
THE VILLAGE OF TINLEY PARK

Cook County, Illinois

Will County, Illinois

**RESOLUTION
NO. 2018-R-057**

**A RESOLUTION APPROVING A CONTRACT BETWEEN THE VILLAGE OF TINLEY PARK
AND ARTISTIC HOLIDAY DESIGNS FOR THE PURCHASE OF SEVENTY-TWO (72)
CUSTOM, TRUMPET-SHAPED LIGHT POLE DECORATIONS**

**JACOB C. VANDENBERG, PRESIDENT
KRISTIN A. THIRION, VILLAGE CLERK**

**MICHAEL J. PANNITTO
BRIAN H. YOUNKER
CYNTHIA A. BERG
WILLIAM P. BRADY
MICHAEL W. GLOTZ
JOHN A. CURRAN
Board of Trustees**

RESOLUTION NO. 2018-R-057

A RESOLUTION APPROVING A CONTRACT BETWEEN THE VILLAGE OF TINLEY PARK AND ARTISTIC HOLIDAY DESIGNS FOR THE PURCHASE OF SEVENTY-TWO (72) CUSTOM, TRUMPET-SHAPED LIGHT POLE DECORATIONS

WHEREAS, the Village of Tinley Park, Cook and Will Counties, Illinois, is a Home Rule Unit pursuant to the Illinois Constitution of 1970; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have considered entering into an Agreement with Artistic Holiday Designs of Broadview, Illinois, a true and correct copy of such Agreement being attached hereto and made a part hereof as **EXHIBIT 1**; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interests of said Village of Tinley Park that said Agreement be entered into by the Village of Tinley Park;

NOW, THEREFORE, Be It Resolved by the President and Board of Trustees of the Village of Tinley Park, Cook and Will Counties, Illinois, as follows:

Section 1: The Preambles hereto are hereby made a part of, and operative provisions of, this Resolution as fully as if completely repeated at length herein.

Section 2: That this President and Board of Trustees of the Village of Tinley Park hereby find that it is in the best interests of the Village of Tinley Park and its residents that the aforesaid "Agreement" be entered into and executed by said Village of Tinley Park, with said Agreement to be substantially in the form attached hereto and made a part hereof as **EXHIBIT 1**.

Section 3: That the President and Clerk of the Village of Tinley Park, Cook and Will Counties, Illinois are hereby authorized to execute for and on behalf of said Village of Tinley Park the aforesaid Agreement.

Section 4: That this Resolution shall take effect from and after its adoption and approval.

ADOPTED this 21st day of August, 2018, by the Corporate Authorities of the Village of Tinley Park on a roll call vote as follows:

AYES: Younker, Pannitto, Berg, Brady, Glotz, Curran

NAYS: None

ABSENT: None

APPROVED this 21st day of August, 2018, by the President of the Village of Tinley Park.

ATTEST

Village Clerk

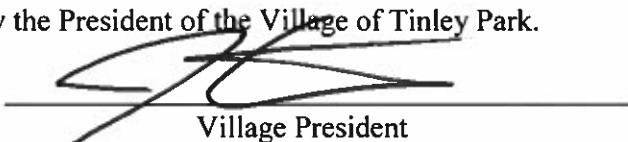

Village President

EXHIBIT 1

ARTISTIC HOLIDAY DESIGNS AGREEMENT



Artistic Holiday Designs

Invoice No. 114100
Invoice Date: 8/1/2018

Seller Address:
 2030 Parkes Drive
 Broadview, IL 60155
 708-223-8506
www.ArtisticHolidayDesigns.com
 Derek Norwood
derekn@ArtisticHolidayDesigns.com

Contact: Sue Pall
 Village of Tinley Park
 16250 S. Oak Park Ave
 Tinley Park, IL 60477
 708-444-5049
spall@tinleypark.org
Buyer Address:
Phone:
E-mail:
Fax:

Delivery Point:
 Artistic Holiday Designs
 2030 Parkes Dr.
 Broadview, IL 60155

Shipping Method: Sea and Rail
Shipping Terms: Invoiced here
Delivery Date: TBD
Shipping Address: 2030 Parkes Dr.
 Broadview, IL 60155

Product Photo	Reference #	Description	Ship Date	Quantity	Unit Price	Total Price
	SP8572	Warm and pure white with green holly and red ornaments		72	575.00	\$ 41,400.00
						Invoice Subtotal \$ 41,400.00
						Shipping 2,800.00
						TOTAL DUE \$ 44,200.00

Once order is confirmed we will check our production and shipping schedules to confirm on time delivery for this year.

Due upon acceptance of order	\$ 22,100.00
Due upon delivery of goods	\$ 22,100.00

General Terms and Conditions

1. Applicability.

- (a) These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") by the seller ("Seller") to the buyer ("Buyer"), both of whom are named on the Sales Confirmation, hereto attached. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- (b) The accompanying confirmation of sale (the "Sales Confirmation," hereto attached) and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

- (a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.
- (b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the location and address stated in the Sales Confirmation (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery when the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.
- (c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- (d) If for any reason Buyer fails to accept delivery of any of the Goods on the date that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non delivery.

- (a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer in delivery unless Buyer can provide conclusive evidence proving the contrary.
- (b) The Seller shall not be liable for any non delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non delivery within five (5) business days of the date when the Goods would in the ordinary course of events have been received.
- (c) Any liability of Seller for non delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to twenty percent (20%) more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms. Seller shall make delivery in accordance with the terms on the face of the Sales Confirmation.

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessories thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. If the security interest granted under this provision constitutes a purchase money security interest under the Illinois Uniform Commercial Code.

7. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

8. Inspection and Rejection of Nonconforming Goods.

- (a) Buyer shall inspect the Goods within five (5) business days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- (b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at the address indicated in the Sales Confirmation. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
- (c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a "as is" basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price.

- (a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices.
- (b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

10. Payment Terms.

- (a) Buyer shall pay all invoiced amounts due to Seller and by the payment methods in accordance with the payment terms of the Sales Confirmation.
- (b) Buyer shall pay interest on all late payments at the lesser of the rate of one and a half percent (1.5%) interest per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees, in addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder). Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) business days following written notice thereof.
- (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. Limited Warranty.

- (a) Seller warrants to Buyer that for a period of two (2) years from the date of shipment of the Goods ("Warranty Period"), that such Goods will materially conform to the specifications set forth in Seller's published specifications in effect as of the date of shipment under the corresponding individual transaction.
- (b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- (c) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE, OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- (d) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) business days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.
- (e) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.
- (f) Subject to Section 11(a) and Section 11(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.
- (g) THE REMEDIES SET FORTH IN SECTION 11(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).

12. Limitation of Liability.

- (a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE

LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

(c) The limitation of liability set forth in Section 12(b) above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. Insurance. During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000.00 per occurrence/\$2,000,000.00 general aggregate/\$1,000,000.00 products with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms.

14. Installation. Buyer acknowledges and understands that Sales Confirmation and these terms only covers the purchase of the goods as stated in the Sales Confirmation. Seller makes no representation, warranty or promise to provide any installation services for the goods under these Terms, unless otherwise stated in a separate agreement, signed by both parties and hereto incorporated.

15. Electrical Product Certification. Buyer understands and acknowledges that all goods under these Terms will be certified by either the Canadian Standards Association (CSA) or the Underwriters Laboratories (UL), and Seller does not make any representation, warranties or guarantees as to which certification, CSA or UL, any good will have. Buyer further agrees and acknowledges that by submitting a Purchase Order it has accepted to receive goods with either certification.

16. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. [Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.]

17. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for five (5) business days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

18. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Confidential Information. All non public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non confidential basis from a third party.

20. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

21. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

22. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

24. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice of conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.

25. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Illinois in each case located in the City of Chicago and County of Cook, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

26. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

27. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this order including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

Date of acceptance:

Signature:

STATE OF ILLINOIS)
COUNTY OF COOK) SS
COUNTY OF WILL)

CERTIFICATE

I, KRISTIN A. THIRION, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2018-R-057, "A RESOLUTION APPROVING A CONTRACT BETWEEN THE VILLAGE OF TINLEY PARK AND ARTISTIC HOLIDAY DESIGNS FOR THE PURCHASE OF SEVENTY-TWO (72) CUSTOM, TRUMPET-SHAPED LIGHT POLE DECORATIONS," which was adopted by the President and Board of Trustees of the Village of Tinley Park on August 21, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this _____ day of _____ 2018.



VILLAGE CLERK