

**CATHEDRAL CITY INTERNATIONAL HOT AIR BALLOON FESTIVAL EVENT SERVICES  
AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF CATHEDRAL CITY, CALIFORNIA**

**AND**

**SOUNDSKILZ, INC.**

This Cathedral City International Hot Air Balloon Festival Event Service Agreement ("**Agreement**") is entered into as of April 23, 2025 ("**Effective Date**") by and between the City of Cathedral City, a charter city and a municipal corporation ("**City**") and Soundskilz, Inc., a California corporation ("**Service Provider**"). City and Service Provider are sometimes hereinafter individually referred to as "**Party**" and hereinafter collectively referred to as the "**Parties**." It is mutually agreed by and between the undersigned Parties as follows:

**SECTION 1. SCOPE OF SERVICES/RESPONSIBILITIES OF SERVICE PROVIDER.**

General Scope of Services. Service Provider promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services necessary for the showcase of hot air balloon activities and hosting a food truck event through flights, rides, music, food, spirits, culture and cuisine ("**Event**"). The services to be provided by Service Provider are more particularly described in **Exhibit "A"**, "Event Specific Services," of this Agreement, attached hereto and incorporated herein by reference. All services 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. The City is retaining Service Provider to produce, organize, manage, and run the Event in 2025, 2026, and 2027. Service Provider shall perform all services for which the corresponding box "☐" has been checked "☒" in Exhibit A in conformance with the terms and conditions set forth in this Agreement and **Exhibit "A"**.

**1.1 Rights to Event.**

City is the founder of the Event and is entitled to copyright the name of the Festival and any associated intellectual property. Any attempt to copyright the name of the Festival or any associated intellectual property by Service Provider shall be a material breach of this Agreement for which City may immediately terminate this Agreement pursuant to Section 28 and be entitled to any damages available to it by law and under this Agreement including liquidated damages as set forth in Section 29.

**1.2 Time of Performance.**

Service Provider shall perform its services in a prompt and timely manner and shall complete all services required hereunder on or before the deadlines set forth in Exhibit A and Section 1.3.

**1.3 Date and Time of Event.**

Service Provider shall provide a full three (3)-day weekend Event consisting of at least six hours per day beginning on Friday morning, continuing through Saturday and ending on Sunday evening each year. The Event will be held on November 21, 2025, through November 23, 2025 ("**2025 Event**"), on November 20, 2026, through November 22, 2026 ("**2026 Event**"), and on November 19, 2027, through November 21, 2027 ("**2027 Event**"). Service Provider may request an alternate date for Event with express written approval of the City.

**1.4 Location / Site of Event.**

The Event will be held at City's Downtown Arts & Entertainment District along Avenida Lalo Guerrero as well as the Festival Lawn areas, with the additional inclusion of the Cathedral City Community Amphitheater located at 68526 Avenida Lalo Guerrero ("**Premises**") and as more specifically depicted in **Exhibit "B"**, which is incorporated herein by this reference.

**1.5 Conformance to Applicable Requirements.**

All work and services prepared or performed by Service Provider shall be subject to approval by the City.

**1.6 Service Provider's Representative.**

Service Provider hereby designates **Stephen Clayton, President of SoundSkilz, Inc.** or his/her designee, to act as its representative for the performance of this Agreement ("Service Provider's Representative"). Service Provider's Representative shall have full authority to represent and act on behalf of the Service Provider for all purposes under this Agreement. The Service Provider's Representative shall supervise and direct the Event and services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Event and services under this Agreement.

**1.7 Substitution of Key Personnel.**

Service Provider has represented to City that certain key personnel will perform and coordinate the services under this Agreement. Should one or more of such personnel become unavailable, Service Provider may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Service Provider cannot agree to the substitution of key personnel, City shall be entitled to terminate this Agreement. As discussed below, any personnel who fail or refuse to perform the services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Event or a threat to the safety of persons or property, shall be promptly removed from the Event planning and Event itself by the Service Provider at the request of the City. The key personnel for performance of this Agreement are as follows: **Stephen Clayton, President of SoundSkilz, Inc.**

**1.8 Coordination of Services.**

Service Provider agrees to work closely with City staff in the performance of services and shall be available to City's staff, consultants and other staff at all reasonable times.

**1.9 Standard of Care; Performance of Service Provider and Employees.**

The Service Provider shall at all times employ such force, plans, materials, and tools as will be sufficient in the opinion of the City to perform the services for the Event within the time limits established, and as provided herein. It is understood and agreed that said tools, equipment, apparatus, facilities, labor, and material shall be furnished and said services performed and completed as required by the Agreement, and subject to the approval of the City's authorized representative. The quality of services shall meet or exceed those standards established by the City or County of jurisdiction. The Service Provider shall perform all services under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Service Provider represents and maintains that it is skilled in the professional calling necessary to perform the services. Service Provider warrants that all employees and subcontractors shall have sufficient skill and experience to perform the services assigned to them. Finally, Service Provider represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

As provided for in the indemnification provisions of this Agreement, Service Provider shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Service Provider's failure to comply with the standard of care provided for herein. Service Provider shall at all times enforce strict discipline and good order among its employees. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the services, or any employee who fails or refuses to perform the services in a manner acceptable to the City, shall be promptly removed from the services to be performed by the Service Provider and shall not be re-employed on the services.

## **SECTION 2. COMPENSATION AND METHOD OF PAYMENT.**

- 2.1** As consideration for Service Provider's performance of this Agreement to City's reasonable satisfaction, and subject to any limitations set forth in this Agreement, City agrees to pay Service Provider total compensation, inclusive of Service Provider's actual expenses, an amount not to exceed one hundred seventy-five thousand dollars (\$175,000) for the 2025 Event, one hundred eighty-three thousand seven hundred fifty dollars (\$183,750) for the 2026 Event, and one hundred ninety-two thousand nine hundred thirty-seven dollars and fifty cents (\$192,937.50) for the 2027 Event (unless additional City compensation is approved in writing in accordance with Section 26, (Amendment) ("**City Payment**"). City will pay Service Provider at the time and in the manner specified in this Section 2.
- 2.2** City agrees to pay Service Provider fifty percent (50%) of the not to exceed amount of one hundred seventy-five thousand dollars (\$175,000) within 30 days of execution of this Agreement. Twenty-five percent (25%) shall be paid 60 days prior to the 2025 Event and the final twenty-five percent (25%) shall be paid 30 days after the 2025 Event.
- 2.3** City agrees to pay Service Provider fifty percent (50%) of the not to exceed amount of one hundred eighty-three thousand seven hundred fifty dollars (\$183,750) on or before January 15, 2026 for the 2026 Event. Twenty-five percent (25%) shall be paid 60 days prior to the 2026 Event and the final twenty-five percent (25%) shall be paid 30 days after the 2026 Event.
- 2.4** City agrees to pay Service Provider fifty percent (50%) of the not to exceed amount of one hundred ninety-two thousand nine hundred thirty-seven dollars and fifty cents (\$192,937.50) on or before January 15, 2027 for the 2027 Event. Twenty-five percent (25%) shall be paid 60 days prior to the 2027 Event and the final twenty-five percent (25%) shall be paid 30 days after the 2027 Event.
- 2.5** The City Payment entitles City to be recognized and designated as the name/title sponsor for the Event and to all of the benefits and privileges afforded to such level of sponsorship and to any benefits and privileges otherwise specified in **Exhibit "A"**. No other sponsor shall be afforded higher or superior recognition, or more benefits or privileges than City, without the prior written consent of City.
- 2.6** Service Provider may solicit, procure, or obtain other sponsors of the Event and shall utilize sponsorship receipts as provided in Section 8 (Sponsorships). Any compensation received by Service Provider as permitted under Section 8 shall not be considered by the City Payment and shall not require amendment of this Agreement pursuant to Section 26 (Amendment).

## **SECTION 3. LICENSE.**

City does hereby grant to Service Provider, and Service Provider hereby accepts from City, a revocable, nonexclusive license to use the Site to plan, produce, organize, manage, and run the Event and for no other purpose.

## **SECTION 4. SCHEDULE OF EVENT ACTIVITIES.**

Service provider shall develop a detailed and integrated schedule of all Activities planned for the entire duration of the Event, broken down by day and hour. The schedule shall include a media preview day featuring balloon launches on the Friday morning two weeks before the festival at Century Park, all Event Activities specified in Section 2 of **Exhibit "A"** and activities planned from 4-8 p.m. on Friday, including an entertainment act inside the Cathedral City Community Amphitheater that night, as well as activities from 2-8 p.m. on Saturday, featuring an evening balloon glow. **Service Provider is to provide a minimum of 20 hot air balloons for the three-day festival.** If the City Council decides to invest additional funds to secure a headline act for Saturday night, the City will be responsible for booking the act, managing the concert and will offer the Service Provider twenty-five percent (25%) of profits generated from the performance. Service Provider shall provide a final detailed timeline of activities to the Communications/Events Manager at least ninety (90) days prior to the commencement of the Event. Where Service Provider has additionally been required to, or has only been required to, develop a detailed schedule for one or more specific Event Activities, as opposed to all activities for the entire Event, Service Provider shall provide that schedule within the time designated in this Section.

#### **SECTION 5. EVENT SITE PLAN.**

Service Provider shall provide a draft site plan, Event layout to City's Communications/Events Manager for approval at least sixty (60) days prior to the Event. A final site plan and event layout shall be submitted to the Communications/Event Manager fourteen (14) days prior to the event. The site plan must show the location of each Event Activity included in the Event, including sources of power and water, restroom facilities, refuse receptacles, first aid station, handicap accessible areas, and event staging or preparation areas.

#### **SECTION 6. PROMOTION AND MARKETING.**

Service Provider shall use reasonable efforts to promote and market the Event which may include use of social media, print ads, broadcast spots, and recruitment of businesses and organizations to participate in the event as sponsors or vendors. Service Provider agrees to coordinate all of its promotional and marketing efforts with the City in advance. City agrees to assist in the promotion and marketing of the Event and will utilize its social media sites for that purpose as the City determines is appropriate. City's efforts also include an awareness program to broadcast the event schedule, first aid locations, public transport locations, restroom facilities, handicap accessible areas, distribution of event related press releases, and media advisories.

#### **SECTION 7. BUDGET.**

No later than 120 days prior to each Event, Service Provider shall draft an Event budget identifying all of the anticipated costs to plan, produce, organize, manage, and run the Event, including without limitation, identification of any third-party contracts entered into by Service Provider including but not limited to sponsorships, payment to any performers, artists, vendors or service providers utilized for the Event, and identifying all of the anticipated revenues for the events (whether from sponsorships, ticket sales, merchandise sales or otherwise). Where a final budget to actual report is required, the Service Provider will prepare a document comparing each identified budgeted cost with the actual expense for those items and provide same to City within ninety (90) days after the end of the Event.

#### **SECTION 8. SPONSORSHIPS.**

When required or permitted under this Agreement, Service Provider will solicit, procure, or otherwise obtain sponsors for the Event who provide goods, services or the payment of money to the Service Provider in exchange for recognition. Service Provider shall primarily use any goods, services or money received from such sponsors to pay or offset the costs of planning, producing, organizing, managing, and running the Event, and may secondarily keep excess monies as additional non-City compensation. Service Provider may offer sponsors predetermined sponsorship recognition packages (e.g. tickets, passes, tables, preferred seating, VIP status, and similar benefits and privileged) in accordance with their level of sponsorship. Sponsorship levels and packages must be preapproved by City. Sponsors may choose to direct their sponsorship to support either the overall Event or a specific Event Activity. If the sponsor chooses a directed donation, Service Provider shall ensure it has received written instructions from the sponsor indicating the allowed use of the sponsorship.

## **SECTION 9. COORDINATION WITH THE CITY.**

Service Provider agrees to coordinate its planning, production, organization, management, and running of the Event with City's Communications/Events Manager, including without limitation, providing regular (at least weekly) status updates to City's Communications/Events Manager, providing prompt responses to information requests, attending periodic meetings with City's Communications/Events Manager and other appropriate City Staff. Service Provider shall respond to emails from the Communications/Events Manager within 48 hours. Service Provider shall respond to emails from the Communications/Events Manager listed as "urgent" within 24 hours. Service Provider shall provide a phone number in which immediate contact can be made by the Communications/Events Manager at least five (5) days prior to the Event. Service Provider shall designate a specific contact person who will remain available for contact by phone beginning two hours prior to opening of the Event through two hours after closing of the Event, during each day the Event is to run.

## **SECTION 10. REPORTS.**

Where Service Provider is required to provide periodic progress reports or Event activity specific reports, all reports shall provide timely and accurate information regarding the progress of Event or activity either in writing, or orally at meetings with City staff. Where information is provided orally at a meeting, Service Provider shall memorialize action, decision or action to be taken in a follow-up email to City's Communication/Events Manager for confirmation. City may designate additional requirements or content for reports or designate additional reports.

The final post-Event report shall include but is not limited to information such as activities held in conjunction with the Event, number of people in attendance, number of sponsors, any issues that arose during the course of the Event, total number of vendors retained by the Service Provider, breakdown of the final budget and number of tickets sold during the Event, if applicable. The report shall be given to the Communications/Events Manager within ninety (90) days from completion of Event.

## **SECTION 11. NON-CITY LICENSES AND PERMITS.**

Service Provider is responsible for obtaining, at its own cost, all licenses, inspections, certificates and permits required for the Event from any governmental agency other than the City having jurisdiction over the Event, the Site, an Event Activity, or some aspect of the Event (e.g. health permit, alcohol license, flyover, etc.,) including the licenses, inspections, certificates or permits indicated in Section 1.9. Service Provider is responsible for timely completing and filing all necessary applications and related documents and materials reasonably necessary to obtain the required licenses, inspections, certificates or permits. Service Provider shall provide City with a certified copy of any issued license, inspection report, certificate or permit and shall maintain the original or a certified copy of each onsite during the Event and available for inspection by City or any issuing governmental agency.

## **SECTION 12. EVENT PARTICIPANTS, VOLUNTEERS, STAFF & PRIVATE SECURITY.**

**12.1** Event Participants. If required under **Exhibit "A"** Section 2.14, Service Provider shall use reasonable efforts to recruit or otherwise obtain participants for Event Activities (e.g. entrants in parades, contests, demonstrations, etc.,) and shall take such reasonable measures as are necessary to arrange for participant to be present on time and ready to participate in their Event Activity. Service Provider shall obtain from each participant an executed liability waiver on a form either acceptable to, or provided by, City. No participant may participate in any Event Activity unless they have provided a duly executed original of the required liability waiver to Service Provider.

**12.2** Volunteers. If required under **Exhibit "A"** Section 2.14, Service Provider shall use reasonable efforts to recruit or otherwise obtain such volunteers as are necessary or desired to assist in the planning, producing, organizing, managing and running of the Event or specific Event Activities. Service Provider shall be solely responsible from properly training and instructing volunteers and for providing adequate supervision and oversight of all volunteers during the Event. Service Provider shall obtain from each volunteer an executed liability waiver on a form either acceptable to, or provided by, City. No volunteer may perform any function at the Event unless they have provided a duly executed original

of the required liability waiver to Service Provider. Service Provider shall not utilize volunteers who are currently on parole or probation for a felony conviction, or who have been previously convicted of the crime of rape or sexual battery or sexual abuse.

**12.3** Staff. If required under **Exhibit "A"** Section 2.14, Service Provider shall recruit, hire and provide, at no cost to City, such paid workers ("**Staff**") as are necessary or desired to assist in the planning, producing, organizing, managing and running of the Event or specific Event Activities. Service Provider shall be solely responsible for properly recruiting, hiring, training and instructing Staff and for providing adequate supervision and oversight of all Staff members at all times they are working. Service Provider shall obtain from each Staff member an executed liability waiver on a form either acceptable to, or provided by, City. No volunteer may perform any function at the Event unless they have provided a duly executed original of the required liability waiver to Service Provider. Service Provider shall not utilize Staff at the Event who are currently on parole or probation for a felony violation, or who have been previously convicted of the crime of rape or sexual battery or abuse.

**12.4** Private Security. If required under **Exhibit "A"** Section 2.14, Service Provider shall provide, at no cost to City, a private security firm or persons licensed and qualified to provide security services and crowd control services for the Event or for specified Event Activities (e.g. a concert at the Event). Service Provider shall coordinate with City regarding the number of private security personnel desired for the Event or for a specified Event Activity.

### **SECTION 13. SUBCONTRACTORS AND VENDORS.**

Service Provider must obtain the prior written consent of City before retaining or hiring a subcontractor, consultant or other person or firm to perform any of the Service Provider's responsibilities under this Agreement, as well as all vendors, merchants and entertainers ("**Subcontractors**"). Service Provider agrees to require in all contracts or agreements, with its Subcontractors that Subcontractors agree to indemnify and defend Service Provider and City to the extent and in the manner provided in this Agreement, and to obtain liability insurance or to produce evidence of same, in the amount required in this Agreement, and to require that Service Provider and City be named as additional insured on the Subcontractor's insurance policy. Service Provider shall also require its Subcontractors, to comply with the anti-discrimination provisions of this Agreement.

### **SECTION 14. CANCELLATION OR MODIFICATION OF EVENT.**

The Parties agree that the Event is to be held regardless of "rain or shine." However, the City or Service Provider reserves the right to stop or cancel the Event should weather pose a potential danger to the Service Provider, equipment, vendors, entertainers and/or members of the public who may attend the Event. Every effort will be made to continue the Event; however, safety is paramount in all decisions.

City may cancel and/or reschedule the Event, with or without cause, at any time by giving ten (10) days written notice of cancellation and/or rescheduling to Service Provider. In the event such notice is given, Service Provider shall cease all work immediately. Service Provider shall be compensated for all work performed prior to receipt of the notice of cancellation. Service Provider may request an alternate date or cancellation of the Event.

During a period of declared state, federal, or local emergency, the City Manager may unilaterally suspend the Agreement, extend the term of the Agreement, or modify any performance deadlines set forth in the Agreement.

### **SECTION 15. CITY SAFETY AND WELFARE PROVISIONS.**

Service Provider shall comply with all applicable City, County and State health and safety laws and regulations. Service Provisions shall also not create or allow the creation of a public nuisance at the Event

or on the Site. Service Provider agrees to follow all safety related directives provided by members of the Cathedral City police department, fire department, building department or code enforcement division.

Service Provider shall comply with City sound curfews if activities related to the Event are held on the Premises after 9 p.m. Sunday through Thursday, 10 p.m. on Friday and 10 p.m. on Saturday.

#### **SECTION 16. CITY PROVIDED SERVICES.**

Service Provider is not responsible for services or equipment that will be furnished, contracted for, or otherwise procured by City. City's failure to procure or to perform or have performed shall not constitute a breach of the Agreement and Service Provider shall have no right to pursue any action for damages or other recovery from City. City shall provide the following:

- 16.1** City's Communications/Events Manager shall be responsible for providing water, food, green room, and restrooms for City Council Members and other special guests of the City.
- 16.2** City shall secure all City services and City permits for activities on the Site, provide support and waive fees for activities planned at City owned and controlled properties.
- 16.3** If required, City shall be responsible for notifying all property and business owners of any anticipated dates, times and length of any street closures due to the Event.
- 16.4** City shall meet all ADA Site accessibility and similar requirements and shall address special needs of spectators on the Site and in all City owned property.
- 16.5** City shall provide road closure and public safety services and personnel, if required for the Event. City is responsible for all printing, production, processing, mailing, postage, signage, and any/all other costs associated with road closure activity related to the Events.
- 16.6** City shall be responsible for ordering and placement of the portable restrooms. The number of portable restrooms shall be commensurate with the expected attendance.
- 16.7** City shall place City owned metal interlocking barricades at congested areas at the Site until all city-owned barricades are exhausted.
- 16.8** City shall provide trash maintenance service.
- 16.9** City shall provide any required traffic cones with holes in top.
- 16.10** City shall provide use of pop-tents in City inventory.
- 16.11** City shall provide City owned light towers, if required, for set up on City property.

#### **SECTION 17. INDEPENDENT CONTRACTOR.**

It is understood that City retains Service Provider on an independent contractor basis and Service Provider is not an agent or employee of the City. The manner and means of conducting services are under the control of the Service Provider, except to the extent they are limited by statute, rule or regulation and expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Service Provider or its employees. Nothing in this Agreement shall be deemed to constitute approval for Service Provider or any of Service Provider's employees or agents, to be the agents or employees of the City. Service Provider shall have the responsibility for and control over the means of performing any work or service provided under this Agreement. Anything in this Agreement that may appear to give City the right to direct Service Provider shall mean only that Service Provider shall follow the desires of the City with respect to the results of the Services provided.

#### **SECTION 18. INSURANCE.**

Service provider shall procure and maintain, at its sole cost and expense, policies of insurance to include Comprehensive General Liability and Personal Injury with limits of at least two million dollars (\$2,000,000.00) per occurrence covering the City of Cathedral City as an additional insured party.

Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insured shall be provided prior to commencement of Services.

#### **SECTION 19. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Service Provider shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Service Provider shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Service Provider to comply with this section.

#### **SECTION 20. NONDISCRIMINATION.**

Service Provider shall not discriminate, in any way, in the employment of persons to perform the Services in violation of any federal or state law prohibiting discrimination in employment, including based on the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, of any person, except as provided under California Government Code Section 12940.

#### **SECTION 21. INDEMNIFICATION.**

- 21.1** To the full extent permitted by law, Service Provider shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Service Provider, or by any individual or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or subcontractors of Service Provider. The provisions of this section do not apply to claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.
- 21.2** Service Provider agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every sub-Service Provider or any other person or entity involved by, for, with or on behalf of Service Provider in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Service Provider fails to obtain such indemnity obligations from others as required herein, Service Provider agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Service Provider and shall survive the termination of this Agreement or this section.

#### **SECTION 22. PROHIBITION AGAINST ASSIGNMENT AND TRANSFERS.**

Except as specifically authorized under this Agreement, the services to be provided shall not be assigned, transferred contracted or subcontracted out without the prior written approval of the City.

#### **SECTION 23. OWNERSHIP OF MATERIALS AND CONFIDENTIALITY.**

- 23.1** Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship



fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Service Provider under this Agreement ("Documents & Data"). Service Provider shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Service Provider represents and warrants that Service Provider has the legal right to license any and all Documents & Data. Service Provider makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Service Provider or provided to Service Provider by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

**23.2** Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Service Provider in connection with the performance of this Agreement shall be held confidential by Service Provider. Such materials shall not, without the prior written consent of City, be used by Service Provider for any purposes other than the performance of the services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services or the Event. Nothing furnished to Service Provider which is otherwise known to Service Provider or is generally known, or has become known, to the related industry shall be deemed confidential. Service Provider shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the services or the Event in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

**23.3** Confidential Information. The City shall refrain from releasing Service Provider's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Service Provider of its intention to release Proprietary Information. Service Provider shall have five (5) working days after receipt of the Release Notice to give City written notice of Service Provider's objection to the City's release of Proprietary Information. Service Provider shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Service Provider fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

## **SECTION 24. NOTICES.**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City:	City of Cathedral City
	Attn: City Manager
	68-700 Avenida Lalo Guerrero
	Cathedral City, CA 92234

To Service Provider: SoundSkilz, Inc.  
Attn: Stephen Clayton  
39444 Calle Portillo  
Temecula, CA 92260

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

## **SECTION 25. ADMINISTRATION AND IMPLEMENTATION.**

This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 23 ("Amendment") and the City Manager's contracting authority under the Cathedral City Municipal Code.

## **SECTION 26. AMENDMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Service Provider and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the Cathedral City Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## **SECTION 27. TIME OF THE ESSENCE.**

Time is of the essence for the completion of the work described in this Agreement. It is anticipated by the Parties that all work described herein will be completed and that any delay in the completion of the work described herein shall constitute default under the terms of this Agreement.

## **SECTION 28. TERMINATION OF AGREEMENT AND DEFAULT.**

- 28.1** City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Service Provider. In the event such notice is given, Service Provider shall cease all work immediately.
- 28.2** In the event that Service Provider is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Service Provider for any work performed after the date of default. Instead, the City may give notice to Service Provider of the default and the reasons for the default. The notice shall include the timeframe in which Service Provider may cure the default. This timeframe is presumptively ten (10) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Service Provider is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Service Provider does not cure the default, the City may take necessary steps to terminate this Agreement. Any failure on the part of the City to give notice of the Service Provider's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.
- 28.3** Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

## **SECTION 29. LIQUIDATED DAMAGES.**

Failure to perform or timely perform the services may result in City's inability to hold the Event or result in an impaired or unsuccessful Event. Therefore, it is agreed that if Service Provider breaches this Agreement, Service Provider will pay to City \$175,000 for the 2025 Event, \$183,750 for the 2026 Event, and \$192,937.50 plus any additional City personnel cost as liquidated damages. The Parties agree that affixing the amount of actual damages from an impaired or unsuccessful Event is impractical and extremely

difficult, and that the liquidated damages amount set forth above is a reasonable estimate of the actual damages that would be suffered if this Agreement were breached. Service Provider will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Service Provider. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and weather deemed dangerous to the safety of the event participants.

Initials \_\_\_\_/\_\_\_\_

### **SECTION 30. ACCOUNTING RECORDS.**

Maintenance and Inspection. Service Provider shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Service Provider shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Service Provider shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **SECTION 31. WAIVER.**

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Service Provider shall not constitute a waiver of any of the provisions of this Agreement.

### **SECTION 32. LAW TO GOVERN; VENUE.**

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **SECTION 33. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, each Party in such litigation or other proceeding shall bear its own attorneys' fees, costs, and expenses.

### **SECTION 34. ENTIRE AGREEMENT.**

This Agreement, including the attached **Exhibits "A" and "B"** is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Service Provider and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

### **SECTION 35. SEVERABILITY.**

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

### **SECTION 36. AUTHORITY TO EXECUTE.**

The person or persons executing this Agreement on behalf of Service Provider represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Service Provider to the performance of its obligations hereunder.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

**CITY OF CATHEDRAL CITY**

**SERVICE PROVIDER**

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Charles P. McClendon  
City Manager

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Stephen Clayton  
President, Soundskilz, Inc.

**ATTEST:**

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Tracey Hermosillo  
City Clerk

**APPROVED AS TO FORM**

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Eric Vail  
City Attorney

## **EXHIBIT A**

### **EVENT SPECIFIC ACTIVITIES AND SERVICES**

#### **SECTION 1. Cathedral City Hot Air Balloon Festival and Food Truck Fiesta**

##### **1.1 Service provider shall be responsible for providing the following:**

- 1.1.1 Service Provider shall promote activities held throughout the Event. This includes promotion of Event activities held at City businesses; and
- 1.1.2 Service Provider shall attend and coordinate up to eight (8) in person meetings with the City's Communications/Events manager. Service Provider shall be prepared to discuss overall event plans at the meetings.

##### **1.2 City shall provide the following:**

- 1.2.1 City shall support the 2025 Event, 2026 Event, and 2027 Event as the naming rights sponsor through compensation as provided in Section 2 of the Agreement. Benefits include naming rights, prominent logo placement in all print and media advertising, press releases, program guide, social marketing, official poster, merchandise and website. City retains the rights to the name "Cathedral City Hot Air Balloon Festival" and Service Provider will be granted use license for all related events. Service Provider is to inform the City Events Manager of any known infringement. City is responsible for enforcement and licensing the name;
- 1.2.2 City's Communications/Events Manager shall give direction as to the involvement of the Cathedral City City Council and any other City related official. This shall include, but not be limited to providing a welcome message; and
- 1.2.3 City shall place City owned metal interlocking barricades at congested areas at the Premises. City is not responsible for providing equipment beyond what is in the City's inventory.

#### **SECTION 2. Entertainment and Vendors**

##### **2.1 Service Provider shall procure and manage talent to perform and otherwise produce, manage, and run the Event.**

##### **2.2 Service Provider shall procure and contract with entertainers and vendors for performance of activities at the Event. Service Provider shall receive approval of entertainer or vendor from the Communications/Events Manager prior to finalization of contract terms.**

##### **2.3 Service Provider shall secure equipment needed for the Event on the Premises including stage, sound, lighting, and all other equipment deemed necessary to properly implement Event activities. Performers and vendors are to be responsible for procuring and providing their own tools of their trade and other related equipment. Service Provider shall receive approval of entertainment from the Communications/Events Manager prior to finalization of contract terms.**

##### **2.4 Entertainment shall generally include the incorporation of the following:**

- 2.4.1 10 x 10 space; or
- 2.4.2 10 x 20 space; or
- 2.4.3 10 x 12 food space with required Category 4 tent

##### **2.5 Service Provider shall be required to enter into a separate written agreement and pay the customary hourly rate for Mercado Technological Solutions, the City's exclusive**

rights vendor for professional stage, sound, and lighting, when using the Cathedral City Community Amphitheater stage and city owned equipment.

**2.5 License for use of Site to be Issued by City.**

- ☒ Required for all Events

**2.6 Schedule of Event Activities for full 3-day weekend.**

- ☒ Full Event Schedule
- ☐ Event Activity Specific Schedule

**2.7 Event Site Plan.**

- ☒ Full Event Site Plan
- ☐ Event Activity Specific Site Plan

**2.8 Promoting and Marketing.**

- ☒ Full Event Promoting and Marketing
- ☐ Event Activity Specific Promotion and Marketing

**2.9 Budget.**

- ☒ Full Event Budget
- ☐ Event Activity Specific Budget
- ☐ Budget to Actual Report

**2.10 Sponsorships.**

- ☒ Full Event Sponsorships
- ☐ Event Activity Specific Sponsorships

**2.11 Coordination with City.**

- ☒ Required for all Events

**2.12 Reports.**

- ☒ Periodic Progress Reports as specified
- ☐ Event Activity Specific Reports as specified
- ☐ Event Promotion and Marketing Reports

**2.13 Non-City Licenses & Permits.**

- ☒ Food service permits – Health Department
- ☒ Alcohol service Permits – Alcohol & Beverage Control
- ☒ From other Governmental Agencies as specified

**2.14 Event Participants, Volunteers, Staff, Private Security.**

- ☒ Event Participants (e.g., parade entrants, artists, etc.).
- ☒ Volunteers (e.g., docents, guides, unpaid helpers)
- ☒ Staff (paid staff and workers)
- ☒ Private security services

**2.15 Event Activities.**

Event Activities shall include those listed in the Event Description in this **Exhibit "A"** and the following:

☒ Entertainment

- Friday night entertainment act inside the Cathedral City Community Amphitheater
- Saturday night entertainment act inside the Cathedral City Community Amphitheater and evening balloon glow

☒ Food Vendors

☒ Merchandise Vendors

☐ Parade

☒ Other: Hot Air Balloons

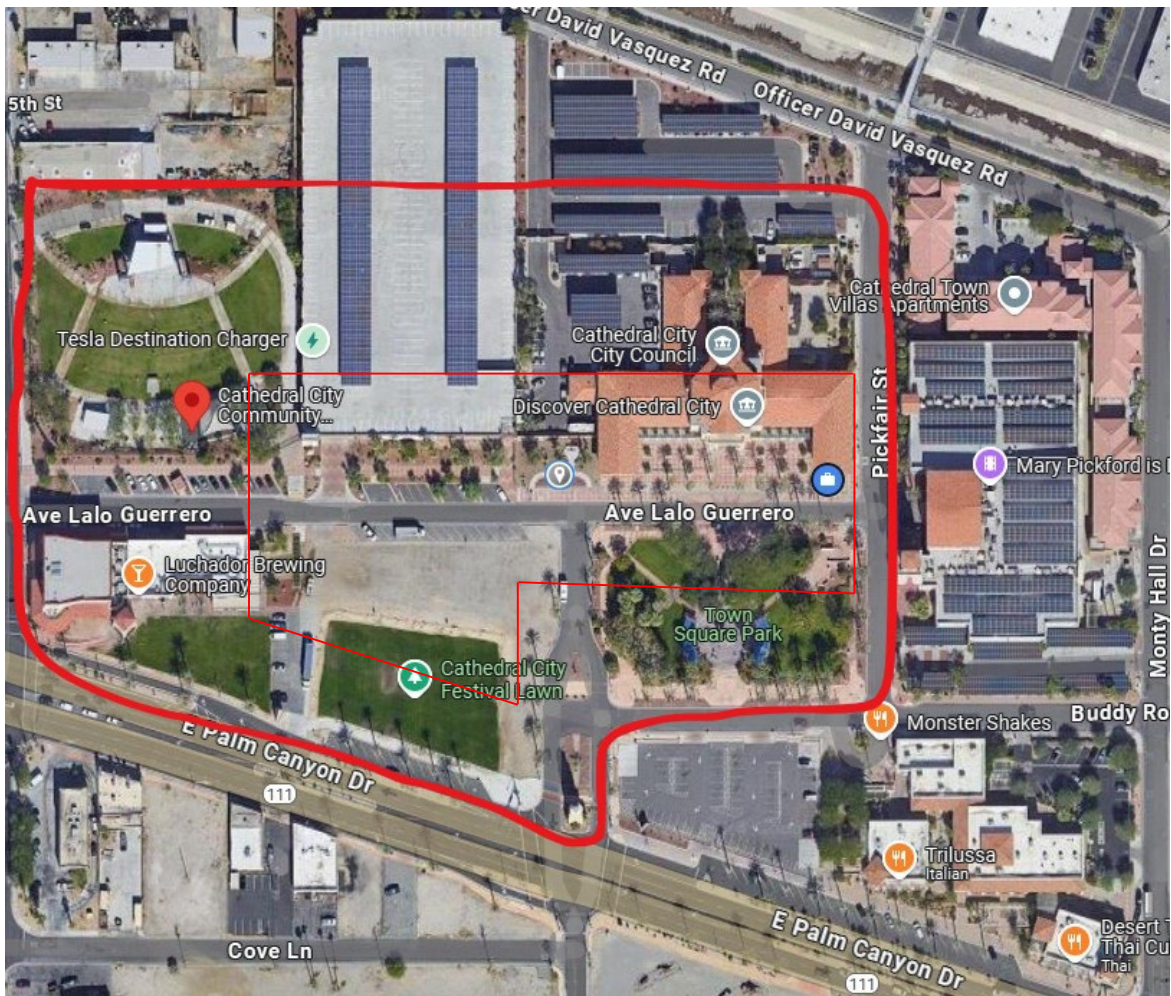
**Service Provider hereby acknowledges he/she has received and reviewed the EVENT SPECIFIC ACTIVITIES AND SERVICES as outlined in Exhibit "A".**

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Service Provider

**EXHIBIT "B"**

**LOCATION MAP AND ACCESS AREA**



\*\* Use of the Amphitheater will be determined at one of the eight meetings between City and Service Provider