



VICTORY
PYROTECHNICS
& SPECIAL EFFECTS

DISPLAY FIREWORKS AGREEMENT

PREPARED FOR:

Tim Vandall
City of Lansing
STE 2 730 1st Terrace, Lansing, KS, 66043

PREPARED BY:

Cody Hanna
Victory Pyrotechnics & Special Effects, LLC
PO Box 219, Clearwater, KS 67026

Display Fireworks Agreement

THIS AGREEMENT (“Agreement”) is entered into on Mar 10, 2022 by and between Victory Pyrotechnics & Special Effects, LLC., a Kansas limited liability company, whose address is set forth above, (“Victory”) and the City of Lansing, whose address is 800 1st Ter, Lansing, KS, 66043-1725, (“Sponsor”). Victory and Sponsor are sometimes individually referred to as a “Party” and collectively as the “Parties.”

In consideration of the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Proposal. Victory agrees to supply, and Sponsor agrees to pay for, a firework display on the following designated date(s) and location: Jul 02, 2022 at 15650 Gilman Rd, Lansing, KS 66043, as detailed in Proposal 20, which has been accepted by the Sponsor and incorporated herein by this reference, (the “Display”) in accordance with the program approved by both Parties.

2. Price and Payment Terms. Total Price of \$25000.00 is to be paid as follows: 60% of the total price is due at the time when the contract is signed by both Parties; the remaining balance of the price is due within 15 days after the display. Interest will accrue at 2.5% per month (an annual percentage rate of 18% per annum) on all unpaid amounts from the date on which the payment was due.

3. Victory Duties. As part of the total price Victory agrees to the following:

- To supply all shells and other pyrotechnics listed on the Proposal;
- Mortars, firing equipment and all other required material necessary to perform its services hereunder;
- To remove all equipment and spent pyrotechnic devices and clean up debris from the immediate Display site. Sponsor acknowledges that additional debris may remain in the fallout zone after Victory’s responsibilities of Display site cleanup have been completed, however Victory agrees to check the entire fallout zone after the show to confirm that no such additional debris is still on fire and/or poses a danger or threat to the public’s health, safety or welfare; and
- Comply with all local and federal guidelines and obtain any necessary permits to perform the Display, unless otherwise notes in Sponsor duties.

4. Sponsor Duties.

- Sponsor shall comply with all duties as detailed in the Compliance with Laws/Sponsor Responsibilities portion of this Agreement;
- Sponsor to supply barrier tape to secure fallout area, and is responsible for securing and maintaining fallout area security before, during, and after the display; and
- Sponsor agrees to clean up remaining debris from fallout zone after Victory crew has raked the immediate launch site.

5. Insurance. Victory agrees to provide, at its expense, commercial general liability insurance coverage in an amount not less than \$3,000,000 per occurrence. If requested in writing, Victory shall provide Sponsor with a certificate of insurance within ten days of the Display. All entities/individuals listed on the certificate of insurance will be deemed as additional insured pursuant to the Agreement.

6. Indemnification. Victory agrees to indemnify, defend and hold harmless the Sponsor, its officers, agents, volunteers, contractors and employees, and those entities/individuals listed on the certificate of insurance referenced in Section 5 above, from and against any and all claims, costs, judgments, damages and expenses, including reasonable attorney's fees, that directly or indirectly arise from the performance of the fireworks display and the performance of Victory under this Agreement to the extent that such claims, costs, judgments, damages and expenses are occasioned by an act or omission of Victory and/or its owners, agents, employees, contractors and volunteers. Sponsor agrees to indemnify, defend and hold harmless Victory and its owners, agents, employees, contractors and volunteers, from and against any and all claims, costs, judgments, damages and expenses, including reasonable attorney's fees, that directly or indirectly arise from the performance of Sponsor under this Agreement to the extent that such claims, costs, judgments, damages and expenses are occasioned by an act or omission of Sponsor and/or officers, agents, volunteers, contractors and employees.

7. Compliance with Laws.

- Sponsor Responsibilities: In accordance with NFPA 1123 Outdoor Display of Fireworks 2010 Edition (National Fire Protection Association) 4-1.1.1, Sponsor has consulted with the Authority Having Jurisdiction to determine the level of fire protection required to provide adequate fire protection for the Display and Victory agrees that such consultation was accomplished, and the level of fire protection is adequate for the size of show this Agreement outlines. It is further agreed that in accordance with NFPA 1123 4-1.2, Sponsor shall provide an adequate number of monitors whose sole duty shall be the enforcement of crowd control located around the Display area during the Display and until the discharge site has been inspected by Victory's pyrotechnic operator after the Display.
- Victory's Responsibilities: Victory shall secure and maintain all licenses, permits or certificates that may be required by any regulatory body having jurisdiction over the materials or performance of the series herein contemplated unless otherwise noted above in Sponsor duties. Victory shall exercise full and complete authority over its personnel, shall comply with all workmen's compensation, employer's liability and other federal, state, county and municipal laws, ordinances, rules and regulations required of an employer performing such services, and shall make all report and remit all withholdings or other deductions from the compensation paid its personnel as may be required by any federal, state, county or municipal law, ordinance, rule or regulation. Victory is responsible to ensure that all material and services supplied under this Agreement comply with all laws, rules, and regulations of the state and federal government relating thereto.

8. Cancellation and Rescheduling by Sponsor. If the Display is canceled by the Sponsor after receipt of this signed Agreement but a month before the the display date referenced in Section 1, Sponsor agrees to pay 60% of the total price for restocking and costs incurred. If the Display is canceled by the Sponsor two weeks prior to said display date, Sponsor agrees to pay 80% of the total price. If the Display is canceled by the Sponsor within three days of the display date, Sponsor agrees to pay 100% of the total price. If the Sponsor elects to reschedule the Display for an alternate, mutually agreeable date, Victory agrees to facilitate this rescheduling and Sponsor agrees to reimburse Victory for any additional costs associated with this change.

9. Safety and Weather Forced Cancellation. Victory agrees that it shall be the responsibility of the pyrotechnic operator in charge, acting on Victory's behalf or the Authority Having Jurisdiction, to cancel or delay the Display if in

the operator's judgement circumstances beyond the control of either Party pose an extraordinary risk to the health and safety of any person or property within the vicinity of the Display. If the product has been damaged as an attempt to execute the Display and cannot be safely reused, 100% of the price is due and Victory has no further obligation under this Agreement. If the product is intact and reusable, Victory agrees to store the product and execute the Display on a mutually agreeable future date. Sponsor agrees to reimburse Victory for reasonable costs associated with the rescheduling of the event.

10. Force Majeure. Sponsor assumes the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Victory which may prevent the Display from being safely performed on the scheduled date, which may cause the cancellation of the event for which Sponsor has purchased the Display, or which may affect or damage such portion of the Display as must be replaced and exposed a necessary time before the Display.

11. Product Performance. Sponsor recognizes and acknowledges that due to the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of non-performance is acceptable as full performance.

12. Limitation on Damages. In the event that Victory claims that Sponsor has breached this Agreement or was negligent in performing its duties hereunder, Victory shall not be entitled to claim or recover monetary damages from Sponsor in excess of funds actually due and owed from Sponsor to Victory under this Agreement. In the event that Sponsor claims that Victory has breached this Agreement or was negligent in performing its duties hereunder, Sponsor shall not be entitled to claim or recover monetary damages from Victory in excess of funds actually paid by Sponsor to Victory under this Agreement. However, notwithstanding any provision of this Agreement to the contrary, Victory and its owners, agents, employees, contractors and volunteers shall continue to be liable to Sponsor and all others who could make a claim against Victory and/or its owners, agents, employees, contractors and volunteers for matters covered by the insurance obtained by Victory referenced in Section 5 of this Agreement to the full extent of coverage limits of such insurance.

13. Time. Time is of the essence in this Agreement. The Parties expressly recognize that in the performance of their respective obligations, each Party is relying on timely performance by the other Party and will schedule operation and incur obligations to third parties in reliance upon timely performances by the other Party and may sustain substantial losses by reason of any failure of timely performance.

14. Independent Contractor and No Joint Venture. The parties agree that Victory is an independent contractor and is not an agent or employee of Sponsor for any purpose. It is further agreed that Victory's employees shall be, and remain, the employees of Victory and not of Sponsor. Nothing in this Agreement or the actions of Victory or Sponsor shall be construed as forming a partnership or joint venture between Sponsor and Victory.

15. Attorney Fees. In the event that either Party to this Agreement shall enforce any of the provisions hereof by an action at law or in equity, the unsuccessful Party to such litigation agrees to pay to the prevailing Party all costs and expenses, including reasonable attorney fees, incurred therein by the prevailing party.

16. Jurisdiction. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of Kansas applicable to contracts.

17. Severability. In the event that a court of competent jurisdiction determines that any provision of this Agreement is in violation of any statute, law, rule, regulation, ordinance or applicable public policy, such provision shall be stricken or modified to the extent that such provision no longer violates such statute, law, rule, regulation, ordinance or applicable public policy. All provisions of this Agreement that do not violate any statute, law, rule, regulation, ordinance or applicable public policy shall continue in full force and effect for all purposes. Furthermore, any court order striking or modifying any provision of this Agreement shall modify or strike the provision in as limited a manner as possible to give as much effect as possible to the intentions of the Parties to this Agreement.

18. Survival. The terms of paragraphs 5, 6, 12, 15, and 16 shall survive the cancellation or termination of this Agreement.

19. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto respecting the matters within its scope and may be modified only in writing signed by both Parties hereto.

Victory Pyrotechnics & Special Effects

City of Lansing

Cody Hanna

03 / 10 / 2022

Cody Hanna

Tim Vandall