

**CITY OF PALM DESERT
AGREEMENT FOR COMMISSION OF PUBLIC ART WORK**

This Agreement for Commission of Public Art Work ("Agreement") is entered into this 11th day of July, 2024, by and between the City of Palm Desert, a municipal corporation organized and operating under the laws of the State of California ("City"), and Kyle Absolom ("Artist"). The City and the Artist are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

WHEREAS, pursuant to Chapter 4.10 of the Palm Desert Municipal Code, the City is implementing an art in public places program and imposing the related development fees; pursuant to City Council Ordinances 900 and 936 establishing the organization, objectives, and responsibilities of the Palm Desert Cultural Arts Committee (the "Committee"); and pursuant to the City's "Art In Public Places" guidelines; and

WHEREAS, the Artist is a recognized professional artist, and the City acknowledges sufficient familiarity with the style and quality of the Artist's work; and

WHEREAS, the City desires for the Artist to create an original work of art entitled "Dueling Palms" (the "Artwork") for placement at the roundabout on San Pablo Avenue and the eastern entrance to College of the Desert (the "Site"). The Artist's concept design (the "Proposal"), which is attached hereto as Exhibit "A", has been reviewed and approved by the City and is hereby made a part of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises set forth herein, the Parties agree to the following:

Section 1 SCOPE OF WORK

1.1 Artist's Obligations

- A. The Artist shall provide all machinery, equipment, supplies, items, parts, materials, labor or other services, including design and engineering services, necessary: to prepare and submit plans and specifications for installation of the Artwork, including, but not limited to, foundation and lighting plans; and for the design, fabrication, transportation, and oversight of the installation of the Artwork. The Artwork is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. The Artwork shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

- B. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site or pedestrian and other traffic flow at the Site, the Artist's proposal shall be reviewed and approved by the City and other applicable City staff such as the Public Works Department, City Engineer and Traffic Department.
- C. The Artist shall not commence any Phase of the Artwork nor incur any expense in anticipation of commencing any Phase unless and until the City has given a Notice to Proceed with the specific Phase.
- D. The Artist shall prepare the design concept and the corresponding budget described in Sections 1.3 and 1.5 of this Agreement. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved.
- E. The Artist shall complete the fabrication of the Artwork by the scheduled installation date as provided in Section 1.5(B)(i) of this Agreement.
- F. The Artist shall arrange the transportation and installation of the Artwork in consultation with the City. If the Artist does not install the Artwork himself or herself, Artist shall supervise and approve the installation.
- G. The Artist shall provide required insurance in amounts and limits specified in Section 14 .
- H. To the extent applicable, the Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- I. The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- J. The Artist shall be available upon reasonable advance notice for all meetings, site visits, and Artwork dedication ceremonies as required by the City.

1.2 City's Obligations

- A. The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- B. The City shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the

Artist.

- C. The City shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The City shall be responsible for all expenses relating to prepare the Site for the timely transportation and installation of the Artwork. The City shall complete the Site preparations by the scheduled installation date as provided in Section 1.5(B)(i) of this Agreement or shall contact the Artist in writing informing him or her of any delays.
- D. The City shall provide and install a plaque on or near the Artwork containing a credit to the Artist and date of installation.
- E. The City shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the City's control.
- F. The City shall be responsible for leading the Artist through the required review process. The City shall be responsible for organizing and scheduling review meetings with the Cultural Arts Committee and for providing the Artist written instructions for the materials required at such meetings.

1.3 Design Review Phase

A. Concept/Schematic

- i. The Artist submitted a proposal (the "Design") with an accompanying budget, pursuant to a call for entries organized for the procurement of an Artist to design and fabricate an Artwork suitable for the current project, which Design was selected and approved by the Cultural Arts Committee and the Palm Desert City Council. The Design and Budget shall be attached to this Agreement as Exhibit "A" and Exhibit "C" respectively.

B. Approval

- i. Within thirty (30) days after the execution of this Agreement, the City shall notify the Artist if it requires any revisions to the Design in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the Design.
- ii. Once the City has reviewed the Design, the City will schedule the presentation of the Design to the Cultural Arts Committee ("CAC"). If the CAC require any revisions to the Design, the City will submit those in

writing to the Artist. The Artist will have sixty (60) days to comply with such revisions. If agreed upon by both Parties, such revisions will become a part of the Design.

- iii. If any changes to the Design made by the City or the CAC affect the cost of the work or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in price necessitated by such change will be agreed upon between the City and the Artist and such change will be authorized by a change order document signed by the City and accepted by the Artist.

1.4 Final Design Phase

- A. The City shall issue a Notice to Proceed with the final Design. The Artist shall complete the Final Design Phase work within 90 calendar days of the Notice to Proceed date.
- B. The Final Design Phase work shall include, but not be limited to the following:
 - i. Final/Construction Documents:
 - a. The Artist shall prepare structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings shall indicate any risks involved in the construction, lighting, integration and maintenance of the Artwork.
 - b. If requested by the City, the Artist shall present such drawings to a qualified engineer, licensed by the state and paid by the Artist, for certification that the Artwork will be of adequate structural integrity and the Artist shall provide the City with such certification.
 - c. The Artist shall consult with City staff and other parties identified by the City to ensure that the Artwork is in full compliance with this Agreement.
 - d. The Artist shall provide a plan and schedule for delivering the Artwork to the Site.

1.5 Budget, Payment Schedule, Construction Schedule and Progress Reports

A. Budget

- i. The Artist shall prepare a budget, which shall include all goods, services and materials, with such costs itemized. The Budget shall be attached to

this Agreement as Exhibit "C".

- ii. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
- iii. The Artist shall retain all original receipts pertaining directly to the project.
- iv. If the Artist incurs costs in excess of the amount listed in the budget, the Artist shall pay such excess from the Artist's own funds unless the Artist previously obtained approval for such costs from the City (or such costs were the result of actions or inaction of the City).

B. Schedule

- i. The Artist shall notify the City of the tentative schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any. The Schedule may be amended by written agreement.
- ii. A schedule for the payment of budget installments is attached to this Agreement as Exhibit "D".

1.6 Fabrication Phase

- A. Upon completion of the Final Design Phase and approval of the final design of the Artwork by the City, the City will issue a Notice to Proceed with the Fabrication. The Artist shall commence the Fabrication and complete the Fabrication work within 160 calendar days from the Notice to Proceed date.
- B. The Artist shall fabricate the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without written approval of the City.
- C. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the City with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All additional workers or subcontractors must provide proof of insurance, as specified in Section 14, prior to entering the site.

- D. The City shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- E. If the City, upon review of the Artwork, determines that the Artwork does not conform to the Design or Revised Design, the City reserves the right to notify the Artist in writing of the deficiencies.
- F. The Artist will promptly cure the City's objections and will notify the City in writing of completion of the cure. The City shall promptly review the Artwork. If the Artist disputes the City's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the City within thirty (30) days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the City.
- G. The Artist shall notify the City in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.
- H. The City shall inspect the Artwork within thirty (30) days after receiving notification pursuant to paragraph (G), prior to installation, to determine that the Artwork conforms with the Design and to give final approval of the Artwork. The City shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the City does withhold final approval, the City shall submit the reasons for such disapproval in writing within thirty (30) days of examining the fabricated Artwork. The Artist shall then have thirty (30) days from the date of the City's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site. However, if the Artist has willfully and substantially deviated from the Design without the prior approval of the City, the Artist shall be held responsible for any expenses incurred in correcting such deviation.
- I. The City shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the City. The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the City of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.7 Installation Phase

- A. Upon the City's final approval of the fabricated Artwork, as being in conformity with the Design, the City will issue a Notice to Proceed with the installation of the Artwork. The Artist shall deliver the completed Artwork to the Site in

accordance with the schedule provided for in Section 1.5(B). Transportation fees shall be paid by the Artist.

- B. Artist must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. Prior to delivery of the Artwork, the Artist shall notify the City in writing when fabrication of the Artwork is complete and Artist is ready for delivery of the Artwork to the Site.
- C. The City is responsible for preparation of the Site and installation of the Artwork as required by the Artist's plans and specification for the installation of the Artwork.
- D. The Artist will coordinate closely with the City to ascertain that the Site is prepared to receive the Artwork. The Artist must notify City of any adverse conditions at the Site that would effect or impede the installation of the Artwork. The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with the City to ensure timely coordination with the City's construction team.
- E. Upon written acceptance of the installation, the Artwork shall be deemed to be in the custody of the City for purposes of Section 11 and Section 14 of this Agreement.
- F. Upon installation of the Artwork, the Artist shall provide the City with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather. The Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The City is responsible for the proper care and maintenance of the Artwork.

1.8 Approval and Acceptance

- A. The Artist shall notify the City in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design.
- B. The City shall promptly notify the Artist of its final acceptance of the Artwork within 30 days after the Artist submitted written notice pursuant to paragraph (A) above. The effective date of final acceptance shall be the date the City submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the Design, and that the City confirms that all services as required of both Parties by this Agreement prior to paragraph (C) of this section have been completed. Title of the Artwork passes

upon final acceptance and final payment, more particularly described in Exhibit "E."

- C. If the City disputes that all the services have been performed, the City shall notify the Artist in writing of those services the Artist has failed to perform within 30 days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by the City.
- D. If the Artist disputes the City's determination that not all services have been performed, the Artist shall submit reasons in writing to the City within 30 days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the City.
- E. Upon the resolution of any disputes that arise under paragraphs (C) and (D) of this section, the City shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (B).
- F. After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the City and the Artist to attend any public meetings and community outreach functions, as well as any ceremonies relating to the dedication of the Artwork.
- G. The City shall be solely responsible for coordinating public information materials and activities related to public presentations.

Section 2 TAXES

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion. The City shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Section 3 TERM OF AGREEMENT

- A. Duration. This Agreement shall be effective on the date that this contract has been signed by both Parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the City under Section 1.8(B), or submission of final payment to the Artist by the City under Exhibit "D", whichever is later. Extension of time of performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both Parties, and attached to the schedule under section 1.5(B)(i) which is attached as Exhibit "B".

- B. **Force Majeure.** The City shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Section 4 COMPENSATION

The City shall pay the Artist One Hundred Sixty-Nine Thousand Five Hundred Dollars and Zero Cents (\$169,500.00), which will constitute full compensation and payment for all work to be performed under this Agreement. No extra charges of any kind will be allowed unless specifically agreed to in writing by the City's authorized representative. The total price shall include all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Artwork furnished to the City hereunder.

Section 5 PAYMENT

- A. All requests for payment shall be submitted to the Economic Development Management Analyst, Public Art in writing for review and approval and must be accompanied with a detailed invoice and other documentation as required by the Economic Development Management Analyst, Public Art supporting the Work completed.
- B. Terms of payment are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable progress milestones. Final payment shall be made by the City after the Artist has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of the work.
- C. Payment shall be made in accordance with the following schedule:
- i. Commencement of the Final Design Phase (10%) – Sixteen Thousand Nine Hundred Fifty Dollars (\$16,950)
 - ii. Commencement of Fabrication (60%) – One Hundred One Thousand Seven Hundred Dollars (\$101,700)

- iii. Completion and Delivery of Art Work (20%) – Thirty-Three Thousand Nine Hundred Dollars (\$33,900)
 - iv. Final Acceptance (10%) - Sixteen Thousand Nine Hundred Fifty Dollars (\$16,950)
- D. Payments otherwise due may be withheld by the City on account of defective work not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of the Artist to make payments properly to its subcontractors or for material or labor, the failure of the Artist to perform any of its other obligations under the Agreement, or to protect the City against any liability arising out of the Artist's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, the City may remove them at the Artist's expense.
- E. Payment of the Final Acceptance payment will be made by the City upon:
- i. Submission of an invoice for satisfactory completion of final acceptance and in the amount associated with the Final Acceptance payment;
 - ii. Written acceptance of the Artwork by the City;
 - iii. Delivery of all drawings and specifications, if required by the City;
 - iv. Delivery of executed full releases of any and all liens arising out of this Agreement; and
- F. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim, or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.
- G. If any person refuses to furnish an actual release or receipt in full, the Artist may furnish a bond satisfactory to the City to indemnify the City against any claim or lien at no cost to the City.
- H. Acceptance by the Artist of payment of the Final Acceptance payment will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which the Artist then has, or can subsequently acquire against the City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for Final Acceptance by the City will not constitute a waiver, release or discharge of any claims or demands which the City then has, or can subsequently acquire, against the Artist, its successors

and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 6 ARTIST'S REPRESENTATIONS AND WARRANTIES

6.1 Warranties of Title

A. The Artist represents and warrants that:

- i. the Artwork is solely the result of artistic effort of the Artist and its representatives.
- ii. except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person.
- iii. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
- 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.
- v. the Artwork is free and clear of any liens from any source whatsoever.
- vi. all Artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- vii. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- viii. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

B. the representations and warranties set forth in paragraph (A) shall survive the termination or other extinction of this Agreement.

6.2 Warranties of Quality and Condition

- A. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice,"

or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the City under Section 1.8(B).

- B. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- C. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(G).
- D. If within two years the City observes any breach of warranty described in this Section 6.2 that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.
- E. If after two years the City observes any breach of warranty described in this Section 6.2 that is curable by the Artist, the City shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the City may seek the services of a qualified restorative conservator and maintenance expert.
- F. If within two years the City observes a breach of warranty described in this Section 6.2 that is not curable by the Artist, the Artist is responsible for reimbursing the City for damages, expenses and loss incurred by the City as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the City accepted that it may occur, it shall not be deemed a breach for purposes of this Section 6.2 of this Agreement.
- G. Acceptable Standard of Display. The Artist represents and warrants that:
 - i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
 - ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
 - iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within

an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

- iv. **Manufacturer's Warranties.** To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the City.

The foregoing warranties are conditional, and shall be voided by the failure of the City to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the City fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Section 7 COPYRIGHT; REPRODUCTION RIGHTS

- A. Copyright of the Artwork and related design, drawings, sketches, and models will be owned by the Artist until acceptance of the Artist's Artwork by the City or termination of the Agreement. Notwithstanding the foregoing, the Artist agrees not to make use of such copyright in the Artwork for any purpose other than the performance by the Artist of the Artist's obligations under this Agreement of public artwork, without the written consent of the City. Upon acceptance of Artist's Work, copyright of the Art Work will be owned jointly by the City and the Artist and no further use of the copyright will be made by the Artist and the City without the written consent of the other, which consent will not be unreasonably withheld. The Artist certifies that the Artwork is a unique work of art especially designed for the City and shall not duplicate or reproduce the Artwork nor shall the Artist permit others to do so except with the written permission by the City. The City has the right to reproduce and distribute in printed form and on commercial documents and/or brochures or any other literature of the City describing or dealing with its real estate holdings, photographs, realistic renderings, videotapes, or films of the Artwork. Such reproductions and use of the images of the Work for promotional purposes shall not constitute a breach of copyright and no royalty shall be due and payable by the City to the Artist for such use.
- B. All reproductions of the Artwork by the City shall contain a credit to the Artist.
- C. The City agrees that the Artist shall have the right to reproduce and distribute in printed form and on non-commercial educational materials and brochures advertising or promoting the Artist and the Artist's career, two-dimensional images such as photos, slides or realistic renderings, video tapes, or films of the Artwork as installed and formally accepted by the City. Such reproductions and use of the images of the Artwork for promotional and educational purposes shall be deemed to not constitute a breach of copyright in any way and no royalty fee

shall be due and payable to the Artist for such use. Such reproduction and images of the Artwork for publicity, promotion, and educational purposes shall, to the extent reasonably possible and appropriate, give reference to the City.

- D. The Artist shall use his/her best effort to give a credit in any public showing under the Artist's control of illustrations of the Artwork as follows: "An original work owned and commissioned by the City of Palm Desert, California."

Section 8 STANDARD OF CARE; INDEPENDENT CONTRACTOR

- A. The Artist shall perform all work under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.
- B. The Artist enters into this Agreement as an independent contractor and not as an employee of City. Artist shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Artist are employees, agents, contractors or subcontractors of the Artist and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against the Artist by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 9 COMPLIANCE WITH LAWS

- A. The Artist shall comply with all applicable laws and regulations of the federal, state and local government.
- B. The Artist 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 any work performed by the Artist under this Agreement 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 \$25,000 or more, the Artist agrees to fully comply with such Prevailing Wage Laws. The Artist shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial Relations against Artist or any subcontractor that affect the Artist's performance of any part of this Agreement, including any delay, shall be the Artist's sole responsibility and the Artist shall indemnify the City from liability arising out of the same. It shall be mandatory upon the Artist and all subcontractors to comply with all California Labor Code provisions, which

include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

Section 10 SUBCONTRACTS

Unless otherwise specified, the Artist must obtain the City's written permission before subcontracting any portion of the work. Except for the insurance requirements in this Agreement, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Artwork, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve the Artist from its obligations to the City, including, but not limited to the Artist's insurance and indemnification obligations. No subcontract or order will bind the City.

Section 11 RISK OF LOSS

The Artist shall bear the risk of loss or damage to the Artwork until the City's final acceptance of the Artwork under Section 1.8(B). The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The City shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the City or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Section 12 ALTERATIONS OF SITE OR REMOVAL OF ARTWORK

- A. The City shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The City shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The City shall make a reasonable effort to maintain the integrity of the Artwork.
- B. The City agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the City with written

handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

Section 13 INDEMNIFICATION

- A. The Artist shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of the Artist, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.
- B. The Artist's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents, or volunteers shall be at the Artist's own cost, expense, and risk. The Artist shall pay and satisfy any judgment, award, or decree that may be rendered against the City or its officials, officers, employees, agents, or volunteers, in any such suit, action, or other legal proceeding. The Artist shall reimburse the City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.
- C. The Artist's obligation to indemnify survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14 INSURANCE

14.1 Minimum Requirements

Without limiting the Artist's indemnification of the City, and prior to commencement of the artwork, the Artist shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form that is satisfactory to the City.

- A. General Liability Insurance. The Artist shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form

CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. 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. The Artist shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Artist arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident. The City's Risk Manager may modify this requirement if it is determined that the Artist will not be utilizing a vehicle in the performance of his/her duties under this Agreement.
- C. Professional Liability (Errors & Omissions) Insurance. The Artist shall maintain professional liability insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Artist agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
- D. Workers' Compensation Insurance. The Artist shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). The Artist shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, volunteers and representatives.
- E. Umbrella or Excess Liability Insurance. The Artist may opt to utilize umbrella or excess liability insurance in meeting insurance requirements. In such circumstances, the Artist shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:
- i. A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
 - ii. Pay on behalf of wording as opposed to reimbursement;
 - iii. Concurrency of effective dates with primary policies;

- iv. Policies shall "follow form" to the underlying primary policies; and
- v. Insureds under primary policies shall also be insureds under the umbrella or excess policies.

14.2 Other Provisions or Requirements.

- A. Proof of Insurance. The Artist, including any subcontractors, shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. The Artist shall provide certificates of insurance to the City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. Duration of Coverage. The Artist shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by the Artist, his/her agents, representatives, employees or subconsultants.
- C. Primary/Non-Contributing. Coverage provided by the Artist shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
- D. City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications, or is canceled and not replaced, the City has the right, but not the duty, to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by the Artist, or the City will withhold amounts sufficient to pay premium from Artist payments. In the alternative, the City may terminate this Agreement.
- E. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest

edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

- F. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, volunteers, and representatives or shall specifically allow the Artist or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. The Artist hereby waives its own right of recovery against the City, its elected or appointed officers, agents, officials, employees, volunteers and representatives and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- G. Enforcement of Contract Provisions (non estoppel). The Artist acknowledges and agrees that any actual or alleged failure on the part of the City to inform the Artist of noncompliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- H. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Artist maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Artist. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- I. Notice of Cancellation. The Artist agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.
- J. Additional Insured Status. General liability, automobile liability, and if applicable, pollution liability and cyber liability, policies shall provide or be endorsed to provide that the City and its officers, officials, employees, agents, volunteers and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement, under such policies. This provision shall also apply to any excess/umbrella liability policies.
- K. Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any

limiting endorsement of any kind that has not been first submitted to the City and approved of in writing.

- L. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that the Artist's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
- M. Pass Through Clause. The Artist agrees to ensure that its subconsultants, subcontractors, and any other party involved with the Project who is brought onto or involved in the Project by the Artist, provide the same minimum insurance coverage and endorsements required of the Artist. The Artist agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. The Artist agrees that upon request, all agreements with subconsultants, subcontractors, and others engaged in the Project will be submitted to the City for review.
- N. City's Right to Revise Specifications. The City and the City's Risk Manager reserve the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Artist ninety (90) days advance written notice of such change. If such change results in additional cost to the Artist, the City and Artist may renegotiate the Artist's compensation. If the City reduces the insurance requirements, the change shall go into effect immediately and require no advanced written notice.
- O. Self-Insured Retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.
- P. Timely Notice of Claims. The Artist shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from the Artist's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- Q. Additional Insurance. The Artist shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Services.

Section 15 DEATH OR INCAPACITY OF THE ARTIST

In the event of the Artist's death or incapacity, as determined solely by the City, rendering the Artist unable to complete the Artwork, the City may elect to complete the

Artwork and all payments made up to the point of death or incapacity will be retained by the Artist or the Artist's estate and all work performed by the Artist up to date of death or incapacity will be compensated. Any incomplete Artwork and any materials paid for by the City included in such Artwork will become the property of the City upon payment to compensate the Artist or Artist's estate, for all work performed up to the date of incapacity or death. However, if the Artwork is substantially designed and/or completed, as determined solely by the City, and it is feasible for the Artwork to be fully completed without undue delay, City may elect to proceed under the terms of this Agreement and complete the Artwork with the consent of the Artist, Artist's estate or Artist's legal representative. In such event, all remaining work to be completed in accordance with this Agreement will be delegated to the City Manager. The invocation of this Section by the City shall not render Section 7 ineffective with respect to the Artist's (or Artist's estate's) copyright ownership and reproduction rights.

Section 15 LIENS

- A. The Artist, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Artwork, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and the Artist, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and the Artist, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.
- B. The Artist will save and hold the City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and the Artist will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16 TERMINATION OF AGREEMENT BY CITY

- A. Should the Artist at any time refuse or fail to deliver the Artwork with promptness and diligence, or to perform any of its other obligations under the Agreement, the City may terminate the Artist's right to proceed with the delivery of the Artwork by written notice to the Artist. In such event the City may obtain the Artwork by whatever method it may deem expedient, including the hiring of another artist and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of the Artist. In such case the Artist will not be entitled to receive any further payments until the Artwork is delivered and installed. If the City's cost of obtaining the Artwork, including compensation for additional managerial and

administrative services, will exceed the unpaid balance of the Agreement, the Artist will be liable for and will pay the difference to the City.

- B. The City may, for its own convenience, terminate the Artist's right to proceed with the work by written notice to the Artist. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which the City may have against the Artist, and will not affect the obligations and duties of the Artist under the Agreement. Upon termination, the Artist shall be compensated only for that Work which has been adequately rendered to the City, and the Artist shall be entitled to no further compensation. The Artist may not terminate this Agreement except for cause.
- C. If this Agreement is terminated as provided herein, the City may require the Artist to provide all finished or unfinished documents and data and other information of any kind prepared by the Artist in connection with the performance of the work under this Agreement. The Artist shall be required to provide such document and other information within fifteen (15) days of the request.

Section 17 MISCELLANEOUS PROVISIONS

- A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

CITY:
City of Palm Desert
73510 Fred Waring Drive
Palm Desert, CA 92260
Attn: Erica Powell, Public Art

ARTIST:
Kyle Absolom
11241 Laurie Dr.
Studio City, CA 91604

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- B. Assignment or Transfer. The Artist shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due to the Artist from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City.

- C. Non-Discrimination. The Artist agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of race, color, gender, religious creed, sex (including pregnancy or child birth), age, national origin, ancestry, sexual orientation, physical or mental disability, medical condition including genetic characteristics, veteran status, marital status, family care status, or any other considerations made unlawful by federal, state or local law in performance of this Agreement. If the use provided for in this Agreement allows the Artist to offer accommodations or services to the public, such accommodations, or services shall be offered on fair and reasonable terms.
- D. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
- E. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- F. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.
- G. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- H. Interpretation. 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.
- I. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- J. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.
- K. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- L. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

- M. City's Right to Employ Other Artists. City reserves its right to employ other contractors in connection with the Goods.
- N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Goods specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AGREEMENT OF COMMISSION OF PUBLIC ARTWORK
BETWEEN THE CITY OF PALM DESERT AND KYLE ABSOLOM**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as
of the day and year first above written.

CITY OF PALM DESERT:

Approved By:

Signed by:


L. TODD HILEMAN, City Manager

ARTIST:

DocuSigned by:

KYLE ABSOLOM

ATTEST:

Signed by:

ANTHONY J. MEJIA, City Clerk

APPROVED AS TO FORM:

Approved By:

Signed by:

ISRA SHAH, City Attorney

QC: MN

Insurance:

DS


Initial Review

DS


EXHIBIT "A"
PROPOSAL

[Attached Behind Page]

Exhibit "A"

EXHIBIT "B"

SCOPE OF WORK

The Artwork shall consist of the following phases:

Design Review Phase.

1. Within 30 days after the execution of this agreement, the City shall notify the Artist if it requires any revisions to the Design.
2. The Artist will have 60 days to comply with any revisions.
3. Upon approval by both Parties, the City will issue a Notice to Proceed with the Final Design Phase.

Final Design Phase.

1. Upon completion of the Design Review Phase and approval of the final design of the Artwork by the City, the City will issue a Notice to Proceed with the Final Design Phase. The Artist shall commence the Final Design and complete the Final Design work within 90 calendar days of the Notice to Proceed date.
2. Final Design work shall include but are not limited to the following:
 - a. Construction Documents
 - i. Artist to work with a California registered Professional Engineer (PE) on structural drawings that include final design plans and specifications, pad design and lighting plan.
 - ii. Consulting with City staff and other parties identified by the City to ensure that Artwork is in full compliance with this Agreement.

Fabrication Phase.

1. Upon completion of the Final Design Phase and approval of the final design of the Artwork by the City, the City will issue a Notice to Proceed with the Fabrication Phase. The Artist shall commence the Fabrication Phase and complete the Fabrication Phase work within 160 calendar days of the Notice to Proceed date.
2. The Fabrication Phase tasks shall include, but are not limited to, the following:
 - a. Procurement of materials and fabrication of the Artwork
 - b. The Artist shall send progress reports and images at reasonable times during the Fabrication Phase.
 - c. The Artist shall notify the City in writing when fabrication of the Artwork has been completed and that Artwork is ready for delivery and installation.

Installation Phase.

1. Upon the City's final approval of the fabricated Artwork, the Artist shall deliver the completed Artwork to the Site in accordance with the schedule provided for in Section 1.5(B).
2. The Artist will coordinate closely with the City to ascertain that the Site is prepared to receive the Artwork.
3. The Artist shall be present to supervise the installation of the Artwork and, if requested by the City, attend a dedication ceremony.

EXHIBIT "C"
ARTWORK BUDGET

ARTIST FEE

FINAL DESIGN DEVELOPMENT

Includes final proposal, engineering and/or architectural documents, budget, and schedule.

15% of project total = \$25,000

INSURANCE

General Liability (\$1million per occurrence/\$2 million general aggregate)

Workers' Compensation Automobile/Hired Vehicle

PROFESSIONAL CONSULTANT FEES

Structural Engineer: Preparation of shop drawings as well as stamped structural engineering plans (wind load and seismic studies) for the footing and the sculpture is estimated at \$6,500.

(Consultants must be licensed in the State of California)

ADMINISTRATIVE EXPENSES

Shop Drawings and Contract Documents

Shop drawings are included in planning and engineering

FABRICATION COSTS

The fabrication estimate is \$138,000.

This includes all materials, supplies and labor

TRANSPORTATION

Materials and finished work to the site

INSTALLATION COSTS (Paid by the City)

Footings

Labor

Equipment (crane, scaffolding, or other) Base or Mounting Devices and Components

Traffic Barricades/Control

Off-duty security

ADDITIONAL LIGHTING (Paid by the City)

Design Fixtures Bulbs

Site Preparation Installation

Electrical modifications

LANDSCAPING (Paid by the City)

City Staff design/Vendor installation

Artist to work with City Landscaping Department

PERMITS (Waived by the City)
Development Services Permit

PERMITS AND TAXES

Sales Tax: Standard 9.5% sales tax on the completed work excluding artist fee. Will provide actuals once final design is completed.

TOTAL \$169,500

EXHIBIT "D"
PAYMENT SCHEDULE

The City shall pay the Artist a fixed fee of One Hundred Sixty-Nine Thousand Five Hundred Dollars (\$169,500), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$16,950 (10%) upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth under Section 1.3;
- b. \$101,700 (60%) upon Notice to Proceed to Fabrication Phase;
- c. \$33,900 (20%) within 30 days after the Artist notifies the City that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.7(A);
- d. \$16,950 (10%) within 30 days after final acceptance of the Artwork by the City as set forth under Section 1.8(B).

All requests for payment shall be submitted to the Economic Development Management Analyst, Public Art in writing for review and approval and must be accompanied with a detailed invoice and other documentation as required by the Economic Development Management Analyst, Public Art supporting the work completed.

Terms of payment are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable progress milestones. Final payment shall be made by City after the Artist has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of the work.

EXHIBIT "E"
Transfer of Title

STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the City, located in Palm Desert, California, its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by Agreement of Dueling Palms and as described therein.

Title: Dueling Palms

Location: Roundabout on San Pablo Avenue at the east entrance of College of the Desert

IN WITNESS WHEREOF, Artist has executed this written transfer of title on this the ____ day of _____, 2024.

WITNESS

ARTIST

Sworn to and subscribed
of _____, 20__.

ADDRESS before me this ____ day

SOC. SEC. NO.

NOTARY PUBLIC
My Commission Expires:
(NOTARY SEAL)

Exhibit "E"