

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

**AGREEMENT FOR  
RFP #0142 HOLIDAY LIGHTS PROGRAM**

This Agreement for (“Agreement”) is made by and between the City of Coppell, Texas (“City”) and Christmas By Zenith, LLC. (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

**RECITALS:**

**WHEREAS**, the City desires to engage the services of the Contractor as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to perform identified in the Scope of Services (the “Services”); and

**WHEREAS**, the Contractor desires to render the Services for the City on the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I  
Term**

1.1 The initial term of this Agreement shall be for an initial term commencing on October 1, 2016 (the “Effective Date”) and ending on September 30, 2018 (“Initial Term”); provided, however, that City shall have the right and option to extend the term for up to three (3) additional one (1) year terms by providing written notice to Contractor of the City’s election to extend the term hereof, such notice to be given not more than ninety (90) days prior to the expiration of the Initial Term.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. Contractor shall be entitled to compensation for any Services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

**Article II  
Scope of Services**

2.1 The Contractor shall perform in connection with the Services as set forth in the Scope of Services for RFP #0142 Holiday Lights Program.

**Article III  
Schedule of Work**

Contractor agrees to complete the required Services in accordance with the Scope of Services.

## **Article IV Compensation and Method of Payment**

4.1 Contractor will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services, not to exceed a total amount of \$122,450.00 . Unless otherwise provided herein, payment to the Contractor shall be monthly based on the Contractor's monthly progress report and detailed monthly itemized statement for Services that shows the names of the Contractor's employees, agents, contractors performing the Services, the time worked, the actual Services performed, the rates charged for such Service, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the Services and expenses unless otherwise provided herein.

4.2 Unless otherwise provided in the Scope of Services, Contractor shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

## **Article V Devotion of Time; Personnel; and Equipment**

5.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the Services under this Agreement. Should the City require additional services not included under this Agreement, Contractor shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Contractor's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Contractor to perform the services under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 Contractor shall furnish the equipment, supplies, and personnel necessary to perform the Services required under this Agreement unless otherwise provided herein.

5.4 City shall provide space for all equipment supplied by Contractor which remains on the job site during the life of the Agreement. The equipment must be maintained in good operating condition and in sufficient quantities to adequately perform all Services and available to the Contractors' employees at all times. All equipment must be OSHA certified and/or meet all OSHA requirements.

## **Article VI Miscellaneous**

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Contractor may not assign this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor shall supervise the performance of its Services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Purchasing Manager  
Purchasing Department  
City of Coppell, Texas  
P.O. Box 9478  
Coppell, Texas 75019

With a copy to:

Robert Hager  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
1800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201

If intended for Contractor:

Christmas By Zenith, LLC.  
Attn: Jim C. Ketchum  
3200 W. Bolt St.  
Ft. Worth, TX 76028

#### 6.9 Insurance.

- (a) Contractor shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general commercial liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), (ii) public liability insurance policy with an aggregate limit of not less than \$1,000,000.00 and products and completed operations liability aggregate limit of no less than \$1,000,000.00; (iii) City's Protective Liability insurance policy with a minimum limits of not less than \$600,000.00 per occurrence and not less than \$1,000,000 Aggregate, (iv) excess /umbrella liability insurance policy coverage with a limit of not less than \$1,000,000.00 per occurrence with drop down coverage, (v) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; and (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Contractor's employees involved in the provision of services under this Agreement.
- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Automobile Liability Insurance and Workers Compensation Insurance; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. Contractor shall provide written notice to the City of any material change of or to the insurance required herein.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of Services and upon request by the City.

- (e) Contractor shall cause all subcontractors performing Services in compliance with this Agreement to obtain insurance coverages as required in Section 6.9 (a) – (d) herein, which shall remain in full force and effect during the term of this Agreement.

6.10 Indemnification.

(a) CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “CITY”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY’S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE CONTRACTOR’S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS, SUBCONTRACTORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE CONTRACTOR’S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

*[Signature Page to Follow]*

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF COPPELL, TEXAS**

By: \_\_\_\_\_  
Clay Phillips, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Christel Pettinos, City Secretary

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

The City of Coppell desires to utilize the uniqueness of its parks and facilities to create a dramatic holiday light display that will decorate and benefit the community during the holiday season.