

**CITY OF TOMBALL  
SERVICES AGREEMENT**

**THE STATE OF TEXAS** §

**COUNTY OF HARRIS** §

**Description of Services: Holiday Lighting Services**

This Agreement is made and entered into by the **City of Tomball** (referred to as the "City"), with an office at 501 James Street, Tomball, TX and, **Cypress Holiday Decorating Concepts** (the "Company"), with an office at **13711 Pristine Lake Lane, Cypress, Texas 77429** City hereby engages the services of Company as an independent contract for meter reading services, upon the following terms and conditions.

**1. SCOPE OF AGREEMENT**

- 1.1. The City hereby agrees to employ Company and Company agrees to perform the necessary services as set forth in Exhibit A – Scope of Work and Exhibit B – Contract Pricing, attached hereto and incorporated herein for all purposes.
- 1.2. In the event of a conflict among the terms of this Agreement and the Exhibit A, the term most favorable to the City, in the City's sole discretion, shall control.

**2. TERM OF AGREEMENT; TERMINATION**

- 2.1. This Agreement shall be effective upon proper execution by the City. It shall be effective from **October 1, 2023 through September 30, 2024, with four additional one-year renewal options**. The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the satisfaction of its contractual obligations. *Either party may terminate this Agreement for any reason with ninety days (90) written notice to the other party.*
- 2.2. The City's obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Nothing contained herein shall ever be construed so as to require City to create a sinking fund or to assess, levy and collect any tax to fund its obligations under this Agreement.
- 2.3. The City reserves the right to enforce the performance of this Agreement in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of any provision of this Agreement, including immediate termination of this Agreement.

**3. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between Company and the City and no prior or contemporaneous oral or written Agreements or representations shall be construed to alter its terms. No additional terms shall become part of this Agreement without the written consent of both parties and compliance with relevant state law. This Agreement supersedes all other prior agreements either oral or in writing.

**4. ASSIGNMENT**

Company shall not assign or subcontract its obligations under this Agreement without the prior written consent of the City.

**5. COMPENSATION**

For and in consideration of the services rendered by the Company pursuant to this Agreement, the City shall pay the Company only for the actual work performed under the Scope of Work, on the basis set forth in Attachment B, up to an amount not-to-exceed \$50,350.48.

## 6. MODIFICATION OF RATES

Base Rate adjustments for changes in the Consumer Price Index (CPI) will be considered by the City no more than once per year during the renewal term of the Contract, during the month of October of each Contract Year.

## 7. IDEMNITY

### 7.1. DEFINITIONS

For the purpose of this section the following definitions apply:

- a. "City" shall mean all officers, agents and employees of the City of Tomball.
- b. "Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.
- c. "Company" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.
- d. "Company's employees" shall mean any employees, officers, agents, subcontractors, licensees and invitees of Company.
- e. "Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:
  - i. injury or damage to any property or right
  - ii. injury, damage, or death to any person or entity
  - iii. attorneys' fees, witness fees, expert witness fees and expenses,
  - iv. any settlement amounts; and
  - v. all other costs and expenses of litigation
- f. "Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

### 7.2. Indemnity

**COMPANY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY FROM AND AGAINST LIABILITY FOR ANY CLAIMS FOR DAMAGES ARISING OUT OF THE COMPANY'S WORK AND ACTIVITIES CONDUCTED IN CONNECTION WITH THIS AGREEMENT.**

**COMPANY IS AN INDEPENDENT CONTRACTOR AND IS NOT, WITH RESPECT TO ITS ACTS OR OMISSIONS, AN AGENT OR EMPLOYEE OF THE CITY.**

**COMPANY MUST AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF COMPANY'S EMPLOYEES WHILE IN THE VICINITY WHERE THE WORK IS BEING DONE. THE CITY IS NOT LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF COMPANY OR COMPANY'S EMPLOYEES.**



**THE CITY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR DAMAGES WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISE DEFECTS.**

**THE CITY AND COMPANY MUST PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY COVERED EVENT WHICH IN ANY WAY AFFECTS OR MIGHT AFFECT THE COMPANY OR CITY. THE CITY HAS THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS.**

**THE INDEMNITY OBLIGATIONS HEREIN SHALL SURVIVE THE TERMINATION OF THE AGREEMENT FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK.**

## 8. INSURANCE

### 8.1. AMOUNTS OF INSURANCE

Company agrees to provide and to maintain the following types and amounts of insurance, for the term of this Contract:

TYPE	AMOUNT
(a) Workers Compensation Employer's Liability	(where required – Statutory by State Law) \$100,000 per occurrence

- (b) Commercial (Public) Liability, including but not limited to:
- a. Premises/ Operations Combined Single Limit
  - b. Independent Contractors
  - c. Personal Injury
  - d. Products/Completed Operations
  - e. Contractual Liability (insuring above indemnity provisions)

All insured at combined single limits for bodily injury and property damage at \$500,000 per occurrence.

- (c) Comprehensive Automobile Liability, in include coverage for:
- a. Owned/Leased Automobiles
  - b. Non-owned Automobiles
  - c. Hired Cars

All insured at combined single limits for bodily injury and property damage for \$500,000 per occurrence.

### 8.2. OTHER INSURANCE REQUIREMENTS

Company understands that it is its sole responsibility to provide the required Certificates and that failure to timely comply with the requirements of this article shall be a cause for termination of this Contract.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Contract for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

- Company further agrees that with respect to the above required liability insurances, the City shall:
- Be named as an additional insured;
  - Be provided with a waiver of subrogation, in favor of the City,
  - Be provided with 30 days advance written notice of cancellation, nonrenewal, or reduction in coverage (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate); and
  - Prior to execution of this Agreement, be provided through the office of the City Attorney with their original Certificate of Insurance evidencing the above requirement.

The insurance requirements set out in this section are independent from all other obligations of Company under this Agreement and apply whether or not required by any other provision of this Agreement.

#### 9. PAYMENT AND PERFORMANCE

Payment for services described in this Agreement will be made in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, or as subsequently amended.

#### 10. VENUE; RECOVERY OF FEES; DISPUTE RESOLUTION; CHOICE OF LAW

Any suit or claim or cause of action regarding this Agreement shall be brought in Harris County, Texas, as the choice of venue and jurisdiction and site of performance by the parties. If the City is the prevailing party in any such action, the City may recover reasonable costs, including costs of court, attorney's fees, expert witnesses' fees, and trial consultants' fees. The parties further agree that the law of the State of Texas shall govern any interpretation of the terms of this Agreement.

#### 11. COMPANY CERTIFICATIONS

Company certifies that neither it, nor any of its agents or employees, have or will offer or accept gifts or anything of value, or enter into any business arrangement, with any employee, official, or agent of the City.

Company certifies, pursuant to Texas Government Code Chapter 2270, that it does not boycott Israel and will not boycott Israel during the term of this Agreement. Company further certifies, pursuant to Texas Government Code Chapter 2252, Subchapter F, that it does not engage in business with Iran, Sudan, or a foreign terrorist organization as may be designated by the United States Secretary of State pursuant to his authorization in 8 U.S.C. Section 1189.

#### 12. NO WAIVER OF IMMUNITY

The City does not waive any statutory or common law right to sovereign immunity by virtue of the execution of this Agreement.

#### 13. NOTICES

Any written notice provided under this Agreement or required by law shall be deemed to have been given and received on the next day after such notice has been deposited by Registered or Certified Mail with sufficient postage affixed thereto and addressed to the other party to the Agreement; provided, that this shall not prevent the giving of actual notice in any manner.

Notice to Company may be sent to the following address:

13711 Pristine Lake Lane  
Cypress, Tx 77429  
cypresscontracting@gmail.com

#### 14. CONTRACT ADMINISTRATOR



This Agreement shall be administered on the City's behalf by the Project Manager, and all notices, questions, or documentation, arising under this Agreement shall be addressed to the Project Manager at:

City of Tomball, Texas  
Attn: Project Manager  
501 James Street  
Tomball, Texas 77375

AGREED to and ACCPETED this 20 day of July, 2023.

Cypress Holiday Decorating Concepts  
Company

Tracy Birdsong  
Signature

Tracy Birdsong  
Print Name

Christmas manager  
Title

THE STATE OF TEXAS

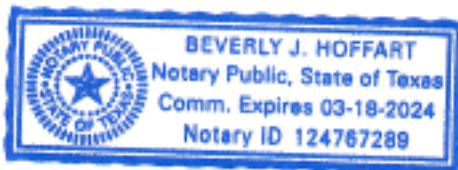
§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on this 20 day of July, 2023,  
by Beverly J. Hoffart, on behalf of said entity.

Beverly J. Hoffart  
Notary Public, State of Texas



AGREED to and ACCPETED this \_\_\_ day of \_\_\_\_\_, 2023.

City of Tomball

\_\_\_\_\_  
David Esquivel, PE  
City Manager

Attest:

\_\_\_\_\_  
Tracylynn Garcia  
City Secretary

## **EXHIBIT A HOLIDAY LIGHTING SCOPE OF WORK**

### **GENERAL DESCRIPTION:**

The City of Tomball is seeking a Contractor to perform holiday decorating at the City's historic Depot Plaza and park, including decorating existing trees and structures, and the median at the intersection of Business 249 and FM 2920 (known as "Four Corners"). The basic scope will also include the provision and placement of decorations on the City's large-scale Christmas tree and a smaller Christmas tree in the City's gazebo (both located in the Depot Plaza).

The City is also seeking proposals to expand the decorations to include the full wrapping of all trees within the Depot Plaza, the trees along Main Street (FM 2920) and Market Street between Pine Street and Elm Street. Alternative proposals should also include providing lights and decorations at City facilities such as City Hall, Police Department, Administrative Services Building, Fire Station No. 1 and No. 2, Visitors Center, and IT buildings.

For all proposals, decorations must be set up and complete by the Friday after Thanksgiving and decorations are to be removed no later than two weeks after January 1 each year.

The selected proposal will provide all of the decorations and lights unless otherwise stated in the scope.

### **INSTALLATION GENERAL SPECIFICATIONS**

- I. The services to be provided for installation of lights on existing trees are described as follows:
  - A. Lights to be wrapped around trees must be wrapped around the trunks/branches and secured with tape **around all electrical connections**.
  - B. Cable ties may be used to secure lights on the trunks/branches if necessary.
  - C. All Contractor supplies extension cords used must be rated for outdoor use (minimum specification – 16/2 Gauge, Polarized, SJTW, UL Outdoor, 13 AMP).
  - D. All exposed cords must be properly covered and secured.
  - E. Lights strings are not to exceed 15 AMPs per breaker. Normal electrical configuration is three (3) tree per 15 AMP breaker.
  - F. Draping of lights should include a minimum of 15 braided lights per tree. If a tree requires a different number, the offeror may suggest a change to meet budget/lighting requirements. Proposer may provide design input.
  - G. Trees must be set at times that turn on at dusk and turn off at 3 a.m. daily.

### **BASE PROPOSAL**

All proposals must, at a minimum, including the following:

- I. Wrapping of Memorial Trees at Depot Plaza
  - A. Wrap approximately 33 memorial trees (Exhibit D) with two-inch spacing, or as recommended by the Proposer.

- B. Wrap the trunk and branches in mini wwLED lights in soft white to match other lighting projects described.
- II. City Facilities
- A. Depot Museum (Exhibit E)
    - 1. Lighting of roofline on all sides with C7 lights.
    - 2. Railing with 14" LED lit garland decorated with bows.
    - 3. Three (3) 60" LED lit decorated wreaths.
  - B. Depot Maintenance Building (Exhibit E)
    - 1. Lighting of roofline with C7 lights on all sides.
    - 2. One (1) 48" LED lit decorated wreath.
  - C. Depot Restroom (Exhibit F)
    - 1. Lighting of roofline on all sides with C7 lights.
    - 2. One (1) 48" LED lit decorated wreath.
  - D. Depot Gazebo (Exhibit G)
    - 1. Lighting around the roofline of the Gazebo with C7 lights (3 rooflines of lights).
    - 2. Lighting around the inside roofline of the Gazebo with C7 lights (2 rooflines of lights).
    - 3. Railing with 14" LED lit garland decorated with bows.
- III. Streetlamp Post
- A. Decorate the 13 taller lamp posts in the Depot Plaza (Exhibit H) with two (2) 36" LED lit undecorated wreaths (back-to-back) per post.
  - B. Decorate the six (6) taller lamp posts along Main Street (Exhibit I) with LED lit 18" garland (9' per post) and one (1) 36" LED lit undecorated wreath.
  - C. Decorate the 30 shorter lamp posts located along Main Street (Exhibit J) between Pine Street and Elm Street, with LED lit decorated sprays or wreaths (two (2) sprays or wreaths back-to-back).
- IV. Four Corners Decorations (median at Business 249 and FM 2920) (Exhibit K)
- A. Two (2) 60" red ornaments on either side of the Tomball sign.
  - B. 18" LED lit garland, decorated, across the top of the sign.
- V. Additional Decorations
- A. Depot Plaza Tree
    - 1. Decorate the 20' tree (provided by the City) with ornaments, ribbons, and bows.
    - 2. Color scheme should include red, green, gold and silver.
    - 3. Ornaments should range in size from 8" to 12" minimum up to 24" maximum.
  - B. Depot Gazebo Tree
    - 1. Decorate the 9' flocked pine tree (provided by the City) with ornaments, ribbons, and bows, suspend a large star from the ceiling in the center of the Gazebo above the tree.
    - 2. Decorations can include any mix of colors, the primary use of this tree is for photography.
    - 3. Maximum size for ornaments should be 16".

**ADDITIVE/ALTERNATE PROPOSAL**



The City is interested in expanding the lighting of the downtown area. Each Proposer may provide their own design input, but the City would like to see proposals to include the following services in addition to the minimum services.

- I. Wrapping of Trees – wrap trees with two-inch spacing light, or as recommended by the Proposer. Wrap the trunk and branches in mini wwLED lights in soft white to match other lighting projects described, at the following locations:
    - A. 36 trees along the north and south side of Main Street, from Pine Street to Elm Street (Exhibit L).
    - B. One (1) Large Cedar tree at four Corners (SH 249 and FM 2920) (Exhibit K).
  - II. Wrapping of larger trees – wrap the entire trunk and 5 of the main branches 4-5 feet up the length of the branch at the following locations:
    - A. IT Building – 3 trees (Exhibit M).
    - B. Depot Plaza – 9 trees (Exhibit N).
- II. City Facilities
- A. Community Center (Exhibit O) – 221 Market Street
    1. Lighting around the roofline of the building with C7 lights.
    2. Lighting in the shrubbery located in the front of the building.
    3. Railing with 14" LEF lit garland decorated with bows.
  - B. City Hall/Police Station (Exhibit P) – 401 Market Street & 400 Fannin Street
    1. Lighting around the roofline of the building with C7 lights.
    2. Lighting in the shrubbery located in the front of the building.
    3. Railing with 14" LEF lit garland decorated with bows.
  - C. Heritage Plaza Parking Lot (Exhibit Q) – 401 Market Street
    1. Decorate the 6 lamp posts within Heritage Plaza with two (2) 36" LED lit undecorated wreaths (back-to-back) per post.
    2. Wrap the 3 trees within Heritage Plaza with two-inch spacing light, or as recommended by the Proposer. Wrap the trunk and branches in mini wwLED lights in soft white to match other lighting projects described.
  - D. Administrative Services Building/Public Works (Exhibit R) – 501 James Street
    1. Lighting around the roofline of the building with C7 lights.
    2. Lighting in the shrubbery located in the front of the building.
    3. Railing with 14" LEF lit garland decorated with bows.
  - E. Fire Department Station 1 (Exhibit S) – 1200 Rudel Road
    1. Lighting around the roofline of the building with C7 lights.
    2. Lighting in the shrubbery located in the front of the building.
  - F. Fire Department Station 2 (Exhibit T) – 11725 Holderrieth Road
  - G. Visitors Center (Exhibit U) – 215 West Main Street
    1. Lighting around the roofline of the building with C7 lights.
  - H. IT Annex (Exhibit V) – 105 S. Cherry Street
    1. Lighting around the roofline of the building with C7 lights.
    2. Lighting in the shrubbery on all sides of the building.
- III. Exterior Music
- A. Depot area



1. Provide speakers located around the Depot area that covers the Depot Museum, restrooms and along Market Street frontage. Content of music to be provided by the City.

**Recommended Proposal**

We encourage all proposals to include a proposal based on their recommendation for holiday décor that would add value to the City's goals of increasing our holiday decorations. This could include additional lighting, trees, garlands, wreaths, or any other holiday decorations that can be placed on City property for the duration of the holiday season. All pricing for additional items must be shown separately in the proposal.

# EXHIBIT B

## *Cypress Holiday Decorating Concepts*

13711 Pristine Lake Ln.

Cypress, TX 77429

Fax: 281-516-3461

Email: CYPRESSCONTRACTING@GMAIL.COM



### City of Tomball Base Proposal 2023

**Red and Green with touches of Gold and Silver**

Price includes installation, extension cords, take-down, and 1 weekly check while the decorations are up.

	Qty	Qty Desc.	Unit Price	Total
<b>Wrapping of Memorial Trees at Depot Plaza</b>				
Wrap LED mini-lights on the trunks of the 33 Memorial oak trees in the park 15' up the trunk and 5 of the main branches 4-5 feet up the length of each branch	33	per tree	\$700.00	\$23,100.00
<b>City Facilities</b>				
<b>Depot Museum</b>				
Depot Museum lined with C7 LED lights on roofline	180	per ft.	\$7.40	\$1,332.00
Depot Museum railing lined with LED 14" lit decorated garland	131	per ft.	\$24.20	\$3,170.20
Depot Museum decorated with 60" LED lit decorated wreaths on the building in 3 locations	3	each	\$488.30	\$1,464.90
<b>Depot Maintenance Building</b>				
Maintenance building lined with C7 lights on roofline	50	per ft.	\$7.40	\$370.00
Maintenance building decorated with 1-48" LED lit decorated wreath	1	each	\$273.00	\$273.00
<b>Depot Restroom</b>				
Depot restroom with C7 lights on roofline	120	per ft.	\$7.40	\$888.00
Depot restroom decorated with 1-48" LED lit decorated wreath	1	each	\$273.00	\$273.00



## Depot Gazebo

C7 lights around the roofline of gazebo (3 rooflines of lights)	160	per ft.	\$7.40	\$1,184.00
C7 lights around the inside roofline of gazebo (2 rooflines of lights)	112	per ft.	\$7.40	\$828.80
Install 14" LED lit garland around the railings of gazebo (decorated with bows)	135	per ft.	\$24.20	\$3,267.00
Install LED mini-lights on the top half of the 8 poles of the gazebo. Starting at the top railing and ending at the hand railing.	8	each	\$25.00	\$200.00

## Streetlamp Post

Decorate the 13 taller lamp posts in the park with 2 -36" LED lit undecorated wreaths back-to-back per lamp post	26	each	\$178.50	\$4,641.00
Decorate the 6 taller lamp posts along the streets with LED lit 18" garland (9' per post)	54	per ft.	\$18.40	\$993.60
Decorate the 6 taller lamp posts along the streets with 1 - 36" LED lit undecorated wreath	6	each	\$178.50	\$1,071.00
Decorate the 30 shorter lamp posts with LED lit sprays with cedar, magnolia leaves, pinecones and bows (2 sprays back-to-back per lamp post)	60	each	\$68.30	\$4,098.00

## Four Corners Decorations (median at 249 and 2920)

2 - 60" red ornaments on either side of the Tomball sign	2	each	\$525.00	\$1,050.00
Garland - 18" LED Lit and decorated garland across the top of the sign	20	per ft.	\$27.30	\$546.00

## Additional Decorations

### Depot Plaza Tree

Decorate 20' tree with ornaments, ribbons, and bows	1	each	\$3,000.00	\$3,000.00
---	---	------	------------	------------

### Depot Gazebo Tree

Decorate 9' tree with ornaments, ribbons, and bows and large star hanging from ceiling in center of gazebo	1	each	\$900.00	\$900.00
Lift Rental	1	each	\$350.00	\$350.00

## Subtotal

**\$53,000.50**

## Christmas 2023

### Subtotal

**\$53,000.50**

### Tax

**\$0.00**

### Grand Total

**\$53,000.50**

Early deposit discounted price if deposit received before October 15, 2023:

**Discounted Christmas 2023**

**Subtotal**

**\$50,350.48**

**Tax**

**\$0.00**

**Grand Total**

**\$50,350.48**