

**CITY OF PALM DESERT
SHORT-FORM SERVICES AGREEMENT**

1. **Parties and Date.** This Agreement is made and entered into this **9th** day of **January, 2025**, by and between the City of Palm Desert, a municipal corporation organized under the laws of the State of California with its principal place of business at 73-510 Fred Waring Drive, Palm Desert, California 92260-2578, ("City") and Desert Biennial, a non-profit 501(c)3 organization, with its principal place of business at P.O. Box 4050, Palm Springs, California 92263 ("Vendor"). The City and Vendor are sometimes individually referred to herein as "Party" and collectively as "Parties."

The City is a public agency of the State of California and is in need of services for the following project:

2025 Desert X Exhibition Project
(hereinafter referred to as "the Project").

2. **Terms and Conditions.** The Parties shall comply with the Terms and Conditions attached hereto as Exhibit "A" and incorporated herein by this reference.

3. **Scope of Services; Schedule.** The Vendor shall be solely responsible for providing all materials, labor, tools, equipment, water, light, power, transportation, and superintendence of every nature and all other services and all facilities necessary to execute, complete, and deliver the services as particularly described in the Scope of Services ("Services") attached hereto as Exhibit "B" and incorporated herein by this reference. The Services shall be completed in a timely manner and in accordance with the Schedule of Services set forth in Exhibit "B".

4. **Term.** The term of this Agreement shall be from **January 9, 2025, to June 30, 2025**, unless earlier terminated as provided herein.

5. **Compensation.** Vendor shall receive compensation for Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by this reference. The total compensation shall not exceed **Thirty-Five Thousand Dollars (\$35,000)** per fiscal year ("Agreement Price"). Vendor's invoices shall include a detailed description of the Services performed. Invoices shall be submitted to the City on a monthly basis. The City shall review and pay all non-disputed and approved charges on such invoices in a timely manner. Vendor shall submit its final invoice to the City within thirty (30) days from the last date of Services performed and failure to do so shall result in a waiver of payment from the City.

6. **Insurance.** In accordance with Exhibit A, Section C of the Terms and Conditions, Vendor shall, at its expense, procure and maintain for the duration of the Agreement such insurance policies as checked below and provide proof of such insurance policies in a form satisfactory to the City.

Commercial General Liability Insurance:

- \$1,000,000 per occurrence/\$2,000,000 aggregate.
- \$2,000,000 per occurrence/\$4,000,000 aggregate.

Automobile Liability:

- \$1,000,000 combined single limit for bodily injury and property damage.

Workers' Compensation:

Statutory Limits / Employer's Liability \$1,000,000 per accident or disease and a waiver of subrogation in favor of the City and their respective officers, agents, employees, volunteers, and representatives.

Professional Liability (Errors and Omissions):

Errors & Omissions liability insurance with a limit of not less than \$1,000,000 per claim and in the aggregate.

[SIGNATURES ON THE NEXT PAGE]

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**SIGNATURE PAGE TO SHORT FORM SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PALM DESERT
AND DESERT BIENNIAL**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF PALM DESERT

DESERT BIENNIAL, A 501(C)3

By: _____

L. Todd Hileman
City Manager

By: _____

Its: _____

Attest:

Printed Name: _____

By: _____

Anthony J. Mejia
City Clerk

City Clerk QC: _____

Contracts QC: _____

Insurance: _____

Approved as to form:

Initial Review

By: _____

Isra Shah
Best Best & Krieger LLP
City Attorney

Final Approval

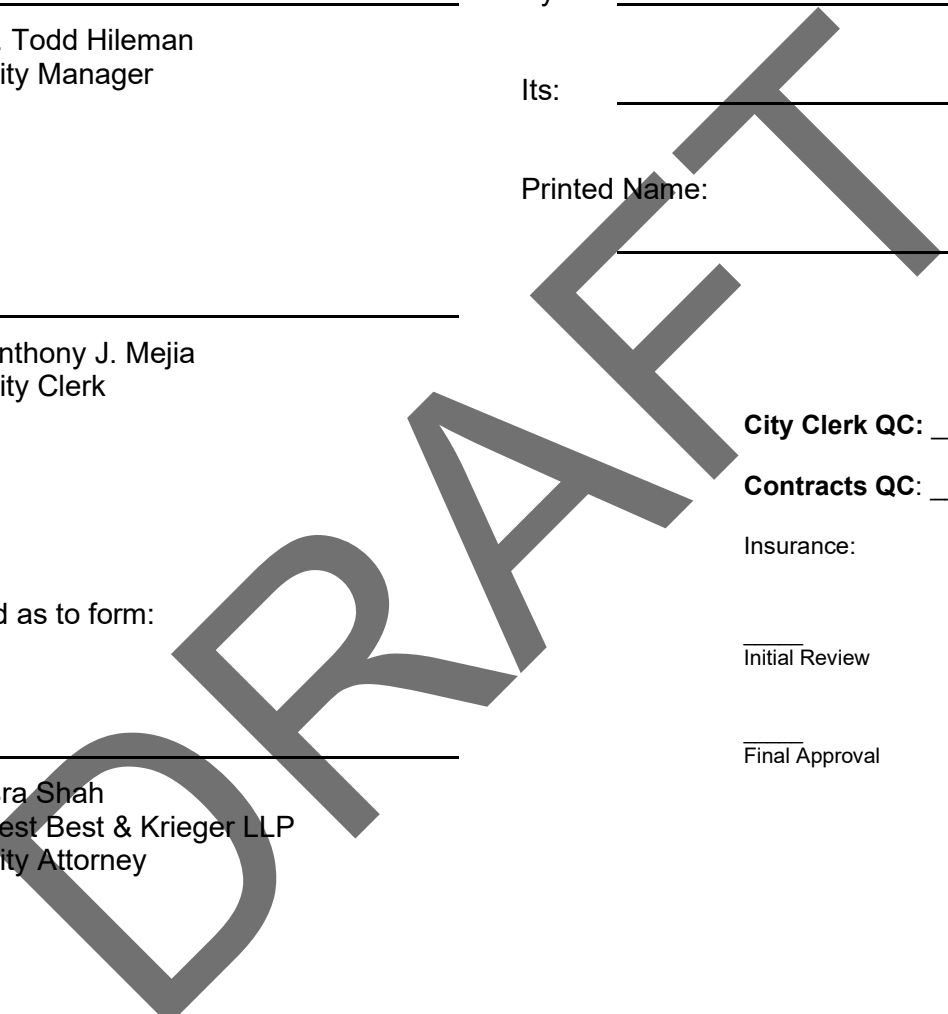


EXHIBIT "A"
TERMS AND CONDITIONS FOR SERVICES

1. Compliance with Law. Vendor shall comply with all applicable laws and regulations of the federal, state and local government. Vendor certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. By its signature hereunder, Vendor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services. Vendor represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee or applicant for employment in violation of state or federal law. Vendor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, Vendor agrees to fully comply with such Prevailing Wage Laws, including, along with subcontractors, being registered with the Department of Industrial Relations (Labor Code §§ 1725.1; 1771.1). It shall be mandatory upon the Vendor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code §§ 1771; 1774; 1775), employment of apprentices (Labor Code § 1777.5), certified payroll records (Labor Code §§ 1771.4; 1776), hours of labor (Labor Code §§ 1813; 1815) and debarment of contractors and subcontractors (Labor Code § 1777.1). This Agreement may be subject to compliance monitoring and enforcement.

2. Standard of Care. The Vendor shall perform the Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession practicing under similar conditions.

3. Insurance. If required by Section 6 of this Agreement, the Vendor shall take out and maintain during this Agreement: A. Commercial General Liability Insurance for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001). The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned, rented, and hired vehicles, at least as broad as Insurance Services Office Form Number CA 0001 (ed. 10/13) covering automobile liability, Code 1 (any auto); C. Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance, and if applicable, as determined by the City's Risk Manager, D. Professional Liability (Errors and Omissions) that covers the Services to be performed in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Vendor agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City of Palm Desert, and their elected or appointed officers, agents, officials, employees, volunteers, and representatives or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against the City of Palm Desert or their elected or appointed officers, agents, officials, employees, volunteers, and representatives and shall require similar written express waivers and insurance clauses from each of its subcontractors. Workers' compensation coverage shall have an endorsement in favor of the City of Palm Desert, and their respective officers, agents, employees, volunteers, and representatives. Insurance carriers shall be licensed and authorized to do business in California. Such insurance carrier shall have not less than an "A-VII" rating according to the latest Best Key Rating unless otherwise approved by City's Risk Manager. Vendor shall add the City, and their respective officers, officials, employees, agents, volunteers and representatives as additional insureds on Vendor's Commercial General Liability, Automobile Liability, and if applicable, Pollution Liability and Cyber Liability policies. Coverage provided by Vendor shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The City or its Risk Manager reserves the right at any time during the term of the contract to change the amounts and types of insurance (i.e., pollution, cyber, and fidelity coverages) required by giving the Vendor advance written notice of such change. If such change results in substantial additional cost to the Vendor, the City and Vendor may renegotiate Vendor's compensation. If the City reduces the insurance requirements, the change shall go into effect immediately and require no advanced written notice.

4. Indemnification. To the fullest extent permitted by law, Vendor shall defend (with counsel of City's choosing), indemnify and hold the City, and their respective officials, officers, employees, volunteers, agents and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death (collectively, "Claims"), in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Vendor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Vendor's Services, the project, or this Agreement, including without limitation the payment of all expert witness fees, attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Vendor's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant or the City, or their respective officials, officers, employees, agents, volunteers or representatives. If Vendor's obligation to defend, indemnify, and/or hold harmless arises out of Vendor's performance as a "design professional" (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Vendor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Vendor, and, upon Vendor obtaining a final adjudication by a court of competent jurisdiction, Vendor's liability for such claim, including the cost to defend, shall not exceed the Vendor's proportionate percentage of fault.

5. Laws; Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Riverside, State of California.

6. Termination. The City may terminate the whole or any part of this Agreement for any or no reason by giving three (3) calendar days written notice to Vendor. In such event, the City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for the work. The City shall pay Vendor the reasonable value as determined by the City of any portion of the Services completed prior to termination. The City shall not be liable for any costs

Exhibit "A-1"

other than the charges or portions thereof which are specified herein. Vendor shall not be entitled to payment for unperformed Services and shall not be entitled to damages or compensation for termination of the Services. Vendor may terminate its obligation to provide further work under this Agreement upon thirty (30) calendar day's written notice to the City only in the event of the City's failure to perform in accordance with the terms of this Agreement through no fault of Vendor.

7. Changes. By written notice, the City may from time to time, make changes to the Services furnished to the City by Vendor. If such change causes an increase or decrease in the Agreement Price or in the time required for performance, Vendor or the City shall promptly notify the other party thereof and assert its claim for adjustment within fifteen (15) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this clause shall excuse the Vendor from proceeding immediately with the Agreement as changed.

8. Miscellaneous Terms. Vendor shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City. This Agreement may not be modified or altered except in writing signed by the Parties. There are no intended third-party beneficiaries of any right or obligation of the Parties. This is an integrated Agreement representing the entire understanding of the Parties as to those matters contained herein and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement. The unenforceability, invalidity, or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the Parties to the addresses set forth in this Agreement. Vendor is retained as an independent contractor and is not an employee of the City. No employee or agent of Vendor shall become an employee of the City. Vendor warrants that the individual who has signed this Agreement has the legal power, right, and authority to make this Agreement and bind the Vendor hereto.

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EXHIBIT "B"

SCOPE OF SERVICES; SCHEDULE OF SERVICES

1. Contractor shall provide and install a minimum of two (2) sculptures within the City of Palm Desert on either City or private property.
2. Contractor shall work with City staff to comply with the Americans with Disabilities Act (ADA) requirements.
3. Contractor shall be responsible for obtaining all appropriate permits and/or inspections from City or any other appropriate agency.
4. Contractor will ensure that Sculpture is available to the public from dawn until dusk and into the evening, if appropriate, seven (7) days per week unless otherwise mutually agreed upon by both parties.
5. Contractor shall advertise and promote the City of Palm Desert within its pre-exhibition advertising, onsite, post-exhibition, and online advertising through the following:
 - a. Inclusion of the City of Palm Desert's logo on the Desert X website and all appropriate print and digital materials;
 - b. Recognition of the City of Palm Desert's sponsorship in signage at the location of the installation;
 - c. Mention of the City of Palm Desert as a sponsor on all press releases; and
 - d. Any other appropriate locations/outlets as negotiated by both Parties.

EXHIBIT "C"

COMPENSATION

1. The City shall pay the Vendor a sponsorship fee in the amount of \$35,000. The payment shall be remitted as follows:
 - a. If Sculpture installed on Private Property, 2 Site Locations: \$17,500 due within thirty (30) days of fully executed contract, and \$17,500 due by May 11, 2025;
 - i. If only one site location is used, only one payment of \$8,750 due within thirty (30) days of fully executed contract, and \$8,750 due by May 11, 2025.
 - b. If Sculpture installed on City Property, 2 Site Locations: \$17,500 due within thirty (30) days of fully executed contract, \$8,750 by April 30, 2025, and \$8,750 within thirty (30) days of deinstallation and restoration of the installation site(s).
 - i. If only one site location is used, a payment of \$8,750 due within thirty (30) days of fully executed contract, and \$8,750 due within thirty (30) days of deinstallation and restoration of the installation site(s).
2. In addition to in kind staff support through the City permitting process, the City shall waive all permit and inspection fees associated with the Exhibition.

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