

**A RESOLUTION APPROVING AN AGREEMENT WITH ARC
PYROTECHNICS, INC. FOR FIREWORK DISPLAY SERVICES.**

**BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN
OAKS, MISSOURI, AS FOLLOWS:**

Section 1. The Board of Aldermen hereby approves, and the Mayor is hereby authorized to execute, a contract substantially in the form of Exhibit 1 (attached hereto and incorporated herein by reference) on behalf of the City of Twin Oaks with Arc Pyrotechnics, Inc. for certain aerial firework display services (the "Agreement"), at a cost of \$26,000.00 for the year 2023, all as more fully set forth in the Contract.

Section 2. Contractor shall comply with Section 285.530 RSMo., pertaining to enrollment and participation in a federal work authorization program (as defined therein) and shall provide verification through an affidavit (form affidavit included herein) that the Responder (1) does not knowingly employ any person who is an unauthorized alien in connection with the Contract and (2) is enrolled in a federal work authorization program and provide documentary proof thereof. The affidavit shall contain the notarized signature of the registered agent, legal representative or corporate officer of the business entity including but not limited to the human resources director or their equivalent. Contractor shall also abide by Section 208.009 RSMo., that requires all applicants at the time of application for any contract provided by a local government to provide "affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States" which affirmative proof may be established through (i) a Missouri driver's license, (ii) any "documentary evidence recognized by the department of revenue when processing an application for a driver's license," or (iii) "any document issued by the federal government that confirms an alien's lawful presence in the United States." §208.009.3 RSMo.

Section 3. This Resolution is adopted and shall be in full force and effect on and after its passage and approval.

THIS RESOLUTION WAS PASSED AND APPROVED THE 15th DAY OF MARCH 2023, BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



Russ Fortune, Mayor

Attest:



Frank Johnson, City Clerk/Administrator

Exhibit 1



Contract for Display of Fireworks by ARC Pyrotechnics, Inc.

This Contract is made and entered into by and between ARC Pyrotechnics, Inc. (hereinafter referred to as "Display Operator") **CITY OF TWIN OAKS** (hereinafter referred to as "Client") on this _____ day of _____.

Recitals

Display Operator is an Oklahoma, for Profit Corporation, having its principal office at 5100 E. SEWARD ROAD, GUTHRIE, OK 73044-9075. Client is a **MUNICIPALITY/PARKS AND RECREATION** with its principal office at **1381 BIG BEND ROAD, TWIN OAKS, MO 63021**. Client desires to engage Display Operator to perform a Fireworks Display, and Display Operator desires to perform such Firework Display under the terms set forth in this Contract.

NOW, THEREFORE, for and in consideration of the sums to be paid to the Display Operator by Client, the Fireworks Display to be performed by the Display Operator, and the other promises made and obligations to be performed by the parties hereunder, the parties agree as follows:

I. **Definitions:** The words and phrases set forth below in bold print are defined as follows:

Firework Display: An entertainment feature at which the public or a private group is admitted or permitted to view the display or discharge of fireworks.

Set-Up of Display: The installation of all equipment and the loading of the fireworks on the equipment, which are to be used by the Display Operator in the performance of the Fireworks Display under this Contract.

Tear-Down of Display: The removal of all equipment utilized by the Display Operator in the performance of the Fireworks Display, and the search of the Fallout Area and removal therefrom of fireworks which failed to explode.

Clean-Up of Display: The removal of large pieces of paper, cardboard, debris, and other fireworks refuse from the Discharge Site and the Fallout Area. This does NOT include any areas that were open, accessible, or occupied by the public and/or spectators.

Fireworks Display Site: The area that includes the "Discharge Site", the "Fallout Area" and the "Separation Area" as those terms are defined below. The Fireworks Display Site shall be a secure area. No persons other than the Display Operator's personnel and security officials will be allowed inside the Fireworks Display Site at any time. **It is understood that there is a danger of damage and harm to any persons, property, or landscaping located within the Fireworks Display Site.**

Discharge Site: The area immediately surrounding the fireworks mortars, multi-shot cakes, or other equipment and items to be used in the Fireworks Display.

Fallout Area: The designated area in which debris is intended to fall after fireworks devices are fired.

Separation Area: The area between the Discharge Site and the area(s) from which spectators observe the Fireworks Display.

Rain Date: An agreed upon alternate date for the presentation of the Fireworks Display when unsafe weather conditions, as determined by the Display Operator, require the postponement of such Fireworks Display.

Proposal: The Fireworks Display Proposal document attached hereto as Exhibit A and incorporated herein by reference.

Security Services: On the day of the Firework Display, roping off the Separation Area and monitoring access to the Separation Area and Discharge Site with a minimum of two (2) persons, before, during and immediately after the Firework Display, on a day other than the day of the Fireworks Display if Display Operator's equipment and the fireworks are upon the Fireworks Display Site, providing reasonable observation of the Fireworks Display Site.

II. The Performance of Firework Display:

1. Display Operator agrees to perform the Fireworks Display, as described in the attached Proposal, on the date of **JULY 3, 2023**, or on the Rain Date identified in paragraph V below.
2. The performance of Fireworks Display shall take place at **1 TWIN OAKS COURT, TWIN OAKS, MO 63021** and shall commence at such time as Display Operator determines that there is adequate darkness, the Fireworks Display Site is secure, and the conditions are safe to proceed.

3. It is agreed that, should unsafe conditions arise during the performance of the Fireworks Display, the Display Operator may halt the display. The Display Operator may resume the Fireworks Display if/when Display Operator determines safe conditions are restored.

III. **Display Operator's Responsibilities:** The responsibilities of the Display Operator under this Contract are as follows:

1. To produce to Client a valid insurance certificate, procuring liability insurance coverage in the amount of Five Million Dollars (\$5,000,000.00). The insurance certificate shall list Client as an additional named insured. If the property at which the Fireworks Display is to be performed is not owned by Client, the owner of such property shall be listed as an additional named insured. **The liability insurance coverage provided by this insurance shall be limited to liability caused by the Display Operator that is directly related to the services and responsibilities to be undertaken by Display Operator under subparagraphs 2, 3, and 4 below.** To the fullest extent permitted by law, the Display Operator agrees to defend with counsel selected by the Client, and indemnify and hold harmless the Client, its officers, engineers, representatives, agents, and employees from and against any and all liabilities, damages, losses, claims, suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the Client or others, arising from breach of the Contract or out of services and operations negligently performed hereunder by the Display Operator, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Display Operator under the terms of this agreement. The Display Operator shall not be liable for any loss or damage attributable solely to the negligence of the Client.
2. To provide all of the following services:
 - a. Set-Up of Fireworks Display.
 - b. Operation of Fireworks Display.
 - c. Tear-Down of Fireworks Display.
3. To provide the following services which have been initialed by both parties:

- a. ____ / CD To obtain a Fireworks Display Permit or other required governmental authorization to conduct the Fireworks Display.
- b. ____ / ____ To provide security services for the Fireworks Display Site before, during, and after the Fireworks Display and at all times when Display Operator's equipment and the fireworks are upon the Fireworks Display Site.
- c. ____ / ____ To provide security services for the spectators attending the Fireworks Display.
- d. ____ / CD To design and produce Fireworks Display choreography.
- e. ____ / ____ To provide an audio/sound system.
- f. ____ / CD Clean-Up of Fireworks Display.
- g. ____ / CD To responsibly dispose of the trash collected in the Clean-Up of the Fireworks Display Site

If a specific service described in this subparagraph 3 is not initialed, it will not be provided by the Display Operator.

- 4. To fulfill all of the above-described responsibilities and perform all of the services identified in this paragraph III, in compliance with all federal, state, and local governmental laws and regulations.

IV. Client's Responsibilities: The responsibilities of the Client under this Contract are as follows:

- 1. In consideration for the services to be performed by Display Operator hereunder, Client agrees to pay Display Operator the total sum of **TWENTY-SIX THOUSAND dollars (\$26,000)**
 - a. Upon the full execution of this Contract, the sum of **TWENTY-SIX THOUSAND dollars (\$26,000)**
 - b. The full balance is to be paid by June 3, 2023.

2. Client agrees to provide the following services which have been initialed by both parties:

- a. _____ / _____ To obtain a Fireworks Display Permit or other required governmental authorization to conduct the Fireworks Display.
- b. _____ /CD___ To provide security services for the Fireworks Display Site before, during, and after the Fireworks Display and at all times when Display Operator's equipment and the fireworks are upon the Fireworks Display Site.
- c. _____ /CD___ To provide security services for the spectators attending the Fireworks Display.
- d. _____ /CD___ To provide an audio/sound system.
- e. _____ / _____ To responsibly dispose of the trash collected in the Clean-Up of the Fireworks Display Site.

Display Operator shall have no responsibility or liability for the performance of the above responsibilities initialed by the parties.

3. To the extent Client is not shielded by Missouri's law affording it sovereign immunity, Client agrees to indemnify and hold harmless Display Operator from any and all negligence claims brought in lawsuits against Display Operator for any and all accidents or incidents resulting from the acts of omissions of the Client.
4. To the extent Client is not shielded by Missouri's law affording it sovereign immunity, Client shall be responsible for any and all Client's act or omissions resulting in injuries to the Display Operator's employees and subcontractors or resulting in damages to Display Operator's property and/or the property of the Display Operator's employees and subcontractors.

V. **Rain Date:** The parties agree that, in the event Display Operator determines that weather conditions require the postponement of the Fireworks Display, the Rain Date will be the 8TH day of JULY 2023 at the same location. If the Display Operator determines that weather conditions on the Rain Date are such as to require a further delay, the parties will agree to a secondary Rain Date. The Display Operator will incur out-of-pocket costs

and expenses in the event the Fireworks Display is postponed due to adverse weather conditions. Twenty-four (24) hour-a-day on-site security will be required, as well as ongoing employee and contractor expense. If the display is not able to occur on July 3 or July 8, 2023, for any reason, the Parties shall come to a mutually agreeable date that is within one (1) year of July 4, 2023. If postponing the Fireworks Display to the agreed upon Rain Day, or secondary Rain Day, requires the Display Operator to Tear-Down the Display and re-Set-Up the Display, the parties agree that the reimbursable costs and expenses to be incurred by Display Operator will not exceed the amount of twenty percent (20%) of the contract amount.

VI. Cancellation of Fireworks Display:

1. If Client cancels the Fireworks Display at a date more than ninety (90) days before the scheduled date of the Fireworks Display, there will be no cancellation fee charged, and any deposit made will be refunded to Client.
2. If Client cancels the Fireworks Display at a point in time more than sixty (60) days before the scheduled date of the Fireworks Display, but less than ninety-one (91) days before the scheduled date, the cancellation fee will be ten percent (10%) of the full contract price.
3. If Client cancels the Fireworks Display at a point in time less than sixty-one (61) days, but more than thirty (30) days before the scheduled date of the Fireworks Display, the cancellation fee will be fifty percent (50%) of the full Contract price.
4. If Client cancels the Fireworks Display at a date which is thirty (30) or fewer days before the scheduled date of the Fireworks Display, the full amount of the Contract price will become due and payable.

Any deposit payment made by Client in excess of the above cancellation fees will be refunded to Client.

Client acknowledges that if Client should cancel the Fireworks Display at a point in time less than ninety-one (91) days prior to the scheduled Fireworks Display, it is almost a certainty that Display Operator will be unable to schedule a fireworks display with another client. Client acknowledges further that, beginning ninety (90) days before the Fireworks Display, Display Operator will be expending funds in preparation for the Fireworks Display by entering into contracts for the transportation of fireworks and equipment, and with its subcontractors for assistance with the Fireworks Display. The parties agree that it would be impractical or extremely difficult to fix the actual amount of the damages to the sustained

Display Operator
ARC Pyrotechnics, Inc.

Date: _____

By: _____

CHRISTINE DOWERS

Office Manager

Client

CITY OF TWIN OAKS

Date: _____

By: *Russ Fortune*

Printed name: Russ Fortune

Title: Mayor



Exhibit A

Customer Name: City of Twin Oaks

Show Number: 14239

Show Date: 7/3/2023

Show Time: Approximately 9:20pm

Proposal:

One Fireworks Display lasting approximately 20-22 minutes.

150	3" Assorted Rising Tail Effects	25	3" Assorted Chrysanthemums
50	3" Palm/Willow Effects	150	3" Premium Effects
50	3" Crossette/Ring Effects	50	3" Assorted Peony Effects
180	4" Assorted Effects	50	4" Willow/Flowering Effects
180	4" Premium Effects	225	1" Multi Color Swimming Stars
108	1" Crackling Brocade	300	1" Color Crossette
130	1 1/2" Color Falling Leaves	80	1 1/2" Colorful Bees
400 (4-100)	1 1/2" Thunder King (4 Cakes 100 Shots Each)	50 (2-25)	1 1/2" Red, White, Blue (2 Cakes 25 Shots Each)
96 (2-48)	2" Red, White, And Blue (2 Cakes 48 Shots Each)	84 (2-42)	1 1/2" Crackle Comet Assorted Colors (2 Cakes 42 Shots Each)
100 (4-25)	1 1/2" Gold Strobe Crossette (4 Cakes 25 Shots Each)	240	3" Red, White, Blue Finale Shells
120	3" Assorted Color Finale Chains	120	3" Brocade Crown Finale Chains