the City in its sole discretion, as appropriate to maintain the Work in its intended condition.

d. During the final design review, the City may also require the Artist to make such revisions to the design as are necessary for the Work to comply with applicable statutes, ordinances, or regulations of the City, the State of Colorado, or the U. S. Government.

e. The City may also request revisions for other practical and/or non-aesthetic reasons.

f. After its receipt of the Artist's submission(s) pursuant to this Section 1.4, the City shall notify the Artist of its approval (or disapproval) of such submission and budget and of all revisions made in the Initial Proposal as a result thereof. The City's approval shall be in its sole discretion. Revisions made pursuant to this Section 1.4 become a part of the Final Design. The Final Design Proposal (the "Proposal") will be incorporated herein as Exhibit C.

1.5 Execution of Work.

a. After written approval by the City of the Final Design, the Artist shall furnish to the City a schedule for the completion of fabrication and installation of the Work, including a schedule for the submission of progress reports, if any. After written approval of the schedule by the City, the Artist shall fabricate, transport and install the Work in accordance with such schedule. Such approval schedule shall be incorporated into this Agreement by reference as Exhibit D and may be amended by written agreement between the City and the Artist.

b. The City shall have the right to review the Work at reasonable times during the fabrication hereof. The Artist shall submit to the City progress reports acceptable to the City.

c. The Artist shall complete the fabrication, transportation and installation of Work in conformity with the Proposal.

d. The Artist shall present to the City in writing for further review

and approval any significant changes in the scope, design, color, size, material or texture of the Work. The City shall in its sole discretion determine whether a significant change exists.

1.6 Delivery and Installation.

a. The Artist shall notify the City in writing when fabrication of the Work is completed and it is ready for delivery and installation at the Site.

b. The Artist shall deliver and install the completed Work at the Site in compliance with the schedule approved pursuant to Section 1.5.

c. The City shall endeavor to prepare the Site for the timely installation of the Work, including public access, and area lighting of the Work, but shall not be responsible for any utility provision or expense, or for any physical alteration of the Site surface.

1.7 Post Installation.

a. Within thirty (30) days after the installation of the Work, the Artist at his sole expense shall furnish the City with the following thirteen (13) digital photographs:

(i) Ten (10) images taken from different viewpoints and distances. At least three (3) of these images should be suitable for reproduction and print use of the Work as installed. Utilizing uncompressed .tiff files at least 300 dpi in 8"x10" is recommended.

(ii) Three (3) images taken of the Site prior to the installation of the Work.

b. The Artist shall provide a plaque at the Site, according to specifications set out in Exhibit E attached hereto and incorporated herein by reference.

c. The Artist shall be available at such time or times as may be agreed between the City and the Artist to attend an inauguration, dedication, or presentation ceremony relating to the transfer of the Work to the City for at least one hour at a date mutually agreed upon by the parties. Artist further agrees to participate in the discussions or question sessions at such event or ceremony. The City shall endeavor to arrange for publicity for the completed Work in such art publications and otherwise as may be determined between the City and the Artist as soon as practicable following installation.

d. Upon installation of the Work, the Artist shall provide to the City written recommendations for appropriate maintenance and preservation of the Work.

1.8 Final Acceptance.

a. The Artist shall advise the City in writing when all services required except those described in Section 1.7. c. have been completed in conformity with the Proposal. The Artist shall, prior to final acceptance of the Work, provide the City with lien and/or claim releases from contractors, subcontractors, and suppliers on the Project and shall otherwise comply with the provisions of C.R.S. §38-26-107.

b. The City shall notify the Artist in writing of its final acceptance of the Work.

1.9 Risk of Loss. The risk of loss or damage to the Work shall be borne by the Artist until installation of the Work and final acceptance thereof by the City, and the Artist shall take such measures as are necessary to protect the Work from loss or damage until such final acceptance. The parties recognize that the City is self-insured and possesses immunities pursuant to C.R.S. §24-10-101, *et seq.*

1.10 Ownership of Work Products. The City, at its option, may retain all plans, drawings, slides, photographs, submittals, studies, designs, maquettes and models, and other documents submitted to the City by the Artist. These items, when submitted, become and are the property of the City, and the City may, without restriction, make use of such documents for educational, public relations, arts promotional and other non-commercial purposes. The Artist shall not be liable for any damage which may result from any use of said documents for purposes other than those described in this Agreement.

2. **COORDINATION AND LIAISON:** The Artist shall fully coordinate all services under the Agreement with Director of the Division of Denver Arts and Venues (the “Director”). The Director may from time to time direct, in writing, with copy to the Artist, that the authority to coordinate certain day-to-day matters shall be exercised by other City employees, including but not limited to those in the Department of Transportation and Infrastructure. The Artist agrees that during the term of this Agreement Artist shall fully coordinate all work hereunder as directed by the City, including coordination with the City’s Department of Transportation and Infrastructure, other City agencies or departments and other consultants or contractors to the City.

3. **TERM OF AGREEMENT AND TIME OF PERFORMANCE:**

3.1 Term. The term of the Agreement shall commence on the date of the City's signature (the "Effective Date") and terminate on completion of the services to be performed by the Artist hereunder, or on December 31, 2026, whichever is earlier.

3.2 Duration. The services to be required of the Artist, as set forth in Article 1, shall be completed in accordance with the schedule for completion of the Work as set out in this Agreement; provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.3 Early Completion of Artist Services. The Artist shall bear any transportation and storage costs resulting from the completion of Artist's services hereunder prior to the time provided in the schedule for installation.

3.4 Time Extensions. The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the City in performing its obligations under this Agreement or in completing the underlying capital project, or if conditions beyond the Artist's reasonable control or Acts of God render timely performance of the Artist's services impossible or unduly burdensome despite the exercise of best efforts by the Artist. Failure to fulfill contractual obligations due to conditions beyond either party's control in such circumstances will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

4. **PAYMENT:**

4.1 Fee. The Artist agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee of Seven Hundred Fifty Thousand Dollars (\$750,000.00), which shall constitute full compensation for all services and materials whatsoever to be performed and furnished by the Artist under this Agreement. It is agreed that the City has no obligations regarding commission, or any agreements with galleries or agents with whom the Artist may have contracted. **The fee shall be paid in the following installments, subject to receipt by the City of acceptable periodic invoices and supporting documentation from the Artist, each installment to represent full and final payment for all services and materials provided by the Artist prior to the submittal of such periodic invoice for the specific phase of performance:**

- a. Execution of Contract (10%) \$ 75,000.00

b.	Preliminary Design Review	(25%)	\$ 187,500.00
c.	Final Design Review	(25%)	\$ 187,500.00
d.	Mid-Point Fabrication	(25%)	\$ 187,500.00
e.	Post-Installation	(10%)	\$ 75,000.00
f.	Final Acceptance	<u>(5%)</u>	<u>\$ 37,500.00</u>
Total Contract Amount Not to Exceed		(100%)	\$750,000.00

The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement and for all other miscellaneous charges hereunder. Nothing contained in this Agreement shall entitle the Artist to retain funds paid by the City hereunder in the event that the Artist fails to fabricate, transport and install a satisfactory Work in accordance with this Agreement, and nothing contained in this Agreement shall prevent or prohibit the City from seeking damages or reimbursement from the Artist in the event of the Artist's breach or default of this Agreement.

4.2 Appropriation. Notwithstanding any other term or condition of this Agreement, it is understood and agreed that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or contingent, shall only extend: (i) as to bond funds, to payment of monies duly and lawfully appropriated by the people, received by the City from the sale of General Obligation Bonds, encumbered for the purpose of this Agreement by the Denver City Council and paid into the Treasury of the City; and (ii) as to other funds, to payment of monies duly and lawfully appropriated by the City Council for the purpose of this Agreement, and paid into the Treasury of the City. The Artist acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

4.3 Maximum Amount Payable. The maximum amount payable by the City under this Agreement shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00).

5. **STATUS OF ARTIST:** It is understood and agreed by and between the parties that the status of the Artist shall be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1 (E)(x) of the Charter of the City and it is not intended, nor shall it be construed, that the Artist or any employee or subcontractor of the Artist is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

Without limiting the foregoing, the parties hereby specifically acknowledge that the Artist is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Artist or some other entity besides the City, that the Artist is not entitled to workers' compensation benefits from the City and that the Artist is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement.

6. **WARRANTIES:**

6.1 Warranties of Title. The Artist represents and warrants to the City that:

- a. The Work is solely the result of the artistic effort of the Artist;
- b. Except as otherwise disclosed in writing to the City prior to the time of execution hereof, the Work is unique and original and does not infringe upon any copyright;
- c. That neither the Work delivered hereunder, nor a duplicate thereof, has been accepted for sale elsewhere; and
- d. The Work is free and clear of any liens or claims from any source whatsoever.

6.2 Warranties of Quality and Condition. The Artist represents and warrants to the City that:

- a. The execution and fabrication of the Work will be performed in a workmanlike manner;
- b. The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of “inherent vice” or qualities which cause or accelerate deterioration of the Work; and

c. 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 to the City hereunder.

6.3 Duration of Warranties; Breach. The warranties described in this Article 6 shall survive for a period of two (2) years after the date of the City's written notification to the Artist of the final acceptance of the Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist utilizing artistic skill and which cure is consistent with professional conservation standards as determined solely by the City (including, for example cure by means of repair or refabrication of the Work).

7. **OWNERSHIP AND REPRODUCTION RIGHTS:**

7.1 Title. Title to the Work shall pass to the City upon final acceptance.

7.2 Waiver of Rights Under Visual Artists Rights Act of 1990 ("VARA"). The Artist understands and agrees that, as to Artist's rights in the Work, the provisions of this Agreement shall supersede the provisions of the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, as to the Work, and that execution of this Agreement by the Artist shall constitute a waiver by the Artist, as permitted in 17 U.S.C. §106A(e), as amended, of any and all rights or protections in the Work, and any uses of the Work whatsoever, set out in or otherwise granted by 17 U.S.C. §101, et seq., as amended, including but not limited to §106A(a) or §113, or otherwise in the nature of "Droit Moral" under which artists claim an interest in their work. The Artist understands that, despite the City's commitment not to intentionally damage, alter, or modify the Work without the prior written approval of the Artist, removal of the Work from the Site may subject the Work to destruction, distortion, mutilation, or other modification, by reason of its removal.

7.3 Artist's Remaining Retained Rights in the Work. The Artist therefore retains: (i) all other right, title and interest in the Work including all copyrights, but expressly excluding any rights in the Work under the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, or otherwise in the nature of "Droit Moral" under which artists claim a continuing interest in their products

and in the maintenance or modification of their products; and (ii) all rights expressly granted in this Agreement. The Artist's waived rights as described above are, insofar as such rights are transferable, assigned to the City. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Work, including but not limited to miniatures or jewelry applications, nor shall the Artist grant permission to others to do so except with the written permission of the City. The City is unable to grant permission of any kind for political use of the Work. The restriction for duplication or reproduction shall not apply to the Artist's use of photographic reproductions of the Work in portfolio or in critical and scholarly writings whether for commercial or non-commercial purposes. The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, in the sole discretion of the City and its assigns, including but not limited to reproductions used in advertising brochures, media publicity, and catalogues or other similar publications.

7.4 Notice. All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: Poetic Kinetics, Inc., date of publication.

7.5 Credit to City. The Artist shall give a credit reading substantially, "an original work owned and commissioned by the City and County of Denver," in any public showing under the Artist's control of reproduction of the Work.

7.6 Registration. The Artist shall at Artist's expense cause to be registered, with the United States Register of Copyrights, a copyright of the Work in the Artist's name.

8. **ARTIST'S RIGHTS:**

8.1 Artist's Enumerated Contractual Rights in the Work. Subject to and consistent with the provisions of Article 7 above, the Artist understands and agrees that Artist is therefore granted the following rights in the Work pursuant to this Agreement.

8.2 Maintenance and Repair.

a. The City shall have the right to determine, in its sole discretion, after consultation with a professional conservator, selected by the City, when and if maintenance, repairs and restorations to the Work will be made. To the extent practical, the Artist, during the

Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs or restorations and shall be paid a reasonable fee for any such services, provided that the City and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services, and subject to appropriation by the City of such fee.

b. All repairs and restorations shall be made in accordance with recognized principles of conservation.

8.3 Damage. Subject to 8.5 below, the City agrees that it will not intentionally damage, alter, or modify the Work without the prior written approval of the Artist.

8.4 Notification to Artist. The City shall endeavor to notify the Artist of any proposed alteration of the Site that would affect the intended character of the Work and shall endeavor to consult with the Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work.

8.5 Removal, Relocation, Sale, Donation or Destruction. Nothing in this Agreement shall preclude any right of the City, in its sole discretion, (i) to remove the Work from public display, (ii) to move or relocate the Work to another location selected solely by the City for public display, or (iii) to donate or sell the Work to a third person or entity, or (iv) to destroy the Work. In addition, the Artist will have the right of final refusal as to any sale of the Work. If the City decides to donate or sell the Work, the donee or buyer of the Work will assume all of the City's duties toward the Artist stated herein, will be obligated to defend and indemnify the City with respect to such duties, and will take the Work subject to all of the Artist's rights as stated herein, and the donee or buyer shall be given a copy of this executed Agreement at the time of donation or sale. The City will endeavor to notify the Artist of such donation and sale and of the identity of the donee or buyer. If the City shall at any time decide to destroy the Work, it shall by notice to the Artist offer the Artist a reasonable opportunity to recover the work at no cost to the Artist, except for an obligation of the Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the costs to the City of the proposed destruction as determined solely by the City. Without limiting the generality of Section 8.1, the Artist agrees that Artist's rights in connection with the destruction of the Work are as described in this Section 8.5; as set out above, the Artist waives

any rights which Artist might have in connection with the removal or destruction of the Work under the Visual Artists Rights Act of 1990 (“VARA”), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113.

8.6 Record. The City shall maintain on permanent file in the Office of the Denver City Clerk, Ex-Officio Clerk and Recorder, a record of this Agreement and of the location and disposition of the Work.

8.7 Artist’s Address. The Artist shall notify the City of changes in Artist’s address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the rights granted to the Artist in this Article 8, or otherwise retained by the Artist, the exercise of which requires response by the Artist. A mailing of notice by the City by certified mail with return receipt requested to the address of the Artist or of Artist’s attorney currently on file with the City at the time of such mailing, shall be deemed to be an adequate notification effort by the City hereunder.

8.8 Surviving Covenants. The covenants and obligations set forth in this Article shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the City’s covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of the Artist. However, the obligations imposed upon the City by Sections 8.2 through 8.5 shall terminate on the death of the Artist. The City shall give any subsequent owner of the Work notice in writing of the covenants herein providing such owner with an executed copy of this Agreement.

9. **TERMINATION OR SUSPENSION OF AGREEMENT:**

9.1 Termination for Default or Convenience. In addition to the City’s rights of termination during Work design and fabrication as set out above, the City may terminate this Agreement at any time on ten (10) days notice if the Artist’s services become unsatisfactory to it or if the Project is canceled. The City may also by written Notice of Default to the Artist terminate the whole or part of this Agreement in the event that the Artist or any of the Artist’s officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Artist’s business. The City may otherwise

terminate the Agreement without cause, for its convenience, upon thirty (30) days notice to the Artist. If the Artist's services are terminated, Artist shall be paid only for that portion of work or services satisfactorily completed at the time of notice of such action.

9.2 Event of Artist's Default or Incapacity. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's sole option become its property, including the right to fabricate or execute the Work. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined, or exercise all of its other rights hereunder.

In the event of incapacity or death of the Artist, such will not be deemed a breach of this Agreement or a default on the part of the Artist. Artist has the right to appoint a successor artist to complete the Work in the event of incapacity or death. The Artist intends that as a corporate entity it shall be the only successor necessary and continue to be responsible for the completion of the Work, regardless of the individual death of the artist(s) assigned to create the Work and the officers of the Artist shall be bound as individuals to act as successor artist and complete the Work in the event of any dissolution of the Artist as a corporate entity. The City has the right to approve a successor and the City agrees to Artist as the corporate entity or its officers as successors in the event of corporate dissolution, being acceptable. 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 City and all copyright described under this Agreement shall remain with the original Artist. Artist shall provide a copy of this Agreement to the officers as successor artist and the successor artist shall provide a written acknowledgement to the City of the successor artist's agreement to abide by the terms of this Agreement.

In the event of incapacity or death of the Artist, 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 under this Agreement shall at the City'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 able to complete the Work, the City retains the rights to select a successor artist to finish the Work at the City's expense. If the artwork was not at mid-point of fabrication or beyond at time of death or incapacity, and no successor is able to complete the Work, the City 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.

9.3 Suspension. The Director may, in his or her sole discretion, suspend performance of this Agreement by both parties until full compliance by the Artist with the insurance requirements set out in Article 16.

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of the Artist, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. No assent, expressed or implied, to any breach of any one or more covenants, terms, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

11. **EXAMINATION OF RECORDS AND AUDIT:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Artist's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Artist shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and

audits pursuant to this paragraph shall require Artist to make disclosures in violation of state or federal privacy laws. Artist shall at all times comply with D.R.M.C. 20-276.

12. **SUBJECT TO LOCAL LAWS; VENUE:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, Executive Orders and/or fiscal rules enacted and/or promulgated pursuant thereto. The Charter, Revised Municipal Code, regulations and Executive Orders of the City and County of Denver, as the same may be amended from time to time, are 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 City and County of Denver, Colorado.

13. **ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than Artist named herein. The Artist understands and agrees that Artist shall not assign or subcontract with respect to any of Artist's rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and the Artist herein named shall remain responsible to the City according to the terms of this Agreement.

14. **PREVAILING WAGES:** Employees of the Artist or his subcontractors may be subject to the payment of prevailing wages pursuant to D.R.M.C. 20-76, depending upon the nature of the Work. By executing this Agreement, the Artist covenants that Artist is familiar with this Code Section and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Artist's or his subcontractor's employees. A schedule of prevailing wage is attached as Exhibit G. The schedule of prevailing wage is periodically updated and Artist is responsible for payment of then current prevailing wage. Exhibit G shall be deemed replaced by updated schedules with out amendment to this Agreement. The Artist may obtain an updated scheduled of prevailing wage at any time from the Auditor's Office.

15. **NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:**

15.1 This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

15.2 The Artist certifies that:

- a. At the time of its execution of this Agreement, Artist does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement. nor will they knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.
- b. Artist will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- c. Artist will not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Artist that it shall not knowingly employ or contract with a worker without authorization to perform work under the Agreement.
- d. Artist is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and are required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- e. If Artist obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with a worker without authorization, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Artist shall also terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with a worker without authorization.
- f. Artist will comply with any reasonable request made in the course of an

investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S. or the City Auditor, under authority of D.R.M.C. 20-90.3.

15.3 The Artist is liable for any violations as provided in the Certification Ordinance. If Artist violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Artist shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Artist from submitting bids or proposals for future contracts with the City.

16. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Artist may not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, military status, gender identity or gender expression, sexual orientation, marital status, source of income, protective hairstyle, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

17. **INSURANCE:**

17.1 **General Conditions:** Artist agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Artist shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, during any warranty period and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days

prior. If such written notice is unavailable from the insurer, Artist shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Artist shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Artist. The Artist shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

17.2 Proof of Insurance: Artist may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Artist certifies that the certificate of insurance attached as Exhibit H, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Artist's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

17.3 Additional Insureds: For commercial general liability, excess/umbrella liability (if required), auto liability, Artist's and subcontractor's insurer shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

17.4 Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability, Artist's insurer shall waive subrogation rights against the City.

17.5 Subcontractors and Sub-consultants: Artist shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Artist and appropriate to their respective primary business risks considering the nature and scope of services provided.

17.6 Workers' Compensation/Employer's Liability Insurance: Artist shall maintain the

coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

17.7 Commercial General Liability: Artist shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

17.8 Automobile Liability: Artist shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

17.9 Payment and Performance Bonds. The Artist shall procure payment and performance bonds, in an amount satisfactory to the City, in the form exemplified by Exhibit F attached hereto and incorporated, upon approval by the City of Artist's Final Design Proposal. The City may in its sole discretion, in writing, accept alternative security from the Artist to assure the faithful payment and performance of the obligations set forth in the Agreement or waive this bond obligation in its entirety.

18. **DEFENSE AND INDEMNIFICATION:**

18.1 Artist hereby agrees to defend, indemnify, reimburse and hold harmless 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 City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Artist or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

18.2 Artist will further indemnify, defend and hold the City harmless from and against 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 City

the 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 an injunction or order is obtained against the City's use of the Works by reason of a claim of the type described above, or if in Artist's opinion, the Work is likely to become the subject of such a claim, Artist shall take all necessary action to correct any such infringement or misappropriation to give the City the right to continue using the Work.

18.3 Artist's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Artist's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

18.4 Artist will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

18.5 Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Artist under the terms of this indemnification obligation. The Artist shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

18.6 This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

19. **CONFLICT OF INTEREST:** No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Artist shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

The Artist shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Artist represents that it has disclosed any and all

current or potential conflicts of interest, including transactions, activities or conduct that would affect the judgment, actions or work of the Artist by placing the Artist's own interests, or the interests of any party with whom the Artist has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Artist written notice describing the conflict.

20. **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 Artist, 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 Artist that any person or entity other than the City or the Artist receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

21. **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.

22. **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.

23. **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: Denver Arts and Venues
 1345 Champa Street
 Denver, Colorado 80204

Email: publicart@denvergov.org

If to the Artist: The address first above written.

24. **EXHIBITS:** The following documents, certain of which are attached hereto, are

incorporated herein and made a part of this Contract:

- a. Exhibit “A”, Artist’s Scope (attached hereto)
- b. Exhibit “B”, Artist’s Preliminary Design Proposal (incorporated herein by reference if accepted by City)
- c. Exhibit “C”, Artist’s Final Design Proposal (incorporated herein by reference if accepted by City)
- d. City and County of Denver Department of Transportation and Infrastructure, Standard Specifications for Construction (“Yellow Book”), 1999 Edition, incorporated herein by reference
- e. Exhibit “D”, Artist’s Schedule (incorporated herein by reference if accepted by City)
- f. Exhibit “E”, City Plaque Specification (attached hereto)
- g. Exhibit “F”, Payment and Performance Bond Form (if required)
- h. Exhibit “G”, Prevailing Wage Schedule
- j. Exhibit “H” Certificate of Insurance

The terms and conditions of Articles 1 through 30 and Exhibits “E”, “F”, “G”, and “H”, hereof shall control over any contradictory or inconsistent terms and conditions that may be found or contained in the above-referenced Exhibits “A”, “B”, “C” and “D” attached or incorporated documents. The order of precedence of control among those exhibits, from the controlling exhibit, shall be “G”, “H”, “F”, “E”, “D”, “C”, “B” and “A”.

25. **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.

26. **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.

27. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:**

27.1 The Artist assures and guarantees that Artist possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

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

27.3 The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Artist or the persons signing the Agreement to enter into this Agreement. The City shall not be obligated to pay Artist for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Article.

28. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Artist 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.

(Remainder of page intentionally left blank. Signatures follow.)

Contract Control Number:
Contractor Name:

THTRS-202266109-00
POETIC KINETICS INC

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

THTRS-202266109-00
POETIC KINETICS INC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]


By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

THTRS-202266109-00
POETIC KINETICS INC

By:  _____

Name: Patrick Shearn
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

"Exhibit A"

Poetic Kinetics will design three kinetic sculptural Aspen Trees ranging in height from 22' to 30' to be installed on the 16th St Mall. The artwork will be fabricated with stainless steel for the trunk and branches and dichroic glass for the leaves.


Poetic Kinetics is responsible for designing, engineering, fabrication, transportation, installing artwork, and all other miscellaneous components necessary to complete the commission, including lighting compounded for the art. Stamped engineering drawings by a licensed Colorado engineer are a requirement before fabrication. The budget for the commission is \$750,000.00.

Exhibit " E "
to
Agreement
between
The City and County of Denver
and
POETIC KINETICS
Related to a series of plaques
to be provided for the
City and County of Denver Public Art Program

**Identification Plaque
for Exterior Art**

POETIC KINETICS
Name of Artwork

Public Art Program – 202x
City and County of Denver
Denver Commission on Cultural Affairs

 **PUBLIC ART**
DENVER ARTS & VENUES

General Notes:

1. Scale: Proportional.
2. Size: Not less than four inches high, nor more than seven inches high.
3. Material: Relevant to project; 3/8" minimum thickness. Smooth surface on raised areas; field area enameled, pebbled/grained surface. Provide stud anchors at back to secure plaque to substrate, or provide alternate mounting acceptable to City.

EXHIBIT G

(exhibit follows)

TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Ryland Feno, Classification and Compensation Analyst Staff
DATE: February 28, 2022
SUBJECT: Latest Change to Prevailing Wage Schedules

Please be advised prevailing wage rates for some building, heavy, highway, and residential construction trades have not been updated by the United States Department of Labor (DOL) since March 1, 2002. The Career Service Board, in their meeting held on April 21, 2011, approved the use of the attached supplemental wage rates until prevailing wage rates for these classifications of work are again published by the United States Department of Labor in accordance with the Davis-Bacon Act.

The effective date for this publication will be **Friday, February 25, 2022** and applies to the City and County of Denver for **HIGHWAY CONSTRUCTION PROJECTS** in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO20220009
Superseded General Decision No. CO20210009
Modification No. 1
Publication Date: 02/25/2022
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

***Career Service Board approved to adjust all Davis Bacon classifications under \$15.87 to comply with the city's minimum wage. The effective date is January 1, 2022. See page 7 for reference.**

"General Decision Number: CO20220009 02/25/2022

Superseded General Decision Number: CO20210009

State: Colorado

Construction Type: Highway

Counties: Denver and Douglas Counties in Colorado.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this

wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

CARP9901-008 11/01/2019

	Rates	Fringes
CARPENTER (Form Work Only).....	\$ 26.50	10.32

ELEC0068-016 03/01/2011

	Rates	Fringes
TRAFFIC SIGNALIZATION:		
Traffic Signal Installation		
Zone 1.....	\$ 26.42	4.75%+8.68
Zone 2.....	\$ 29.42	4.75%+8.68

TRAFFIC SIGNAL INSTALLER ZONE DEFINITIONS

Zone 1 shall be a 35 mile radius, measured from the following addresses in each of the following cities:
Colorado Springs - Nevada & Bijou
Denver - Ellsworth Avenue & Broadway
Ft. Collins - Prospect & College
Grand Junction - 12th & North Avenue
Pueblo - I-25 & Highway 50
All work outside of these areas shall be paid Zone 2 rates.

ENGI0009-008 05/01/2021

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
(3)-Hydraulic Backhoe (Wheel Mounted, under 3/4 yds), Hydraulic Backhoe (Backhoe/Loader combination), Drill Rig Caisson (smaller than Watson 2500 and similar), Loader (up to and		

including 6 cu. yd.).....\$ 31.05	12.35
(3)-Loader (under 6 cu. yd.)	
Denver County.....\$ 31.05	12.35
(3)-Motor Grader (blade-rough)	
Douglas County.....\$ 31.05	12.35
(4)-Crane (50 tons and under), Scraper (single bowl, under 40 cu. yd).....\$ 31.70	12.35
(4)-Loader (over 6 cu. yd)	
Denver County.....\$ 31.20	12.35
(5)-Drill Rig Caisson (Watson 2500 similar or larger), Crane (51-90 tons), Scraper (40 cu.yd and over),.....\$ 31.37	12.35
(5)-Motor Grader (blade-finish)	
Douglas County.....\$ 31.37	12.35
(6)-Crane (91-140 tons).....\$ 33.05	12.35

 * SUCO2011-004 09/15/2011

	Rates	Fringes
CARPENTER (Excludes Form Work)...	\$ 19.27	5.08
CEMENT MASON/CONCRETE FINISHER		
Denver.....	\$ 20.18	5.75
Douglas.....	\$ 18.75	3.00
ELECTRICIAN (Excludes Traffic Signal Installation).....	\$ 35.13	6.83
FENCE ERECTOR (Excludes Link/Cyclone Fence Erection).....	\$ 13.02 **	3.20
GUARDRAIL INSTALLER.....	\$ 12.89 **	3.20
HIGHWAY/PARKING LOT STRIPING:Painter		
Denver.....	\$ 12.62 **	3.21
Douglas.....	\$ 13.89 **	3.21
IRONWORKER, REINFORCING (Excludes Guardrail Installation).....	\$ 16.69	5.45
IRONWORKER, STRUCTURAL (Includes Link/Cyclone Fence Erection, Excludes Guardrail		

Installation).....\$ 18.22 6.01

LABORER

Asphalt Raker.....\$ 16.29 4.25

Asphalt Shoveler.....\$ 21.21 4.25

Asphalt Spreader.....\$ 18.58 4.65

Common or General

Denver.....\$ 16.76 6.77

Douglas.....\$ 16.29 4.25

Concrete Saw (Hand Held)....\$ 16.29 6.14

Landscape and Irrigation....\$ 12.26 ** 3.16

Mason Tender-

Cement/Concrete

Denver.....\$ 16.96 4.04

Douglas.....\$ 16.29 4.25

Pipelayer

Denver.....\$ 13.55 ** 2.41

Douglas.....\$ 16.30 2.18

Traffic Control (Flagger)....\$ 9.55 ** 3.05

Traffic Control (Sets

Up/Moves Barrels, Cones,

Install Signs, Arrow

Boards and Place

Stationary Flags) (Excludes

Flaggers).....\$ 12.43 ** 3.22

PAINTER (Spray Only).....\$ 16.99 2.87

POWER EQUIPMENT OPERATOR:

Asphalt Laydown

Denver.....\$ 22.67 8.72

Douglas.....\$ 23.67 8.47

Asphalt Paver

Denver.....\$ 24.97 6.13

Douglas.....\$ 25.44 3.50

Asphalt Roller

Denver.....\$ 23.13 7.55

Douglas.....\$ 23.63 6.43

Asphalt Spreader.....\$ 22.67 8.72

Backhoe/Trackhoe

Douglas.....\$ 23.82 6.00

Bobcat/Skid Loader.....\$ 15.37 4.28

Boom.....\$ 22.67 8.72

Broom/Sweeper

Denver.....\$ 22.47 8.72

Douglas.....\$ 22.96 8.22

Bulldozer.....\$ 26.90 5.59

Concrete Pump.....\$ 21.60 5.21

Drill

Denver.....\$ 20.48 4.71

Douglas.....\$ 20.71 2.66

Forklift.....\$ 15.91 4.68

Grader/Blade		
Denver.....	\$ 22.67	8.72
Guardrail/Post Driver.....	\$ 16.07	4.41
Loader (Front End)		
Douglas.....	\$ 21.67	8.22
Mechanic		
Denver.....	\$ 22.89	8.72
Douglas.....	\$ 23.88	8.22
Oiler		
Denver.....	\$ 23.73	8.41
Douglas.....	\$ 24.90	7.67
Roller/Compactor (Dirt and Grade Compaction)		
Denver.....	\$ 20.30	5.51
Douglas.....	\$ 22.78	4.86
Rotomill.....	\$ 16.22	4.41
Screed		
Denver.....	\$ 22.67	8.38
Douglas.....	\$ 29.99	1.40
Tractor.....	\$ 13.13 **	2.95

TRAFFIC SIGNALIZATION:

Groundsman		
Denver.....	\$ 17.90	3.41
Douglas.....	\$ 18.67	7.17

TRUCK DRIVER

Distributor		
Denver.....	\$ 17.81	5.82
Douglas.....	\$ 16.98	5.27
Dump Truck		
Denver.....	\$ 15.27	5.27
Douglas.....	\$ 16.39	5.27
Lowboy Truck.....	\$ 17.25	5.27
Mechanic.....	\$ 26.48	3.50
Multi-Purpose Specialty & Hoisting Truck		
Denver.....	\$ 17.49	3.17
Douglas.....	\$ 20.05	2.88
Pickup and Pilot Car		
Denver.....	\$ 14.24 **	3.77
Douglas.....	\$ 16.43	3.68
Semi/Trailer Truck.....	\$ 18.39	4.13
Truck Mounted Attenuator....	\$ 12.43 **	3.22
Water Truck		
Denver.....	\$ 26.27	5.27
Douglas.....	\$ 19.46	2.58

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

**Office of Human Resources
Supplemental Rates
(Specific to the Denver Projects)
Revised 01/01/2022)**

Classification		Base	Fringe
Guard Rail Installer		\$15.87	\$3.20
Highway Parking Lot Striping: Painter		\$15.87	\$3.21
Ironworker (Ornamental)		\$26.05	\$12.00
Laborer	Removal of Asbestos	\$21.03	\$8.55
Laborer (Landscape & Irrigation)		\$15.87	\$3.16
Laborer: Traffic Control (Flagger)		\$15.87	\$3.05
Laborer: Stationary Flags(excludes Flaggers)		\$15.87	\$3.22
Line Construction	Lineman, Gas Fitter/Welder	\$36.88	\$9.55
	Line Eq Operator/Line Truck Crew	\$25.74	\$8.09
Millwright		\$28.00	\$10.00
Pipefitter		\$30.45	\$12.85
Plumber		\$30.19	\$13.55
Power Equipment Operator (Tunnels Above and Below Ground, shafts and raises):	Group 1	\$25.12	\$10.81
	Group 2	\$25.47	\$10.85
	Group 3	\$25.57	\$10.86
	Group 4	\$25.82	\$10.88
	Group 5	\$25.97	\$10.90
	Group 6	\$26.12	\$10.91
	Group 7	\$26.37	\$10.94
Power Equipment Operator	Group 1	\$22.97	\$10.60
	Group 2	\$23.32	\$10.63
	Group 3	\$23.67	\$10.67
	Group 4	\$23.82	\$10.68
	Group 5	\$23.97	\$10.70
	Group 6	\$24.12	\$10.71
	Group 7	\$24.88	\$10.79
Truck Driver	Group 1	\$18.42	\$10.00
	Group 2	\$19.14	\$10.07
	Group 3	\$19.48	\$10.11
	Group 4	\$20.01	\$10.16
	Group 5	\$20.66	\$10.23
	Group 6	\$21.46	\$10.31
Truck Driver: Truck Mounted Attenuator		\$15.87	\$3.22

Go to <http://www.denvergov.org/Auditor> to view the Prevailing Wage Clarification Document for a list of complete classifications used.

EXHIBIT H
(Exhibit follows)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/01/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cura Insurance & Financial Solutions 318 Avenue I Unit 148 Redondo Beach, CA 90277	CONTACT NAME: Diana Cruz Adams PHONE (A/C, No. Ext): 888-380-1355 E-MAIL ADDRESS: Diana@curainsurance.com	FAX (A/C, No): 888-380-7752
	INSURER(S) AFFORDING COVERAGE	
INSURED Poetic Kinetics, Inc. 12060 Woodlake Rd Elbert, CO 80106	INSURER A: Evanston Insurance Company	NAIC # 35378
	INSURER B: State Compensation Insurance Fund	NAIC # 35076
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		MKLV5PBC005332	12/04/2022	12/04/2023	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000						
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB OCCUR CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		9205353-23	02/24/2023	02/24/2023	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	E.L. EACH ACCIDENT \$ 100,000						
	E.L. DISEASE - EA EMPLOYEE \$ 100,000						
	E.L. DISEASE - POLICY LIMIT \$ 500,000						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City and County of Denver, its elected and appointed officials, employees and volunteers are named as additional insured with regards to the commercial general liability policy.

CERTIFICATE HOLDER**CANCELLATION**

City and County of Denver Arts and Venues Denver Ginger White, Director 1345 Champa Street Denver, Colorado 80204	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Progressive
P.O. Box 94739
Cleveland, OH 44101
1-800-895-2886

PROGRESSIVE[®]
COMMERCIAL

Policy number: 960691031

Underwritten by:
Artisan and Truckers Casualty Co
NAIC Number: 10194
March 8, 2023
Page 1 of 1

Certificate of Insurance

Certificate Holder

City and County of Denver, Arts and Venues Denver
Ginger White, Director 1345 Champa Street
Denver, CO 80204

Insured

Poetic Kinetics Inc
12060 WOODLAKE ROAD
ELBERT, CO 80106

Agent

PROG COMMERCIAL
PO BOX 94739
CLEVELAND, OH 44101

This document certifies that insurance policies identified below have been issued by the designated insurer to the insured named above for the period(s) indicated. This Certificate is issued for information purposes only. It confers no rights upon the certificate holder and does not change, alter, modify, or extend the coverages afforded by the policies listed below. The coverages afforded by the policies listed below are subject to all the terms, exclusions, limitations, endorsements, and conditions of these policies. Liability coverage may not apply to all scheduled vehicles.

Policy Effective Date: Aug 15, 2022

Policy Expiration Date: Aug 15, 2023

Insurance coverage(s)

Limits

Bodily Injury/Property Damage	\$1,000,000 Combined Single Limit
Uninsured/Underinsured Motorist	\$1,000,000 Combined Single Limit

Description of Location/Vehicles/Special Items

Scheduled autos only

2017 FORD TRANSIT 1FBZX2XM1HKB08364	
Medical Payments	\$5,000
Comprehensive	\$1,000 Ded
Collision	\$1,000 Ded
2020 FORD ESCAPE 1FMCU9DZ2LUC14463	
Medical Payments	\$5,000
Comprehensive	\$1,000 Ded
Collision	\$1,000 Ded

Please be advised that the certificate holder will not be notified in the event of a mid-term cancellation.

