



FIREWORKS DISPLAY AGREEMENT

THIS AGREEMENT is made and entered into on Tuesday, August 15th, 2023 by and between Pyro Productions, Inc., an Alabama Corporation, having its principal place of business at 2083 Helms Road Dothan, Alabama, including its employees, owners, and agents, hereinafter referred to as "Seller", and Hernando High School, hereinafter referred to as "Buyer".

Seller shall furnish to Buyer 1 fireworks display, as per the \$ 6,700.00 program submitted and accepted by the Buyer, and which by reference is made a part hereof as Exhibit "A". The display is to take place on the evening of 9/28/2023, at approximately 8:45pm, weather permitting. Buyer agrees that if they are paying via credit card, the buyer will be responsible for an additional 4 percent processing fee to offset charges by Sellers merchant processor.

IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. FIRING OF DISPLAY :

o Seller agrees to furnish all necessary fireworks display material and personnel for a fireworks display in accordance with the program approved by the parties. Seller agrees to comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks.

Seller reserves the right to substitute items of equal or greater value due to current market conditions.

2. POSTPONEMENT / CANCELLATION:

Displays cancelled or postponed to an alternate date will be charged an additional 25% of the total contract price for additional expenses incurred in presenting the display on an alternate date.

3. RAIN DATE:

Should inclement weather prevent the firing of the display on the date mentioned herein, the parties agree to a mutually convenient rain date of 9/29/2023 or another date as agreed to by both parties. Once display set- up has begun, the determination to cancel the fireworks display because of inclement weather or unsafe weather conditions shall rest within the sole discretion of the AHJ, Seller, and the lead pyrotechnician.

4. INSURANCE:

If Seller is firing the show, Seller agrees to provide, at its expense, general liability insurance coverage, in an amount not less than \$2,000,000.00, and within 2 weeks prior to the date of the fireworks display, shall submit to the Buyer, if requested in writing, a certificate of insurance. All entities listed on the certificate of insurance will be deemed an additional insured. In the event of a claim by Buyer, the applicable deductible shall be paid by the Seller.

The Seller agrees to defend, indemnify and hold harmless the Buyer and its agents and employees from and against all claims, costs, judgments, damages and expenses, including reasonable attorney fees that may or shall arise out of any negligent or wrongful act or omission by the Seller related to the performance of the fireworks by the Buyer. The Buyer agrees to give the Seller prompt notice of any claims or demands and to cooperate with the Seller or its successors in interest or assigns, if any, in the defense of any such claims and/or demands.

5. BUYER AGREES TO PROVIDE:

- Ø Sufficient area for the display, including a minimum spectator set back as determined by Seller.
- Ø Protection of the display area by roping off the area or similar facility.
- Ø Adequate police protection to prevent spectators from entering display area.

Ø Dry, clean sand, if needed, for firing.

Ø Persons to assist in the inspection and cleanup of fireworks debris in the fallout zone of the shoot site at first light in the morning following the display for anything that may have been missed at the night search.

6.

No representation or affirmation of fact, including but not limited to statement regarding capacity, suitability for use, or performance of equipment or products shall be, or deemed to be a warranty by the Seller for any purpose, nor give rise to any liability or obligation of the Seller whatsoever, except for acts of Seller's negligence as above stated.

7.

It is further understood and agreed that nothing in this Agreement shall be construed or interpreted to mean a partnership. Both parties hereto being responsible for their separate and individual debts and obligations, and neither party shall be responsible for any agreements not stipulated in this Agreement. The Agreement shall not be construed to have been drafted, authored, or written by any specific Party. Rather, the Agreement shall be construed as co-drafted, co-authored, or co-written by the Parties. Therefore, the Agreement shall not be construed against any Party on the claim or basis the Agreement was drafted, written, or authored by any specific Party.

8.

The parties hereto do mutually and severally guarantee terms, conditions, and payments of this Agreement. This document shall be binding upon the parties, themselves, their heirs, executors, administrators, successors and assigns.

9. EXCLUDED DAMAGES AND LIMITATION OF LIABILITY:

Except for claims covered by Seller's applicable general liability insurance, notwithstanding any provision to the contrary in this Agreement:

Ø In no event shall Seller be liable to Buyer or any third party for any loss of use, revenue or profit or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages.

Ø In no event shall Seller's liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the aggregate amount paid or payable to Seller pursuant to this Agreement.

10. FORCE MAJEURE AND SAFE ENVIRONMENT CLAUSE:

If Seller cannot perform or believes it may not be able to perform this Agreement in whole or in part due to a fire, natural disaster, act of war or terrorism (domestic or foreign), epidemic or pandemic (including COVID-19), action of any governmental authority (including a Government Order as defined in Section 7.3), national or regional emergency, other casualty, act of God, or other cause beyond the control of the parties or due to Seller's illness or injury, whether or not foreseeable ("Force Majeure Event"), then Seller will give notice to the Buyer as soon as reasonably practicable after Seller determines that a Force Majeure Event will or may prevent seller from performing under this Agreement. Seller shall have no obligation to perform under this Agreement and no liability for delays or failures to perform due to a Force Majeure Event, but Seller may, in Seller's discretion, work with the Buyer to find an alternative date for the Event that is suitable to both Buyer and Seller. To the extent the Parties cannot agree on a suitable replacement date consistent with Seller's availability, Seller may also, in its sole discretion, refund fees paid to seller under the Agreement, less any amounts necessary to cover expenses and work (based on time spent by Seller) already performed by Seller related to the Event, including, but not limited to, pre-event communications, development of timelines, and preparation of gear for the Event (the "Refund Amount"). In the case of a Force Majeure Event, Seller shall have no additional liability to Buyer with respect to this Agreement beyond that described in this section and below.

Ø In the case of a Force Majeure Event that impacts the Seller individually, but does not otherwise impact the Event, including, but not limited to, illness or injury to Seller, Seller shall make reasonable efforts to schedule a replacement for the Event. Should Buyer not accept a replacement selected by Seller to perform Seller's obligations under the Agreement, Seller shall refund the Refund Amount and shall have no further obligation to perform under the Agreement.

Ø Buyer understands that Seller works to maintain a safe work environment, including but not limited to, complying with applicable governmental laws, directives, orders, and regulations (each a "Governmental Order"). Buyer further understands and agrees that Seller shall not be required to perform under this Agreement if the Event is held in violation of a Governmental Order or Seller's participation in the Event would violate a Governmental Order. Buyer also understands and agrees that Seller is not obligated to continue to perform under this Agreement if Seller's personal safety or well-being has been or will be comprised or threatened at the Event, including, but not limited to, as a result of the condition of the venue for the Event, or the conduct of an attendee of the Event.

11. CHOICE OF LAW, JURISDICTION, AND VENUE:

This Agreement shall be governing by and construed in accordance with the laws of the State of Alabama without regard to conflict-of-law principles, except as otherwise specifically required for the storing and displaying of fireworks as provided in paragraph one above. Notwithstanding, the Parties must bring any legal or equitable action or proceeding arising under or related to this Agreement exclusively in the Alabama District Court in and for Houston County, Alabama. The Alabama District Court in and for Houston County, Alabama shall have exclusive jurisdiction to decide any disputes arising out of or related to this Agreement. Each Party knowingly and voluntarily consents to and expressly waives any objection or defense to personal jurisdiction, improper or inconvenient venue, or inconvenient forum in the Alabama District Court in and for Houston County, Alabama.

12. PRODUCTION CREDITS.

Buyer agrees to credit Pyro Productions in printed, recorded, or broadcast event credits, Pyro Productions shall be credited as follows, either:

Ø Pyrotechnics and Flame Effects – Pyro Productions, Inc.

Ø Special Effects – Pyro Productions, Inc.

Ø Fireworks by Pyro Productions, Inc.

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

Client / Buyer Signature: _____
Pyro Productions, Inc. Signature: Charles McKinley

Approved as to Form

Nancy McClain Alfonso

General Counsel, HCSB