

# **Attachment 1**

**AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND PHOENIX DECORATING COMPANY, INC. FOR 2014 PASADENA TOURNAMENT OF ROSES PARADE FLOAT**

THIS AGREEMENT, made this 6th day of August, 2013 by and between the CITY OF BEVERLY HILLS, hereinafter referred to as "CITY", and PHOENIX DECORATING CO., INC., 835 South Raymond Avenue, Pasadena, California 91105, hereinafter referred to as "PHOENIX". This agreement is entered into in the City of Beverly Hills, County of Los Angeles, State of California.

**WITNESSETH:**

IN CONSIDERATION OF THE MUTUAL AGREEMENTS HEREIN CONTAINED, the parties hereto agree as follows:

1. PHOENIX agrees to design, build, decorate and enter a float on behalf of CITY in the PASADENA TOURNAMENT OF ROSES PARADE to be held on January 1, 2014 in the City of Pasadena, County of Los Angeles, State of California.
2. The above mentioned float shall be the creation of PHOENIX in strict accordance with the 2014 Pasadena Tournament of Roses Parade Theme entitled "Dreams Come True". CITY and PHOENIX shall agree upon a float design in accordance with the parade theme.
3. It is agreed between the parties that PHOENIX is an independent contractor and not the partner or agent of CITY and shall be responsible to CITY only for the accomplishment of the result herein contemplated and that the manner, methods, and means of the accomplishment of said result shall be solely within the discretion of PHOENIX and in compliance with industry standards.
4. PHOENIX agrees to complete the subject float in a good and workmanlike manner, to have it present at the line of march not later than judging time on the day of the parade, that its appearance and operating condition shall be of high quality, and to drive and operate the same in the PASADENA TOURNAMENT OF ROSES PARADE and deliver the float to the exhibition grounds at the post parade area, Pasadena, California, and said float at all times shall be the sole property of PHOENIX.
5. PHOENIX agrees to operate the float in all aspects of the parade in strict accordance with the rules and regulations of the PASADENA TOURNAMENT OF ROSES ASSOCIATION. Operators for the subject float shall be furnished at the expense and responsibility of PHOENIX.
6. PHOENIX agrees that in entering, displaying, and operating said float in the PASADENA TOURNAMENT OF ROSES PARADE for CITY they will observe the rules and regulations of the PASADENA TOURNAMENT OF ROSES ASSOCIATION regarding such display and operation, as well as all applicable laws, ordinances or regulations.
7. PHOENIX agrees that upon commencement of construction for the subject float, PHOENIX will notify CITY of the location of such construction in order that representatives of CITY may, at their discretion, inspect the construction. In the event that PHOENIX moves the said float to a second or third location, they agree to keep CITY advised of all such changes of the location of the construction site.
8. Independent Contractor. CONTRACTOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.
9. Indemnification and Insurance.
  - a. PHOENIX agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all claims, liability or financial loss resulting from any suits, claims, losses or actions, and from all cost and expenses of litigation, brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the actions or omissions of PHOENIX or their officers, employees, agents or others employed by PHOENIX in the conduct of the projects funded by this Agreement.

b. PHOENIX shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by PHOENIX.

c. PHOENIX shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

d. PHOENIX agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.

e. PHOENIX shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.

f. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

g. If PHOENIX fails to keep the aforesaid insurance in full force and effect, City shall notify PHOENIX that it is in breach of the Agreement and PHOENIX has three (3) days to cure such breach. If such breach is not cured by PHOENIX as required in this paragraph, City may terminate the Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at PHOENIX' s expense, the premium thereon.

h. At all times during the term of this Agreement, PHOENIX shall maintain on file with the City Clerk a certificate or certificates of insurance on the form required by the City, showing that the aforesaid policies are in effect in the required amounts. PHOENIX shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

i. The insurance provided by PHOENIX shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

j. Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

9. IN CONSIDERATION OF THE FOREGOING, CITY agrees to pay PHOENIX the sum of \$250,000 payable as follows:

a. 50% (\$125,000) due and payable upon the signing of this contract;

b. 30% (\$75,000) due and payable upon completion of float design agreed to by CITY and PHOENIX;

c. 20% (\$50,000) due and payable upon completion of float construction and successful entrance in parade no later than January 7, 2014.

CITY also agrees to pay PHOENIX one percent (1%) per month for unpaid balance after February 1, 2014.

In the event, however, that the parade is not held due to any reason beyond the control of PHOENIX, or shall be prevented by rain, act of God, war, or by any reason of the rules, regulations, or restrictions issued by any branch

or agency of the UNITED STATES GOVERNMENT or the STATE OF CALIFORNIA, it is understood that PHOENIX shall be reimbursed by CITY for all their expenses of every kind and nature which they have incurred in connection with its performance hereunder to-date, , and PHOENIX shall be excused from further performance of this agreement, with the following exception: where a partial payment has been made by CITY and cancellation should occur the day of the parade, then CITY shall be liable for the full contract price.

10. The Law of the State of California shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties. The parties specifically agree that any litigation which may arise out of the performance of the terms or conditions set forth herein shall be commenced in the County of Los Angeles, State of California. In the event litigation is commenced concerning a breach of this Agreement, the prevailing party shall be entitled to their reasonable attorney's fees and costs.

11. This agreement constitutes the entire understanding and agreement between and among the parties hereto with respect to the subject matter hereof and there are no oral or written agreements, understandings, restrictions, representations or warranties among the parties hereto other than those expressly set forth in this Agreement. This Agreement may not be amended, changed or modified except by a written instrument signed by all parties hereto. No modification or amendment to this agreement shall be valid or binding unless such modification and/or amendment is set forth in writing and signed by all of the parties to this Agreement.

12. Each and every provision of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and personal representatives.

13. CITY may cancel this Agreement at any time upon five (5) days written notice to PHOENIX. PHOENIX agrees to cease all work under this Agreement on or before the effective date of such notice.

In the event of termination or cancellation of this Agreement by CITY without cause, due to no fault or failure of performance by PHOENIX, PHOENIX shall be paid for work done in accordance with all of the terms and provisions of this Agreement. PHOENIX shall be paid for all services satisfactorily performed prior to the effective date of termination or cancellation, provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid PHOENIX for the full performance of the services required by this Agreement.

In the event of termination without cause, CITY shall release CONTRACTOR from any and all further liability that relate to acts that would have been performed if the Agreement was not terminated.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first hereinabove written. Each party represents and warrants that they have the authority to enter into this agreement.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 2013\_\_\_\_\_, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of Beverly Hills, California

ATTEST:

\_\_\_\_\_  
(SEAL)

BYRON POPE  
City Clerk  
[Signatures continue]

CONTRACTOR: PHOENIX DECORATING CO., INC.



CHRIS LOFTHOUSE  
Chief Executive Officer and President

APPROVED AS TO FORM:



LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager



\_\_\_\_\_  
CHERYL FRIEDLING  
Deputy City Manager



\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager