

INTRODUCED BY: Trustees Stoekl, Fortune, Graves, Whitmore and Eisenhauer

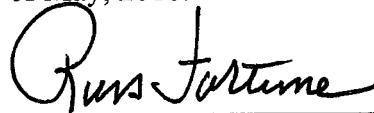
AN ORDINANCE APPROVING A CONTRACT FOR THE DISPLAY OF FIREWORKS BY EXTREME PYROTECHNICS, LLC, AND AUTHORIZING THE CHAIRMAN OF THE BOARD OF TRUSTEES TO EXECUTE SAME ON BEHALF OF THE VILLAGE OF TWIN OAKS.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF TWIN OAKS, MISSOURI, AS FOLLOWS:

Section 1. The Board of Trustees hereby approves, and the Chairman of the Village of Twin Oaks, Missouri is hereby authorized to execute, the Contract for Display of Fireworks by Extreme Pyrotechnics (attached hereto as Exhibit 1 incorporated herein by reference) on behalf of the Village with Extreme Pyrotechnics, LLC, a Texas Limited Liability Company, for a display of fireworks to be provided to the Village of Twin Oaks, Missouri on the 2nd day of July 2016, or the rain date agreed upon by the parties to the Contract.

Section 2. This ordinance having been read by title or in full two times prior to passage, shall be in full force and effect from and after its passage and after being duly signed by the Chairman of the Board of Trustees and attested by the Village Clerk.

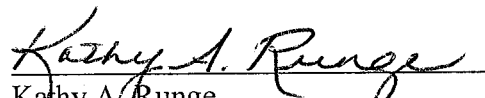
PASSED AND APPROVED THIS 4th day of May, 2016.



Russ Fortune, Chairman
Board of Trustees

ATTEST:

First Reading: 5-4-16


Kathy A. Runge
Administrator/Clerk

Second Reading: 5-4-16

Exhibit 1

Contract



Contract for Display of Fireworks by Extreme Pyrotechnics

This contract for the display of fireworks by Extreme Pyrotechnics, LLC (herein "Display Operator") to be provided to **Village of Twin Oaks** (herein referred as "Client") this 28th day of April, **2016**. The parties agree to the following:

Recitals

WHEREAS the Display Operator is a for profit entity organized under the laws of the State of Texas; and,

WHEREAS Client is a **Municipal Corporation** organized under the laws of the State of **Missouri**; and,

WHEREAS Display Operator maintains its offices at **7233 PECAN COURT, MANSFIELD, TX, 76063** and,

WHEREAS Client maintains its offices at **1393 Big Bend Road Suite F, Twin Oaks, MO, 63021**; and,

WHEREAS the Display Operator desires to provide a display of fireworks for Client to be held the **2nd** day(s) of **JULY, 2016** at Twin Oaks Park located at the end of the Park Road (Robert Hartzog Drive) and Display Operator has visited the site and is familiar with it.

Terms and Conditions

I. Definitions

FIREWORKS DISPLAY: Shall mean an entertainment feature(s) where the public or a private group is admitted or permitted to view the display or discharge of either display fireworks, consumer fireworks, proximate or theatrical fireworks or any combination thereof.

SET UP OF DISPLAY: Shall mean the provision of all equipment necessary to perform the fireworks display based upon the type and number of fireworks to be used and if any choreography. Said equipment may, but not necessarily include, mortars, mortar racks, electric firing systems, any and all cabling for said system, lighting, trucks/vehicles and music. It specifically excludes sound systems unless agreed upon in Section II(2).

TEAR DOWN OF DISPLAY: Shall mean the removal of all equipment that was "Set Up", as defined above, by the Display Operator. This includes a search of the fall out area of any "dud" fireworks and the removal of said duds.

CLEAN UP OF DISPLAY: Shall mean the removal of paper, cardboard, debris and other fireworks refuse located in, on or about the discharged site and fall out area. It does NOT include any areas that were open, accessible or occupied by the public and/or spectators.

FIREWORKS DISPLAY SITE SECURITY: Shall mean the areas that include the fireworks discharge location, the designated fallout area, separation distance, all as defined in this section.

DISCHARGE SITE: Shall mean the area immediately surrounding the fireworks mortars, multi-shot cakes or other firework items to be used in the fireworks display.

FALLC AREA: Shall mean the designated area in which debris is intended to fall after a firework device is

RAIN DATE: Shall mean an agreed alternative date for the fireworks display to be conducted due to unsafe weather conditions, including drought, as determined by Display Operator, weather conditions and/or appropriate governmental authority.

SEPARATION DISTANCE: Shall mean the distance from the fireworks mortars, multi-shot cakes or firework items to the spectator area.

VENUE: Shall mean the location, place, locale, or site of the display.

II. Fireworks Display

- 1) Display operator agrees to provide a fireworks display as per the attached proposal submitted to the Client on the date(s) of **JULY 2nd, 2016** or the rain date as the parties agree.
- 2) The Display Operator and Client also agree that the fireworks display shall be provided to the Client for a period of 1 consecutive year(s). The parties understand that the date, location, size of the show and/or choreography may change from year to year. If the Client agrees to a multiple year contract, then the Client shall be entitled to a discount of the annual cost as provided by the Display Company.
- 3) Display Company shall provide an approximate cost to the Client for shows in additional years as the parties may agree.

III. Display Operator Duties and Responsibilities:

- 1) Maintain a certificate of insurance in the amount of **\$5,000,000.00** for the display.
 - a) The Client, show sponsor and land owners shall be listed as an additional insured.
 - b) At the sole discretion of the Display Operator, the fireworks display venue shall also be listed as an additional insured.
 - c) The insurance certificate shall be maintained by the Display Operator and will provide a copy to the Client within thirty (30) days of execution of this Contract.
 - d) The certificate of insurance shall only be for any incident or liability caused by the Display Operator that is directly related to the transportation, set up, storage, discharge or clean up of the fireworks used in the fireworks display.
- 2) The Display Operator agrees to provide the following services under this Contract:
 - a) Obtain fireworks display permit or other required government authorization to conduct fireworks display;
 - b) Set up of fireworks display;
 - c) Choreography for fireworks display;
 - d) Tear down of fireworks display; and,
 - e) Clean up after fireworks display.
 - Clean up shall be completed by Display Operator on July 3rd, 2016.
 - Client designates _____ (printed) to inspect the display site for adequate cleanliness.
 - No additional fee shall be paid by Client for the clean-up service.
 - No additional fee of shall be paid by Client for the security service.

If a specific service is not initialed, it will not be provided by the Display Operator.

- 3) No live material shall remain at the display site over-night or during set up. Any required security to protect and preserve the fireworks and the area immediately surrounding the location where the fireworks display set up and all related costs for said security shall be the responsibility of the Display Operator.
It is understood and acceptable by both parties that the industry standard of no more than 2% of the total number of fireworks shells utilized in a display may not fire or be used in the display for whatever reason and those unused shells shall not reduce the contract price of the show.

4) Display Operator agrees to a rain date with Client in consultation with Display Operator and local Fire Marshall (Valley Park Fire Protection District), shall determine whether cancellation is necessary due to "unsafe" conditions with the Fire Marshall's opinion to control in the event of disagreement on the 9th day of July, 2016. The rain date fireworks display shall be conducted at the same location as the original date. If a complete tear down of the display on July 2nd has to be done then a fee of \$950 would apply. If setup was not initiated on the original display date then no additional fee would apply.

5) This contract must be executed within 45 days of any oral agreements between Display Operator and Client. Failure to do so will void any and all duties and obligations made by Display Operator to Client.

IV. Client Duties and Responsibilities:

- 1) In consideration of the fully adhered to and completed above stated conditions, the Client agrees to pay the Display Operator the sum of \$ **19,500.** _____, for a display(s) to be performed on the 2nd day of **JULY, 2016.** Unless otherwise mutually agreed in writing by the parties:
 - a. A deposit of \$ **9750** _____ shall be made upon execution of this contract.
 - b. A Final payment of \$ **9750** _____ to be made within 10 business days after the Display date.
- 2) Failure of the Client to pay agreed upon fee within the time allowed will subject the Client to payment of interest charges not to exceed 1.5% per month.
- 3) The Client agrees to provide the following initialed services as Display Operator is NOT providing these services:
 - a. Provide fireworks display site security; and
 - b. Provide audio/sound system (if desired by Client)
- 4) The Display Operator agrees to defend, indemnify, and hold harmless the client and its agents and employees from and against all claims, costs, judgments, damages and expense, including reasonable attorney fees that may or shall arise from the performance of the fireworks display. Client agrees to give Display Operator prompt notice of any claims or demands

V. Cancellation of Fireworks Display

Should the fireworks display(s), agreed upon in this Contract, be permanently cancelled by the Client, less than 30 days prior to the fireworks display date shall result in liquidated damages payable to Display Operator from the Client for an amount equal to 50% of the Contract price. This shall be the Display Operator's sole relief for a cancellation of this contract.

VI. Miscellaneous:

- 1) Parties agree that any litigation arising from this contract shall be brought in a court of competent jurisdiction within the State of Missouri and that the laws of the State of Missouri shall control any and all claims, disputes, litigation, and interpretation related to this contract.
- 2) At the conclusion of any litigation arising from this contract, the party found to be in breach of the contract shall be responsible to the other party for all costs (including but not limited to court costs, attorney fees (to the extent permitted by law against a political subdivision), litigation expenses, witness fees/expenses, travel expenses and similar costs), prejudgment interest, post judgment interest, fees, expenses and all damages incurred by the other party.
- 3) Any amendments, changes, or modifications to the terms specified by this contract shall be reduced to writing and signed by the parties before said changes are binding upon the parties.

Dated this 28th day of April, 20 16.

For the Extreme Pyrotechnic, LLC:

Brian Young

SALESMAN

SALES REPRESENTATIVE

For the Client:

Printed name: _____

Title: _____