

**GENERAL SERVICE CONTRACT WITH
THE CITY OF GEORGETOWN, TEXAS**

This General Service Contract is by and between the **City of Georgetown**, a Texas Home-Rule Municipal Corporation (the “City”), and **DécorIQ, LLC**, a Texas limited liability company (the “Contractor”), pursuant to a piggyback clause in the National Purchasing Cooperative Vendor Award Agreement of BuyBoard Contract 643-21 – Holiday Lighting and Decoration between the Contractor and the Local Government Purchasing Cooperative, 12007 Research Blvd., Austin, Texas 78759 (the “Cooperative”), for the following work: **Leasing, installation, and maintenance of holiday lights** as described in the Scope of Services attached as **Exhibit “A”**.

- 1. Consideration.** In consideration for the services performed in the Scope of Services and Contractor’s completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **ONE HUNDRED FOURTEEN THOUSAND, FIFTY-FIVE dollars and 23/100 cents (\$114,055.23)**.
- 2. Payment Application.** Within **seven (7)** calendar days of completion of the services the Contractor will submit its payment application to the City.
- 3. City’s Payment and Approval.** All payments will be processed in accordance with Texas Prompt Payment Act, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Contractor within thirty days after of receipt of a correct payment application for services. The Contractor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Contractor concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Contractor and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which caused the payment to be late; or (d) the payment application is not mailed to the City in accordance with Agreement.
- 4. Term.** The term of the Contract is through May 31, 2023, with no opportunity to renew.
- 5. Executed Contract.** **The “Notice to Proceed” will not be given nor shall any work commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to the Contract.**
- 6. Change Orders.** Changes will not be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid, except upon the prior written order from authorized personnel of the City. The Contractor will not execute change orders on behalf of the City or otherwise alter the scope of the services except in the event of a duly authorized change order approved by the City as provided in this Contract.

7. **Dispute Resolution.** If either the Contractor or the City has a claim or dispute, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute. If there is a dispute between the Contractor and the City respecting any service provided or to be provided hereunder by the Contractor, the Contractor agrees to continue providing on a timely basis all services to be provided by the Contractor hereunder, including any service as to which there is a dispute.
8. **Independent Contractor.** It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services. The City will not control the manner or the means of the Contractor's performance, but shall be entitled to work product as detailed in the Scope of Services. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.
9. **Subcontractor.** The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.
10. **Insurance.** Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The polices, limits and endorsements required are set forth in **Exhibit D**. Contractor's insurance certificate satisfying the City insurance requirements is attached as **Exhibit E**.
11. **INDEMNIFICATION. THE CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY**

PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, VOLUNTEERS, EMPLOYEES, OR SUBCONTRACTORS UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

12. RELEASE. THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE WORK TO BE PERFORMED HEREUNDER BY CONTRACTOR, ITS AGENTS, REPRESENTATIVES, VOLUNTEERS, EMPLOYEES, OR SUBCONTRACTORS. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE AND REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY RELEASED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

13. Performance. Contractor, its employees, associates, or subcontractors shall perform all the services described in the Scope of Services in a professional manner and be fully qualified and competent to perform those services. Contractor shall undertake the work and complete it in a timely manner.

14. Termination for Convenience. The City shall have the right to terminate this Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all services performed and obligations incurred prior to the date of termination.

15. Termination for Cause. In addition to the termination rights described above, either party may terminate this Agreement effective upon written notice to the other if the other breaches any of the terms and conditions of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. In the event of an incurable breach, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party.

- 16. Venue.** This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Williamson County, Texas.
- 17. Amendment.** This Contract may only be amended by written instrument approved and executed by the parties.
- 18. Taxes.** The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.
- 19. Compliance with Laws.** The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws.
- 20. Waiver of Terms.** No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.
- 21. Assignment.** This Contract and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of City.
- 22. Entire Agreement.** This Contract represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 23. City Terms Prevail.** The Instructions to Proposers, General Terms and Conditions, attachments/forms, item specifications, and line items of Contract #562-18 between Contractor and the Cooperative (collectively, the "Cooperative Requirements") are by this reference incorporated within this Agreement. In the event of any conflict between the terms of this Agreement and those of the Cooperative Requirements, the terms of this Agreement shall prevail.
- 24. Effective Date.** This Contract will be effective when it is signed by the last party making it fully executed.
- 25. Notices.** Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States properly, or sent via electronic means, addressed to the appropriate party at the address set forth below:

Notice to the Contractor:

DécorIQ, LLC
ATTN: John Alban

1310 W. Laurel
San Antonio, TX 78201
jalban@decoriq.net

Notice to the City:

City of Georgetown
ATTN: City Manager
P.O. Box 409
Georgetown, Texas 78627
david.morgan@georgetown.org

With a copy to:

City of Georgetown
ATTN: City Attorney
P.O. Box 409
Georgetown, Texas 78627
skye.masson@georgetown.org

26. Severability. This Agreement is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this Agreement if it can be given effect without the invalid parts.

27. Duplicate Originals. The parties may execute this Contract in duplicate originals, each of equal dignity.

28. Exhibits. All exhibits to this Contract are incorporated and made part of this Agreement for all purposes.

List of Exhibits

- A.** Scope of Services
- B.** Payment Schedule
- C.** Insurance Requirements
- D.** Certificates of Insurance

[signatures on the following page]

DécorIQ, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF GEORGETOWN

By: _____

Josh Schroeder, Mayor

Date: _____

ATTEST:

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

Skye Masson, City Attorney

EXHIBIT A
SCOPE OF SERVICES

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

Contractor shall provide the labor and materials set forth in Exhibits "A-1" and "A-2". Contractor shall not deliver the materials or commence the services set forth in Exhibits "A-1" and "A-2" unless and until City has provided a written Notice to Proceed for such materials or work.

City, in its sole discretion but with at least seven (7) business days' notice to Contractor, reserves the right to modify the quantities set forth in Exhibits "A-1" and "A-2", and any such change order shall be in writing and made as an Amendment to this Agreement. Provided, however, that City shall be required to pay Contractor for goods or services delivered prior to the Amendment and not otherwise returned in accordance with Contractor's return policy.

**EXHIBIT A-1
SCOPE OF SERVICES:
CITY AND PRIVATE PROPERTY**

Contractor agrees to install, lease, and/or sell the following holiday decorations with pricing terms no greater than agreed to in BuyBoard Contract 643-21.

DECORATIONS THROUGHOUT DOWNTOWN AREA				
Item	Description	Quantity	Rate	Total
Product Lease Option	Lease of lights in 48 trees – total lights = 456,435	1	27,337.1976	27,337.20
	BuyBoard 15% Discount	1	-4,100.58	-4,100.58
Labor Only	48 Trees: 456, 435 total lights (Installation/Removal Labor Only)	959	50.00	47,950.00
Labor Only	City-Owned Wreath – 67 Total (Installation/Removal Labor Only)	89	50.00	4,450.00
Labor Only	City-Owned 24' Frame Tree (Installation/Removal Labor Only)	58	50.00	2,900.00
Product Purchase	Purchase of new C9 Lights for Roofline	1	15,861.1845	15,861.18
	BuyBoard 15% Discount	1	-2,379.17	-2,379.17
Labor Only	Labor to install Roofline Lights	200	50.00	10,000.00

EXHIBIT A-2
SCOPE OF SERVICES:
COUNTY COURTHOUSE TREES

Contractor agrees to install, lease, and/or sell the following holiday decorations with pricing terms no greater than agreed to in BuyBoard Contract 643-21.

TREES AROUND COURTHOUSE				
Item	Description	Quantity	Rate	Total
Product Lease Option	Lease of 6 trees (Approx 88200 lights)	1	5,925.4092	5,925.41
	BuyBoard 15% Discount	1	-888.81	-888.81
Labor Only	Installation/removal of lights wrapped on main branches of 6 existing trees around courthouse (Approx 88200 lights)	140	50.00	7,000.00

EXHIBIT B
PAYMENT SCHEDULE

The Contractor must submit *monthly* invoices to the City, accompanied by an explanation of charges, fees, services, and expenses, including an accounting of actual hours worked. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

EXHIBIT C
INSURANCE REQUIREMENTS

I. The Contractor agrees to maintain the types and amounts of insurance required in this Agreement throughout the term of the Agreement. The following insurance policies shall be required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Workers' Compensation
- D. Professional Liability

II. For each of these policies, the Contractor's insurance coverage shall be primary with respect to the City, its officials, agents, employees and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Agreement shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City *before* work commences.

III. General Requirements Applicable to All Policies.

- A. Only licensed insurance carriers authorized to do business in the State of Texas shall be accepted.
- B. Deductibles shall be listed on the certificate of insurance and are acceptable only on an "occurrence" basis.
- C. "Claims made" policies are not accepted, except for Professional Liability insurance.
- D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Georgetown.
- E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:
 - 1. The insurance company is licensed and authorized to do business in the State of Texas
 - 2. The insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO
 - 3. All endorsements and coverages are included according to the requirements of this Agreement
 - 4. The form of notice of cancellation, termination, or change in coverage provisions is specified in this attachment

- F. The City of Georgetown, its officials, agents, employees, and volunteers are to be listed as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverages shall contain no special limitations on the scope of protection afforded the City, its officials, employees, and volunteers.

V. **Commercial General Liability** requirements:

- A. Coverage shall be written by a carrier rated “A: VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence per project for bodily injury and property damage with a \$2,000,000 annual aggregate limit.
- C. Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall not exclude: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and where exposures exist, Explosion, Collapse and Underground coverage.
- F. The City shall be listed as Additional Insured, and the policy shall be endorsed to waive rights of subrogation, to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.

VI. **Business Automobile Liability** requirements:

- A. Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- C. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- D. The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

VII. **Workers' Compensation Insurance** requirements:

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, *all* employees of the Contractor, the Contractor, *all* employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers compensation insurance policy, either directly through their employer's policy (the Contractor's, or subcontractor's policy) or through an executed coverage agreement on an approved DWC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors *must* use that portion of the form whereby the hiring Contractor agrees to provide coverage to the employees of the

subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Contractor may not be used.

- B. The workers compensation insurance shall include the following terms:
1. Employer's Liability limits of \$1,000,000 for each accident is required.
 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

VIII. Professional Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City upon request.
- C. For "claims made" policies, the availability of a 24-month extended reporting period is necessary. The retroactive date shall be shown on the certificate of liability insurance.

EXHIBIT D
CERTIFICATES OF INSURANCE