

LIGHT DISPLAY AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, ~~2013~~2014, by and between the CITY OF OVERLAND PARK, KANSAS, a municipal corporation (the "City"), and MARK CALLEGARI ("Callegari").

WHEREAS, the past several years Callegari has set up and displayed the Ultimate Tree Light Display (aka the Deer Creek Light Display, and hereafter referred to as the "Light Display") at Callegari's residence in the Deer Creek neighborhood, which is a holiday light display which has been featured on HGTV and which showcases pictures, video and sparkling effects all synchronized to music; and

WHEREAS, recognizing the opportunity and benefit of Callegari's offer to plan and conduct a winter public event at the City's Deanna Rose Children's Farmstead (the "Farmstead"), the parties hereby agree to use the Farmstead for the Light Display, subject to the provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recital and the mutual promises and covenants hereinafter given, the parties agree as follows:

1. Dates and Location.

A. This Agreement shall be effective for an initial term beginning on October 1, 2014 and ending on January 4, 2015. Thereafter this Agreement will automatically renew for a second term running October 1, 2015 through January 4, 2016, and then a third term running October 1, 2016 through January 4, 2017, unless either party notifies the other party of its intent to terminate the Agreement pursuant to Section 11B. The additional term(s) shall be deemed a continuation of this Agreement and not as a new Agreement.

~~1-B.~~ The Light Display will be set-up and displayed at the Farmstead from approximately ~~November 28, 2013~~November 27 ~~October 1, 2014~~ through ~~January 5, 2014~~January 4, ~~2017~~of the applicable year, with the specific dates to be agreed upon at a later date by Callegari and City staff. ~~This Agreement may be renewed for the following year upon the mutual agreement of the parties.~~

2. Callegari Responsibilities. Callegari will:

A. Plan, supervise, and conduct the Light Display at the Farmstead, in cooperation with and at the direction of the City staff assigned to this project. Callegari acknowledges that he shall have no authority over the conduct, activity or supervision of the City staff members assigned to this project. Further, the exact location of the Light Display, any lines of security, etc., shall be determined by the City and agreed upon by Callegari.

B. Provide all necessary equipment, lights, computers and other technical devices and gear to run the Light Display (the "Equipment"). With respect to the Equipment, Callegari is responsible for all necessary technical assistance, support, installation, tear down and storage (before and after the Light Display, as needed); provided, however, the City will provide assistance with the installation and tear down of the tree with the City's boom truck, and at its option may assist with other installation

and tear down activities. All of the Equipment must meet any applicable electrical code or other regulatory standard.

- C. Furnish the musical soundtrack for the synchronized music and the Equipment necessary to broadcast the same. However, the City is responsible to obtain any necessary license, public performance rights or other authorization necessary to broadcast the musical soundtrack.

- D. Acknowledge and agree that, while Callegari will plan, supervise and conduct the Light Display, the City has the right of final approval of the Light Display and the musical soundtrack. In the event the City, in its sole discretion, finds either the Light Display or musical soundtrack objectionable for any reason, Callegari agrees to either delete that section that is objectionable or to make the appropriate changes to the Light Display or the musical soundtrack to remedy the objection.
 - E. Abide by all other federal, state or local laws, ordinances and regulations applicable to this Agreement and governing Callegari's production of the Light Display.
3. City Responsibilities. The City will:
- A. Provide the use of the Farmstead, subject to the provisions of this Agreement.
 - B. Have final approval rights of the design of the Light Display, the musical soundtrack the exact location of the Light Display area, lines of security, and all other logistical determinations with respect to the Light Display. In the event the City finds, in the City's sole discretion, any portion of the Light Display, the musical soundtrack or any other logistical determination objectionable for any reason, the City will reasonably work with Callegari to determine any necessary changes to remedy the objection.
 - C. Provide electricity for the Light Display and indoor housing for the computers and other technical equipment running the Light Display. This responsibility will include providing Callegari with reasonable access to such location(s).
 - D. Provide traffic and crowd control. Prior to the display, the parties will work together to establish any necessary minimum distances from location of the Light Display. The City may provide barriers and/or signage with respect to such minimum distances. Notwithstanding, the parties both acknowledge and agree that the City is not responsible for any vandalism or theft of Callegari's Equipment, or for any damage to the Equipment unless cause by the City or its employees' negligence.
 - E. Obtain any necessary City permit or other authorization for the Light Display.
 - F. Provide assistance with the installation and tear down of the tree with the City's boom truck, and at its option may assist with other installation and tear down activities.
 - G. Obtain any necessary license, public performance rights or other authorization necessary to use the musical soundtrack.
 - H. Provide or reimburse Callegari for Commercial General Liability insurance with a minimum general aggregate of \$5,000,000.00 and a single occurrence of \$1,000,000.00. The City shall be included as additional insured. In order to fulfill this requirement, the parties acknowledge the intent to accept the insurance quote provided by Francis L. Dean & Associates LLC on or about July 19, 2013, on behalf of United States Fire Insurance Company (incorporated herein by reference); and the City's out of pocket expense for this requirement shall not exceed the amount of this quote (\$857 + \$135 + \$100 = \$1092).

4. Consideration. The parties acknowledge and agree that Callegari is donating the use of the Equipment and his services and technical support for the purposes set forth herein. Callegari acknowledges and agrees that he will not receive any cash fee for his services, the provision and use of the Equipment or any other Callegari responsibility set forth in this Agreement. The City acknowledges and agrees that it will not charge Callegari for the use of its facilities, any permit fee or any other charge for the City services being performed by the City with respect to the Light Display.
5. Independent Contractor. It is mutually understood that the parties are independent contractors. It is specifically agreed between the parties that this Agreement does not create a joint venture agreement, partnership, employment agreement or agency relationship between the parties, and that Callegari is not an agent or employee of the City.
6. Inclement Weather/Cancellation. In the event that inclement weather or some other factor not under control of the parties causes cancellation of the Light Display on any scheduled date, the City shall be responsible for closing the Light Display and notifying Callegari. The City shall be the final authority in determining cancellation.
7. Publicity. As subsequently agreed upon in writing by the parties, the parties will be allowed to advertise or otherwise publicize the operations of the Light Display. The parties agree that, subject to any applicable sign regulations, Callegari shall be allowed to post a sign in conjunction with the Light Display in a size and form agreed upon in writing by the City, which acknowledges Callegari's role in the production of the Light Display.
8. Donations. The parties agree that, at the City's discretion, donations may be collected in coordination with the Light Display, with said proceeds to go to the Friends of the Farmstead.
9. Non-Discrimination. Callegari agrees that:
 - A. During the performance of this Agreement or any subcontract resulting thereof, Callegari, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
 - B. In all solicitations or advertisements for employees Callegari, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission;
 - C. If Callegari, a subcontractor or vendor fails to comply with the manner in which Callegari, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Callegari, subcontractor or vendor shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
 - D. If Callegari, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights

Commission which has become final, Callegari, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the City;

- E. Callegari shall include the provisions of paragraphs A through D above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

10. Intellectual Property Rights. Except to the extent the City's logo, name, trade name or trade mark is used, Callegari shall be the owner of and will retain all Intellectual Property Rights (as defined below) created, conceived, prepared, made, discovered or produced in connection with the Light Display. "Intellectual Property Rights" means worldwide common law and statutory rights associated with (i) patents and patent applications; (ii) works of authorship, copyrights, copyright applications, copyright registrations and "moral" rights; (iii) the protection of trade and industrial secrets and confidential information; (iv) trademarks, service marks, slogans, logos, sound marks, motion marks, trade dress, domain names, trade names, corporate names, or indicia (v) other proprietary rights relating to intangible intellectual property (specifically excluding trademarks, trade names and service marks); (vi) analogous rights to those set forth above; and (vii) divisions, continuations, renewals, re-issuances and extensions of the foregoing (as applicable), including all foreign counterparts of the foregoing, now existing or hereafter filed, issued or acquired. Notwithstanding, nothing in the above provision shall prevent the City from conducting a holiday or other light display at the Farmstead in the future.

11. General Provisions.

- A. This Agreement may not be assigned or transferred by either party without the expressed written consent of the other party.
- B. This Agreement may be terminated by either party upon sixty (60) days written notice to the other party.
- C. Any and all notices required to be given under this Agreement or notices given in connection with this Agreement shall be given in writing, addressed as follows:

The City:
City of Overland Park
City Clerk
8500 Santa Fe Drive
Overland Park, KS 66212

Callegari:
Mark Callegari
6605 West 131st St
Overland Park, KS 66209

Either party may change the address to which notices to such party are transmitted by so notifying the other party hereto.

- D. Any failure by either party to enforce at any time or for any period of time any one or more of the terms or conditions of this Agreement, shall not be a waiver of such terms or conditions or of either party's right thereafter to enforce each and every term and condition of this Agreement.
- E. This Agreement supersedes any prior agreements or understandings between the

parties. This Agreement constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by both parties. This Agreement is for the exclusive benefit of the parties, their successors and permitted assigns. There are no third party beneficiaries to this Agreement.

- F. If any provision of this Agreement is found unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. To the fullest extent permitted by applicable law, if any provision of this Agreement is invalid or unenforceable a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.
- G. This Agreement will be governed by the laws of the State of Kansas, without regard to its conflict of laws principles. The parties agree that appropriate jurisdiction and venue in connection with this Agreement and the subject matter hereof shall be in the District Courts of Johnson County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed the above and foregoing Agreement on the date first above written.

CITY OF OVERLAND PARK, KANSAS

MARK CALLEGARI, AN INDIVIDUAL

By: _____
Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney

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ACKNOWLEDGEMENT

STATE OF)
) SS:
COUNTY OF)

BE IT REMEMBERED, That on this ____day of _____ 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Mark Callegari, who is personally known to me to be the person who executed the within instrument.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Appointment Expires:

Notary Public
