

DONATION AND ASSIGNMENT OF INTEREST AGREEMENT

THIS DONATION AND ASSIGNMENT OF INTEREST 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 **THE COLORADO PARKS FOUNDATION**, a Colorado nonprofit corporation, with an address of 2401 E. 2nd Avenue Suite G40 Denver, CO 80206 hereinafter referred to as the "Donor."

RECITALS:

1. The Donor entered into an agreement with artist **TRM COMPANY LLC**, a Colorado limited liability company, whose mailing address is 1948 Blue Sage Lane, Castle Rock CO 80104 and also named Mary Williams as an individual ("Williams") in the contract for artwork ("TRM Work") a description of which is attached as **Exhibit A** to be installed at Confluence Park (the "TRM Site") which is undated but appears to have been created in July 2023 (the "TRM Agreement" or collectively with the other artist's agreement described herein the "Artists' Agreements"), attached hereto as **Exhibit B** and incorporated herein by this reference, to perform the TRM Work. The agreement purports to give rights to create the TRM Work in Confluence Park. The contracting parties for the TRM Agreement do not have authority to place art on City and County of Denver Park but the City wishes to accept the donation of the work as further described in this Donation Agreement.

2. The Donor also entered into an agreement with artist **AP DADO**, a Colorado limited liability company, whose mailing address is 2568 S Vine St., Denver, CO 80210 ("AP Dado") for artwork named "Your World for a Moment" ("AP Dado Work") a description of which is attached as **Exhibit C** to be installed at Johnson Habitat Park (the "AP Dado Site") which is undated but which also appears to have been created in July 2023 (the "AP Dado Agreement" or collectively with the other artist's agreement described herein the "Artists' Agreements"), attached hereto as **Exhibit D** and incorporated herein by this reference, to perform the AP Dado Work. The agreement purports to give rights to create the AP Dado Work in Confluence Park. The contracting parties for the AP Dado Agreement do not have authority to place art on City and County of Denver Park but the City wishes to accept the donation of the work as further described in this Donation Agreement.

3. In consultation with the City, Donor wishes to donate the TRM Work and the AP

Dado Work and associated recognition plaques (the "Works") which the City and the Donor wish to install (the "Project") at the identified TRM Site and AP Dado Site (collectively "Sites") in Denver, Colorado.

4. The Artists have completed the Works and the Donor and the City have reviewed and accepted the Works for installation on the Site.

5. Donor shall pay all costs to fund the installation of the Works and associated base(s) and other mounting devices. Donor shall coordinate the installation with the City's Department of Parks and Recreation.

6. In accordance with the terms and conditions of the gift specified herein, the City is willing to accept the donation of the Work.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto agree as follows:

1. **THE PROJECT:** The term "Projects" or "Works" shall mean a public work of art as depicted on **Exhibits A and C** attached hereto and incorporated herein in the form of a sculpture and related plaques as ultimately conceived, designed, fabricated, executed, stored, transported and installed at the site by the Artists. Activities at the Sites shall be coordinated with the Denver Department of Parks and Recreation.

2. **DONOR GIFT AND RELATED PROJECT RESPONSIBILITIES:** The Donor shall make a gift to the City of the Works for which it has paid with privately raised funds. The Donor hereby donates, grants, conveys, assigns and delivers to the City for the use and benefit of the people of Denver, all of the Donor's rights, title and interest in and to the Works as depicted on **Exhibits A and C**, and any contractual rights held by the Donor, as shown by the contracts attached as **Exhibits B and D** including any rights held by the Donor under the Visual Artists Rights Act of 1990, 17 U.S.C. §106A and §113 et. seq., as amended, or otherwise in the nature of "Droit Moral." The Artists Agreements both reference that they are amendment to another agreement at Paragraph numbered 9 between Paragraphs 7.8 and 8 of the AP Dado Agreement and at Paragraph 7.9 of the TRM Agreement and each also indicates that it is not an amended agreement in their respective Integration Clause at Subparagraphs 13(e) of both Artists Agreements. The City agrees to accept only the contractual rights as set forth in **Exhibit B and Exhibit D** hereto and makes no representation of any kind as to any other agreements between the Donor and either of the Artists. The City has determined that the Works as newly created Works

shall not require a major repair or rehabilitation and does not require Donor to provide any additional funds to maintain the donated Works under §2-258 of the Denver Revised Municipal Code (“DRMC”). The Donor represents and warrants to the City that it has ownership of the Works and it is not subject to any other lien or claim of any kind. Ownership of the copyright for the TRM Work is in either TRM Company LLC or in Mary Williams. Ownership of the copyright for the AP Dado Work is in AP Dado. The City accepts the assignment of the waiver of the Artists in the Artists’ respective paragraphs 6.2 , 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.

Exhibits B and D also make reference to the position of the City with respect to the City obligations. The Donor is not authorized to make representations on behalf of the City. The City in consideration for receipt of the Donation will adopt certain of the representations as set forth herein. Although the Donor may not make representations to the Artists on behalf of the City, the City affirms its commitment not to intentionally damage, alter, or modify the Works without the prior written approval of the Artist, and accepts assignment of the Artists’ understanding that removal of the Works from their respective Sites may subject the Work to destruction, distortion, mutilation, or other modification, by reason of its removal. The City expressly agrees to the terms of the Artists Agreements at their respective Subparagraphs 6.3, 6.4, 6.5, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, and 7.8 upon this Assignment taking effect.

The City does not accept assignment of Subparagraphs 13(f) of the Artists’ Agreements and the City will not under any circumstances pay any attorney’s fees to the Donor nor to either of the Artists.

3. COORDINATION AND LIAISON: The Donor agrees that during performance under this Donation Agreement it shall fully coordinate all services hereunder with the City, including the City’s Director of Denver Arts and Venues (“the Director”) or the Director’s designee, and all work at the Sites shall be coordinated with the Denver Department of Parks and Recreation or as otherwise directed by the City. The Donor further understands that the Director is the City's representative under this Donation Agreement through whom contractual services

performed hereunder shall be coordinated. Paragraph 11 of the Artists' Agreements is not applicable to the City and this Paragraph 3 shall control installation at the Sites.

4. **TERM OF DONATION AGREEMENT:** The term of the Donation Agreement shall commence on the date of execution, and remain in effect for so long as the City owns the Work.

5. **APPROPRIATION:** It is understood and agreed that any payment obligation of the City associated with this donation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council for the purpose of this Donation Agreement, and paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. **STATUS OF DONOR:** It is understood and agreed by and between the parties that the status of the Donor shall be that of an independent contractor and it is not intended, nor shall it be construed, that the Donor or any employee or sub-consultant is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any acceptance 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 Donor, and the rendering of any such acceptance 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; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Donation Agreement shall be construed as a waiver of any succeeding or other breach.

8. **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 Donor's performance pursuant to this Donation Agreement, provision of any goods or services to the City, and any other transactions related to

this Agreement. Donor 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 Donation Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Donation 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 Donor to make disclosures in violation of state or federal privacy laws. Donor shall at all times comply with D.R.M.C. 20-276

9. VENUE, GOVERNING LAW: Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this grant as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

10. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Donor, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Donor from City facilities or participating in City operations.

11. ASSIGNMENT AND SUBCONTRACTING: The City is not obligated or liable under this Donation Agreement to any party other than the Donor named herein.

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

13. INSURANCE: As of the date of acceptance of the Works by the City which requires approval of City Council, the City will add the Works to its fine arts policy and will be responsible for risk associated with ownership of the Work. Donor agrees that it is responsible for risks related to installation of the Works and shall provide insurance coverage as it deems appropriate for protection of the City and 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 installation of the Works 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 insurance obligation shall survive the expiration or termination of this Agreement until the running of all applicable statutes of limitation.

14. DEFENSE AND INDEMNIFICATION:

a. Because the Donor is working with the Artists to install the Works, Donor 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 Donor 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.

b. Donor’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. Donor'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.

c. Donor 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.

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

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

f. Paragraphs 9 of the respective Artists' Agreements are not binding on the City and do not relieve the Donor of its obligations to the City. The City does not accept Assignment of Paragraph 9 of the Artists' Agreements. The City does not waive the right to seek damages from any party, including the Artists.

15. 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 Donor 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.

16. NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Donation Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Donor, and nothing contained in this grant shall give or allow any such claim or right of action by any other or third person on such grant, including but not limited to subcontractors, sub-consultants, and suppliers. It is the express intention of the City and the Donor that any person other than the City the Donor receiving services or benefits under this grant shall be deemed to be an incidental beneficiary only.

17. **DISPUTES:** All disputes of whatsoever nature between the City and Donor regarding this Donation Agreement shall be resolved by administrative hearings pursuant to Denver Revised Municipal Code 56-106, with the Director acting in the place of the referenced agency head. The City will not arbitrate disputes and does not accept any assignment of any other alternate dispute resolution than the process at DRMC 56-106, including any references to arbitration under the Artists' Agreements.

18. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Donor at the address first above written, and if to the City at:

Denver Arts and Venues
1345 Champa Street, First Floor
Denver, Colorado 80204

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

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

20. **PREVAILING WAGES:** Because the works are being installed by the Donor and the Artists on City property, Donor and employees of the Artists or Artists' 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 Donor covenants that Donor 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 Artists' or their subcontractor's employees. A schedule of prevailing wage is attached as **Exhibit E**. The schedule of prevailing wage is periodically updated and Donor is responsible for payment of then current prevailing wage. **Exhibit E** shall be deemed replaced by updated schedules with out amendment to this Agreement. The Donor may obtain an updated scheduled of prevailing wage at any time from the Auditor's Office

21. 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.

22. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Donation Agreement is by the courts held 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 grant did not contain the particular part, term, or provision held to be invalid.

23. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

24. SUPPLEMENTAL DOCUMENTS: The following documents are attached and/or incorporated herein and made a part of this Agreement:

- A. Exhibit "A" Depiction of the TRM Work
- B. Exhibit "B" TRM Artist Contract (Incorporated by reference only)
- C. Exhibit "C" Depiction of the AP Dado Work
- D. Exhibit "D" AP Dado Artist Contract (Incorporated by reference only)
- E. Exhibit "E" Prevailing Wage Schedule

The terms and conditions contained in this Agreement shall control over any contradictory or inconsistent terms and conditions which may be found or contained in the above referenced attached Exhibits.

25. LEGAL AUTHORITY:

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

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

26. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Donor 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 left intentionally blank.
Signatures follow.*

Contract Control Number:
Contractor Name:

THTRS-202367282-00
THE COLORADO PARKS FOUNDATION

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-202367282-00
THE COLORADO PARKS FOUNDATION

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____


Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

THTRS-202367282-00
THE COLORADO PARKS FOUNDATION

By: COLORADO PARKS FOUNDATION

Name: 
(please print)

Title: EXEC. DIRECTOR
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

(exhibit follows)

CPF Grant Request Summary

2021 FALL CYCLE



CONFLUENCE PARK GRANT REQUEST SUMMARY

Purpose of Grant: This project aims to provide an engaging environmental art experience for the citizen of Denver by creating a permanent wall mural located in Confluence Park. The mural will draw attention to the importance of the South Platte River to the history of this significant geographic location; the 3D mural will add a splash of color and life to the existing retaining wall, thus creating an inspiring focal point for Confluence Park East.

Recognition: CPF will be recognized along with all the participating students on a plaque that will be placed adjacent to the wall.

Requested Amount: \$35,000

Mural Size: 4' x 28' x 4"

Matching Funds/Partner Contribution: Approx. \$10,000 in supplies, design/construction services, etc.

Contact Information:

- . Contact Person: Mary Williams VIA [Jeff Shoemaker](#)
- . Mailing Address: 2200 15th St. Denver, CO. 80202
- . Email Address: mwadart@comcast.net
- . Phone Number: 303.570-9435

Recommendation: Recommend Full Funding





EXHIBIT B

(exhibit follows)

PROFESSIONAL SERVICES AGREEMENT
Confluence Park Art Installation

This Professional Services Agreement is made and entered into between the Colorado Parks Foundation (CPF), a nonprofit Colorado organization and Mary Williams, TRM Company, LLC. (**Artist**) collectively hereinafter referred to as the "Parties."

RECITALS

WHEREAS, since its inception in 1985, the Mission of the CPF has been and remains to provide Funding, Advocacy and Promotion for Parks Across the State of Colorado; and

WHEREAS, over the course of these four decades the CPF has funded over 300 grants to Parks Across the State of Colorado totaling, to date, over \$1,300,000 in grant support; and

WHEREAS, the Board of Trustees of CPF unanimously supported a grant request from the Artist to create a public art project at Confluence Park along the South Platte River Greenway in Denver; and

WHEREAS, the Artist is ready, willing and able to render such services as provided by this Agreement as an Artist.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, and the recitals set forth above which are made a part hereof, the Parties agree as follows:

TERMS

1. **SCOPE OF SERVICES.**

- (a) Artist shall perform the tasks set forth on **Exhibit 1** to this Agreement, which Exhibit is incorporated into and made a part of this Agreement (the "Services").
- (b) Artist and CPF are using a fixed bid contract agreement. Any changes to the agreed upon price shall be in writing by either party. Artist agrees to provide a cost breakdown by category upon request.

- (c) Artist shall furnish all of the equipment, supplies, and materials necessary for the performance of the Services called for under this Agreement.
 - (d) Artist shall have no authority to act on behalf of or to bind CPF, including, without limitation, with respect to any third-party contracts for goods or services. Further, Artist shall not serve as an agent for CPF, nor represent himself as such to any third party.
2. **TERM.** The term of this Agreement shall commence upon execution of this Agreement, and shall continue until the Artwork is accepted by Denver, unless otherwise terminated in accordance to the terms of this Agreement.
3. **CONTRACTUAL RELATIONSHIP OF PARTIES.** Nothing in this Agreement shall be interpreted or construed as creating or establishing partnership, agency, joint venture, or the relationship of employer and employee between Artist and CPF and neither Artist nor any of their employees or agents shall have any right to or claim for any worker's compensation, medical, welfare, pension or retirement benefits from CPF arising out of performance of the Services.
4. **WARRANTY.**
- (a) **Exercise of Judgment and Skill.** Artist represents and warrants to CPF that they are an experienced artist with the specialized knowledge, training and experience required for the provision of services to CPF pursuant to this Agreement.
 - (b) **Warranty as to Title.** Artist represents and warrants that the artwork produced pursuant to this Agreement (i) is solely the result of the artistic effort of the Artist; (ii) except as otherwise disclosed in writing to CPF, the artwork is unique and original and does not infringe upon any copyright or the rights of any third party; (iii) that neither the artwork installed nor a duplication thereof has been accepted for sale elsewhere; and (iv) the Artist has not sold, assigned, transferred, licensed, granted encumbered or utilized the artwork or any element thereof or any copyright related thereto which may affect or impair the rights ranted pursuant to this Agreement; and (v) the artwork is free and clear of any liens from any source whatsoever.
 - (c) **Warranties of Quality and Condition.** The Artist represents and warrants, except as otherwise disclosed to CPF in writing, that the execution and fabrication of the artwork will be performed in a skillful manner and the artwork, as fabricated and installed, will be free of defective or inferior materials and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the artwork. The Artist also represents and warrants that the artwork and materials used are not currently known to be harmful to public health and safety.

The warranties described above shall survive the termination or other extinction of this Agreement.

6. **OWNERSHIP AND REPRODUCTION RIGHTS:**

6.1. Title. Title to the Work and Assignment of the Artist Agreement shall pass to the City of Denver (City) upon final acceptance from the Donors (Colorado Park Foundation) as evidenced by a separate Donation Agreement between the Donors and the City. Artist consents and agrees that the rights of Donors have been assigned to the City of Denver.

6.2. 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.

6.3. 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 of Denver. 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 of Denver. 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. 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.

6.4. Notice. All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: AP Dado and date of installation.

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

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

An additional paragraph 2 is added to read as follows:

7. ARTIST'S RIGHTS:

7.1 Artist's Enumerated Contractual Rights in the Work. Subject to and consistent with the provisions of Article 1 above, the Artist understands and agrees that he or she is therefore granted the following rights in the Work pursuant to this Agreement.

7.2 Maintenance and Repair.

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

7.3 Damage. Subject to 2.5 below, the City agrees that it will not intentionally damage, alter, or modify the Work without the prior written approval of the Artist.

7.4 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.

7.5 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 17.1, the Artist agrees that his or her rights in connection with the destruction of the Work are as described in this Section 17.5; as set out above, the Artist waives any rights which he or she 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.

7.6 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.

7.7 Artist's Address. The Artist shall notify the City of changes in his or her 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 17, 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 his or her 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.

7.8 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 or dissolution of the Artist. However, the obligations imposed upon the City by Sections 2.2 through 2.5 shall terminate on the death or dissolution 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.

7.9 Except as herein amended, the Artist Agreement is affirmed and ratified in each and every particular and is assigned as herein amended, to the City.

8. TERMINATION.

- a. Except as otherwise provided in this Agreement, this Agreement may not be terminated by either party except in good faith, for good cause shown, and upon written notice to the other party. A termination of this Agreement shall be considered to be a termination "for good cause," if such termination is for reasons including but not limited to the following: (i) material dishonesty; (ii) failure of CPF to compensate Artist in accordance with the provisions of Paragraph 6; and (iii) failure of Artist to perform services under or comply with the terms of this Agreement.
- b. Upon termination of this Agreement, CPF will reimburse Artist for work performed prior to termination.
- c. Artist's obligations to indemnify CPF under Paragraph 10 below shall continue in full force and effect notwithstanding any termination of this Agreement.

9. INDEMNIFICATION. Artist shall indemnify, defend and hold the City and County of Denver, CPF and the aforementioned organizations' officers, agent and employees harmless from any and all demands, claims, causes of action, suits, proceedings, arbitrations, judgments, losses, liabilities, costs, expenses and fees, including but not limited to reasonable attorneys' fees, which arise from or in connection with the services provided by Artist or Artist's subcontractors and/or employees; the design, fabrication or installation of the artwork; and/or

the negligence or intentional acts of Artist. This indemnity shall be interpreted in the broadest possible manner to indemnify the City and County of Denver, either passive or active, for any acts or omissions of Artist irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City. This indemnification provision shall survive the termination or expiration of this Agreement.

10. CONFLICT OF INTEREST. It is understood that Artist may provide consulting and/or artistic services for other clients during the term of this Agreement. However, during the term of this Agreement, Artist will not undertake any responsibilities or engage in activities that may conflict with or be detrimental to the success of Artist's Services to CPF. Further, Artist shall disclose to CPF any situation which may reasonably present a conflict of interest. CPF and Artist will mutually and in good faith attempt to resolve any apparent or perceived conflict of interest. If the conflict cannot be resolved between the parties, CPF may terminate the Agreement effective on the day notice is sent to Artist.

11. PROJECT ADMINISTRATION. This Agreement will be administered by the following representative of CPF: Jeff Shoemaker, Executive Director provided that CPF reserves the right to change such person at any time.

12. DEFAULT. In the event that Artist defaults in the performance of any of Artist's obligations under this Agreement, in addition to CPF's right to recover damages for breach of contract or any other remedy provided by law or equity, CPF shall be entitled to receive all information and materials obtained by Artist in connection with the performance of this Agreement up until the time of Artist's default, and Artist shall return to CPF all supplies, documents and materials acquired by Artist by or on behalf of CPF.

13. MISCELLANEOUS.

- a. **Assignment.** Neither party shall assign this Agreement or any rights or benefits accruing to it hereunder without the prior written consent of the other party.
- b. **Governing Law.** This Agreement shall be governed by the laws of the State of Colorado, applicable to contracts executed and performed entirely therein.
- c. **Waiver of Default.** Failure by either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or of the right to such party thereafter to enforce such provision. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.
- d. **Modifications.** Except as expressly set forth elsewhere in this Agreement, this Agreement may be modified only in writing, signed

by both parties hereto.

- e. **Integration Clause.** This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior correspondence, conversations and negotiations with respect thereto.
 - f. **Attorneys' Fees.** The parties agree that reasonable attorneys' fees and costs shall be awarded to the prevailing party in any arbitration or litigation between the parties in connection with this Agreement.
 - g. **Binding Effect.** This Agreement shall be binding upon the heirs, successors, assigns and representatives of the parties hereto.
 - h. **Severability.** If any provision, in whole or in part, of this Agreement should be found to be invalid or unenforceable, it shall not affect the validity of any other provisions within this Agreement which shall continue to bind the parties.
 - i. **Time is of the Essence.** Artist understands that time is of the essence in this Agreement and that CPF will be relying on the timeliness of the Artist.
- d. **Multiple Originals/Electronic Signatures.** Electronic signatures of or on behalf of either party on this Agreement shall be effective for all purposes, including delivery, as an original. This Agreement may be executed in multiple originals, which shall be deemed to be one document.

IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date (the "Effective Date") of this Agreement shall be the last date of execution by either of the parties to this Agreement.

ARTIST

A handwritten signature in black ink, appearing to read "Mary Williams", with a long horizontal line extending to the right.

Mary Williams, TRM Company, LLC
Mary Williams,

CPF

A handwritten signature in black ink, appearing to read "Jeff Shoemaker", with a long horizontal line extending to the right.

Jeff Shoemaker, Executive Director
Colorado Parks Foundation

EXHIBIT C

(exhibit follows)

CPF Grant Request Summary

2021 FALL CYCLE



JOHNSON-HABITAT PARK GRANT REQUEST SUMMARY

Purpose of Grant: We are designing a sculpture, a sea of flowers that represent the Columbine, in a multitude of colors, the official Colorado state flower. All of the flowers will be designed into a Kinetic sculpture so they will move with the breeze. Imagine a field of columbines blowing in the wind. This project is titled, "Your World for a Moment". This idea was inspired by the San Francisco Hearts and developed into a kinetic sculpture of Columbines to represent Colorado. The columbines will be cut from aluminum individually so that no two are alike. There will be 40-60 flowers total.

Recognition: Looking up at a sea of colorful Columbines blowing in the wind allows for a person to stop and take a moment to admire the beauty that is all around us when we are outdoors.

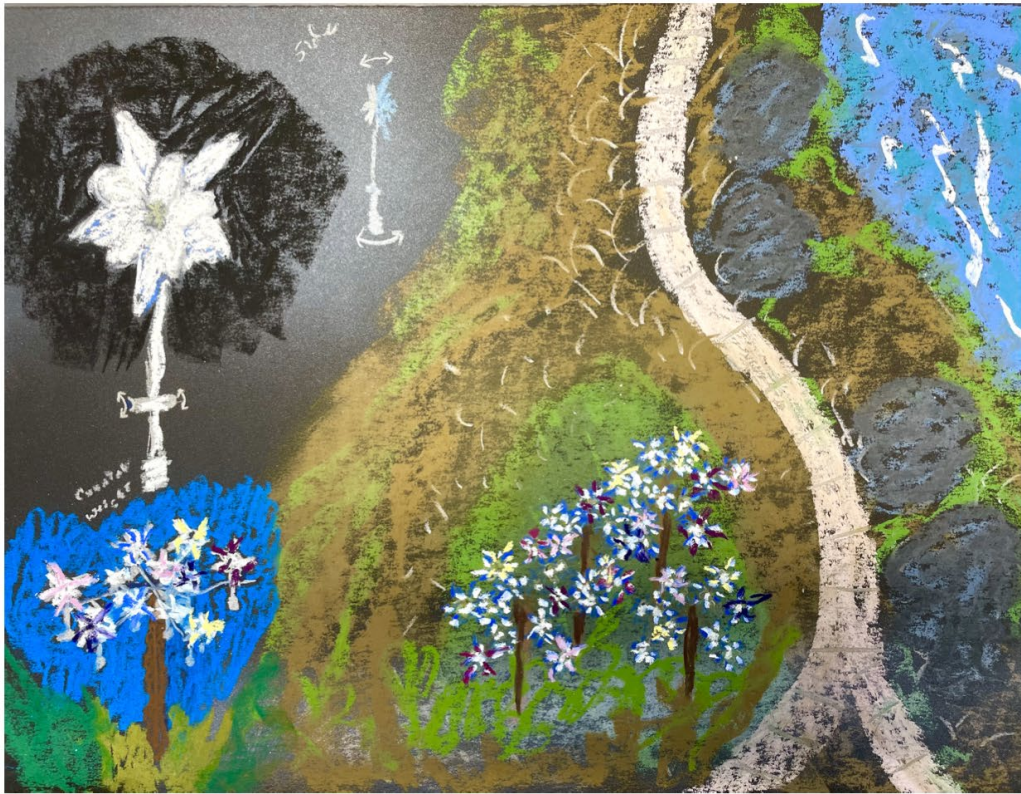
Requested Amount: \$34,850
Sculpture construction: \$24,850
Sculpture installation and engineering: \$10,000

Matching Funds/Partner Contribution: Approx. \$10,000 in supplies, design/construction services, etc.

Contact Information:

- . Contact Person: Edward Done VIA Michelle Brady
- . Mailing Address: 610 S Jason St Denver, CO 80223
- . Email Address: edwarddone@mac.com
- . Phone Number: 303.898-5577

Recommendation: Recommend Full Funding



BIRDS EYE VIEW

"Your World for a Moment"

If you take a flower in your hand and really look at it, it's your world for a moment.



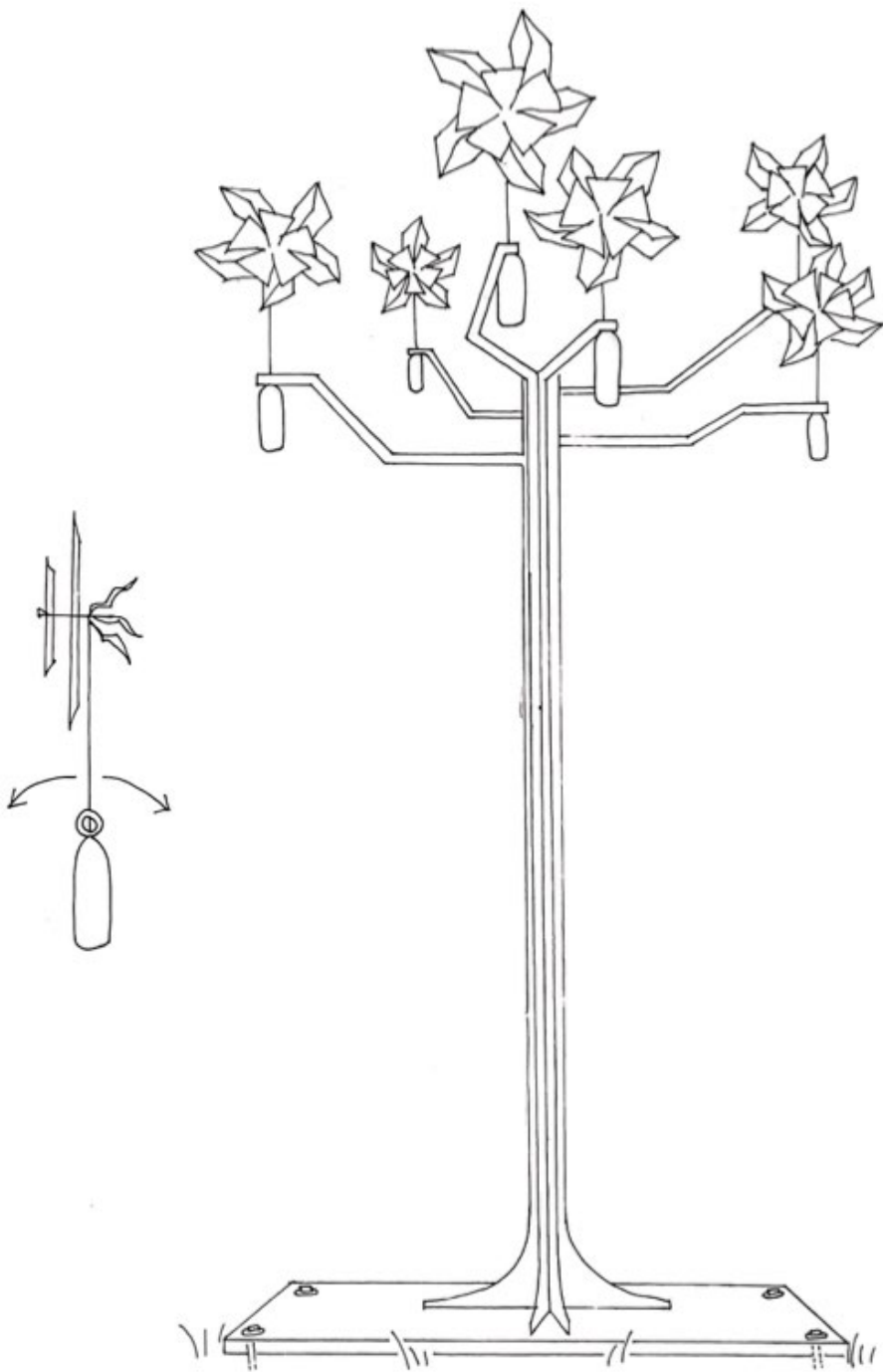


EXHIBIT D

(exhibit follows)

**PROFESSIONAL SERVICES AGREEMENT
Johnson Habitat Park Art Installation**

This Professional Services Agreement is made and entered into between the Colorado Parks Foundation (CPF), a nonprofit Colorado organization and AP Dado, LLC. (Artist) collectively hereinafter referred to as the "Parties."

RECITALS

WHEREAS, since its inception in 1985, the Mission of the CPF has been and remains to provide Funding, Advocacy and Promotion for Parks Across the State of Colorado; and

WHEREAS, over the course of these four decades the CPF has funded over 300 grants to Parks Across the State of Colorado totaling, to date, over \$1,300,000 in grant support; and

WHEREAS, the Board of Trustees of CPF unanimously supported a grant request from the Artist to create a public art project at Confluence Park along the South Platte River Greenway in Denver; and

WHEREAS, the Artist is ready, willing and able to render such services as provided by this Agreement as an Artist.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, and the recitals set forth above which are made a part hereof, the Parties agree as follows:

TERMS

1. **SCOPE OF SERVICES.**

- (a) Artist shall perform the tasks set forth on **Exhibit 1** to this Agreement, which Exhibit is incorporated into and made a part of this Agreement (the "Services").
- (b) Artist and CPF are using a fixed bid contract agreement. Any changes to the agreed upon price shall be in writing by either party. Artist agrees to provide a cost breakdown by category upon request.

- (c) Artist shall furnish all of the equipment, supplies, and materials necessary for the performance of the Services called for under this Agreement.
 - (d) Artist shall have no authority to act on behalf of or to bind CPF, including, without limitation, with respect to any third-party contracts for goods or services. Further, Artist shall not serve as an agent for CPF, nor represent himself as such to any third party.
2. **TERM.** The term of this Agreement shall commence upon execution of this Agreement, and shall continue until the Artwork is accepted by Denver, unless otherwise terminated in accordance to the terms of this Agreement.
3. **CONTRACTUAL RELATIONSHIP OF PARTIES.** Nothing in this Agreement shall be interpreted or construed as creating or establishing partnership, agency, joint venture, or the relationship of employer and employee between Artist and CPF and neither Artist nor any of their employees or agents shall have any right to or claim for any worker's compensation, medical, welfare, pension or retirement benefits from CPF arising out of performance of the Services.
4. **WARRANTY.**
- (a) **Exercise of Judgment and Skill.** Artist represents and warrants to CPF that they are an experienced artist with the specialized knowledge, training and experience required for the provision of services to CPF pursuant to this Agreement.
 - (b) **Warranty as to Title.** Artist represents and warrants that the artwork produced pursuant to this Agreement (i) is solely the result of the artistic effort of the Artist; (ii) except as otherwise disclosed in writing to CPF, the artwork is unique and original and does not infringe upon any copyright or the rights of any third party; (iii) that neither the artwork installed nor a duplication thereof has been accepted for sale elsewhere; and (iv) the Artist has not sold, assigned, transferred, licensed, granted encumbered or utilized the artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement; and (v) the artwork is free and clear of any liens from any source whatsoever.
 - (c) **Warranties of Quality and Condition.** The Artist represents and warrants, except as otherwise disclosed to CPF in writing, that the execution and fabrication of the artwork will be performed in a skillful manner and the artwork, as fabricated and installed, will be free of defective or inferior materials and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the artwork. The Artist also represents and warrants that the artwork and materials used are not currently known to be harmful to public health and safety.

The warranties described above shall survive the termination or other extinction of this Agreement.

6. OWNERSHIP AND REPRODUCTION RIGHTS:

6.1. Title. Title to the Work and Assignment of the Artist Agreement shall pass to the City of Denver (City) upon final acceptance from the Donors (Colorado Park Foundation) as evidenced by a separate Donation Agreement between the Donors and the City. Artist consents and agrees that the rights of Donors have been assigned to the City of Denver.

6.2. 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.

6.3. 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 of Denver. 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 of Denver. 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. 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.

6.4. Notice. All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: AP Dado and date of installation.

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

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

An additional paragraph 2 is added to read as follows:

7. **ARTIST'S RIGHTS:**

7.1 Artist's Enumerated Contractual Rights in the Work. Subject to and consistent with the provisions of Article 1 above, the Artist understands and agrees that he or she is therefore granted the following rights in the Work pursuant to this Agreement.

7.2 Maintenance and Repair.

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

7.3 Damage. Subject to 2.5 below, the City agrees that it will not intentionally damage, alter, or modify the Work without the prior written approval of the Artist.

7.4 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.

7.5 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 17.1, the Artist agrees that his or her rights in connection with the destruction of the Work are as described in this Section 17.5; as set out above, the Artist waives any rights which he or she 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.

7.6 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.

7. Artist's Address. The Artist shall notify the City of changes in his or her 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 17, 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 his or her 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.

7.8 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 or dissolution of the Artist. However, the obligations imposed upon the City by Sections 2.2 through 2.5 shall terminate on the death or dissolution 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. Except as herein amended, the Artist Agreement is affirmed and ratified in each and every particular and is assigned as herein amended, to the City.

8. TERMINATION.

- a. Except as otherwise provided in this Agreement, this Agreement may not be terminated by either party except in good faith, for good cause shown, and upon written notice to the other party. A termination of this Agreement shall be considered to be a termination "for good cause," if such termination is for reasons including but not limited to the following: (i) material dishonesty; (ii) failure of CPF to compensate Artist in accordance with the provisions of Paragraph 6; and (iii) failure of Artist to perform services under or comply with the terms of this Agreement.
- b. Upon termination of this Agreement, CPF will reimburse Artist for work

performed prior to termination.

- c. Artist's obligations to indemnify CPF under Paragraph 10 below shall continue in full force and effect notwithstanding any termination of this Agreement.

9. INDEMNIFICATION. Artist shall indemnify, defend and hold the City and County of Denver, CPF and the aforementioned organizations' officers, agent and employees harmless from any and all demands, claims, causes of action, suits, proceedings, arbitrations, judgments, losses, liabilities, costs, expenses and fees, including but not limited to reasonable attorneys' fees, which arise from or in connection with the services provided by Artist or Artist's subcontractors and/or employees; the design, fabrication or installation of the artwork; and/or the negligence or intentional acts of Artist. This indemnity shall be interpreted in the broadest possible manner to indemnify the City and County of Denver, either passive or active, for any acts or omissions of Artist irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City. This indemnification provision shall survive the termination or expiration of this Agreement.

10. **CONFLICT OF INTEREST.** It is understood that Artist may provide consulting and/or artistic services for other clients during the term of this Agreement. However, during the term of this Agreement, Artist will not undertake any responsibilities or engage in activities that may conflict with or be detrimental to the success of Artist's Services to CPF. Further, Artist shall disclose to CPF any situation which may reasonably present a conflict of interest. CPF and Artist will mutually and in good faith attempt to resolve any apparent or perceived conflict of interest. If the conflict cannot be resolved between the parties, CPF may terminate the Agreement effective on the day notice is sent to Artist.

11. PROJECT ADMINISTRATION. This Agreement will be administered by the following representative of CPF: Jeff Shoemaker, Executive Director provided that CPF reserves the right to change such person at any time.

12. **DEFAULT.** In the event that Artist defaults in the performance of any of Artist's obligations under this Agreement, in addition to CPF's right to recover damages for breach of contract or any other remedy provided by law or equity, CPF shall be entitled to receive all information and materials obtained by Artist in connection with the performance of this Agreement up until the time of Artist's default, and Artist shall return to CPF all supplies, documents and materials acquired by Artist by or on behalf of CPF.

13. MISCELLANEOUS.

- a. **Assignment.** Neither party shall assign this Agreement or any rights or benefits accruing to it hereunder without the prior written consent of the other party.
- b. **Governing Law.** This Agreement shall be governed by the laws of the State of Colorado, applicable to contracts executed and performed entirely therein.
- c. **Waiver of Default.** Failure by either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or of the right to such party thereafter to enforce such provision. No

term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

- d. **Modifications.** Except as expressly set forth elsewhere in this Agreement, this Agreement may be modified only in writing, signed by both parties hereto.
 - e. **Integration Clause.** This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior correspondence, conversations and negotiations with respect thereto.
 - f. **Attorneys' Fees.** The parties agree that reasonable attorneys' fees and costs shall be awarded to the prevailing party in any arbitration or litigation between the parties in connection with this Agreement.
 - g. **Binding Effect.** This Agreement shall be binding upon the heirs, successors, assigns and representatives of the parties hereto.
 - h. **Severability.** If any provision, in whole or in part, of this Agreement should be found to be invalid or unenforceable, it shall not affect the validity of any other provisions within this Agreement which shall continue to bind the parties.
 - i. **Time is of the Essence.** Artist understands that time is of the essence in this Agreement and that CPF will be relying on the timeliness of the Artist.
- d. **Multiple Originals/Electronic Signatures.** Electronic signatures of or on behalf of either party on this Agreement shall be effective for all purposes, including delivery, as an original. This Agreement may be executed in multiple originals, which shall be deemed to be one document.

IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date (the "Effective Date") of this Agreement shall be the last date of execution by either of the parties to this Agreement.

ARTIST



Andrew Patch and Edward Done

AP Dado, LLC

6-30-23

CPF



**Jeff Shoemaker, Executive Director
Colorado Parks Foundation**

EXHIBIT E

(exhibit follows)



TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Alex Marvin, Classification and Compensation Analyst Staff
DATE: July 26, 2023
SUBJECT: Latest Change to Prevailing Wage Schedules

The effective date for this publication will be **Friday, July 21, 2023**, and applies to the City and County of Denver for **BUILDING CONSTRUCTION PROJECTS** (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO20230020
Superseded General Decision No. CO20220020
Modification No. 7
Publication Date: 7/21/2023
(8 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 \$17.29 to comply with the city's minimum wage. The effective date is January 1, 2023.**

Office of Human Resources
201 W. Colfax Ave. Dept. 412 | Denver, CO 80202
p: 720.913.5751 | f: 720.913.5720
www.denvergov.org/humanresources

"General Decision Number: CO20230020 07/21/2023

Superseded General Decision Number: CO20220020

State: Colorado

Construction Type: Building

County: Denver County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

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	. Executive Order 14026
into on or after January 30,	generally applies to the
2022, or the contract is	contract.
renewed or extended (e.g., an	. The contractor must pay
option is exercised) on or	all covered workers at
after January 30, 2022:	least \$16.20 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 2023.
<hr/>	
If the contract was awarded on	. Executive Order 13658
or between January 1, 2015 and	generally applies to the
January 29, 2022, and the	contract.
contract is not renewed or	. The contractor must pay
all	covered workers at least
extended on or after January	\$12.15 per hour (or the
30, 2022:	applicable wage rate
listed	on this wage
determination,	if it is higher) for all
	hours spent performing on
	that contract in 2023.
<hr/>	

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 <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	01/13/2023
2	02/24/2023
3	04/07/2023
4	05/12/2023
5	06/02/2023
6	07/07/2023
7	07/21/2023

ASBE0028-002 03/01/2022

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 32.98	15.47

CARP0055-002 05/01/2023

	Rates	Fringes
CARPENTER (Drywall Hanging Only).....	\$ 33.86	12.59

CARP1607-001 06/01/2023

	Rates	Fringes
MILLWRIGHT.....	\$ 41.19	16.74

ELEC0068-012 06/01/2023

Rates	Fringes
-------	---------

ELECTRICIAN (Includes Low Voltage Wiring).....\$ 43.20 18.38

 ELEV0025-001 01/01/2023

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 51.94	37.335

FOOTNOTE:

a. Vacation: 6%/under 5 years based on regular hourly rate for all hours worked. 8%/over 5 years based on regular hourly rate for all hours worked.

b. PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

 ENGI0009-017 05/01/2023

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Crane)		
141 tons and over.....	\$ 38.63	14.25
50 tons and under.....	\$ 34.77	14.25
51 to 90 tons.....	\$ 35.07	14.25
91 to 140 tons.....	\$ 36.27	14.25

 IRON0024-009 05/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 35.24	12.50

IRON0024-010 05/01/2023

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 35.24	12.50

PAIN0079-006 08/01/2022

	Rates	Fringes
PAINTER (Brush, Roller and Spray; Excludes Drywall Finishing/Taping).....	\$ 25.11	10.95

PAIN0079-007 08/01/2022

	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 25.81	10.95

PAIN0419-001 06/01/2022

	Rates	Fringes
SOFT FLOOR LAYER (Vinyl and Carpet).....	\$ 18.25	14.33

* PAIN0930-002 07/01/2023

	Rates	Fringes
GLAZIER.....	\$ 33.51	12.65

PLUM0003-009 06/01/2022

	Rates	Fringes
PLUMBER (Excludes HVAC Duct, Pipe and Unit Installation).....	\$ 41.33	19.29

PLUM0208-008 06/01/2023

	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe and Unit Installation; Excludes HVAC Duct Installation).....	\$ 41.50	19.72

SFCO0669-002 04/01/2023

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 43.14	26.40

SHEE0009-004 07/01/2023

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation; Excludes HVAC Pipe and Unit Installation).....	\$ 38.47	20.83

* SUCO2013-006 07/31/2015

	Rates	Fringes
BRICKLAYER.....	\$ 21.96	0.00
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 22.40	4.85
CARPENTER (Metal Stud Installation Only).....	\$ 17.68	0.00
CARPENTER, Excludes Acoustical Ceiling		

Installation, Drywall Hanging, and Metal Stud Installation.....	\$ 21.09	6.31
CEMENT MASON/CONCRETE FINISHER....	\$ 20.09	7.03
LABORER: Common or General.....	\$ 14.49 **	5.22
LABORER: Mason Tender - Brick....	\$ 15.99 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 16.00 **	0.00
LABORER: Pipelayer.....	\$ 16.96	3.68
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.78	5.78
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 19.10	3.89
OPERATOR: Grader/Blade.....	\$ 21.50	0.00
ROOFER.....	\$ 16.56	0.00
TRUCK DRIVER: Dump Truck.....	\$ 17.34	0.00
WATERPROOFER.....	\$ 12.71 **	0.00

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

**Office of Human Resources
Supplemental Rates
(Specific to the Denver projects)
Revision Date: 01-01-2023**

Classification		Base	Fringe
Boilermaker		\$30.97	\$21.45
Iron Worker, Reinforcing		\$18.49	\$3.87
Laborer: Concrete Saw		\$17.29	-
Paper Hanger		\$20.15	\$6.91
Plasterer		\$24.60	\$12.11
Plaster Tender		\$17.29	-
Power Equipment Operator	Concrete Mixer - Less than 1 yd	\$23.67	\$10.67
	Concrete Mixer - 1 yd and over	\$23.82	\$10.68
	Drillers	\$23.97	\$10.70
	Loader - up to and incl 6 cu yd	\$23.67	\$10.67
	Loaders - over 6 cu yd	\$23.82	\$10.68
	Mechanic	\$18.48	-
	Motor Grader	\$23.97	\$10.70
	Oilers	\$22.97	\$10.70
	Roller	\$23.67	\$10.67
Truck Driver	Flatbed	\$19.14	\$10.07
	Semi	\$19.48	\$10.11
Waterproofer		\$17.29	\$0.00

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