



## AGREEMENT

THIS AGREEMENT, made this 26<sup>th</sup> day of October, 2017, by The WOW Agency, LLC., a Georgia corporation having its office and principal place of business located at 8564 Lake Forrest Dr., Douglasville, GA 30134, (herein sometimes referred to as "WOW"), and City of Savannah, having its office and principal place of business located at 2 East Bay Street, Savannah, GA 31401 (hereinafter referred to as "CLIENT");

### WITNESSETH

WHEREAS, CLIENT desires to obtain technical production and event coordination services from WOW for Holiday Tree Erection, Tree Lighting, Tree Removal and Storage 2017-2020 (a four (4) year agreement for said services) (in hereafter sometimes referred to as the "EVENT"), outlined and attached thereto as Exhibit "A";

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### 1.0 PRODUCTION OF EVENT

1.1 Subject to the terms and conditions hereinafter set forth, WOW shall coordinate the production elements of the EVENT in accordance with client and specifications outlined and attached thereto as Exhibit "A". This multi-year agreement of production services ("Services") shall be provided by WOW to CLIENT beginning November 22, 2017, and continuing through January 3, 2020, in accordance with the schedule attached hereto as Exhibit "B" and the further provisions in accordance with the highest standards of content and performance.

1.2 WOW will also be responsible for the installation, lighting, storage and removal throughout the



EVENT relating to the TREE. WOW is not responsible for the daily lighting of the tree between the lighting event and removal. This includes any required certification and training when pertaining to safety procedures and safety checks of the technical support and equipment that WOW is providing pursuant to this Agreement. WOW does not assume, and expressly disclaims, any responsibility for venue or facility safety procedures, plans or equipment except as provided otherwise herein.

1.3 CLIENT is solely responsible for the cost of providing security for the equipment, regardless of whether that cost is included in the Expense Budget for the EVENT included in Exhibit A of this Agreement. CLIENT shall bear the entire risk of loss or damage to such equipment that occurs when WOW is not on the EVENT site, except, as a result of, WOW's negligence or misconduct.

## 2.0 CRITICAL PATH CALENDAR

WOW shall be responsible for producing Timelines and Critical Path Calendars to CLIENT detailing when production elements of the EVENT are scheduled to be finalized, constructed, or determined. Any alterations to this schedule will be provided to CLIENT with explanation. The date of the EVENT is November 22, 2017 through January 3, 2018. Subsequent year Critical Path Calendar's (2017-2020) will be agreed upon by both WOW and CLIENT. Notwithstanding anything to the contrary contained herein, the tree shall be fully erected, stabilized, operational and lit by no later than November 22, 2017 and dismantled and removed from the street no later than midnight January 3, 2018.

## 3.0 EXPENSES OF PRODUCTION AND PERFORMANCE

3.1 CLIENT, except as expressly provided herein, shall bear all costs and expenses reasonably necessary for the staffing and operation of the EVENT, including, but not limited to, rental or purchase of the





following listed equipment ("Expenses"): Specifically one (1) 5000 pound forklift + fuel and one (1) 65 articulating boom lift + fuel for installation and removal. WOW shall provide operators (fully licensed and insured) for the foregoing boom lift and forklift. No Party shall have any authority to bind the other for any Expenses incurred hereunder except as specifically identified by Exhibit A, or as subsequently agreed upon by both parties.

3.2 Upon termination of this Agreement, CLIENT must return all technical support, equipment, scenic elements, and all other property of WOW (whether owned or controlled by WOW) in the same condition as when delivered less reasonable wear and tear. WOW will be responsible for the installation and removal of all technical support, equipment, scenic elements, and all other property of WOW or controlled by WOW. WOW will perform daily safety check on all equipment and tree during installation and removal of tree and once every four weeks during the Event.

3.3 WOW will assist in coordinating with the State, City and County for all necessary permits, but ultimate responsibility for permitting rests with CLIENT for the TREE unless otherwise agreed by WOW and CLIENT.

3.4 If either Party shall be prevented from performing any portion of the Agreement by causes beyond its reasonable control, including without limitation, fire, explosion, power blackout, earthquake, flood, named storm events, strike, labor disputes, acts of civil or military authority, war, acts of God, or governmental regulations or controls, ("Force Majeure Event"), such Party shall be excused from performance for the period of the delay. If a Force Majeure Event continues for a period of thirty (30) days, the other Party (not expected to perform) may, without incurring liability, terminate the Agreement. Notwithstanding the foregoing, CLIENT shall not be responsible for payment for any Services not rendered during such Force Majeure Event; however, CLIENT shall pay WOW for all Services rendered and Expenses incurred prior to such Force Majeure Event.



#### 4.0 RIGHT TO USE MATERIAL PROVIDED TO WOW BY CLIENT

With regard to those names, characters, images, and visual representations developed by CLIENT or obtained by CLIENT from a third-party (including, without limitation, photographs, copyrighted materials, art work or any other property or rights) and used in the EVENT production by WOW ("CLIENT ELEMENTS"), CLIENT hereby grants WOW a right and license, to the extent Client has such right, to use such CLIENT ELEMENTS, including, without limitation, any designs, shirts, props, or other items incorporating such CLIENT ELEMENTS in the EVENT production. CLIENT shall be responsible for obtaining any required releases, licenses, permits or other authorizations to use such CLIENT ELEMENTS.

#### 5.0 INSTITUTIONAL ADVERTISING

It is acknowledged and agreed that CLIENT may obtain institutional advertisers as sponsors for the EVENT.

#### 6.0 TERM OF AGREEMENT

The duties expected of WOW shall be performed as listed in this Agreement from the date of execution of this Agreement to January 6, 2020 ("Initial Term"). This Agreement may be extended by the Client, in writing, within ninety (90) days following the expiration of the Initial Term ("Extension Term"). An Extension Term shall not exceed one (1) year. Payments and fees associated with the Extension Term shall be determined by the parties and set forth in an attachment designated: "Extension Term Payment/Expense Schedule". Client shall have the right to terminate this Agreement at any time upon thirty (30) days' written notice to WOW, provided Client shall pay WOW for any cost incurred by WOW under this Agreement up to and through the termination date.





## 7.0 PAYMENT FOR SERVICES

CLIENT shall pay WOW \$50,049.82 for the Services rendered by WOW in 2017, which will be payable in accordance with the payment schedule set forth in Exhibit "C" ("Payment"). The following three year payments (2018-2020) are detailed on Exhibit "C".

## 8.0 ADDITIONAL PAYMENT FOR SERVICES AND EXPENSES BASED ON EVENT ALTERATIONS

As the result of CLIENT's written request, under which the scope, timing, or elements of the EVENT are altered, and where such alterations result in an increase or decrease in the Payment due WOW for Services pursuant to Section 7.0 of this Agreement or an increase or decrease in the Expenses incurred by WOW pursuant to Section 3.1 of this Agreement, the Parties will confer (whether in-person, by phone, via electronic mail, or otherwise) and will exercise their reasonable efforts to reach an agreement (which agreement may be oral, written, via electronic mail, or otherwise) to amend Exhibit "A", Exhibit "C", and/or any "Extension Term Payment/Expense Schedule" accordingly.

## 9.0 EARLY TERMINATION

9.1 CLIENT may terminate this Agreement at any time before expiration of the Initial Term or of any Extension Term by giving notice to WOW. In the event CLIENT terminates this Agreement before expiration of the Initial Term or of any Extension Term in accordance with Section 9.0, CLIENT shall pay WOW the lesser of:

- 1) its expenses already incurred and an additional 20% of total compensation for the year in which the termination occurs, as set forth in Exhibit "C", as liquidated damages and not a



penalty, or

2) the total amount of compensation set forth in Exhibit "C".

9.2 In the event CLIENT (1) in any way materially and intentionally prevents or impairs WOW's ability to produce, facilitate, or staff the EVENT or (2) breaches any material obligation under this Agreement and doesn't cure within 30 days of written notice, then WOW may terminate this Agreement before expiration of the Initial Term or of any Extension Term by giving notice to CLIENT. In the event WOW terminates this Agreement before expiration of the Initial Term or of any Extension Term, WOW shall have no further obligations to CLIENT or related to the EVENT, shall do so without penalty or liability to CLIENT, and CLIENT shall pay WOW for the Services WOW has rendered and the Expenses WOW has incurred as of such termination.

9.3 In the event WOW is in material default under the Agreement, CLIENT may terminate this Agreement immediately.

#### 10.0 INDEPENDENT CONTRACTOR

The relationship of WOW as to CLIENT is that of an independent contractor and neither party shall have the right or power to obligate or bind the other in any manner whatsoever. In no event shall this Agreement be construed as the formation of a partnership or joint venture between the parties hereto.

#### 11.0 INDEMNIFICATION. Deleted.

#### 12.0 INSURANCE

Throughout the term of this Agreement, WOW shall maintain at minimum (1) Worker's Compensation



Insurance coverage on its employees involved in the production and performance of the show to the statutory limits of the location including all employees or controlled workers installing and/or dismantling the tree (2) General Liability Insurance coverage of \$3,000,000 combined single limit coverage for property damage and personal injury covering the acts of WOW and their agents in performing their obligations under this Agreement including, without limitation, the installation, securing the tree structure and dismantling the tree. WOW shall provide CLIENT evidence (in form of a certificate naming those parties designated by CLIENT as additional insured) of such insurance coverage and shall provide CLIENT with ten day's written notice of cancellation or of any material change in an applicable policy. Upon request, WOW shall provide a Certificate of Insurance naming CLIENT as additional insured.

### 13.0 MISCELLANEOUS PROVISIONS

13.1 Ownership Rights. CLIENT agrees not to use the name "The WOW Agency, LLC.", "WOW", or any copyright, trademark, or trade names, or derivatives thereof ("WOW Intellectual Property") without the prior written consent of WOW. Unless otherwise agreed to by the Parties, materials created by WOW specifically for the EVENT ("EVENT ELEMENTS") are the property of WOW. WOW shall have exclusive right, title and use of, and the sole right to obtain and to hold in its own name, all copyrights, trademarks, and any other intellectual property rights and registrations, or other such protection as may be appropriate with regard to any EVENT ELEMENTS, including any extensions and renewals thereof. Client disclaims any interest in any and all EVENT ELEMENTS. All right, title, and interest in and to any materials furnished to CLIENT by WOW, including, without limitation, EVENT ELEMENTS are and shall remain the property of WOW.

13.2 Governing Law and Applicable Jurisdiction. This Agreement shall be governed by the laws of





the State of Georgia, without regard to its conflict of laws provisions, and venue shall lie in any court of competent jurisdiction in Chatham County, Georgia.

13.3 Entire Agreement. This Agreement, together with its Exhibits, constitutes the final, exclusive and complete understanding and agreement of the Parties with respect to the subject matter hereof. Any waiver, modification, addendum, or amendment of any provision of this Agreement shall be effective only if in writing and signed by an authorized officer of WOW and CLIENT.

13.4 Assignment/Benefit. The rights and obligations of the parties hereunder shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This agreement shall not be assigned, nor shall it be assigned by WOW, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, such consent shall not be required upon an assignment by a Party to a parent, subsidiary or affiliate, or to an entity succeeding to all or substantially all the assets or business of such Party whether by merger, consolidation, acquisition or otherwise. Unless otherwise agreed to in writing by the Parties, the assignor shall not be liable to the other Party for an assignee's performance under this Agreement.

13.5 Notices. All notices or requests which may be required or contemplated hereunder shall be deemed sufficient if in writing and sent by certified or registered United States mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below or such other addresses as any party may designate for itself by written notice. Such notices and requests shall be deemed given when mailed.





CLIENT: City of Savannah  
PO Box 1027  
Savannah, GA 31402  
Attn: Rob Hernandez, City Manager

WOW: The WOW Agency, LLC  
8564 Lake Forrest Drive  
Douglasville, GA 30134  
Attn.: Steve Guy

13.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

#### 14. OWNERSHIP OF TREE

14. Notwithstanding anything to the contrary, WOW acknowledges that the tree (40' Christmas) is owned by CLIENT and shall remain the property of CLIENT. In the event this Agreement is terminated or any reason, WOW, upon ten (10) days written notice shall deliver the tree to a location specified by CLIENT, and, in addition to any other obligations hereunder, shall reimburse WOW for the actual (and reasonable cost to transport and deliver the tree to such specified location.



IN WITNESS, WHEREOF, the Parties hereunto set their hands and seals as of the day and year first above written.

For: The WOW Agency, LLC.

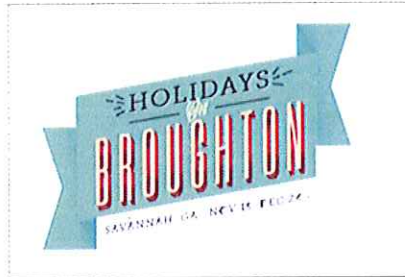
By: \_\_\_\_\_  
Name: Steve Guy  
Its: President

For: CLIENT

By: \_\_\_\_\_  
Name: Rob Hernandez  
Its: City Manager



## EXHIBIT "A"



Proposal Date: October 26, 2017

Client: City of Savannah

Email : blidy@savannahga.gov

**Project: Broughton Street Collection / Tree**

Delivery : Wednesday, November 22, 2016

Budget Maker: Steve Guy

[steve@thewowagency.com](mailto:steve@thewowagency.com)

770.480.7837

### TOTAL PAGE

Tree Installation (per plans attached as Exhibit A-1), Removal, & Storage  
The Wow Agency - Professional Fees

### GRAND TOTAL

### Total

\$40,520.50

\$14,000.00

**\$54,520.50**

Discount for Four (4) Year Contract @ 10%

\$5,452.05

### Contract Amounts / Five Year Agreement

Total for 2017 (+/-2%) for COLA (estimated)

\$50,049.82

Total for 2018 (+/-2%) for COLA (estimated)

\$51,050.82

Total for 2019 (+/-2%) for COLA (estimated)

\$52,071.83

Total for 2020 (+/-2%) for COLA (estimated)

\$53,113.27

Note: Broughton Street Partners Company, LLC ("BSPC") has already paid WOW \$53,838.92 for the purchase of tree (referenced herein). BSPC has transferred ownership of the tree to the City of Savannah.





**EXHIBIT "A-1"**

**STREET PLAN**

**On Following Two (2) Pages**

PROJECT



CLIENT

PHASE: E

Mary Reynolds

DRAWING TITLE

Tree  
Plan View

DATE

October 2, 2016

SCALE

1/8" = 1'  
If Printed On 11" x 17"

DESIGNER

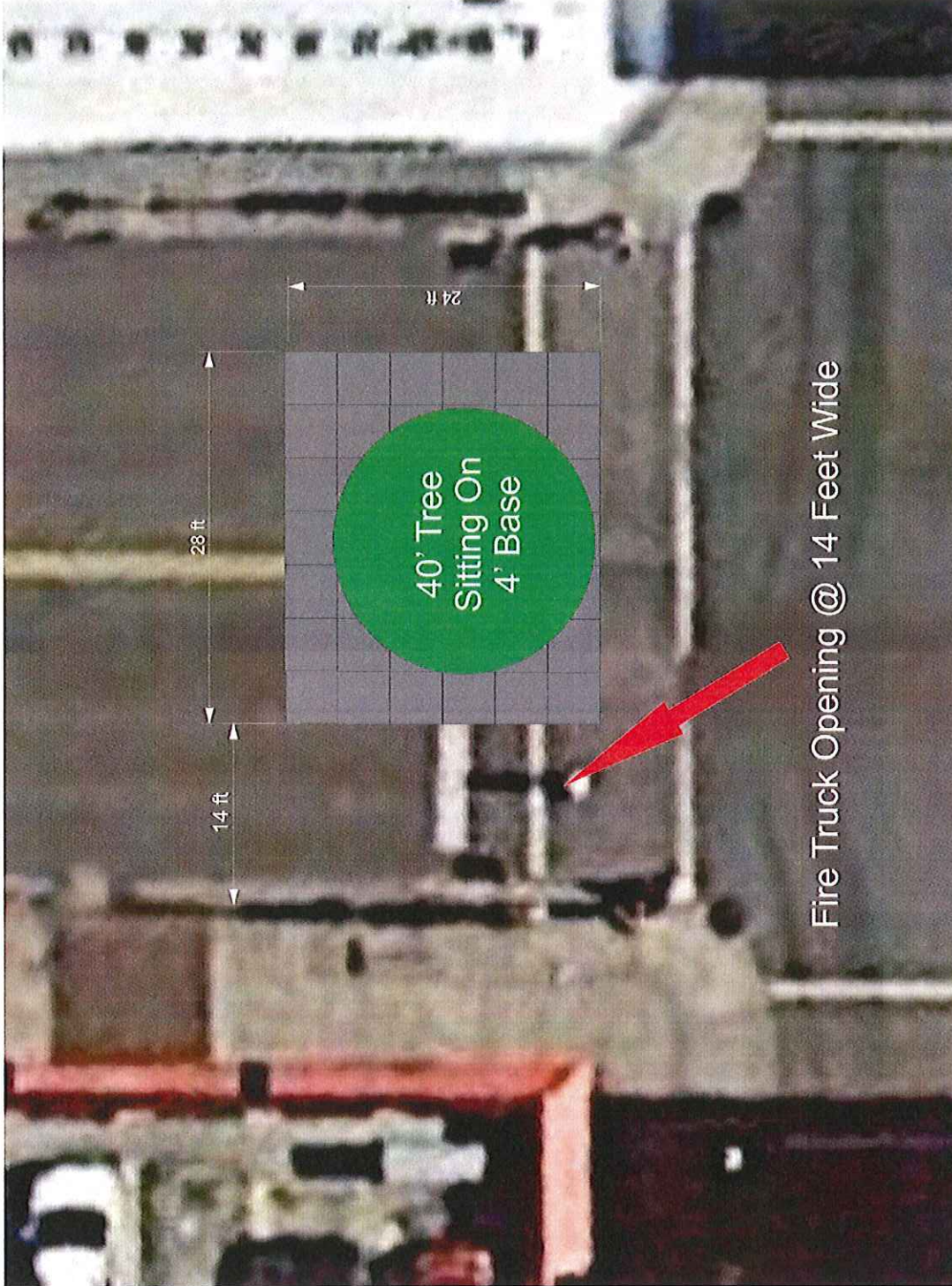
Steve Guy

MANAGER

Steve Guy

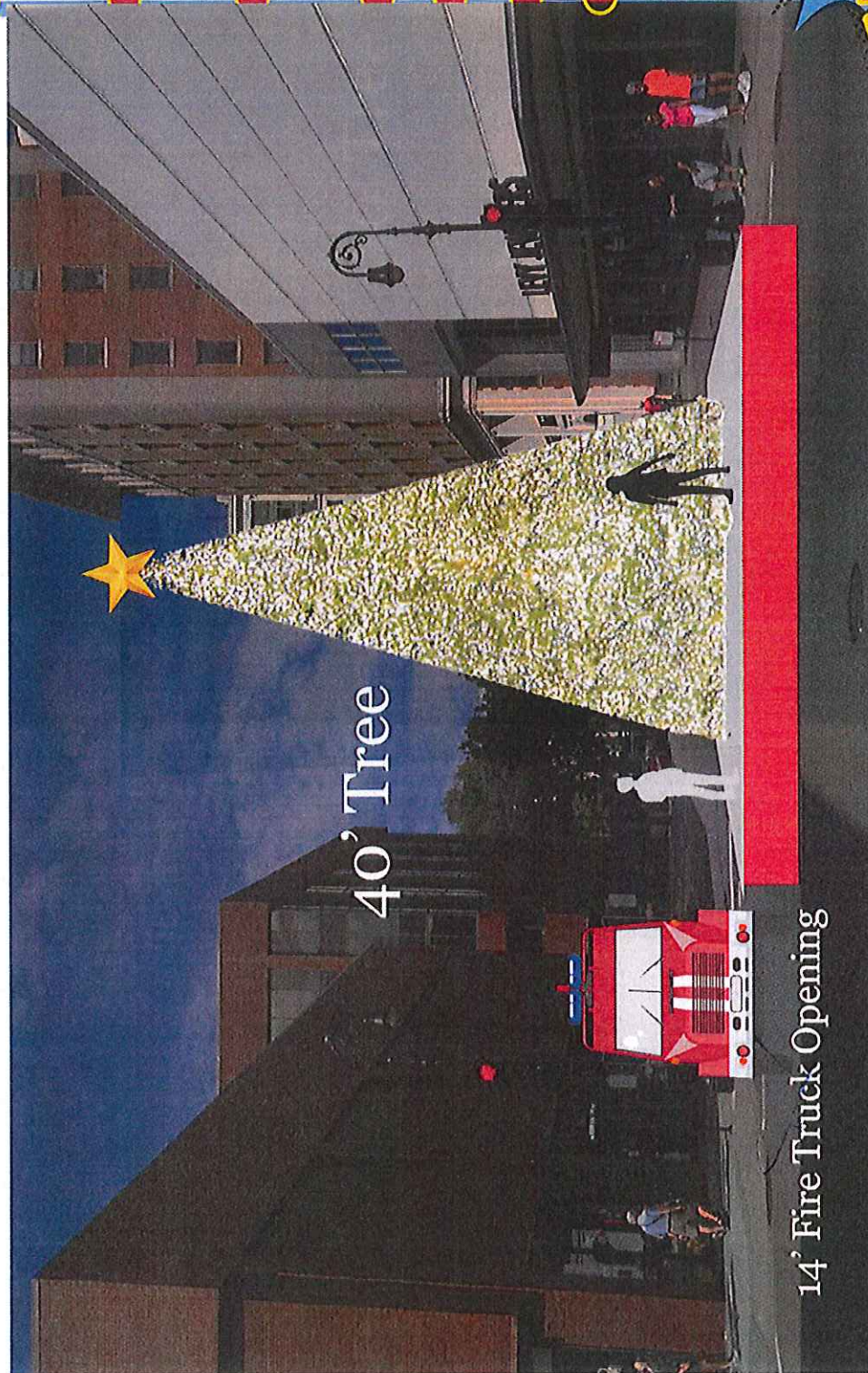
steve@thetwowagency.com

770.480.7837

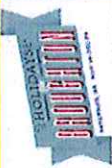


Fire Truck Opening @ 14 Feet Wide





## PROJECT



## CLIENT

## PHASE 3

Mary Reynolds

DRAWING TITLE

Tree  
Facing East  
on Bull Street

DATE \_\_\_\_\_

October 2, 2016

SCALE

$3/16" = 1'$   
If Printed On 11" x 17"

DESIGNER

Steve Guy

MANAGER

Steve Guy

[steve@thewowagency.com](mailto:steve@thewowagency.com)

770.480.7837

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## **EXHIBIT "B"**

### **EVENT SCHEDULE**

**2017**

**Installation: November 22- 25**

**Event & Tree Lighting: November 24**

**Tree Removal: January 2-3, 2018**

**2017-2020**

**Installation, Lighting, Removal at the Discretion of CLIENT**

**Based on 2016 Event location**



## **EXHIBIT "C"**

### **PAYMENT SCHEDULE**

**2017**

**Total Payment Due: \$50,049.82 Deposit Due: November 1, 2017 – 50% or \$25,024.91 (paid 11/1/2017)**

**Final Due: January 15, 2018 – 50% or \$25,024.91**

**2017 - 2020**

**Invoiced annually based on COLA and Tree Location**

**Deposit of 50% Due November 1 each year**

**Final of 50% Due January 15 each year**