

AGREEMENT FOR HOLIDAY DECORATION DISPLAY

This Agreement for the Holiday Decoration Fireworks Display (this "Agreement") is made and entered into by and between the **City of Sanger Texas**, a home-rule Texas Municipal Corporation ("the City") and **First Choice Christmas Lights LLC DBA First Choice Lights** ("Contractor"), located at 14481 Day Road, Roanoke, TX 76262 (collectively, "the Parties").

WITNESSETH

WHEREAS, the City seeks to celebrate the holidays by leasing lighting and decorations for the downtown area; and

WHEREAS, the City has received a proposal for services from Contractor to provide a lease for a seasonal display for Holiday Decoration;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and the City, agree as follows:

1. Scope of Services. Contractor shall provide leased lighting and decorations and undertake and complete the services as more specifically described in RFP-2023-03 ("the RFP" i.e. the Holiday Decoration Display) issued by the City attached hereto and incorporated herein by reference as Exhibit A and Contractor's response ("the Proposal" i.e. the City of Sanger 2023 Holiday Lighting Proposal) attached hereto and incorporated herein by reference as Exhibit B. (Exhibit A & B collectively referred to as "the Services").

2. Commencement and Completion of Services. Contractor shall begin Services immediately upon receipt of a notice to proceed from the City.

3. Fees and Costs: The City is responsible for all fees and costs associated with the acquisition of state and local permits.

4. Term. This Agreement shall be for the term of one year ("the Initial Term") beginning on the Effective Date entered below. The City shall have the sole option to renew the agreement annually for up to a maximum of two (2) additional one (1) year periods by notifying the other Contractor in writing of its request to extend the term, such notice being sent at least ninety (90) days prior to the end of the Initial Term. The Party receiving the request for extension may reject the extension by notifying the requesting Party in writing of its rejection of the requested extension, such notice being sent at least thirty (30) days prior to the end of the Initial Term.

5. Force Majeure: Contractor shall make every effort to fulfill its obligations under this contract. Contractor shall not be liable in the event of strike, lockout, act of God, accident, or other circumstances beyond its control.

6. Compensation. In consideration for the Services performed by Contractor, the City agrees to pay Contractor in the amounts and manner indicated on the document attached hereto herein as Exhibit "B."

7. Postponement: The City reserves the right to postpone and extend the date for the receipt of responses and will give ample notice of any such postponement and extension to each prospective respondent.

8. Cancellation: Either Party may terminate this Agreement by providing thirty (30) days written notice to the other Party. If the City cancels the display less than thirty (30) days prior to the display date, the City shall pay Contractor 75% of the total contract amount plus incurred governmental fees. If the City cancels less than 14 days prior to display date the City is responsible for 100% of total contact

9. Workflow: Contractor shall provide qualified installers who will deliver, set-up, execute, and dismantle the holiday display as described in Exhibit A. Contractor must accomplish tasks on schedule and adhere to prepared timelines and schedules. The City shall allow sufficient time for Contractor to access and safely set up the display. Following the display, Contractor shall remove all decorations in accordance with the terms outlined in Exhibit A.

10. Safety and Security: The City agrees to make best efforts to cooperate with requests of Contractor regarding the safety and security of the display. In the event such a reasonable request is not resolved, Contractor reserves the right to withdraw all equipment, decorations, and other property without refund.

11. Modifications: Contractor reserves the right to substitute lighting and decoration products, for those of an equal or higher value based upon product availability and overall holiday decoration design.

12. **WARRANTY AND DEGREE OF CARE. CONTRACTOR WARRANTS THE MATERIALS USED SHALL BE FREE OF DEFECT OR FAILURE FOR A PERIOD OF AT LEAST ONE YEAR FROM THE DATE OF COMPLETION OF THE SERVICES AND THAT ALL SERVICES PROVIDED BY CONTRACTOR SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THE SPECIFICATIONS OF THIS AGREEMENT AND IN ACCORDANCE WITH THE DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY COMPETENT CONTRACTORS IN TEXAS APPLICABLE TO THE TYPE OF SERVICES CONTEMPLATED HEREUNDER. IN THE EVENT ANY DEFECT IS DISCOVERED OR DEVELOPS IN MATERIALS PROVIDED BY CONTRACTOR OR WORK PERFORMED BY CONTRACTOR WITHIN ONE YEAR AFTER COMPLETION OF THE SERVICES, CONTRACTOR**

WILL REPAIR OR REPLACE ANY SUCH MATERIALS OR WORK SO THAT IT IS NOT DEFECTIVE AND MEETS THE REQUIREMENTS OF THIS AGREEMENT.

13. INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CAUSES OF ACTION, FINES, JUDGMENTS, LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, JOINT OR SEVERAL, WHETHER THEY BE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER TYPE OF CLAIM, WHICH MAY BE ASSERTED AGAINST ANY OF THEM ARISING OUT OF OR RELATED TO (I) ANY ACTION BY CONTRACTOR OR ITS AGENTS IN THE CARRYING OUT OF THE SERVICES DURING THE TERM OF THIS AGREEMENT; (II) THE NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF CONTRACTOR OR ITS AGENTS; (III) ANY VIOLATION OF ANY REQUIREMENT APPLICABLE TO CONTRACTOR OR ITS AGENTS UNDER ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, (IV) THE FAILURE OF CONTRACTOR TO PERFORM SPECIFIED DUTIES UNDER THIS AGREEMENT, OR (V) THE BREACH OF THIS AGREEMENT BY CONTRACTOR, EXCEPT IN EACH CASE TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF THE CITY. 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 AND WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

14. Non-Discrimination. Contractor hereby agrees to refrain from any activity in the performance of this agreement that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease, in accordance with present federal and state laws.

15. Insurance. Contractor shall procure, at its own expense, insurance as described in the RFP and additional coverage sufficient to cover the Services being provided under this Agreement as determined by the City. Contractor shall provide the City with written notice of any coverage limit change on the insurance. Contractor shall provide the City with proof of insurance required hereunder. The City shall be named as an additional insured on the policy.

16. Independent Contractor. Contractor shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Contractor hereby certifies that it shall be and is in compliance with all such regulations, laws and requirements.

17. No Third-Party Benefit. Nothing herein expressed or implied is intended, or shall

be construed, to confer upon or give to any person or entity, other than the parties, any right or remedy under or by reason of this Agreement.

18. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas as to all matters, including but not limited to matters of validity, construction, effect and performance, without regard to conflict of law principles. All actions regarding this Agreement shall be in a court of competent subject matter jurisdiction Denton, Texas.

19. Severability. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Code of the City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein.

20. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of the City, to:

City of Sanger
Attention: John Noblitt, City Manager
P.O. Box 1729
Sanger, TX 76266
With courtesy copy email to: jnoblitt@sangertexas.org

In case of Contractor, to:

First Choice Christmas Lights LLC
DBA First Choice Lights
Nicole Weiss
14481 Day Road
Roanoke, Texas 76262

With courtesy copy email to: Nicole@firstchoicelights.com

21. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all other

discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof. In the event of a dispute under this agreement, the applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) this Agreement; (2) the Request for Proposal; (3) the Response to the Request for Proposal from the Contractor.

22. Amendment. No amendment to this Agreement shall be effective unless in writing signed by both parties.

23. Compliance with Laws. Contractor shall comply with all applicable federal, state, and local laws applicable to the services to be performed under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals and effective as of the ____ day of _____, 202__.

CONTRACTOR

By: _____

Name: _____

Title: _____

THE CITY OF SANGER

By: _____

Name: _____

Title: _____

Approved as to Form

Hugh Coleman
City Attorney
City of Sanger

Attest: _____
By: City Secretary

EXHIBIT LIST:

EXHIBIT “A” – RFP-2023-03 2023 Holiday
Lighting and Decorations

EXHIBIT “B” – Holiday Lighting City of
Sanger 2023 Lighting Proposal