

**PYROTECHNIC DISPLAY, INC.  
FIREWORKS DISPLAY AGREEMENT**

This agreement is entered into this **20<sup>th</sup>** day of **February 2020** between Pyrotechnic Display, Inc., a Minnesota Corporation with offices in Clear Lake, Minnesota, ("Pyrotechnic") and **City of Northfield** of the City of **Northfield** State of **Minnesota** ("Customer"), for the purchase of a fireworks display. ("Agreement")

**SECTION 1 FIREWORKS DISPLAY**

Pyrotechnic agrees to furnish for the Customer **(1)** fireworks display(s), as per the specifications agreed to and made part of this Agreement, on the evening of **July 4, 2020** ("Fireworks Display").

**SECTION 2 CONTRACT PRICE**

In consideration for the Fireworks Display, Customer agrees to pay Pyrotechnic the sum of **\$16,250.00 (Sixteen-thousand two hundred fifty and 00/100 dollars)** which includes all taxes ("Contract Price"). A service fee of 2% per month shall be added to the Contract Price, or any portion of the Contract Price due, if it is not paid within 15 days of the date payment becomes due under this Agreement.

**SECTION 3 MATERIALS AND SERVICES**

Pyrotechnic shall be responsible for providing inventory meeting the specifications for the Fireworks Display, and the services of an operator who will be responsible for preparing and conducting the Fireworks Display. The materials and personnel described in the attached specifications are approximate. Pyrotechnic shall prepare a final design prior to the Fireworks Display, and the exact specifications will be supplied to the Customer after the final design, upon request.

**SECTION 4 INSURANCE**

Pyrotechnic Display, Inc. shall obtain a Public Liability and Property Damage and Workers Compensation Insurance. Those entities/individuals listed on the certificate of insurance shall be deemed an additional insured per this contract.

**SECTION 5 LOCATION**

Customer shall be responsible for providing a suitable location for the Fireworks Display. Customer shall cooperate with Pyrotechnic to ensure that the site is suitable for the Fireworks Display, and Pyrotechnic shall have the right to reject a proposed site for lack of accessibility, fire or other safety reasons.

In addition to providing the location, Customer shall be responsible for:

- Providing an appropriate staging area, and a minimum spectator setback of **420** feet.
- Providing for the staging area to be roped off or otherwise clearly marked as off limits to unauthorized personnel.
- Searching the fallout area at first light following a nighttime display.
- Providing security, police and fire protection, to ensure 1) that the staging area and the surrounding setback area will be free from unauthorized persons, and 2) the safety of people in or around the display location.

**SECTION 6 WEATHER RELATED POSTPONEMENT AND CANCELLATION.**

Customer acknowledges that the Fireworks Display will be provided so long as weather, and weather related conditions, including but not limited to drought and fire risk, permit. If weather or weather related conditions, in the sole discretion of Pyrotechnic, prevent the Fireworks Display on the agreed upon date, the Fireworks Display shall be postponed. In the event of a postponement of the Fireworks display, Customer shall be responsible for payment of 20% of the Contract Price, which shall be due within 30 days of the date agreed to in Section 1. If Customer does not reschedule the Fireworks Display within the twelve-month period, an additional 30% of the Contract Price shall be due from the Customer for damages and expenses relating to the cancellation.

If customer chooses to postpone or cancel the Fireworks Display for any reason, customer shall be responsible for payment of the Contract Price as follows:

- At any time prior to the scheduled date of the Fireworks Display, 5% of the Contract Price.
- At any time on the scheduled date for the Fireworks Display, 20% of the Contract Price
- After the commencement of the Fireworks Display, where Pyrotechnic's operator has not determined that the postponement is necessary for weather or weather related circumstances, 100% of the Contract Price.

**SECTION 7 INDEMNIFICATION**

Customer shall indemnify, defend, and hold Pyrotechnic and its shareholders, officers, employees, agents, insurers, and representative harmless from all demands, claims, causes of action, judgments, or liability, including costs and attorneys' fees, arising from damage or destruction of property, bodily injuries, tort, contract, or otherwise. Said indemnification shall include occurrences relating to gross negligence or willful misconduct of the Customer or its employees, agents, contractors or representatives, or the failure of the Customer to comply with its obligations and responsibilities as set forth in this Agreement.

Pyrotechnic shall indemnify, defend, and hold Customer harmless from all demands, claims, causes of action, judgments, or liability, including without limitation costs and attorneys' fees, arising from damage or destruction of property, bodily injuries, tort, contract, or

otherwise. Customer shall not be entitled to recover consequential, incidental, exemplary, special and/or punitive damages from Pyrotechnic, including, without limitation, loss of income, business, or profits.

#### SECTION 8 NON-PARTNERSHIP

It is further agreed and mutually understood that nothing in this contract shall be construed or interpreted to mean a partnership, both parties being hereto responsible for their separate and individual debts and obligations. Neither party shall be responsible for any agreements not stipulated in this contract. Customer agrees to pay any and all collection costs, including reasonable attorney's fees and court costs incurred by Pyrotechnic Display, Inc. in the collection or attempted collections of any amount due under this agreement and invoice.

#### SECTION 9 VENUE

Any action on or relating to this Contract, the parties hereto consent to the exclusive jurisdiction and venue of the state courts located in Sherburne County, Minnesota and of the federal courts located in Minnesota.

#### SECTION 10 NOTICES

All notices under this Contract must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice): Pyrotechnic Display, Inc., 9405 River Road SE, Clear Lake, MN 55319, (800) 507-9074, Ext. 1

#### SECTION 11 LEGAL CONSTRUCTION

If any provision of this Contract is held to be illegal, invalid or otherwise unenforceable, then:

- A) The same shall not affect other terms or provisions of this Contract; and
- B) Such terms or provision shall be deemed modified to the extent necessary to render such term or provision enforceable and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent the intent and agreements of the parties set forth herein.

#### SECTION 12 ENTIRE AGREEMENT

This Contract and the Fireworks Exhibition and Display Program constitutes the entire agreement between the parties hereto, and there are no other understandings, either oral or written, regarding to the subject matter hereof. The parties hereto do mutually and severally guarantee terms, conditions, and payments of this contract, these articles to be binding upon the parties, themselves, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the undersigned executed this Contract by and through their authorized representatives whose names appear below.

Signed on: Feb 20, 2020.

PYROTECHNIC DISPLAY, INC.

BY: Dale M Nowak

*BH*

NAME: Dale M Nowak  
(PLEASE TYPE OR PRINT)

ITS: Display Sales and Design

Pyrotechnic Display, Inc.  
9405 River Road SE  
Clear Lake, MN 55319  
Telephone: (800) 507-9074, Ext. 1

Signed on: February 20, 2020.

CUSTOMER:

BY: David E Bennett

Its duly authorized agent, who represents  
he/she has full authority to bind the  
customer

NAME: David Bennett  
(PLEASE TYPE OR PRINT)

ITS: Public Works Director

Address: 801 Washington St.  
City/State: Northfield, MN  
Zip Code: 55057  
Telephone: (507) 645-3006  
Email: david.bennett@ci.northfield.mn.us