

## AGREEMENT

This Agreement is made as of the 21ST DAY day of MARCH in the year 2024, by and between Northern Lighter Pyrotechnics, Inc. (“NLP”) and City of St Francis (Pioneer Days) (the “Client”):

**WHEREAS**, NLP is a nonprofit corporation engaged in the activity of producing firework displays; and

**WHEREAS**, Client desires to utilize the services of NLP for its event; and

**WHEREAS**, NLP and Client desire to enter into this Agreement to more fully set forth and describe the duties and obligations of the parties to this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises of the parties hereto and the mutual benefits to be gained by the performance hereof, the parties hereto agree as follows:

**1. Description of Project.** On Saturday JUNE 1ST 2024 NLP shall provide for Client a fireworks display, as set forth on the permit (the “Permit”) completed by NLP describing the proposed fireworks display (the “Display”) at the location described as ST FRANCIS HIGH SCHOOL (the “Display Site”). In the event of inclement weather or other conditions that, in the sole judgment of NLP, make conducting the Display unsafe or more hazardous than otherwise agreed to by NLP, the back-up date for conducting the Display shall be AS NEEDED JUNE 2ND 2024

**2. Payment.** For and in total consideration for NLP’s performance of the Display, Client agrees to pay to NLP the sum of \$15,000 (city no tax ) (the “Display Fee”). The Display Fee shall be paid in full by Client to NLP on or before Day of Display with due upon execution of this Agreement to hold Date and ensure product availability.

**3. Representations of Parties**

3.1 NLP represents that the Display will be performed by its member volunteers whose qualifications and training is supervised and approved by NLP. NLP represents that it is fully experienced and properly qualified to perform the Display described herein and that it is properly licensed, equipped, organized and financed to perform such work.

3.2 NLP shall supply a sufficient number of properly skilled staff and all tools, equipment, materials and facilities and perform all functions necessary to perform the Display.

3.3 NLP shall perform the Display in accordance with all applicable local, state and federal rules, regulations and laws.

3.4 NLP shall take all reasonable safety precautions with respect to its work, shall comply with all safety measures initiated by the authority(s) having jurisdiction at the Display Site and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Display.

3.5 NLP shall be at all times an independent contractor and shall not be deemed an employee, agent, partner, joint venture or otherwise of Client.

3.6 It is the intention of the parties that the entire control of the Display Site be and remain the responsibility of NLP, and that any representative of Client who may be present, will be present only in a consulting capacity. NLP shall be solely responsible for the means, methods, techniques, sequences and procedures of the Display.

3.7 The Client shall determine, coordinate and provide the proper police and fire protection necessary to allow NLP to conduct the Display as described hereunder. The Client shall bear all costs related to providing proper police and fire protection for the Display and the Display Site. In the event NLP determines, in its sole discretion, that additional police and/or fire protection is necessary to allow NLP to conduct the Display as described hereunder, the Client agrees that it shall cooperate with such requests by NLP.

3.8 In order to ensure a safe Display site and the orderly progress of the Display, NLP shall have full and final control of all personnel, other contractors, or other individuals present on the Display site.

3.9 The Client waives all claims against NLP for loss or damage to Client's real property, personal property and fixtures arising out of or reasonably related to NLP conducting the Display.

3.10 Except as required by law, NLP shall not be required to directly correspond, communicate or interact in any way with any third parties, except with the prior consent of NLP.

**4. Permits, Fees And Notices.** NLP shall secure and pay for all permits. All further governmental fees, licenses and inspections necessary for the proper execution and completion of the Display shall be the responsibility and expense of Client.

**5. Standard Of Care.** NLP warrants that all services performed or furnished by NLP under this Agreement in relation to the Display will be performed with the care and skill ordinarily used by members of NLP's profession practicing under similar circumstances at the same time and in the same locality.

**6. Indemnification.** To the fullest extent permitted by law, the Client shall indemnify and hold harmless NLP, its agents, officers, employees and volunteers from and against claims, damages, losses and expenses, including claims for bodily injury, sickness, death, or to injury to or destruction of tangible property, and including, but not limited to attorneys' fees, arising out of or resulting from NLP conducting the Display, but only to the extent caused by the negligent acts or omissions of the Client, anyone directly or indirectly controlled or employed by Client or anyone for whose acts the Client may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**7. Insurance.** NLP shall secure commercial general liability/public liability insurance in an amount not less than \$2,000,000 naming Client as an additional insured. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of NLP and NLP's officers, directors, employees, and agents to Client and anyone claiming by, through, or under Client for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Display or this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of NLP or NLP's officers, directors, employees, agents, or any of them, shall not exceed the policy limits of the CGL/Public Liability insurance provided by NLP under this Agreement.

**8. Cancellation.** In the event Client cancels the Display, NLP shall be reimbursed for all direct expenses incurred by NLP in preparing for the Display, including, but not limited to, the cost of obtaining the insurance described in Section 7 hereof.

**9. Suspension** Either party hereunder reserves the right, at any time to suspend the Display (until such time that the default described hereunder is cured to the satisfaction of the non-defaulting party), in whole or in part, upon written notice thereof to the other party if:

9.1 a party hereto persistently or repeatedly refuses or fails to supply enough properly skilled staff (including police and fire protection) or proper materials for the conduct the Display;

9.2 a party hereto fails to make payment required hereunder;

9.3 a party hereto persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

9.4 a party hereto is otherwise is guilty of substantial breach of a provision of this Agreement.

9.5 In the event of a suspension hereunder that results in the cancellation of the Display, NLP shall be reimbursed for all direct expenses incurred by NLP in preparing for the Display, including, but not limited to, the cost of obtaining the insurance described in Section 7 hereof.

## **10. Dispute Resolution**

10.1 All claims, controversies, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in Hennepin County, Minnesota, in accordance with Commercial Arbitration Rules of the American Arbitration Association then in place.

10.2 If arbitration is invoked, then notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, controversy, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

10.3 An award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**11. No Waiver** Any failure by either party to enforce at any time any terms and conditions of this Agreement shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.

**12. Severability** The invalidity of any provision or obligation hereunder or the contravention thereby of any law, rule or regulation shall not relieve a party to this agreement from its obligation under, nor deprive a party to this agreement of the advantages of any other provisions of this Agreement.

**13. Entire Agreement** The foregoing contains the entire agreement of the parties hereto, and no modification thereof shall be binding upon the parties unless the same is in writing signed by the respective parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year above written.

**NORTHERN LIGHTER PYROTECHNICS, INC.**

PRESIDENT

By: \_\_\_\_\_PAUL MARCHIO

\_\_\_\_\_

Title: \_\_\_\_\_

Date: 3/21/24\_\_\_\_\_

**CLIENT** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Paul D. Marchio  
JLPI President  
3/6/2009

