



FIREWORKS DISPLAY AGREEMENT

This Fireworks Display Agreement (this “Agreement”) is made on the 27th day of January, 2022, by and between **The City of Angleton, Texas** (hereinafter referred to as “**Promoter**”), and **Celestial Displays, LLC**, a Texas limited liability company (hereinafter referred to as “**Contractor**”). Promoter and Contractor may be referred to collectively hereinafter as the “Parties”. The primary point of contact for the Promoter is Nico Gallardo with a contact number of (979) 849-4364. The point of contact for Contractor is Michael Hudanish with a contact phone number of (530) 919-9726 or Candy Robinson with a contact number of (281) 364 – 9738.

WITNESSETH:

WHEREAS, **Promoter** is engaged in promoting the City of Angleton’s July 2nd Freedom Fireworks Celebration and wishes to have a fireworks display for such event.

WHEREAS, **Contractor** has the personnel, qualifications, training, experience, knowledge and equipment to safely and efficiently discharge fireworks displays, and desires to provide such services to Promoter.

NOW THEREFORE, in consideration of the mutual premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Fireworks Display.**

Date of Fireworks Display:	July 2, 2022
Type of Pyrotechnic Provided:	Class B 1.3G
Duration of Fireworks Display:	20 minutes
Choreographed to Music:	YES (if desired)
Location for Display:	901 S. Downing Street, Angleton, TX. 77515.
Alternate Rain Date:	None, must reschedule; see cancellations
Contractor's Set-Up Date(s):	July 1, 2, 2022

Except as otherwise specifically provided in this Agreement, Contractor shall cause the above-described Fireworks Display to be performed, together with rendering those services generally relating to or affecting the delivery of the Fireworks Display. Contractor shall discharge the Fireworks Display in a manner consistent with generally accepted practices in the fireworks display industry in the United States, and in accordance with those practices conforming with local and state laws and regulations.

2. **Fee.** Contractor shall provide a Fireworks Display. Promoter agrees to pay Contractor a total payment for production of the Fireworks Display, the sum, or "Total Fee" of Twenty Eight Thousand Seven Hundred and Fifty/100 Dollars (\$28,750.00). Such Fee shall be paid as follows: fifty percent (50%) of such Fee, Fourteen Thousand Three Hundred Seventy Five Dollars (\$14,375.00) shall be paid upon delivery of a fully executed Agreement. The balance of the Fee, Fourteen Thousand Three Hundred Seventy Five Dollars (\$14,375.00) is due ten (10) days after the scheduled discharge of the Fireworks Display. In the event the tenth (10th) day after the scheduled Fireworks Display falls on a Saturday, Sunday or federal holiday, the balance of the Fee shall be due on the next succeeding business day. In the event such Fee is not paid within ten (10) days, Promoter agrees to pay interest on the due and unpaid amount of the Fee in the sum of one and one-half percent (1.5%) of the Fee per month, or any portion of a month in which payment of the unpaid balance of the Fee is delinquent. Promoter shall be responsible for any, and all costs incurred by Contractor for collection of the balance due, including without limitation, attorney fees, collection costs, witness fees, travel costs and any and all other expenses incurred by Contractor.

3. **Responsibilities.**

A. Contractor shall, at its own expense:

1. provide a trained, experienced lead pyrotechnician, licensed by the State of Texas, to supervise the setup, discharge, and post-firing cleanup of the Fireworks Display;

2. provide additional technicians and assistants as may be deemed by Contractor to be necessary for the proper setup, discharge, and post-firing cleanup of the Fireworks Display;
3. provide additional technicians and assistants as may be deemed by Contractor to be necessary for the proper setup, discharge, and post-firing cleanup of the Fireworks Display;
4. be responsible for any, and all costs associated with the lead pyrotechnician and any, and all additional technicians and assistants utilized for the Fireworks Display; and
5. indemnify and hold Promoter harmless against any liability for compensation to any, and all technicians and assistants. The indemnity contained in this Section shall survive the termination of this Agreement or the Fireworks Display.

B. Promoter shall, at its own expense:

1. provide adequate security personnel and barricades as reasonably required to preclude unauthorized persons from entering the area designated by Contractor as the area for discharge of the Fireworks Display (the “Exclusion Zone”). See Figure 1, attached.

4. **Permits and Licenses.**

C. Contractor shall, at its own expense:

1. procure, and provide Promoter with evidence of, all appropriate valid permits for the Fireworks Display as required by law;
2. procure and provide Promoter with evidence of all other federal and state permits and licenses necessary for the transportation, storage and discharge of pyrotechnic materials for the Fireworks Display;
3. be responsible for, and shall comply with, all laws, rules, ordinances, or regulations of any, and all authorities having jurisdiction over the Fireworks Display; and
4. subject to the provisions of Sections 5 and 6 of this Agreement, have the sole and complete responsibility for safety conditions at the Fireworks Display site during setup, discharge, and cleanup of the Fireworks Display.

5. **Security.**

A. Unless Contractor’s Set-Up Date, specified in Section 1, does not coincide with the scheduled date for the Fireworks Display, Promoter must provide security along the perimeter of the Security Zone to preclude access by unauthorized personnel to the restricted pyrotechnic fallout “exclusion zone”. Once Pyrotechnic Material arrives on site at 9am on the scheduled date for the Fireworks Display, July 2, 2022, Security shall be maintained at all times, prior to, during, and immediately after the discharge of the

Fireworks Display, until Contractor's lead pyrotechnician declares the area safe and clear from hazards and allows persons not associated with Contractor to enter the area.

- B. Contractor has designated an exclusion zone which contains the fallout area for the Fireworks Display. A secured line must be staked and flagged by Promoter as in years past. See Figure 1, attached. Promoter shall ensure that the secured fallout zone is evacuated by all persons and personal property on the date scheduled for the Fireworks Display. Security will be required to preclude anyone from entering this area other than the pyrotechnic crew, employees of the City of Angleton, or government officials. The Fireworks Display shall begin no earlier than 9:15 pm on the scheduled date for the Fireworks Display, with an anticipated 'all clear' time of 10pm. The display shall not begin any later than 10:45pm.
- C. Road Closures will need to take place to accommodate a safe display. One closure approximately 100 yards north of the fairgrounds, on County Road 428 (Jamison Road) between the fairgrounds and E. Kiber Street, and one approximately 200 yards south of the fairgrounds' southeastern exit, also on County Road 428 (Jamison Road), will need to be in place from 9am until the all clear signal is given, which is anticipated to be approximately 10pm.
- D. The time of set up shall be determined by Contractor and shall begin no later than 9am on the scheduled date for the Fireworks Display. Due to the nature of the extreme heat experienced in Texas during summertime, Contractor may need to utilize the day of July 1, 2022, preceding the Display date, to begin set up, as to try to alleviate heat related illnesses associated with long durations of exposure to the sun. Contractor will need to bring in the explosive material in the early morning on July 2, 2022. If Contractor requires July 1, 2022 as a set up day, no pyro will be allowed on site that day, and no closures will need to take place. In this instance, no extra security will be required. On the day following the display, the area will need to remain closed until our team member is able to walk and clear the property of any duds, until no later than 9am.

6. **Choreographed Music.** If desired by Promoter, Contractor shall provide the "radio ready" patriotic music mix, at a later date, to be approved by Promoter within 14 days of receiving the soundtrack. Musical suggestions are welcomed and appreciated. Contractor is working towards methods to broadcast music amongst the spectators. More details shall emerge on this at a later date. No extra costs are implied.

7. **Conducting the Fireworks Display.**

- A. In the event that the safety perimeter has been compromised, or other unsafe conditions are present, and, in Contractor's opinion, such conditions may interfere with the setup or discharge of the Fireworks Display, or create a risk of harm to spectators or by-standers during the Fireworks Display, Promoter, at the request of Contractor, shall take appropriate

action to relocate the at-risk spectators or by-standers and their property to a safe position for viewing the Fireworks Display. Contractor shall have the right to delay the start, or suspend said Fireworks Display, without penalty, until said persons and property are moved to a safe location and the Security Zone is re-established.

- B. In order to maintain safety regulations the parties agree that the final authority, with respect to the discharge of the Fireworks Display, shall be with the local representative of the AHJ (authority having jurisdiction) and/or the Contractor's lead pyrotechnician on site. In this instance, the AHJ is the Brazoria County Fire Marshal, or one of his officers. In the event that either the representative of the local authority having jurisdiction, or the lead pyrotechnician of Contractor, determines that conditions are such that a Fireworks Display cannot be conducted safely, then the Fireworks Display shall be halted immediately without penalty.
- C. To the extent feasible, Contractor will delay the start time for commencement of the Fireworks Display up to and including a total of 90 minutes of delay. In the case of delay due to unsafe conditions within or related to the venue and not related to inclement weather, Promoter shall be responsible to correct the conditions within the 90 minute delay allowance until the conditions are deemed safe by the AHJ. Except as provided in Section 13, Contractor shall not be liable to Promoter, its officers, agents, employees, contractors, or invitees, due to failure to discharge the Fireworks Display, whether at the scheduled start time, or at all on the date scheduled for the Fireworks Display, resulting, in whole or in part, from wind, weather, or other conditions deemed unsafe by the lead pyrotechnician and/or AHJ.
- D. To the extent minor mechanical or electrical issues arise on the date scheduled for the Fireworks Display, at the start time for triggering the Fireworks Display, Contractor shall be allowed a 30 minute window to correct such issues and trigger the Fireworks Display without any penalty or liability against Contractor. Promoter shall be responsible for any notification to its guests that Promoter deems appropriate.

8. **Transportation and Storage of Pyrotechnic Materials.** Contractor shall be responsible for the transportation of all pyrotechnic materials to the display site in full compliance with all applicable federal, state, and local regulations and ordinances regarding the transportation of explosive materials. Contractor shall make no claims against Promoter for any damage or loss relating to the transportation or storage of pyrotechnic materials, except in the event of Promoter's failure to provide security as set forth in this Agreement.

9. **Cleanup.** At the conclusion of the Fireworks Display, Contractor shall conduct an inspection and cleanup of both the shooting and fallout area of the Fireworks Display site. All un-discharged pyrotechnic materials and other fireworks-related debris shall be safely removed from the display site, and properly disposed of by the Contractor. Contractor shall remove all pyrotechnic equipment and related materials from the Fireworks Display and fallout areas and perform a final clean-up of the Security Zone no later than 9:00 am on the day after the Fireworks Display.

10. **Expenses.** Unless otherwise provided herein, Contractor shall furnish, at Contractor's own expense, all pyrotechnic and other materials, supplies, and equipment related to its provision of the Fireworks Display hereunder. Contractor shall not incur any indebtedness on behalf of Promoter without the express written consent of Promoter to specific indebtedness.

11. **Relationship of Parties.** Contractor shall act as an independent contractor in the provision of services pursuant to this Agreement. Neither Contractor nor any of its agents shall be considered as partners or co-venturers of Promoter for any purposes, nor shall any such persons be entitled to any of the benefits Promoter may provide for its employees.

12. **Insurance and Indemnification.** Before beginning the performance of its duties pursuant to this Agreement, Contractor shall procure and maintain in full force Commercial General Liability Insurance on an occurrence basis. Promoter, its officer's, agents, contractors, employees, and volunteers shall be named as an additional insured, as their interest may apply, on each policy. Coverage will be provided with the following limits of liability:

Commercial General Liability Insurance:

Bodily Injury and Property Damage Occurrence	\$1,000,000 each
	\$2,000,000 in the aggregate

Workman's Insurance

\$100, 000 each accident
\$100, 000 each disease each employee
\$500, 000 policy limits

Enforceable only to the extent authorized by the Constitution and laws of the State of Texas, promoter, its officers, agents, contractors, employees and volunteers shall indemnify, hold harmless, and defend Contractor from and against any and all claims, actions, damages, liability and expenses, including, without limitation, any attorney's or other professional fees and court costs, in connection with the loss of life, bodily injury, and/or damage to property, occasioned by any negligent act or omission of Promoter, its officers, agents, contractors or employees with respect to Promoter's duties relating to the Fireworks Display and/or the presentation thereof set forth in this Agreement (including, without limitation, those described in Sections 3, 5 and 7 hereof), and with respect to any matter occurring on the grounds of the event (of which the Fireworks Display is only one attraction) which is not directly related to the Fireworks Display, the presentation thereof, or any duty of Contractor. The respective indemnities contained in this Section shall survive the termination of this Agreement or the Fireworks Display.

13. **Delay or Cancellation.**

A. **Delay.**

- (1) If, on the date scheduled for the Fireworks Display, delay caused by minor mechanical or electrical issues arise at the start time for triggering the Fireworks Display, Contractor shall be allowed a 30 minute window to correct such issues and trigger the Fireworks Display without any penalty or liability against Contractor. Beyond the 30 minutes delay agreed upon above, Contractor will rebate 10% of the total fee to promoter, until the 90 minute total delay allowance is reached, at which time the display will be canceled on behalf of Contractor and Total Fee rebated to promoter. Both Parties agree that neither Promoter nor Contractor shall have any further obligations hereunder, except for those provisions which survive termination of this Agreement. Promoter shall remain responsible for any notification to its guests that Promoter deems appropriate
- (2) To the extent feasible, when necessary, due to weather or safety reasons, Contractor will allow for a delay to the start time for commencement of the Fireworks Display up to and including a total of 90 minutes of delay. In the case of delay due to unsafe conditions within or related to the venue and not related to inclement weather, Promoter shall be responsible to correct the conditions within the 90 minute delay allowance until the conditions are deemed safe by the AHJ and/or lead pyrotechnician. Delay beyond 90 minutes will result in a cancellation on behalf of the Promoter. Except as provided in Section 13, Contractor shall have no liability to Promoter, its officers, agents, employees, contractors, or invitees failure to discharge the Fireworks Display, whether at the scheduled start time, or at all on the date scheduled for the Fireworks Display, resulting, in whole or in part, from weather and/or wind or other conditions deemed unsafe by the lead pyrotechnician and/or AHJ.

B. **Cancellation.**

- (1) A cancellation made 4 days or more prior to display will incur a 25% cancellation fee plus applicable government fees .
- (2) A cancellation made within 3 days of the display date, including the day of display, will incur a 50% cancellation fee plus applicable government fees.
- (3) Alternately, Promoter may opt to pay a 10% rescheduling fee to Contractor, plus applicable government fees, and, at the availability of Celestial Displays, reschedule the display within twelve (12) months of the original display date.

- (4) If, on the day of display, inclement weather, or the threat of inclement weather leads to the cancellation of display, Promoter may opt to pay a 10% rescheduling fee to Contractor, and, at the availability of Celestial Displays, reschedule display within twelve (12) months of the original display date.
- (5) If the local, State or Federal Entities restrict gatherings prior to, or, on the day of the display, due to Covid-19 precautions, the Total Fee will be refunded to the Promoter, and the Contractor shall be reimbursed any and all applicable costs and expenses. A complete accounting shall be provided to Promoter within fifteen (15) days of the date of the Fireworks Display. The contract agreement will remain valid for twelve (12) months from the original display date with no rescheduling fee.

15. **Miscellaneous**

- a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- b) Waiver. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, condition or right as respect further performance.
- c) Notices. All notices, covenants, requests, authorizations, and approvals permitted or required under this Agreement shall be in writing, signed and personally delivered, or sent by registered or certified mail, return receipt requested, to the appropriate parties. For purposes of notice under this Agreement, the addresses of the respective parties are:

Contractor: Celestial Displays, LLC
 2006 Nature Park Lane
 Spring, Texas 77386

Promoter: The City of Angleton
 121 South Velasco Street
 Angleton, Texas 77515

- d) Exhibits. All exhibits, schedules and diagrams described herein and attached hereto are fully incorporated into this Agreement by reference for all purposes.
- e) Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement may be executed via facsimile or electronic

mail, and the facsimile signature or electronic delivery of such signature of any Party shall be considered valid, binding, and effective for all purposes.

- f) Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and any agreement hereafter shall be ineffective to modify or terminate this Agreement or constitute a waiver of any provisions hereof unless such agreement is in writing and signed by both Parties.
- g) Applicability. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the respective Parties hereto and their respective successors and assigns.
- h) Force Majeure. Neither Party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is prevented by reason of riots, strikes, labor disputes, judgments, decrees, injunctions, or acts of governmental authorities, acts of God, Pandemics, and other causes beyond the control of such party ("Force Majeure"). The Party declaring Force Majeure shall make every reasonable effort to prevent and remove the cause of the Force Majeure.
- i) Ownership and Copyrights. Contractor shall have and retain ownership of any, and all original works, images, compositions, designs, copyrights and/or rights to completed fireworks display production created under this Agreement except for the Promoter's supplied copyrighted or trademarked material. Promoter warrants and represents that Promoter shall not use, promote, disseminate, display, or reproduce any, and all intellectual property rights, copyrights and trademarks owned by Contractor unless specifically approved or licensed. Promoter disclaims any right to reproduce images, compositions, or designs owned by Contractor without the prior written consent thereto from Contractor.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first set forth above.

Promoter

The City of Angleton, Texas

By: _____

Print Name: _____

Date

Contractor

Celestial Displays, LLC

By: _____
AnneMarie Robinson, Member

Print Name: _____

Date

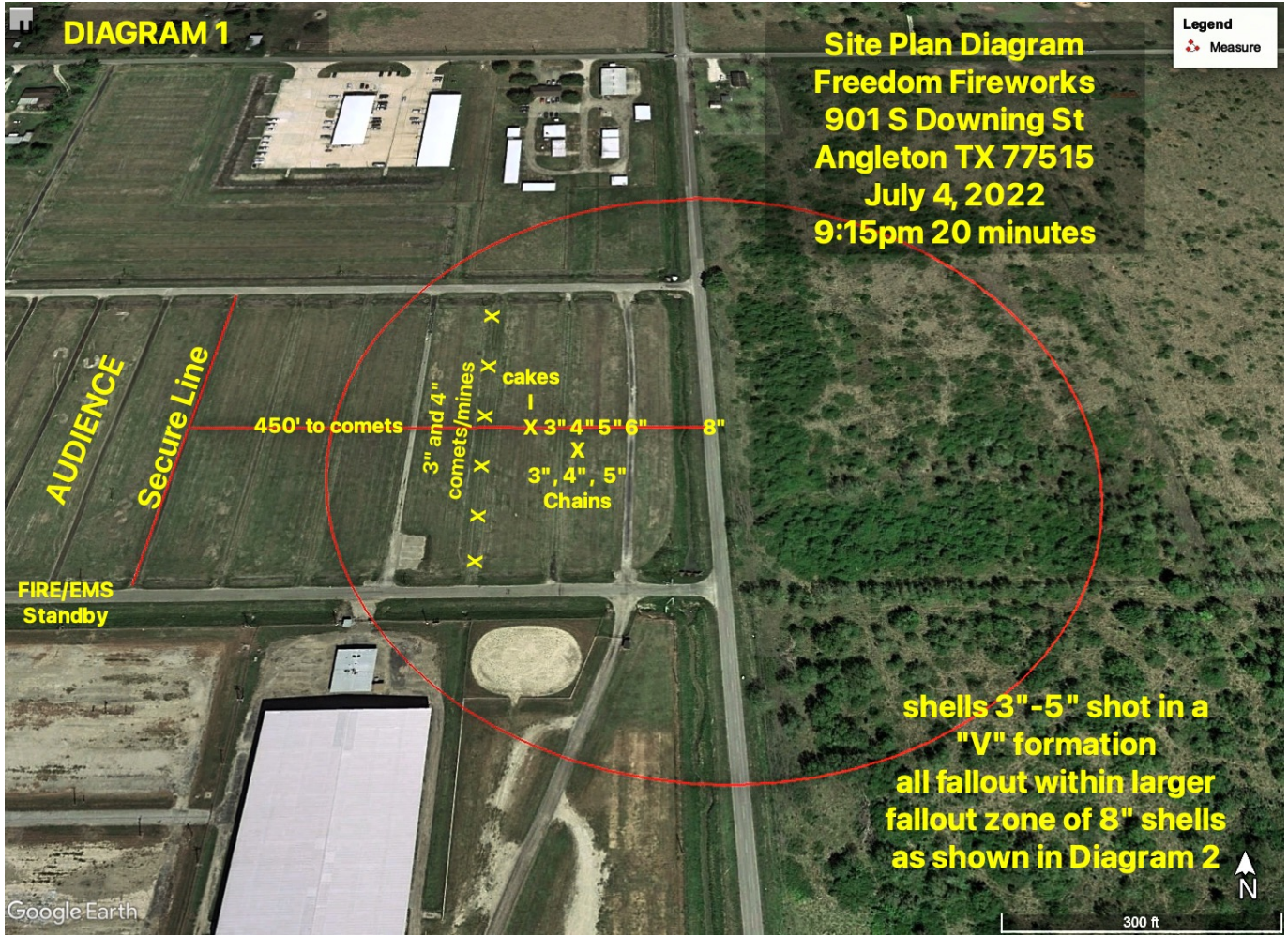


Figure 1