

AGREEMENT FOR JULY 4, 2022 FIREWORKS DISPLAY

THIS AGREEMENT is made and entered this ____ day of _____, 2022, by and between ISLAND OUTDOOR MANAGEMENT, INC., a Florida corporation, d/b/a NORTH FLORIDA PYROTECHNICS (the “**Contractor**”) whose mailing address is 805 Arthur Moore Drive, Green Cove Springs, Florida 32043 and the CITY OF FLAGLER BEACH, FLORIDA (the “**City**”), a municipal corporation, whose mailing address is 105 S. Second Street, P.O. Box 70, Flagler Beach, Florida 32136.

WHEREAS, the **Contractor** is in the business of performing exhibitions of fireworks and hereby certifies that it possesses all necessary qualifications, experience, staff, and licenses to perform the work contemplated herein; and

WHEREAS, the parties acknowledge that the City has relied upon **Contractor**’s representations regarding its qualifications, experience, staffing, and licensure as material inducements to enter this Agreement; and

WHEREAS, the **City** desires that the **Contractor** provide an exhibition of fireworks for the **City** pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

1. **THE DISPLAY.** The **Contractor** agrees to sell, furnish, and deliver, to the **City** an aerial fireworks display on July 4, 2022 (the “Display”) lasting at least twenty (20) minutes in length. For purposes of this Agreement, a substantial pause or interruption shall be deemed to mean a pause or interruption lasting longer than sixty seconds. In the event the Contractor must pause or interrupt the display longer than sixty seconds due to safety considerations, the time of such pause or interruption shall not be counted toward the required total Display length. In the event the Contractor fails to deliver the Display in accordance with this Paragraph, unless for a reason specifically set forth herein, the Contractor shall forfeit all payments provided for herein and return all deposits or other payments received by the City. In the event the **Contractor** experiences or anticipates any necessary modifications to the Display due to supply chain limitations, the **Contractor** shall notify the **City** at least thirty days prior to the Display date and renegotiate payment terms based on products available within the supply chain at such time; if the **Contractor** and the **City** are unable to agree to modified payment terms, the **City** may terminate this Agreement and the **Contractor** shall return to the **City** all deposits or other monies paid by the **City**.
2. **THE LOCATION.** The location for the Display shall be the **City** of Flagler Beach Pier.
3. **THE CONTRACT PRICE.** The **City** shall pay the **Contractor** TWENTY-FOUR THOUSAND DOLLARS (\$24,000.00) (the “Contract Price”) for the Display as follows:
 - a. Seven days after the **Contractor** provides proof insurance required pursuant to Paragraph 6 herein, the **City** shall pay to the **Contractor** a deposit equal to one-half (1/2) of the Contract Price (the “Deposit”).
 - b. Upon completion of the Display, the **Contractor** shall apply the Deposit to the amount due from the **City**. Within seven (7) days of the completion of the Display, the **City** shall pay to the **Contractor** the remaining outstanding balance of the Contract Price. In the event payment is not timely paid, late payments shall accrue interest at the rate of

eighteen percent (18%) per annum from the first day after the payment was due until payment is made.

4. **CITY RESPONSIBILITIES.** The **City** acknowledges that is responsible for providing a suitable location for the Display, which shall include making arrangements to keep all spectators at least three hundred fifty (350) feet away from the area where the aerial fireworks firing will take place. The **City** shall furnish necessary police and fire protection, and crowd control. The **City** shall be responsible for all fire watch / inspection fees incurred by the **Contractor**. Said fees will be paid by the **City** to the **Contractor** upon notification of any amounts due. The **City** shall be responsible for removal or protection of all property within the "fireworks fallout zone" as shown in Exhibit 1 to this Agreement. By entering this Agreement the **City** agrees to indemnify and hold harmless the **Contractor** for damage caused to property or persons within the "fireworks fallout zone" resulting from any source other than the fireworks presented by the **Contractor**.
5. **CONTRACTOR RESPONSIBILITIES.** The **Contractor** will obtain all required permits for the firing of the Display and secure any security bonds required by law. At the completion of the Display, the **Contractor** will clear all equipment, debris, and any unexploded fireworks from the firing site. The **Contractor** shall arrange for fire watch / inspection. The **Contractor** shall furnish the services of display technicians who are sufficiently trained to present the Display in a safe and professional manner. The **Contractor** shall notify and obtain any necessary permission from the Federal Aviation Administration for the Display.
6. **EXHIBITION INSURANCE.** Within seven (7) days of entering this Agreement, the **Contractor** shall furnish to the **City** proof of insurance coverage in the amount of five million dollars \$5,000,000.00 per Occurrence combined single limit for bodily injury and property damage, including products liability, which insurance shall include the **City** as additional insured. The insurance furnished by the **Contractor** shall include a provision that it shall not be cancelled without prior written notice to the **City**. If the **Contractor** fails to furnish the required insurance or if the insurance is canceled prior to the Display, the **City** may immediately and without prior notice terminate this Agreement without penalty or expense and the **Contractor** shall return all monies received from the **City** within seven (7) days of written notice of termination of the Agreement.
7. **WORKERS' COMPENSATION INSURANCE.** The **Contractor** shall obtain workers' compensation insurance for its employees as required by law. No employee of **Contractor** shall be allowed to provide any services to the **City** unless covered by workers' compensation insurance.
8. **CANCELLATION INSURANCE.** The **City** may, at its option, procure insurance to cover the risk of loss due to cancellation of the Display.
9. **INDEMNIFICATION.** The **Contractor** shall protect, defend, indemnify, save and hold harmless the **City**, all departments, agencies, boards and commissions, its officers, agents, servants, and employees, from and against any and all claims, demands, expense, and liability arising out of injury or death to any person or the damage, loss, or destruction of any property which may occur in any way arising from the Display due to the negligent act or omission of the **Contractor**, its agents or employees. Nothing in this indemnification provision shall be interpreted as a waiver of the **City's** sovereign immunity rights, including those provided under Section 768.28, Florida Statutes. This indemnification shall survive any expiration or termination of this Agreement.
10. **POSTPONEMENT OF DISPLAY.** It is agreed and understood that should inclement weather prevent firing of the Display on the Display date, then the Display shall be postponed and fired on a postponement date that shall occur within seven months of the originally planned Display date.

If the **City** does not provide a postponement date within seven months of the originally planned Display date, the **Contractor** shall be entitled to keep the Deposit paid by the **City**.

11. **PROMOTION.** The **City** will include reference to the **Contractor** in its promotional materials, including event schedules and radio, television, newspaper and internet announcements.
12. **GOVERNING LAW AND VENUE.** The laws of the State of Florida shall govern this agreement, and in the event of any dispute, venue for all proceedings, be they litigation, mediation, arbitration or otherwise shall be in a court of appropriate jurisdiction in Flagler County, Florida.
13. **ATTORNEYS' FEES AND WAIVER OF JURY TRIAL.** In the event of litigation or arbitration to enforce the terms of this Agreement the prevailing party shall be entitled to recover a reasonable fee for its attorneys and to recover all costs reasonably incurred in such proceedings. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.
14. **CONTROLLING AGREEMENT.** This writing expresses the entire agreement between the parties, integrating all previous agreements, understandings, practices and discussions, and no modification shall be made to this Agreement except as expressed in writing and executed by both parties.
15. **CANCELLATION OF DISPLAY.** The **City** may cancel the Display for any reason subject to written notice to the **Contractor** and subject to the following:
 - a. If the **City** cancels the Display thirty (30) or more days prior to the Display date, the **Contractor** shall be entitled to payment of twenty-five percent (25%) of the Contract Price, which amount shall be paid from the Deposit and the remainder of the Deposit returned to the **City** less any reimbursable fees paid by **Contractor**;
 - b. If the **CITY** cancels the Display eleven (11) to twenty-nine (29) days before the Display date, the **Contractor** shall be entitled to payment of thirty-five percent (35%) of the Contract Price, which amount shall be paid from the Deposit and the remainder of the Deposit returned to the **City** less any reimbursable fees paid by **Contractor**;
 - c. If the **City** cancels the Display three (3) to ten (10) days prior to the Display date, the **Contractor** shall be entitled to payment of forty-five percent (45%) of the Contract Price, which amount shall be paid from the Deposit and the remainder of the Deposit returned to the **City** less any reimbursable fees paid by **Contractor**;
 - d. If the **City** cancels the Display 48 -24 hours prior to the Display date, the **Contractor** shall be entitled to payment of seventy percent (70%) of the Contract Price.
 - e. If the **City** cancel s the Display less than 24 hours prior to the Display date, the **Contractor** shall be entitled to payment of one hundred percent (100%) of the Contract Price.
16. **TERMINATION FOR CAUSE.** In the event either party is in default of any term of this Agreement, the other party may terminate this Agreement immediately upon written notice to the party in default. In the event the City terminates this Agreement due to any breach by the Contractor, the Contractor shall forfeit any payments due from the City and return all deposits or other monies already paid by the **City**.
17. **COOPERATION WITH REGULATORY AGENCIES.** The parties agree to cooperate with all regulatory agencies having jurisdiction over the Display, including but not limited to: local fire and police departments, the Bureau of Alcohol Tobacco, Firearms, and Explosives, the Department of Transportation, the Department of Homeland Security, and the USCG. The parties acknowledge

that such governmental regulatory authorities have the right to prohibit the Display until unsafe or unsuitable conditions are corrected.

18. **COMPLIANCE WITH LAWS.** The parties agree to comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out the Display.
19. **DISSOLUTION, BANKRUPTCY, OR RECEIVERSHIP** In the event the **Contractor** is dissolved, files a petition in bankruptcy, or has a receiver appointed for it prior to the Display, the **Contractor** shall forfeit any payments due from the City and the **City** shall be entitled to immediate return of the full amount of the Deposit or other monies already paid by the **City**.
20. **FORCE MAJEURE.** Each party shall be excused for the period of delay in the performance of any of its obligations and shall not be liable for failure to perform or considered in default hereunder when prevented from performing by a natural disaster.
21. **NOTICES.** Notices required or permitted to be given by either party in writing shall be deemed delivered when mailed via certified mail to the respective addresses first set forth above or any other address provided in writing by either party.
22. **COUNTERPARTS.** This Agreement may be executed in on or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
23. **SUCCESSORS AND ASSIGNS.** This Agreement and all the rights and powers granted thereby shall bind and inure to the benefit of the parties and their respective successors and assigns.
24. **PUBLIC RECORDS.** All work, deliverables, and services provided by the **Contractor** are subject to Florida's Public Records Law (Chapter 119, Florida Statutes, including but not limited to the following:
 - a. All records, books, documents, maps, data, deliverables, papers, and financial information (the "Records") that result from the **Contractor** providing the agreed upon services to the **City** shall be the property of the **City**;
 - b. The **Contractor** agrees to keep and maintain public records in the **Contractor's** possession or control in connection with the **Contractor's** performance under this Agreement. The **Contractor** further agrees to comply with the provisions of Section 119.0701, Florida Statutes. The **Contractor** shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law, for the duration of the Agreement and, following completion of the Agreement, until the records are transferred to the **City**;
 - c. Upon request from the custodian of records for the **City**, the **Contractor** shall provide the **City** with a copy on any requests records related to the provision of services pursuant to this Agreement within a reasonable time at a cost that does not exceed that allowed by Chapter 119, Florida Statutes, or as otherwise provided by law;
 - d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the **Contractor** shall be delivered to the **City** at no cost to the **City**.

IF THE CONTRACTORS HAS QUESTIONS RELATED TO THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATED TO THIS AGREEMENT, IT SHOULD CONTACT THE CUSTODIAN OF RECORDS FOR THE CITY, PENNY

**OVERSTREET, CITY CLERK, (386) 517-2000,
POVERSTREET@CITYOFFLAGLERBEACH.COM.**

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have set their hand and seal as set forth below:

CITY OF FLAGLER BEACH

**ISLAND OUTDOOR MANAGEMENT, INC.
d/b/a North Florida Pyrotechnics**

**BY: _____ Date: _____
SUZIE JOHNSTON, MAYOR**

**By: _____ Date _____
RYAN L. ALLEN**