

RESOLUTION NO. 2023-26

**A RESOLUTION OF THE TWIN OAKS BOARD OF ALDERMEN  
APPROVING AN AGREEMENT BETWEEN THE CITY OF TWIN OAKS  
AND ARC PYROTECHNICS, INC. FOR THE 2024 THIRD OF JULY  
FIREWORKS DISPLAY**

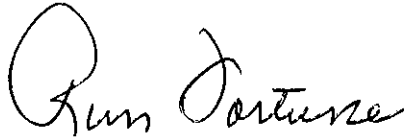
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**BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen hereby approves, and the Mayor is hereby authorized to enter a contract on behalf of the City of Twin Oaks with ARC Pyrotechnics, Inc., for the 2024 Third of July fireworks display. Such contract shall be in substantially the form of the contract, marked "Exhibit 1" attached hereto and incorporated herein by reference.

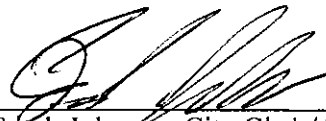
**Section 2.** This Resolution is adopted and shall be in full force and effect on and after its passage and approval.

THIS RESOLUTION WAS PASSED AND APPROVED THE 15<sup>th</sup> DAY OF NOVEMBER, 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 **8<sup>TH</sup>** day **NOVEMBER 2023**.

### 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, 2024**, or on the Rain Date identified in paragraph V below.
2. The performance of Fireworks Display shall take place at **1381 BIG BEND ROAD, 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 **THIRTEEN THOUSAND** dollars (**\$13,000**)
  - b. The remaining balance is to be paid by June 3, 2024.

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 **6<sup>TH</sup>** day of **JULY 2024** 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**



**by Display Operator in the event of a cancellation of this Contract by Client at a point in time less than ninety-one (91) days before the scheduled date. The parties agree that the estimated cancellation fees provided for herein are fair and reasonable.**

- VII. **Remedies:** The parties agree that, in any lawsuit brought to enforce the terms of this Contract, the prevailing party shall be entitled to receive, as part of its judgment, an award of its attorney fees, as deemed reasonable by the court, together with all of its litigation costs, including court costs, fees for the service of process, travel expenses, witness fees, copy expense, court reporter fees for depositions and in court testimony, video deposition expense, transcripts and postage.
- VIII. **Complete Agreement:** This Contract, including the attached Proposal, constitutes the entire agreement between the parties. No oral promises, commitments, or agreements made by either party before or after the execution of this Contract shall be binding upon them. Any amendments, changes, or modifications to the terms set forth in this Contract must be reduced to writing and signed by both parties before said changes become binding.

Executed by the parties on the date or dates set forth opposite their names.

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: 14390

Show Date: 7/3/2024

Show Time: Approximately 9:20pm

### Proposal:

One Fireworks Display lasting approximately 20-22 minutes.

114	3" ASSORTED RISING TAIL EFFECTS	24	3" ASSORTED CHRYSANTHEMUMS
48	3" PALM/WILLOW EFFECTS	114	3" PREMIUM EFFECTS
48	3" CROSSETTE / RING EFFECTS	48	3" ASSORTED PEONY EFFECTS
176	4" ASSORTED EFFECTS	48	4" WILLOW / FLOWERING EFFECTS
176	4" PREMIUM EFFECTS	225	1" MULTI COLOR SWIMMING STARS
108	1" CRACKLING BROCADE	300	1" COLOR CROSSETTE
130	1.5" COLOR FALLING LEAVE	80	1.5" COLORFUL BEES
400 (4-100)	1.25" THUNDER KING (4 CAKES 100 SHOTS EACH)	50 (2-25)	1.5" RED, WHITE BLUE (2 CAKES 25 SHOTS EACH)
96 (2-48)	2" RED, WHITE AND BLUE (2 CAKES 48 SHOTS EACH)	84 (2-42)	1.5" CRACKLE COMET ASSORTED COLORS (2 CAKES 42 SHOTS EACH)
100 (4-25)	1.5" GOLD STROBE CROSSETTE (4 CAKES 25 SHOTS EACH)	120	3" RED WHITE, BLUE FINALE SHELLS
120	3" ASSORTED COLOR FINALE SHELLS	120	3" BROCADE CROWN FINALE SHELLS

**A RESOLUTION AUTHORIZING A FIRST AMENDMENT TO  
THE PROSECUTING ATTORNEY SERVICES AGREEMENT  
WITH TIM ENGELMEYER AND ENGELMEYER & PEZZANI,  
LLC.**

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WHEREAS, the City of Twin Oaks (the “City”) and Engelmeyer & Pezzani, LLC (the “Prosecutor”) entered an agreement for Prosecuting Attorney services in July of 2022 (“PA Services Agreement”); and,

WHEREAS, the PA Services Agreement provided for Prosecutor Assistant services to be provided at \$25 an hour; and,

WHEREAS, the City and the Prosecutor now seek to amend the PA Services Agreement to increase the hourly rate for Prosecutor Assistant services to \$30 an hour.

**NOW, THEREFORE, 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 first amendment to the PA Services Agreement to increase the hourly rate of the Prosecutor Assistant services to \$30 an hour contract which First Amended Agreement shall be substantially in the form of Exhibit 1 (attached hereto and incorporated herein by reference).

**Section 2.** 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 15<sup>th</sup> DAY OF NOVEMBER 2023,  
BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.

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Russ Fortune, Mayor

Attest:

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Frank Johnson, City Clerk/Administrator

## Exhibit 1

### FIRST AMENDMENT TO PROSECUTING ATTORNEY SERVICE AGREEMENT

This First Amendment to the Prosecuting Attorney Service Agreement (“Amended Agreement”) made and effective this [REDACTED] day of November 2023, by and between Timothy A. Engelmeyer and Engelmeyer & Pezzani, LLC, (the “Firm”) and the City of Twin Oaks (“City”). This First Amended Agreement shall amend the original agreement dated June [REDACTED], 2022 (the “Original Agreement”), as follows:

Paragraph 1 of the Original Agreement is amended to increase the hourly rate of the Prosecutor Assistant services from \$25 to \$30 an hour, to read as follows:

**I. FLAT FEE SERVICES:** The following services shall be rendered to the City at the hourly rate of \$150.00 per hour for prosecution services and \$30 per hour for Prosecutor Assistant services:

1. Attendance at the regularly scheduled Municipal Court dates, as well as any daytime or evening Housing Dockets as scheduled by the Court;
2. Preparation and attendance on trial de novo cases and cases tried before a judge or jury in St. Louis County Circuit Court.
3. Prepare and prosecute municipal ordinance violations filed in Municipal Court, including review of warrant applications and all related attorney correspondence;
4. Render informal opinions as may be requested by the Mayor, City Attorney, the Board of Aldermen, the City’s Chief of Police, or code violation officers;
5. Provide a Provisional/Assistant Prosecuting Attorney to assist in the prosecution of Municipal Court; and
6. Provide a certified Prosecutor Assistant to assist in the prosecutorial duties as mandated by Missouri Statute, Senate Bill 5, and Senate Bill 572.

#### ALL OTHER TERMS TO REMAIN IN EFFECT

Except as expressly set forth in this First Amended Agreement, the terms of the Original Agreement otherwise remain unmodified, and the Original Agreement remains in full force and effect. Each reference in the Original Agreement to itself shall be deemed also to refer to this First Amended Agreement.

#### COUNTERPARTS

This First Amended Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

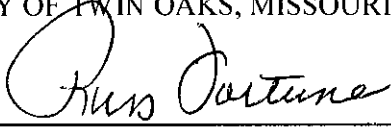


IN WITNESS WHEREOF, the parties hereto have signed this First Amended Agreement as of the effective date first above written.

ENGELMEYER & PEZZANI, LLC

By: \_\_\_\_\_  
Timothy A. Engelmeyer

CITY OF TWIN OAKS, MISSOURI

By:  \_\_\_\_\_  
Russ Fortune, Mayor

ATTEST:

\_\_\_\_\_  
Frank Johnson, City Clerk/Administrator