

CONTRACT FOR PROFESSIONAL SERVICES
FOR NASSAU COUNTY, FLORIDA

THIS AGREEMENT made and entered into this _____ day of _____ 2021, by and between the **Board of County Commissioners of Nassau County (“County”)**, a political subdivision of the State of Florida, hereinafter referred to as “County”, and **We-Decorate, LLC (“Consultant”)**, located at 1796 South Metro Parkway, Centerville, Ohio 45459, hereinafter referred to as “Consultant”:

WHEREAS, County desires to obtain professional lighting services to assist County with designing, installing and servicing a Christmas lighting display in Fernandina Beach, Florida. Said services are more fully described in the Proposal, attached hereto and incorporated herein as Exhibit “A”; and

WHEREAS, the Tourist Development Council and Amelia Island Convention and Visitors Bureau have recommended that the Board of County Commissioners fund this Contract from the Tourist Development Tax revenues; and

WHEREAS, Consultant desires to render certain professional services as described in the Proposal, and has the qualifications, experience, staff and resources to perform those services.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE 1 - EMPLOYMENT OF CONSULTANT

County hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services set forth in the Proposal.

ARTICLE 2 - SCOPE OF SERVICES

2.1 Consultant shall provide professional services inclusive of installation, service, mapping, takedown, and storage of lighting as more fully described in attached Proposal.

2.2 Services requested by County or County's representative that are in addition to the Proposal will be considered additional services and reviewed, at that time for additional fees. Any additional services shall be provided if mutually agreed in writing by County and Consultant.

ARTICLE 3 - COUNTY'S RESPONSIBILITY

The County's responsibilities are to render approvals and decisions as necessary for the orderly process of Consultant's services. The Amelia Island Convention and Visitors Bureau shall have the authority to transmit instructions pursuant to the terms of the contract, receive information with respect to the terms of this contract regarding Consultant's services, and recommend approval to the County. Any instructions provided to Consultant shall be copied to:

Nassau County Attorney's Office
96135 Nassau Place, Suite 6
Yulee, Florida 32097
904-530-6100
contracts@nassaucountyfl.com

Nassau County Office of Management and Budget
96135 Nassau Place, Suite 2
Yulee, Florida 32097
904-530-6010
bsimmons@nassaucountyfl.com

ARTICLE 4 - TERM OF AGREEMENT

The term of this Agreement shall be from the date of execution through January 31, 2022 with two (2) annual renewals subject to annual appropriation. The term of this Agreement may be extended upon mutual written agreement between both parties.

Any extension of the term under this Agreement shall be in one (1) year increments, unless otherwise agreed to by the parties, and shall be in County's best interest and sole discretion. Any agreement or amendment to the Agreement shall be subject to fund availability and mutual written agreement between County and Consultant.

ARTICLE 5 - COMPENSATION

5.1 Consultant shall be compensated \$185,613.19 annually. A deposit of \$92,806.60 will be due within 10 days of execution of this Agreement and annually by September 30 for the term of the agreement. Final annual payment of \$92,806.59 shall be rendered upon successful completion of the services expected by January 31 annually. The total sum is not to exceed \$185,613.19 annually, in accordance with the Proposal.

5.2 The Consultant shall prepare and submit to the Amelia Island Convention and Visitors Bureau, for approval, a monthly invoice for the services rendered under this Agreement based upon the attached Scope of Services. Said invoices shall be reviewed and recommended for approval to the Director of the Nassau County Office of Management and Budget. Invoices for services shall be paid within forty-five (45) days, in accordance with the Florida Prompt Payment Act. The County reserves the right to withhold payment to the Consultant for failure to perform the work in accordance with the provisions of this Agreement, and the County shall promptly notify the Consultant if any invoice or report is found to be unacceptable and will specify the reasons therefor.

5.3 All representation, indemnifications, warranties and guaranties made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive final payment and termination or completion of this Agreement.

5.4 Final Invoice: In order for both parties herein to close their books and records, Consultant will clearly state "Final Invoice" on Consultant's final/last billing to County. This indicates that all services have been performed and all charges and costs have been invoiced to County and that there is no further work to be performed on the specific project.

ARTICLE 6 – EXPENSES

Consultant shall be responsible for all expenses incurred while performing the services. This includes, without limitation, license fees, memberships and dues; automobile and other travel expenses; meals and entertainment; insurance premiums; and all salary, expenses and other compensation paid to Consultant's agents, if any, hired by Consultant to complete the work under this Agreement.

ARTICLE 7 - STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a professional under similar circumstances, at the same time, and in the same locality. Consultant shall, at no additional cost to County, re-perform services which fail to satisfy the foregoing standard of care.

ARTICLE 8 - DOCUMENTS

The documents which comprise this Agreement between County and Consultant are attached hereto and made a part hereof and consist of the following:

- 8.1** This Agreement; and
- 8.2** The Proposal attached hereto Exhibit "A"; and
- 8.3** *Certificate of Insurance* attached hereto as Exhibit "B"; and

8.4 Any work authorizations, written amendments, modifications or addenda to this Agreement.

ARTICLE 9 - EQUAL OPPORTUNITY EMPLOYMENT

In connection with the work to be performed under this Agreement, Consultant agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity statutes and regulations.

ARTICLE 10 - INDEMNIFICATION

Consultant shall indemnify and hold harmless County and its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Consultant and other persons employed or utilized by the Consultant, in the performance of the Agreement.

ARTICLE 11 - INDEPENDENT CONSULTANT

Consultant undertakes performance of the services as an independent consultant under this Agreement, and shall be wholly responsible for the methods of performance. County shall have no right to supervise the methods used, but County shall have the right to observe such performance. Consultant shall work closely with County in performing services under this Agreement.

ARTICLE 12 – EXTENT OF AGREEMENT

12.1 This Agreement represents the entire and integrated agreement between County and Consultant and supersedes all prior negotiations, representations, or agreement, either written or oral.

12.2 This Agreement may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

ARTICLE 13 - COMPLIANCE WITH LAWS

In performance of the services, Consultant will comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.

ARTICLE 14 - INSURANCE

Consultant shall maintain such commercial (occurrence form) or comprehensive general liability, workers compensation, professional liability, and other insurance as is detailed in Exhibit "B" and as is appropriate for the services being performed hereunder by Consultant, its employees or agents.

ARTICLE 15 – ACCESS TO PREMISES

County shall be responsible for providing access to all project sites (if required), and for providing project-specific information.

ARTICLE 16 - TERMINATION OF AGREEMENT

16.1 Termination for Convenience: This Agreement may be terminated by County for convenience, upon thirty (30) days of written notice to Consultant. In such event, Consultant shall be paid its compensation for services performed prior to the termination date. In the event that Consultant abandons this Agreement or causes it to be terminated, Consultant is liable to County for all loss pertaining to this termination.

16.2 Default by Consultant: In addition to all other remedies available to County, County may terminate this Agreement for cause should Consultant neglect, fail to perform, or observe any of the terms, provisions, conditions, or requirements herein contained. Prior to termination, County shall provide written notice of the specific conditions warranting default, and County shall allow thirty (30) days for Consultant to cure.

ARTICLE 17 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Consultant shall consider all information provided by County and all reports, studies, calculations, and other documentation resulting from Consultant's performance of the services to be proprietary unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of County or in response to legal process.

ARTICLE 18 – UNCONTROLLABLE FORCES

18.1 Neither County nor Consultant 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, war, riot, civil disturbance, sabotage and governmental actions.

18.2 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.

ARTICLE 19 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida. All legal action necessary to enforce the Agreement will be held in Nassau County, Florida.

ARTICLE 20 - MISCELLANEOUS

20.1 Non-waiver: A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

20.2 Severability: Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

20.3 Public Records: County is a public agency subject to Chapter 119, Florida Statutes. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 530-6010, RECORDS@NASSAUCOUNTYFL.COM, 96135 NASSAU PLACE, YULEE, FLORIDA

32097. Under this Agreement, to the extent that Consultant is providing services to County, and pursuant to section 119.0701, Florida Statutes, Consultant shall:

a. Keep and maintain public records required by the public agency to perform the service.

b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of the Agreement if Consultant does not transfer the records to the public agency.

d. Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of Consultant or keep and maintain public records required by the public agency to perform the service. If Consultant transfers all public records to the public agency upon completion of the contract, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

e. A request to inspect or copy public records relating to a Nassau County

contract for services must be made directly to the Nassau County Custodian of Public Records. If Nassau County does not possess the requested records due to Consultant maintaining the public records, then Nassau County shall immediately notify Consultant of the request for records. Consultant must provide the records to Nassau County or allow the records to be inspected or copied within a reasonable time. If Consultant does not comply with Nassau County's request for records, Nassau County shall be entitled to enforce the contract provisions herein for failure to comply with the terms of the contract. Any Consultant which fails to provide public records to Nassau County within a reasonable time may also be subject to penalties as provided under Section 119.10, Florida Statutes, including punishment by fine or may be guilty of committing a misdemeanor of the first degree for any willful and knowing violation.

20.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

ARTICLE 21 – EMPLOYMENT ELIGIBILITY

Consultant must comply with F.S. 448.095 and use the United States Department of Homeland Security's E-Verify system ("E-Verify") to verify the employment eligibility of all persons hired by Consultant during the term of this Agreement to work in Florida. Additionally, if Consultant uses subcontractors to perform any portion of the Work (under this Agreement), Consultant must include a requirement in the subcontractor's contract that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by subcontractor to perform any such portion of the Work. Consultant must include a requirement in the subcontractor's contract that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by

subcontractor to perform any such portion of the work. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: www.uscis.gov/e-verify.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

County and Consultant each binds itself and its director, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

ARTICLE 23 - CONTINGENT FEES

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 24 - OWNERSHIP OF DOCUMENTS

Consultant shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. All documents, records, disks, original drawings, or other information shall become the property of the County upon completion for its use and distribution as may be deemed appropriate by County.

ARTICLE 25 - FUNDING

The funding for this contract is solely from the Tourist Development Tax revenues. This Agreement shall remain in full force and effect only as long as the

expenditures provided for in the Agreement have been appropriated by the County Commission of the County of Nassau from Tourist Development Tax revenues in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding from the Tourist Development Tax revenues. There are no ad valorem or other funds available to fund this contract.

ARTICLE 26 - NOTICE

26.1 Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

COUNTY

Taco E. Pope, AICP, County Manager
96135 Nassau Place, Suite 1
Yulee, Florida 32097
904-530-6010
tpope@nassaucountyfl.com

With a copy to the County Attorney at:

96135 Nassau Place, Suite 6
Yulee, Florida 32097
(904) 530-6100
contracts@nassaucountyfl.com

With a copy to the Office of Management and Budget at:

96135 Nassau Place, Suite 2
Yulee, Florida 32097
(904) 530-6040
mdiehl@nassaucountyfl.com

With a copy to the Amelia Island Convention and Visitors Bureau at:

398 Sadler Road, Suite 200
Amelia Island, Florida 32034
904-277-4369
qlangley@ameliaisland.com

CONSULTANT:

Josh Johnston
We-Decorate, LLC
1796 South Metro Parkway
Centerville, OH 45459
(937) 886-4848
joshj4@hotmail.com

26.2 Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Email and facsimile are acceptable notice effective when received, however, notices received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

26.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

ARTICLE 27 - DISPUTE RESOLUTION

27.1 County may utilize this section, at their discretion, as to disputes regarding contract interpretation. County may send a written communication to Consultant by email, overnight mail, UPS, FedEx, or certified mail. The written notification shall set forth County's interpretation of the Agreement. A response shall be provided in the same manner prior to the initial meeting with the County Manager. This initial meeting shall take place no more than twenty (20) days from the written notification of the dispute addressed to Consultant. Consultant should have a representative, at the meeting that can render a decision on behalf of Consultant.

27.2 If there is no satisfactory resolution as to the interpretation of the Agreement, the dispute may be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by County and the cost of mediation shall be borne by Consultant. Consultant shall not stop work during the pendency of mediation or dispute resolution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA**

THOMAS R. FORD
Its: Chairman

Attest as to authenticity of the
Chair's signature:

JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form and legality by the
Nassau County Attorney

MICHAEL S. MULLIN

We-Decorate, LLC

By: _____

Its: _____

Date: _____