



FIRST AMENDMENT TO AGREEMENT

THIS AMENDMENT (“First Amendment”), dated this ___ day of _____, 2022, is entered into by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation organized and operating under the laws of the State of Florida, with an address of **601 City Center Way, Pembroke Pines, FL 33025**, hereinafter referred to as "CITY",

and

RILEIGHS OUTDOOR, LLC d/b/a CHRISTMAS DESIGNERS FLORIDA (f/k/a FLORIDA CDI, LLC d/b/a CHRISTMAS DESIGNERS), a Limited Liability Company, as listed with the Delaware Division of Corporations, with a business address of **1053 N Plymouth Street, Allentown, PA 18109 Lehigh**, hereinafter referred to as "CONTRACTOR". "CITY" and "CONTRACTOR" may hereafter be collectively referred to as the "Parties".

WHEREAS, on **November 14, 2017**, pursuant to Request for Proposals #RE-17-04 the Parties entered into an agreement to govern the provision of holiday decorations at the Charles F. Dodge City Center Plaza by Florida CDI, LLC (“Original Agreement”), for an initial **five (5) year period** which naturally expires on **October 31, 2022**; and,

WHEREAS, on or about **July 1, 2022**, Florida CDI, LLC was acquired by Rileighs Outdoor, LLC; and,

WHEREAS, on _____, 2022, the CITY Commission approved assignment of the Original Agreement to Rileighs Outdoor, LLC; and,

WHEREAS, the Original Agreement authorized renewal thereof at the expiration of the initial term upon the mutual written consent of the Parties; and,

WHEREAS, to date the Parties have been satisfied with the performance and execution of the Original Agreement and desire to supplement the terms contained therein and renew the term thereof as set forth herein.

WITNESSETH

NOW, THEREFORE, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as set forth below:



SECTION 1. The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

SECTION 2. Any language contained in this First Amendment, or any subsequent amendment, which is in ~~striketrough~~ type shall be deletions from the terms of the Original Agreement and language in underlined type shall be additions to the terms of the Original Agreement.

SECTION 3. Renewal Term. The Original Agreement is hereby renewed for **five (5) years** which shall commence on **November 1, 2022** and expire on **October 31, 2027**.

SECTION 4. CONTRACTOR's Proposal. The Parties acknowledge and agree that the fees more particularly described and set forth in Exhibit "1-A", attached hereto and by this reference made a part hereof, shall take effect upon execution of this First Amendment.

SECTION 5. Compensation. The annual amount paid by CITY to CONTRACTOR for the required services shall not exceed **TWENTY-SEVEN THOUSAND NINETY-EIGHT DOLLARS AND 00/100 (\$27,098.00)** for the 2022-23 season which includes the cost associated with the annual fee and the purchase of lights in an amount equal to NINE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$9,500.00). The annual amount paid by CITY to CONTRACTOR for each year following the 2022-23 season shall not exceed **SEVENTEEN THOUSAND FIVE HUNDRED NINETY-EIGHT DOLLARS AND 00/100 (\$17,598.00)**, which is the annual fee for services. CONTRACTOR shall invoice the CITY for fifty percent (50%) of the upcoming season costs on November 1st and the remaining fifty percent (50%) shall be invoiced upon completion of the services for the same season. The invoice shall include, but not be limited to, date of service, a description of the service, and any other information reasonably required by CITY. The pricing for the services shall not exceed the amounts provided in Exhibit "1-A". The CITY shall not be subject to any late fee in excess of one (1) percent.

SECTION 6. Method of Billing and Payment. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes. The CITY shall within thirty (30) calendar days, from the date the City's Recreation and Cultural Arts Director approves the Application for Payment, pay the CONTRACTOR the amount approved by the CITY's Recreation and Cultural Arts Director or his or her assignees. Payment will be made to CONTRACTOR at:

**Christmas Designers FL c/o Holiday Outdoor Décor
PO Box 4365
Bethlehem, PA 18018**

SECTION 7. Public Records. The Parties hereby acknowledge and agree that Section 5.1.4, as set forth in the Original Agreement, shall be revised and amended as set forth below:

"5.1.4 Upon completion of the contract, transfer, at no cost to the City all public records in possession of the Contractor or keep and maintain public records



required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**MARLENE GRAHAM 954-450-1050,
MGRAHAM@PPINES.COM,
601 City Center Way, 4th Floor, 10100 Pines Boulevard,
Pembroke Pines, Florida 330256"**

SECTION 8. Sovereign Immunity. The Parties hereby acknowledge and agree that nothing contained in the Original Agreement nor set forth herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.

SECTION 9. Insurance. The Parties hereby acknowledge and agree that Article VIII, entitled "Insurance" as set forth in the Original Agreement, shall be deleted and replaced with the requirements set forth below:

"8.1 CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein required.

8.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

8.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and



no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

8.4 Certificates of Insurance shall provide for thirty (30) calendar days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) calendar days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

8.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

8.6 REQUIRED INSURANCE. CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

8.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

8.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance



of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

- 1. Workers' Compensation: Coverage A – Statutory
- 2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption for CITY to exempt CONTRACTOR.

Yes No

8.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

- 1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
- 2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
- 3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

8.7 REQUIRED ENDORSEMENTS.

- 8.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 8.7.2 Waiver of all Rights of Subrogation against the CITY.
- 8.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 8.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 8.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- 8.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.



8.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

8.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

8.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.”

SECTION 10. Uncontrollable Forces. The Parties hereby acknowledge and agree that Article XV, entitled “Miscellaneous”, as set forth in the Original Agreement, shall be revised and amended to include Section 15, as set forth below:

“15. Uncontrollable Forces. Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions. Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.”

SECTION 11. CONTRACTOR has made certain certifications regarding compliance with State law as more specifically described in the Scrutinized Companies Certification and E-Verify System Certification Statement attached hereto as Exhibit “1-B” and made a part here of by this reference.

SECTION 12. In the event of any conflict or ambiguity by and between the terms and provisions of the Original Agreement with the terms and provisions of this First Amendment, this First Amendment shall control to the extent of any such conflict or ambiguity.

SECTION 13. The Parties agree that in all other respects the Original Agreement, shall



remain in full force and effect, except as specifically modified herein.

SECTION 14. Each exhibit referred to in the Original Agreement, except as repealed herein, forms an essential part of this First Amendment. The exhibits, if not physically attached, should be treated as part of this First Amendment and are incorporated herein by reference.

SECTION 15. Each person signing this First Amendment on behalf of either Party individually warrants that he or she has full legal power to execute this First Amendment on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this First Amendment.

SECTION 16. This First Amendment may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this First Amendment by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other Party through facsimile transmission, email, or other electronic delivery.

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

CITY:

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

MARLENE D. GRAHAM, CITY CLERK

BY: _____
MAYOR FRANK C. ORTIS

APPROVED AS TO FORM:

BY: _____
CHARLES F. DODGE, CITY MANAGER

Print Name: _____
OFFICE OF THE CITY ATTORNEY

CONTRACTOR:

**RILEIGHS OUTDOOR, LLC d/b/a
CHRISTMAS DESIGNERS FLORIDA**

Signed By:  _____
Joe Campbell (Aug 8, 2022 11:39 EDT)

Name: Joe Campbell

Title: Director of Sales

Rileighs Outdoor LLC - First Amendment to Holiday Decorations Agreement (00516591-2xC4B6A)

Final Audit Report

2022-08-08

Created:	2022-08-08
By:	Sarah Knoess (salesassist@christmasdesigners.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQGmEzXmpcrlqpBS6BHqtp13c8QCP0BZv

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 Document created by Sarah Knoess (salesassist@christmasdesigners.com)

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 Document emailed to jcampbell@christmasdesigners-fl.com for signature

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 Signer jcampbell@christmasdesigners-fl.com entered name at signing as Joe Campbell

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 Document e-signed by Joe Campbell (jcampbell@christmasdesigners-fl.com)

Signature Date: 2022-08-08 - 3:39:39 PM GMT - Time Source: server- IP address: 172.58.110.223

 Agreement completed.

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