

AGREEMENT BETWEEN THE CITY OF RAPID CITY  
AND PYROTECHNIC DISPLAY, INC. FOR  
ANNUAL FIREWORKS DISPLAYS

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Rapid City, a municipal corporation organized under the laws of the state of South Dakota, of 515 West Boulevard, Rapid City, SD 57701, hereinafter referred to as “City,” and Pyrotechnic Display, Inc., a corporation organized under the laws of Minnesota, of 9405 River Road, SE Clear Lake, MN 55319 (“Contractor”). The parties agree to the following terms:

1. Statement of Work. Contractor agrees to provide a fireworks display in accordance with the following specifications:
  - A. *Length.* Contractor shall provide a fireworks display that is a minimum of 20 minutes in length and a maximum of 25 minutes in length.
  - B. *Music.* The display shall be choreographed to a music selection approved by City. Contractor must provide a CD containing music that has been choreographed for the fireworks display. Contractor shall coordinate with a local radio station for public broadcast. The CD will be given to the radio station broadcasting the event.
  - C. *Permits.* Contractor shall secure all necessary permits at least 30 days prior to show.
  - D. *Display Specifications.*
    - a. Contractor’s fireworks display shall include a spectrum of styles, patterns and sound effects.
    - b. Shells shall not exceed 6” in diameter (approx. 600 feet to spectators and important structures).
    - c. All shells must be fired with an electronic computer firing system.
    - d. There should be no large gaps of time between shells, good display pacing, multiple firing, tailed effect and a choreographed control of the display execution.
    - e. No less than 30 days prior to show, Contractor shall provide a computer model of display for preview by City as well as information on average pace of shells per minute. If City has concerns about the display preview, Contractor agrees to accommodate City to the extent possible within the financial parameters found within this Agreement.
  - E. *Security.* Contractor shall provide security at staffing area for equipment and product during pre-event set-up and up through display.

- F. *Licensure.* Contractor shall be federally licensed for pyrotechnic displays at the time of the show. Display presentation must be staffed and executed by personnel who are trained and licensed in pyrotechnics.
- G. *Insurance.* No less than 30 days prior to the show, Contractor shall provide City with a general commercial liability insurance policy with policy coverage of at least \$5,000,000.00 and with City listed as an additional insured. Contractor agrees to maintain this coverage until the show is complete.
- H. *Pre-event meeting.* Contractor agrees to attend pre-event organizational meeting with City staff.
- I. *Post-show obligations.* After the show, Contractor shall help identify and locate any unexploded shells and shall participate with a sweep of grounds for debris at the conclusion of the event.
2. City Obligations. The parties agree that City shall perform as follows:
- A. City will barricade and determine staging location. City will ensure that staging area for firing display is ready for Contractor's set-up at 8:00 am the day prior to the scheduled event.
- B. City will provide all necessary safety zones and will provide for a minimum spectator set back of 420 feet at all points from the discharge area.
- C. City will provide support at the event to include Public Safety personnel to prevent spectators from entering display area.
- D. City agrees to search the fallout area at first light following a nighttime display.
3. Back-up Date Procedure. The parties agree that the Rapid City Fire Chief will have sole discretion as to the decision whether or not to fire shells based on inclement weather, wind, crowd issues, security, etc. If the show is postponed by the Fire Chief, Contractor agrees to be available for display on back-up date. The back-up dates for each year are as follows:

July 5, 2020

July 5, 2021

July 5, 2022

If Contractor wishes to change the back-up date, it shall contact City at least 30 days prior to the display date, and the parties may mutually agree to a different back-up date than described above.

If the display is canceled for any reason, Contractor is responsible for securing product and equipment in the staging area. Contractor is also responsible for providing security needed for equipment, product and staging area until the display is executed on the back-up date.

4. Price for Work. Contractor agrees to perform the Work for an amount not to exceed Thirty Thousand and No/100 Dollars (\$30,000) for each display, for a maximum price of Ninety Thousand and No/100 Dollars (\$90,000) for three displays in three years.
5. Payment. Contractor agrees to bill City in full for each show by invoice. City shall remit payment to Contractor within forty-five (45) days of each invoice or within ten (10) days after the show, whichever is later. If City does not pay according to this provision, Contractor may charge a service fee of 1 ½ percent per month on all outstanding balances.
6. Relationship between the Parties. Contractor is an independent contractor of City. This Agreement does not create an employment relationship between City and Contractor or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Contractor and City. No agent of Contractor shall be the agent of City, and Contractor covenants that it will not take any action in the name of, or by holding itself out as the agent of, City.
7. General Conditions.
  - A. Time of Essence. Time is of the essence of this Agreement.
  - B. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
  - C. Amendments. This Agreement may only be amended by a written document duly executed by all parties.
  - D. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.
  - E. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.
  - F. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
  - G. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

H. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF RAPID CITY

By \_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)

State of South Dakota )  
  SS.  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

**PYROTECHNIC DISPLAY, INC.**

\_\_\_\_\_  
*By* \_\_\_\_\_  
*Its* \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of Pyrotechnic Display, Inc., a Minnesota corporation, and as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_