

RESOLUTION NO. 2020- 264

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PYROTECNICO FIREWORKS, INC., NEW CASTLE PENNSYLVANIA, FOR A FIREWORKS DISPLAY FOR THE VINELAND 2020 4TH OF JULY CELEBRATION

WHEREAS, Governor Murphy has heretofore executed an Executive Order prohibiting municipalities within the State of New Jersey from celebrating the birth of our Country on the 4th of July to stop the spread of COVID-19 and has on June 12, 2020 signaled the ability of municipalities within the State of New Jersey to celebrate the 4th of July with fireworks displays based upon the reduction in the spread of the virus subject to restrictions with regards to social distancing as outlined in his Executive Orders; and

WHEREAS, the City of Vineland has a long standing patriotic desire to celebrate the birth of our Country with a fireworks display and has entered into contracts with licensed pyrotechnicians in the past, including Pyrotecnico Fireworks, Inc.(Pyrotecnico) and due to the short timeframe, the City found it necessary to obtain a pyrotechnician as a Non-Fair and Open Contract pursuant to NJSA 19:44A-20.5; and

WHEREAS, the purchasing agent has determined and certified in writing that the value of said services will exceed \$17,500.00; and

WHEREAS, Pyrotecnico has submitted a proposal to provide a fireworks display for the City in an amount of \$30,000.00 and based upon their experience and prior services to the City, City Council finds it to be in the best interest of the City to accept the proposal of Pyrotecnico in an amount not to exceed \$30,000.00 pursuant to the proposal and form of contract attached hereto and made a part hereof; and

WHEREAS, Pyrotecnico has completed and submitted a Business Entity Disclosure Certification for Non-Fair And Open Contract which certifies that the company has not made any reportable contributions to a political or candidate committee in the City of Vineland in the previous one year and that the contract will prohibit Pyrotecnico from making any reportable contributions through the term of the contract or its extension to a political or candidate committee in the City of Vineland; and

WHEREAS, the availability of funds for said Professional Services Contract to be awarded have been certified by the Chief Finance Officer; and

WHEREAS, the Local Public Contract Law (N.J.S.A. 40 A: 11 – 1, et seq.) requires that the Resolution authorizing the award of contract for Professional Services without competitive bidding and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vineland as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute a Non-Fair and Open Agreement pursuant to N.J.S.A. 19:44A – 20.5 with Pyrotecnico Fireworks, Inc. New Castle, Pennsylvania for Professional Pyrotechnical Services for the 2020 4th of July Celebration for the City of Vineland in an amount not to exceed \$30,000.00, for specified services as attached hereto and made a part hereof.
2. That this Professional Services Agreement is awarded without competitive bidding in accordance with NJSA 40 A: 11 – 5 (1)(a) of the Local Public Contracts Law because said services to be rendered or performed require knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction distinguished from general academic instruction or apprenticeship and training.
3. That the Business Disclosure Entity Certification, the Political Contribution Disclosure Form and the Determination of Value be placed on file with the Resolution.
4. That a notice of this action shall be printed once in the daily Journal.

Adopted:

President of Council

ATTEST:

City Clerk



FIREWORKS DISPLAY AGREEMENT

THIS FIREWORKS DISPLAY AGREEMENT (“Agreement”) is made effective as of the later of the dates set forth below the signatures below (“Effective Date”) by and between Pyrotecnico Fireworks Inc. (“Pyrotecnico”) and **City of Vineland** (“Sponsor”), sometimes referred to individually as “Party” or collectively as “Parties.” In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

GENERAL TERMS:

Scope of services to be provided by Pyrotecnico (“Services”):	Aerial Fireworks Display
Date(s) of Show:	July 4, 2020
Rain Date(s) of Show (if negotiated):	July 5, 2020
Compensation to be paid to Pyrotecnico for providing the Services (“Compensation”):	\$30,000.00
Pre-Show Advance:	\$0.00
Pre-Show Advance Due Date:	N/A
Payment Terms:	Full Compensation due Net 10
Postponement Fee:	Actual verifiable unrecoverable costs for Postponement, not to exceed \$7,500.00
Cancellation Fee:	\$22,500.00

SERVICE TERMS:

Pyrotecnico will provide Sponsor with a fireworks display subject to the terms and conditions of this Agreement. The pricing provided in this Agreement is valid only for 60 days from the date this Agreement is sent to the Sponsor via any means. Pyrotecnico may, but is not required to, accept this Agreement if the Sponsor does not return the signed Agreement within this time.

PRE-SHOW ADVANCE, COMPENSATION AND PAYMENT TERMS

Sponsor shall pay Pyrotecnico the Compensation and the Pre-Show Advance on or before the dates set forth above. The Pre-Show Advance includes, among other things, the purchase of products necessary for the show, permit costs, the hiring of any necessary equipment, show programming, the assembly and packing of the show, and is necessary in order for Pyrotecnico to finally confirm availability for your event.

Sponsor must pay interest at the rate of 1.5% per month on any unpaid balance until paid in full. Payment must be made by check or otherwise as agreed by the Parties to Pyrotecnico at PO Box 149, New Castle, PA 16103. If Sponsor fails to perform its obligations and responsibilities under this Agreement, and Pyrotecnico must enforce its rights by hiring an attorney or other third party, Sponsor must pay all fees and costs incurred by Pyrotecnico to collect the full amount owed under this Agreement.

RAIN DATES

Rain Dates must be negotiated by the Parties and are NOT available July 1st through July 7th unless specifically negotiated.

DISPLAY RESPONSIBILITIES

Pyrotecnico and Sponsor shall collaborate in the performance of all tasks relating to the fireworks display. These tasks include, but are not limited to:

- A) procuring and furnishing a place suitable for the fireworks display (the “Display Site”),
- B) applying for, obtaining and securing all permits, licenses and approvals required by all applicable local, state and federal laws and regulations as well as those required by any local police and fire departments for the Fireworks Display (collectively, the “Required Approvals”). Unless otherwise stated in this Agreement, Sponsor is responsible for the payment of all governmental fees and expenses imposed or applied to this show including any fees or expenses incurred after the signing and execution of contract for the show.
- C) securing an acceptable location with private or public security personnel to park the Pyrotecnico fireworks truck(s) overnight (or for such longer or shorter period as Pyrotecnico may reasonably require in order to effectively provide the fireworks display),
- D) unless otherwise specified by Pyrotecnico the Sponsor is solely responsible for securing adequate protection (via private or public security, police and fire protection, as may be appropriate) to prevent all motor vehicles and individuals, other than those authorized by Pyrotecnico, from entering the security area (display site, fallout area and safe zone) designated by Pyrotecnico.

The Parties shall fulfill their responsibilities in accordance with all local, state and federal rules, laws, orders and regulations, including those of the National Fire Protection Association (NFPA).

SCRIPTED SHOW AND MUSIC SOUNDTRACKS

For displays designated as "scripted" exhibitions:

- A) Sponsor must complete, sign and return this Agreement, at least 40 days prior to the show date.
- B) Sponsor must either provide a pre-approved music soundtrack for the display OR to give final approval to a soundtrack created by Pyrotecnico, at least 30 days before the show date (at least 45 days prior for 4th of July shows). If Sponsor fails to do either, then Pyrotecnico will complete the soundtrack without Sponsor's prior approval and the scripting process will be completed based on the soundtrack created by Pyrotecnico.
- C) Proposal pricing is based upon Pyrotecnico creating one (1) soundtrack and the first set of revisions requested by Sponsor. Any additional revisions requested by the Sponsor will be billed at the rate of \$125 per set of revisions.

If Pyrotecnico provides a show which includes music or commercial video of any type that is protected under intellectual property law, Sponsor is solely responsible for payment of any applicable licensing fees, and/or BMI, ASCAP or other fees, and shall indemnify Pyrotecnico against any claims or liabilities which may arise from the use of the intellectual property.

POSTPONEMENT

If on the show date either the Authority Having Jurisdiction or Pyrotecnico (in its sole and absolute discretion) determines that the conditions make the show either impossible or would increase the risk of damage or danger to person or property, the Parties agree as follows:

- A) If the Parties agree to reschedule the display to a date within 6 months of the original date, then the Sponsor shall pay the Postponement Fee in addition to the original Compensation.
- B) If the Sponsor elects to cancel the display, the Sponsor shall pay the Cancellation Fee in full satisfaction of its obligations under this Agreement within 10 days of the show date.

CANCELLATION

If Sponsor cancels this Agreement for any reason other than Pyrotecnico's default, or, if it is or will be impossible for Pyrotecnico to perform all of its obligations under this Agreement for reasons outside of its control regardless of its best efforts, the Parties agree as follows:

- A) If the display is cancelled more than 30 days prior to the show date, Sponsor shall pay the Postponement Fee in full satisfaction of its obligations under this Agreement.
- B) If the display is cancelled 30 days or less prior to the show date, Sponsor shall pay the Cancellation Fee in full satisfaction of its obligations under this Agreement.

If Sponsor elects to cancel this Agreement, it must do so by sending a written notice by either overnight mail via nationally recognized courier or certified mail addressed to Pyrotecnico, PO Box 149, New Castle PA 16103. Notice is effective upon receipt by Pyrotecnico and will determine the fee owed by Sponsor under this paragraph.

In the event of any force majeure occurrences (e.g. floods, strikes, civil unrest, etc.) which prevent the display, Sponsor shall pay to Pyrotecnico the Postponement Fee in full satisfaction of its obligations under this Agreement.

INDEMNIFICATION & INSURANCE

Sponsor shall indemnify and defend Pyrotecnico and its shareholders, directors, officers, employees, agents, representatives and insurers from any and all demands, claims, causes of action, judgments or liability (including the costs of suit and reasonable costs of experts and attorneys) arising from damage to or destruction of property (including both real and personal) or bodily or personal injuries (including death), whether arising from tort, contract or otherwise, that occur directly or indirectly from (a) the gross negligence or willful misconduct of Sponsor or its employees, agents, contractors or representatives, or (b) the failure of Sponsor to comply with its obligations and responsibilities. If Sponsor is not the owner of the property being used by Pyrotecnico as the show site (shooting location), Sponsor further agrees to defend Pyrotecnico, its officers and/or employees against any claims brought or actions filed against Pyrotecnico with respect to Pyrotecnico's use of the show site. Sponsor will not under any circumstances be entitled to recover any consequential, incidental, exemplary, special or punitive damages from Pyrotecnico, including loss of income, business or profits.

Pyrotecnico will provide a certificate evidencing general liability insurance coverage as required by Sponsor. Pyrotecnico agrees to name as additional insureds parties to whom Sponsor has written, contractual obligations to insure. Additional Insureds are limited to Sponsor, sponsors of Sponsor, property owners in and around the show site, municipal corporations (including authorities and public safety departments) and employees and volunteers of any of these. This coverage specifically does not include coverage for any independent acts of negligence of those additionally insured.

CREDITING


Sponsor will credit Pyrotecnico as "Fireworks by Pyrotecnico" in all advertising or marketing materials that are within the Sponsor's authority.

MISCELLANEOUS

- A) For all purposes under this Agreement, a "week" is defined as that period from Sunday at 0:00 through the immediately following Saturday at 23:59.
- B) Neither this Agreement nor any part of this Agreement may be transferred, conveyed or assigned by Sponsor without the prior written consent of Pyrotecnico.
- C) This Agreement contains the entire Agreement between the Parties for this show and any prior agreements are terminated. This Agreement may only be amended, revised or terminated by a written instrument executed by the Party against which enforcement of the amendment, revision or termination is asserted. Any terms conflicting with or in addition to the terms of this Agreement, regardless of how communicated and regardless of the timing, are not a part of this Agreement.
- D) Tender of either the pre-show advance or full payment by Sponsor, without a signed contract, will represent Sponsor's acceptance of this Agreement as written.
- E) Nothing contained in this Agreement will create or be construed as creating a partnership, employment, joint venture or agency relationship between the Parties and no Party shall have the authority to bind the other in any respect.
- F) All of the terms of this Agreement apply to and are binding upon the Parties, and shall inure to the benefit of their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.
- G) The term of this Agreement ("Term") shall begin on the Effective Date and end 3 days after the later of 1) the final Show Date or Rain Date under this Agreement, or 2) any delayed performance date agreed to either orally or in writing by the Parties. The provisions of this Agreement that by their nature extend beyond termination or expiration of this Agreement survive such termination or expiration.
- H) All parties have been advised to seek their own independent counsel concerning the interpretation and legal effect of this Agreement and have either obtained such counsel, or have intentionally refrained from doing so and have knowingly and voluntarily waived such right. Consequently, the normal rule of construction to the effect that any drafting ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or exhibits.
- I) If either Party fails to enforce any of its rights under any provision of this Agreement or fails to exercise any election provided in this Agreement, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either Party to exercise any of these provisions, rights or elections will not prevent or prejudice such Party from later enforcing or exercising the same or any other provision, right or election which it may have under this Agreement.
- J) If any part of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remainder of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated. Pyrotecnico reserves the right to substitute products of equal or greater value.
- K) All notices must be in writing and will must be delivered personally with receipt acknowledged, or sent by certified mail, return receipt requested, or sent by nationally recognized overnight courier for next day delivery, to Pyrotecnico, 299 Wilson Road, New Castle PA 16101.
- L) The Parties agree that in the event of any difference of interpretation, or in the event of any controversy, claim or breach of this Agreement or any amendments, the Parties will immediately make good faith efforts to negotiate a written voluntary resolution of the matter prior to instigating legal proceedings.
- M) This Agreement may be executed by facsimile and PDF and in any number of counterparts, and each of the counterparts will be deemed an original. Sponsor represents by his/her signature that he/she has the authority to enter into this Agreement.

ACCEPTED AND AGREED as of the later of the dates set forth below the signatures below.

PYROTECNICO :

By (sign): 
 Name: **Lynn Ann Hamed**
 Title: **Secretary**
 Date: **June 15, 2020**
 Address: PO Box 149
New Castle PA 16103
 Phone: (724) 652-9555
 Email: contracts@pyrotecnico.com

SPONSOR:

By (sign) : _____
 Name: _____
 Title: _____
 Date: _____
 Address: _____

 Phone: _____
 Email: : _____



CONTACT/INSURANCE INFORMATION FORM

You must return this form with your signed agreement, for the certificate of insurance to be issued, and for the permit application to be completed and submitted. If information isn't applicable, please state such by indicating "N/A".

Sponsor Name (Entity Contracting Pyrotecnico): _____

Primary Point of Contact Name: _____

Phone: _____ Fax: _____

Email: _____

Billing Address: _____

City, State & Zip: _____

Accounts Payable Contact: _____

Accounts Payable Email: _____

Show Date(s): _____ Display Start Time(s): _____

Rain Date(s): _____

Day-of-Show Contact Name: _____

Day-of-Show Mobile Phone Number: _____

Day-of-Show Email: _____

Display Site Location and Address: _____

If Pyrotecnico has produced a show at this site, has the geography changed (i.e. new structures, new terrain, etc.)? If yes, please describe:

Additionally Insured – If Applicable:

****PLEASE RETURN THIS COMPLETED 4-PAGE AGREEMENT TO****

FAX: +1.724.652.1288 (Attn: Mary Killingsworth)

EMAIL: mkillingsworth@pyrotecnico.com