

RESOLUTION NO. R-17-02

A RESOLUTION SEEKING TO APPROVE AN AGREEMENT BETWEEN THE CITY OF WOOD DALE AND FLASHING THUNDER FIREWORKS FOR THE 2017 PRAIRIE FEST FIREWORKS DISPLAY IN THE NOT TO EXCEED AMOUNT OF \$12,500

WHEREAS, the City of Wood Dale (hereinafter the "City") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the City is authorized and empowered under the Illinois Municipal Code, and its Ordinances adopted pursuant thereto, to enter into agreements and to contract for goods and services; and

WHEREAS, the Mayor and the City Council of the City seek to ensure that the City is run effectively and efficiently; and

WHEREAS, the Mayor and the City Council of the City, seeks the services of Flashing Thunder Fireworks for the Prairie Fest 2017 fireworks display; and

WHEREAS, these services are necessary to maintain and promote an effective and efficient City Government; and

WHEREAS, after diligent review of the qualifications and services of Flashing Thunder Fireworks; the Mayor and the City Council find Flashing Thunder Fireworks; is the most qualified company to perform the duties sought by the City; and

WHEREAS, the City requires that Flashing Thunder Fireworks executed the Agreement prior to submitting it to the City for its approval and notification; and

WHEREAS, the City has received an executed Agreement from Flashing Thunder Fireworks and

WHEREAS, pursuant to the Act, the Mayor and the City Council of the City hereby seek to approve and ratify the Agreement with Flashing Thunder Fireworks a copy of which is attached hereto and incorporated herein by reference as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WOOD DALE, DUPAGE COUNTY, AN ILLINOIS CORPORATION, as follows:

SECTION 1: The recitals set forth above are incorporated herein and made a part hereof.

SECTION 2: That Agreement with Flashing Thunder Fireworks is substantially the same form as attached to this Resolution as Exhibit "A" and incorporated herein by reference, is approved and accepted by the City of Wood Dale.

SECTION 2: The Mayor is authorized to execute said Agreement on behalf of the City of Wood Dale, which signature shall be attested to by the City Clerk.

SECTION 3: The City Manager, staff and/or the City Attorney shall take the steps necessary to put the terms and conditions of the Agreement into effect.

SECTION 4: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

SECTION 5: That this Resolution shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED this 19th day of January, 2017

AYES: Aldermen Catalano, Jacob, Messina, Sorrentino, Susmarski, E. Wesley, R. Wesley, and Woods.

NAYS: None

ABSENT: None

APPROVED this 19th day of January, 2017

SIGNED: Annunziato Pulice
Annunziato Pulice, Mayor

ATTEST: Shirley J. Siebert
Shirley J. Siebert, City Clerk

AGREEMENT FOR FIREWORKS DISPLAY

THIS AGREEMENT made and entered into this 7th day of December, 2016, by and between **Flashing Thunder Fireworks**, whose principal place of business is 700 E. Van Buren Street, Mitchell, Iowa, 50461 sometimes hereinafter referred to as **Provider**; and **City of Wood Dale** ("Wood Dale Prairie Fest" event) in Illinois, sometimes hereinafter referred to as **Client or Sponsor**, WITNESSETH: WHEREAS, Flashing Thunder Fireworks was the successful bidder for the pyrotechnic display (hereafter "fireworks display") **to be performed and displayed on July 29, 2017** for Client, and

WHEREAS, Flashing Thunder Fireworks is to perform the fireworks display in a manner consistent with the highest degree of care with respect to the safety of spectators, its employees and the improvements located in the area where the fireworks will be set off, and

WHEREAS, in exchange for Flashing Thunder Fireworks performing the fireworks display, Flashing Thunder Fireworks shall be entitled to the payment of the successfully bid amount of **\$12,500.00 (TWELVE THOUSAND FIVE HUNDRED DOLLARS US)**, inclusive of tax, payable as hereafter provided.

NOW THEREFORE, the parties hereto agree as follows:

Provider's responsibilities with respect to fireworks display:

Seller agrees to provide all necessary fireworks, fireworks display materials and equipment, and the personnel necessary to perform the fireworks display in a timely fashion and in accordance with the bid previously submitted by Provider. Provider further submits that the display will be 100% electrically fired, that the equipment used will equal or exceed the specifications of those recommended by the National Fire Protection Association and that the fireworks used will be from those manufacturers widely recognized and accepted as being of the highest quality in the pyrotechnic industry. Provider shall take all steps reasonably necessary to safeguard the improvements or other property in the area of the display other than the issues for which Client is responsible. Provider shall provide licensed, experienced, professional pyro-technicians, who will deliver, set up, discharge and dismantle the fireworks display. The pyro-technicians shall conduct a search of the grounds after the display in an effort to locate and dispose of any unexploded fireworks. The scope and extent of such search shall be dependent upon the weather conditions, time of the completion of the display, etc. Provider shall comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks, and obtain all necessary permits and shall be responsible for the cost thereof.

Client's responsibilities with respect to fireworks display:

Client agrees to (a) provide a sufficient area for the display, including a minimum spectator set back as determined by Provider, (b) provide protection of the display area to prevent unrestricted access by unauthorized persons by a means it shall determine is adequately designed for that purpose, (c) arrange adequate police or other protection to prevent spectators from entering the display area, administer proper crowd control, parking supervision, etc., (d) arrange fire protection and emergency

medical care for the health and safety of spectators and the public, and (e) remove non-hazardous debris, trash and clean-up of shoot site and surrounding area.

Compensation and Terms to Provider: Client shall pay to Provider the amount of \$12,500.00 (TWELVE THOUSAND FIVE HUNDRED DOLLARS US). The sum shall be paid to Flashing Thunder Fireworks (Provider), 700 E. Van Buren Street, Mitchell, Iowa, 50461 at time of display date but due no later than August 31, 2017. Any balance that is not paid by the due date shall bear interest at 12% per annum.

Weather, election to cancel: The parties understand that weather may prevent the ability to perform the fireworks display. In the event inclement weather is forecast on the day the display is scheduled to occur, the event may be cancelled by mutual agreement of the parties prior to set up with a rain date of July 30, 2017. If fireworks display is to be performed on the rain date, an additional \$1,500.00 will be due for overnight accommodations. Shall the display arrive or be set up and then cancelled due to weather, or by any person or agency authorized to cancel the display, provider gets paid \$4,500.00 in liquidated damages.

Insurance: Provider will issue the client and those individuals or entities the client chooses to indemnify (additionally insured), **an insurance certificate (as part of the display expense) outlining coverage in the amount of \$5,000,000.00 (FIVE MILLION DOLLARS US)** to cover liability associated with the fireworks display. Provider warrants that it maintains worker's compensation insurance on its employees.

Liability:

Performance: Provider shall not be liable for any faulty performance of equipment or products that could not reasonably have been discovered prior to the commencement of the fireworks display. Provider shall use its best efforts to ensure that the display will proceed as planned and on time.

Harm to third parties or property: Provider shall not be liable for harm to any spectators, third parties, or improvements or property in the vicinity of the fireworks display except for negligence. Provider covenants that it will use its best efforts to avoid any such harm and that it maintains/has obtained insurance coverage (refer to insurance certificate) to cover any such harm pursuant to the foregoing section.

Indemnification: Provider agrees to indemnify and hold Client harmless for any liability to third parties caused in whole or in part by a failure by Client to perform its obligations hereunder.

No partnership or joint venture: The parties agree that Provider is a sub-contractor and that there is no partnership or joint venture between the parties. The manner and means of providing the display is left to the sole discretion of Provider.

General Provisions

Binding Effect on Representatives and Successors: This Agreement shall be binding upon and inure to the benefit of the representatives, heirs, estates, and successors and assigns to the parties hereto.

Entire Agreement: This instrument contains the entire agreement between the parties with respect to the transaction contemplated herein. Each party acknowledges that it is not relying upon any representation made by the other party unless such representation is contained in this Agreement. This Agreement may be

executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Assignment: Without the prior written consent of the other party, neither party shall: Assign, transfer, pledge or hypothecate this agreement, the property or any part thereof, or any interest therein; Sublet or lend the property or any part thereof.

Attorney's Fees: In the event that any action is filed in relation to the terms of this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all other sums that either party may be called upon to pay, the reasonable sum for the successful party's attorney's fees. Modification: Subsequent amendments, modification, or releases from any provision of this agreement shall be binding only if in writing and signed by all parties.

Time of Essence: Time is of the essence of this agreement.

Severability: If any provision of this agreement is held invalid by a court of competent jurisdiction, it shall be considered deleted from this agreement, but such invalidity shall not affect the other provisions that can be given effect without the invalid provisions.


Authority: Each party signing this Agreement represents that they are fully authorized by the entity for which they are acting in executing this Agreement.

Headings: Headings or titles to sections or paragraphs of this agreement are solely for the convenience of the parties and shall have no effect whatsoever on the interpretation of the provisions of this agreement.

References to Gender: Reference herein to the masculine singular shall refer to all parties that the context shall require, whether masculine, feminine, or neuter, and whether one or more. If any party or parties herein shall be corporations, all references herein to the heirs of such corporate party shall be construed to refer to the successors thereof.

IN WITNESS WHEREOF, this Agreement has been executed this 7th day of December, 2016.

PROVIDER



Flashing Thunder Fireworks

CLIENT/SPONSOR

City of Wood Dale



Signature of Authorizing Official

MAYOR

Title/Office of Authorizing Party

Signature of Authorizing Official

Title/Office of Authorizing Party