

**CITY OF PALM DESERT
ARTIST AGREEMENT**

This Artist Agreement (“Agreement”) is entered into on **September 25, 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 **Cristopher Cichocki, a Sole Proprietor**, with its principal place of business at **800 S Vella Road, Unit A, Palm Springs, CA 92264** (“Artist”). City and Artist are sometimes individually referred to herein as “Party” and collectively as “Parties.”

On **September 25, 2025**, City Council approved the award of this Agreement to the Artist above.

RECITALS

A. 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 Ordinance 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

B. The Artist is a recognized professional artist, and the City acknowledges sufficient familiarity with the style and quality of the Artist’s work; and

C. The City desires for the Artist to create an original work of art entitled **RISING INVERSION** (“Artwork”) for placement at **Ironwood Park, 47800 Chia Drive, Palm Desert** (“Site”). The Artist’s design (“Proposal”), which is attached hereto as Exhibit “A” has been reviewed and approved by the City and is hereby incorporated and made a part of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is mutually agreed between the Parties as follows:

AGREEMENT

SECTION 1. Scope of Services.

1.1 Artists’ Obligations.

(a) Artist is hereby retained to perform all services and furnish all supplies, materials, outside expertise and equipment necessary for the completion of the Artwork in accordance with the “Description of Artwork” which is attached hereto and incorporated herein as **Exhibit “A”**, “Scope of Work,” which is attached hereto and incorporated herein as **Exhibit “B”**, and “Payment Schedule” which is attached hereto and incorporated herewith **Exhibit “D”**. The Artwork shall be completed and installed in a professional manner and in strict compliance with all the terms and conditions in this Agreement.

(b) Artist shall be responsible for complying with all federal, state, and local laws, ordinances, statutes and regulations and for obtaining all required licenses, permits, or other similar authorizations applicable to the performance of Artist's responsibilities under this Agreement.

(c) 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 Work's Department, City Engineer, and Traffic Department.

(d) The Artist shall arrange the transportation and installation of the Artwork in consultation with the City. If the Artist does not install the artwork themselves, the Artist shall supervise and approve the installation.

(e) The Artist shall provide required insurances in the amounts and limits specified in Section 13.

(f) 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.

(g) 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.

(h) 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 the 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 Artist shall prepare the Site in accordance with the specifications detailed in the approved design concept in "Exhibit B" of this Agreement. The Artist shall be responsible for all expenses relating to preparing the Site for the timely transportation and installation of the Artwork. The Artist shall complete the Site preparations according to schedule in "Exhibit B" or shall contact the City in writing informing 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 [RESERVED]

1.4 [RESERVED]

1.5 Budget, Payment Schedule, Construction Schedule and Progress Reports

(a) Budget

(i) The City shall pay the Artist **One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00)**, as described in Exhibit "C", 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.

(b) Schedule

(i) The Artist shall notify the City of the tentative schedule for the 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.

1.6 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 "Exhibit 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 the Artwork is ready for delivery to the Site.

(c) The Artist 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 the City of any adverse conditions at the Site that would affect or impede the installation of the Artwork. The Artist is responsible for the timely installation of the Artwork. The Artist will confer and coordinate with the City to ensure timely coordination with the Artist'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.

1.7 Final Acceptance.

(a) Artist shall advise City in writing, or via email, when the Artwork has been completed.

(b) City shall notify Artist in writing, or via email, of its final acceptance or non-acceptance of the Artwork.

(c) Artist shall be responsible for promptly resolving the reasons for non-acceptance of the Artwork indicated by the City.

(d) Final acceptance is effective on the date of City's notification of final acceptance or forty-five (45) calendar days after Artist has sent City written notice of completion, whichever first occurs, unless City, upon receipt of Artist's notice of completion provides Artist, before forty-five (45) calendar days have elapsed, with written notice specifying and describing any uncompleted services.

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. Time of Performance.

3.1 Duration. The services required of Artist as set forth in Section 1 shall be completed in accordance with the Payment Schedule (Exhibit "D"). 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, or submission of final payment to the Artist by the City under Exhibit "D", whichever is later.

3.2 Time Extension. City agrees to grant reasonable extension of time to Artist in the event of delay on City's part in performing its obligations under this Agreement or if conditions beyond Artist's control render Artist's timely performance impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of agreement, provided that such obligations are suspended only for the duration of such conditions and the party with knowledge of the condition immediately notifies the other party, in writing, of such condition. 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".

3.3 Termination. If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner or otherwise violate any of the covenants, agreements, or stipulations materials to this Agreement, the other party shall have the right thereupon to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate and, specifically, the grounds for termination. The defaulting party shall have thirty (30) calendar days after receipt of the notice to cure the default. If default is not cured, this Agreement shall terminate as determined by the non-defaulting party. In the event of City's default, City shall promptly compensate Artist for all services performed by the Artist prior to termination, in accordance with the payment schedule described in Section 2. In the event of Artist's default, all products prepared and submitted or prepared for submission by Artist under this Agreement shall at City's option become City's property; Artist shall not be relieved of liability to City for damages sustained by City by virtue of Artist's breach of this Agreement. In such event, City may reasonably withhold payments to Artist until the exact amount of damages due to the City from Artist is determined. In addition, the City shall retain the right to have the Artwork completed; however, the Artist shall retain the copyright in the Artwork to the extent it has become fixed in the applicable medium. By Artist allowing for completion of the Artwork by another party in the event of default Artist is agreeing to share copyright in the completed Artwork with the completing party.

SECTION 4. Compensation

The City shall pay the Artist **One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00)**, as described in Exhibit "C", 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.

The Artist shall bear the risk of any material price increases between the date of the Notice to Proceed and the completion of the Project. No additional price increases will be permitted unless agreed to in writing by the City's authorized representative.

1) 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) Execution of Agreement (50%) — Seventy Five Thousand and 00/100 Dollars (\$75,000.00)
 - ii) Final Acceptance (50%) — Seventy Five Thousand and 00/100 Dollars (\$75,000.00)

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.

2) 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.
- (ix) 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.

(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. Ownership, Rights, and Interest.

Artist hereby grants a royalty free license in perpetuity, to the City, its employees and its agents, to make reproductions, photographs and other non-exact reproductions of the Artwork for non-commercial purposes:

1. Description: Spherical formation with a depth ranging from five feet at the center to one foot at the edges. The artwork is fabricated with an inner steel framework. The mass body of the artwork consists of high-density polystyrene coated in 2 layers of smoothed concrete. The concrete surface was primed with industrial strength primer and coated on two sides. Side One – is coated with phosphorescent pigment and Nova Flex Varnish. Sealed with a protective anti-graffiti coating that is UV resistant. Side Two – is coated with high gloss “Aristoshield Black” by Dunn Edwards, a water-based “oil” paint that is industrial-grade. This side will not be sealed with a protective coating. Stock touch up is the easier solution to eliminate any potential graffiti while maintaining an ultra-high gloss finish that the Aristoshield Black provides. The edges of the artwork are finished with rusted and sealed sheet metal.

2. Title: *Rising Inversion*, Date: dedicated November 2023, Laguna Beach

3. Address/Location: Ironwood Park, 47800 Chia Drive, Palm Desert

7.1 Waiver of Moral Rights. Artist bears the risk of damage to or loss of the Artwork until the City's final acceptance under Section 1.2 and shall take such measures as necessary to protect the Artwork from damage until final acceptance. Artist acknowledges and agrees that the Artwork is a “work made for hire” as defined in the

United States Copyright Act (17 U.S.C. § 101 *et seq.*) and is owned by City, for all purposes worldwide, in perpetuity, in any and all media, whether now known or hereafter devised.

Artist understands that the Artwork is to be installed on the Site such that it becomes an integral, permanent and site-specific part of a building and that the operation, management, or other circumstances of the Site, could result in significant alteration of the Artwork or Site. For purposes of this Agreement, the term “alter or alteration,” with respect to the Artwork, shall mean: alter, repair, restore, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.

Due to the nature of the Artwork and the public interest of the City, Artist and Artist’s agents, heirs, successors and assigns hereby waive any and all rights and claims they may have against the City, and its employees, and its agents, under the Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113(d) (“VARA”), the California Art Preservation Act, Cal. Civ. Code, §§ 987, 989 (“CAPA”), and any other local, state, foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights (“Moral Rights Laws”), with respect to the Artwork, its display, removal from display, exhibition, installation, conservation, storage, study, alteration, and any other activities conducted by the City, its officers, employees, agents, contractors, licensees, successors or assigns. Since the Artwork is incorporated into a building at the Site such that it cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, “Modification”), Artist waives any and all such claims under any Moral Rights Laws arising out of or against the City or City’s agents, officers, employees, successors, or assigns for Modification of the Artwork.

City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Artwork, in whole or in part, in City’s sole discretion.

The City has no obligation to pursue claims against third parties for modifications or damage to the Artwork done without the City’s authorization. However, the City may pursue claims against third parties for modifications or damage or to restore the Artwork if the Artwork has been modified without the City’s authorization. In the event that the City pursues such a claim, it shall notify the Artist, and Artist shall cooperate with the City’s efforts to prosecute such claims.

If City causes Modification of the Artwork without the Artist’s consent in a manner that is prejudicial to Artist’s reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. § 106A (a)(2).

7.2 Reproduction Rights. Artist grants to City an irrevocable license and right to duplicate, make, display, and distribute and authorize the making, display, and distribution of reproductions for noncommercial purposes, including but not limited to advertising, brochures, media publicity, educational and promotional materials, postcards, booklets, catalogues and other similar publications. To the extent this provision constitutes a transfer of the right to reproduction, this Agreement is intended to be and shall be deemed

to constitute the document in writing required by California Civil Code Section 982 (c). Reproductions by City are not required to contain a credit to Artist, nor any form of copyright notice. Artist is not required to give credit to City in any public showing under Artist's control or in reproductions of the Artwork.

7.3 Copyright. Artist shall retain all rights under Copyright Act of 1976 for original works produced under this Agreement except ownership and possession and as otherwise provided in this Agreement. Artist's copyright shall not extend to utilitarian aspects of the Artwork such as landscaping, lighting, furnishings or other similar objects. The City and its assigns are not responsible for any third party infringement of Artist's copyright and for protecting the intellectual property rights of Artist. Any registration of a copyright under the State's Register of Copyrights shall be the sole responsibility of the Artist, and the costs of such registration shall be borne by the Artist.

7.4 Royalty Rights. Artist agrees that they shall receive no royalties or other remuneration for the use of the Artwork by the City beyond the agreed compensation pursuant to Civil Code Section 986. Any use, reproduction, and dissemination of the Artwork by the City shall not entitle the Artist to any further payments.

7.5 Survival. The obligations under this Section 5 shall survive the termination or expiration of this Agreement.

SECTION 8. Insurance and Indemnification.

8.1 Insurance. Artist agrees to carry for the duration of this Agreement and any extensions thereof, at Artist's expense, insurance in the kinds and amounts as listed in Section 13. The required insurance shall be the primary coverage and cover the Artist and Artist's employees, agents, contractors, and subcontractors. Proof of such insurance shall be provided to the City prior to undertaking any work under this Agreement and contain a provision that the policy shall not be canceled or reduced in coverage without thirty (30) calendar days written notice to the City. The Artist must provide proof of renewal or replacement for any policy(s) that expire during the term of the Agreement. Failure of Artist to maintain or provide proof of insurance shall be considered a breach of this Agreement and the City shall have the right to terminate this Agreement without any financial or contractual obligation and reserves the right to select another artist to complete the Artwork, alternatively the City may purchase the required insurance and deduct the cost from the monies otherwise due to the Artist.

8.2 Indemnification. Artist agrees to indemnify, protect, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, and authorized volunteers (collectively, "Indemnitee") from and against all liabilities, claims, demands, obligations, losses, damages, judgments, legal actions costs or expenses, including attorneys' fees, court costs and other litigation costs arising from, in connection with or caused by any act, omission, or negligence by Artist or Artist's officers employees, agents, subconsultants, suppliers, or any entity or person for whom Artist may be legally liable (regardless of whether or not they are separate legal entities). Artist shall have no obligation to indemnify City for City's gross negligence or willful misconduct. Artist, at its sole cost and expense and upon written notice from City, shall defend any and all actions,

lawsuits, causes of action, or proceedings caused by any third party against City and shall employ counsel acceptable to City in its sole discretion. The Artist accepts that City has the right to participate in such proceeding with counsel of its own choosing at Artist's expense. Should a claim, action or proceeding related to this Agreement be made or filed against City, the City shall promptly provide written notice of such claim or action to the Artist, allowing Artist the time stipulated by applicable law to respond to such action. The obligations of Artist under this provision shall survive the expiration or earlier termination of this Agreement until it is determined to the satisfaction of the City that all liabilities have been met that could arise from the indemnification obligations set forth in this Section.

SECTION 9. 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 10. 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 11. 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 12. 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 13. Insurance

13.1 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 Manger 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) Concurrence 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.

13.2 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 14. Death or Incapacity of 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

17.1 Notices. All notices hereunder and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CITY:

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

ARTIST:

Cristopher Cichocki
800 S Vella Road, Unit A
Palm Springs, CA 92264

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.

17.2 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.

17.3 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.

17.4 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

17.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

17.6 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.

17.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

17.8 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.

17.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

17.10 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.

17.11 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.

17.12 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

17.13 City's Right to Employ Other Artists. City reserves its right to employ other contractors in connection with the artwork.

17.14 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Goods specified herein. There are no understandings, agreements,

Contract No. _____

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 ARTIST AGREEMENT
BETWEEN THE CITY OF PALM DESERT AND CRISTOPHER CICHOCKI**

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

ARTIST

By: _____
Chris Escobedo
City Manager

By: _____
Cristopher Cichocki
Artist

Attest:

By: _____
Anthony J. Mejia
City Clerk

Approved as to form:

By: _____
Isra Shah
City Attorney

City Clerk QC: _____

Contracts QC: _____

Insurance: _____

Initial Review

Final Review

Contract No. _____

EXHIBIT "A"
ARTIST DESIGN & DESCRIPTION OF ARTWORK

1. Title, Date: *Rising Inversion*, November 2023 (original dedication date Nov 2023)
2. Description: [type, medium]: Sculpture: Steel frame, polystyrene, concrete, sheet metal, phosphorescent pigment, Nova Flex Varnish, sealed with protective anti-graffiti/UV paint,
3. Dimensions: 127" H x 42" W x 450" L above ground dimensions
4. Address/Location(s): Ironwood Park, 47800 Chia Drive
5. Description: Spherical formation with a depth ranging from five feet at the center to one foot at the edges. The artwork is fabricated with an inner steel framework. The mass body of the artwork consists of high-density polystyrene coated in 2 layers of smoothed concrete. The concrete surface was primed with industrial strength primer and coated on two sides. Side One – is coated with phosphorescent pigment and Nova Flex Varnish. Sealed with a protective anti-graffiti coating that is UV resistant. Side Two – is coated with high gloss "Aristoshield Black" by Dunn Edwards, a water-based "oil" paint that is industrial-grade. This side will not be sealed with a protective coating. Stock touch up is the easier solution to eliminate any potential graffiti while maintaining an ultra-high gloss finish that the Aristoshield Black provides. The edges of the artwork are finished with rusted and sealed sheet metal
6. Measurements and Images on following pages.

EXHIBIT "B"

SCOPE OF WORK

1. Artwork Preparation

Artist shall complete the touch-up and protective treatment of the sculpture prior to delivery. This shall include renewed application of phosphorescent paint and a protective varnish sealer. All such work shall be completed off-site, and the sculpture shall be delivered in a finished state with the entirety of its detail intact.

2. Coordination and Communication

Artist shall coordinate directly with the City, as Property Owner, regarding the schedule of work. All work activities shall be communicated to and approved by the City prior to execution. Artist shall provide the City with progress updates and promptly advise of any changes to the scope or schedule.

3. Site Preparation

Artist shall prepare the designated placement zone at Ironwood Park through grading and leveling of the site. This shall consist of one (1) day of work, performed preferably one day prior to installation, and will involve the use of multiple workers for raking, shoveling, and leveling activities.

4. Transportation and Installation

- a) Artist shall arrange for transport of the sculpture from the Empire Polo Fields to Ironwood Park on the morning of the installation. Transport shall be conducted on a 40-foot flatbed truck, with preference for early morning transit to avoid cross-town traffic.
- b) Upon arrival, Artist shall oversee offloading of the sculpture using a forklift positioned on-site.
- c) The sculpture shall be placed within the prepared footprint, with its footings set and backfilled using recycled, local desert soil.
- d) To mitigate dust from the newly graded soil, Artist shall apply the soil stabilizer "Perma-Zyme" encircling approximately twenty-five (25) feet around the sculpture. The material is organic, eco-friendly, and will dry clear and unnoticeable to the eye.

5. Equipment and Materials

Artist shall furnish all equipment, supplies, and materials necessary for the preparation, transportation, and installation of the sculpture in accordance with this Agreement.

6. Permits and Inspections

Artist shall work with the City to ensure all necessary permits, approvals, and inspections are secured prior to final installation. Artist shall coordinate with the City to arrange for inspection of the installation before final placement of the sculpture.

7. Acceptance of Work

a. The City shall have the right to review the Work at reasonable times during the installation.

b. Artist shall notify the City in writing upon completion of all Services required under this Agreement. The City shall provide written notice of final acceptance (or non-acceptance) of the Work.

8. Risk of Loss

The risk of loss or damage to the sculpture shall be borne by the Artist until written notice of final acceptance is issued by the City. Artist shall take necessary measures to protect the Work until final acceptance.

9. Insurance

Artist shall add the City, as Property Owner, as additional insured on all insurance submittals required under this Agreement.

EXHIBIT "C"
BUDGET

<i>Rising Inversion Sculpture Breakdown</i>	Amount
Sculpture	\$ 130,000.00
Soluble varnish/graffiti coating	\$ 2,000.00
Grading	\$ 5,000.00
Installation	\$ 2,000.00
Crane	\$ 5,000.00
Transport	\$ 1,000.00
Landscape	\$ 5,000.00
Total	\$ 150,000.00

EXHIBIT "D"
PAYMENT SCHEDULE

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.

a) 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.

b) Payment shall be made in accordance with the following schedule:

- i) Execution of Agreement (50%) — Seventy Five Thousand and 00/100 Dollars (\$75,000.00)
- ii) Final Acceptance (50%) — Seventy Five Thousand and 00/100 Dollars (\$75,000.00)