

STANDARD FIREWORKS CONTRACT

THIS CONTRACT AND AGREEMENT (this “Contract” or this “Agreement”) is made effective as of this ____ day of _____, 20____, by and between:

_____(hereinafter referred to as the “The Vendor”)

-AND-

HERNANDO COUNTY SCHOOL BOARD (hereinafter referred to as the “School Board”; or collectively, as the “Parties”)

WHEREAS, the Vendor is in the business of designing and performing exhibitions and displays of fireworks; and

WHEREAS, the School Board desires that the Vendor provide an exhibition and display of fireworks for the School Board’s benefit at (*SCHOOL NAME*): _____ pursuant to the terms and conditions hereof, and the Vendor desires to perform an exhibition and display of fireworks for the School Board’s benefit pursuant to the terms and conditions hereof.

1. The Vendor agrees to sell, furnish and deliver to the School Board a fireworks display [per the program submitted by the Vendor to the School Board] accepted by the School Board and made a part hereof (hereinafter referred to as the “Display”) to be exhibited on the display date set forth below (hereinafter referred to as the “Display Date”), or on the postponement date set forth below (hereinafter referred to as the “Postponement Date”) if the Display is postponed as provided herein, which the Display Date and the Postponement Date have been agreed upon at the time of signing this Contract.

Display Date: _____ **Postponement Date:** _____

2. The Vendor agrees to furnish the services of display technicians (hereinafter referred to as “Display Technicians”) who are sufficiently trained to present the Display. The Vendor shall determine in its sole discretion the number of Display Technicians necessary to take charge of and safely present the Display.
3. The Vendor agrees to furnish insurance coverage in connection with the Display for bodily injury and property damage, including products liability, which insurance shall include the School Board as additional insured regarding claims made against the School Board for bodily injury or property damage arising from the operations of the Vendor in performing the Display provided for in this Contract. Such insurance afforded by the Vendor shall not include claims made against the School Board for bodily injury or property damage arising from failure of the School Board, including through or by its

employees, agents and independent contractors, to perform its obligations under this Contract, including, without limitation, those set forth in paragraphs 5., and 6., below.

4. The School Board agrees to pay the Vendor the sum of \$_____ (hereinafter referred to as the "Purchase Price"), ten percent (10%) of which is due upon signing this Contract and the balance of which is due on the Display Date or the Postponement Date. In addition, the School Board agrees to pay a postponement fee of fifteen percent (15%) of the Purchase Price plus Additional Third Party Charges (as defined in paragraph 11., below) if the Display is fired on a date other than the Display Date or the Postponement Date ("Alternate Date"). The Alternate Date must occur within six (6) months of the original Display Date at a time agreeable to both the Vendor and the School Board. Generally, Alternate Dates will not include the period from June 28th through July 7th. These checks shall be made payable to the Vendor, unless otherwise authorized in writing by the Vendor. NO CASH shall be paid to any agent or employee of the Vendor, unless otherwise authorized in writing by the Vendor. There shall be no refund of the Purchase Price due and payable under this paragraph 4., except as specifically provided in paragraph 10., below.
5. The School Board agrees to meet all deadlines outlined in the Design and Production Provisions, which has been provided to the School Board, including but not limited to, the following:
 - a. The School Board must select a suitable place for the Display, including a firing and debris zone reasonably acceptable to the Vendor (hereinafter referred to as the "Display Area") and submit a site map of such selection to the Vendor no later than sixty (60) days prior to the Display Date. The Vendor shall determine if the Display Area adheres to or exceeds applicable Vendor guidelines and national Fire Protection Association ("NFPA") standards and has a radius of at least one hundred (100) feet per inch of the largest diameter pyrotechnic from the firing site in all directions to any parking area, spectators, inhabited buildings, public roads, or active railroad. The content of the Display may be limited by the selection of the Display Area due to the requirement to provide sufficient safety zones.
 - b. The School Board must secure and deliver to the Vendor no later than one (1) month or thirty (30) days prior to the Display Date all permits necessary for the Display, including but not limited to police, local, state and United States Coast Guard ("USCG") permits, and arrange for any security bonds or insurance as required by law. The Vendor will assist the School Board when appropriate in completing permit applications.

[NOTE: *Alternate to b., above, when it is expressly required by regulations that the Vendor obtain the permits.* The Vendor will secure all permits necessary for the Display as required, including but not limited to, police, local, state and the United States Coast Guard ("USCG") permits, and arrange for any security bonds or insurance required by law. The School Board will assist the Vendor when appropriate in completing permit applications.]

6. If, in its sole discretion, the School Board designates an area for members of the public to view the Display (hereinafter referred to as the "Spectator Area") or an area for vehicular parking (hereinafter referred to as the "Parking Area"), the School Board shall ensure that the Spectator Area does not infringe on the Display Area. The Vendor will have no responsibility for:
 - a. Ensuring that the terrain of the Spectator Area and any structures thereon, including but not limited to grandstands and bleachers are reasonably safe for use by spectators;
 - b. Ensuring that the Parking Area is safe for use, and/or
 - c. Policing, monitoring and appropriately controlling the behavior of persons in these areas.

It is expressly agreed that the Vendor shall not inspect any other area other than the Display Area, except to ensure that any Spectator or Parking Areas are outside the Display Area.

7. Prior to, during, and immediately following the Display, the School Board shall monitor the Display Area and will be solely responsible to keep all persons and property not authorized by the Vendor out of the Display Area and behind safety zone lines and limits.
8. Following the Display, the Vendor shall be solely responsible for policing of the Display Area and for cleanup. The Vendor shall be responsible for the removal of unexploded fireworks and the cleanup of material debris, the removal of frames, sets and lumber from the Discharge Area, and the refilling of holes created by the Vendor or on behalf of the Vendor within the Discharge Area.
9. The School Board will include a direct reference to the Vendor in all promotional material, including but not limited to event schedules; radio, television, newspaper and internet announcements; newspaper articles; and other media.

The Parties, intending to be legally bound, mutually agree as follows:

10. It is agreed and understood by the Parties hereto that should inclement weather prevent firing of the Display on the Display Date, as determined by the Authority Having Jurisdiction (as defined in paragraph 13., below) or as reasonably determined by the Parties, then the program shall be postponed and fired on the Postponement Date. If there is no Postponement Date and the Display is not fired on the Display Date, or if inclement weather prevents firing of the Display on the Postponement Date, as determined by the Authority Having Jurisdiction or as reasonably determined by the Parties, the Display will be cancelled and there will be a refund of the deposit or ten percent (10%) of the Purchase Price, whichever is greater.

- a. The School Board's cancellation of the Display will only be effective upon receipt by the Vendor of a written notice from an authorized person representing the School Board.

In the event of cancellation of the Display, the Parties agree as follows:

11. The Vendor reserves the exclusive right to make minor modifications and substitutions to the Display, provided that such changes are reasonable and necessary and do not materially adversely affect price, time of delivery, functional character or performance of the Display.
12. It shall be within the Vendor's and/or the Authority Having Jurisdiction's discretion to terminate the firing of the Display if any unsafe or unsuitable conditions are identified. If such conditions are not corrected, the Vendor may cancel the Display without further liability to the School Board for such cancellation.
13. The Parties agree to cooperate with the regulatory authorities 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 (any such authority having jurisdiction over the Display is sometimes referred to herein as, the "Authority Having Jurisdiction"). The Parties acknowledge that such governmental regulatory authorities having jurisdiction over the Display have the right to prohibit the Display until unsafe or unsuitable conditions are corrected.
14. This Contract shall be deemed made in the State of Florida and shall be construed in accordance with the laws of the State of Florida, excluding its conflict of law rules. The Parties agree and consent to the jurisdiction of the courts of Florida to resolve any disputes concerning this Agreement and agree that venue for any proceeding or action related hereto shall lie in the State courts in Hernando County, Florida.
15. If the Vendor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed by or against the Vendor or if a receiver is appointed for the Vendor, the School Board may refuse to perform under this Contract and may terminate this Contract without prejudice to the right of the School Board. Except to the extent, if any, specifically provided to the contrary herein, in no event shall the School Board be liable to the Vendor for any indirect, special consequential, incidental or punitive damages or lost profits, however caused and on any theory of liability (including negligence of any kind, strict liability or tort) arising in any way out of this contract, whether or not the Vendor has been advised of the possibility of damages.
16. This Contract shall not be construed to create a partnership or joint venture between the Parties or persons mentioned herein.
17. Each party hereunder shall be excused for the period of delay in the performance of any of its obligations hereunder and shall not be liable for failure to perform or

considered in default hereunder, when prevented from so performing by a cause beyond its reasonable control, including but not limited to fire, storm, earthquake, flood, drought, accident, explosion, operation malfunction, or interruption, strikes, lockouts, labor disputes, riots, war (whether or not declared or whether or not the United States is a member), federal, state, municipal or other governmental legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain materials, supplies, equipment, fuel, power, labor or other operational necessity, interruption or curtailment of power supply, or act of God, nature or public enemy.

18. This Contract constitutes the sole and entire understanding of the Parties with respect to the matters contemplated hereby and supersedes and renders null and void all prior negotiations, representations, agreements and undertakings (oral and written) between the Parties with respect to such matters. No change or amendment may be made to this Contract except by an instrument in writing signed by each of the Parties.
19. Notices, consents, requests or other communications required or permitted to be given by either party pursuant to this Contract shall be given in writing by first class mail.

Postage prepaid addressed as follows:

if to the Vendor:

Attention: _____

if to the School Board:

Hernando County School Board

Attention: _____

919 North Broad Street

Brooksville, Florida 34601

20. This Contract may be executed in one (1) 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. The exchange of copies of this Contract and of the signature pages by facsimile transmission shall constitute effective executions and delivery of this Contract as to the Parties and may be used in lieu of the original Contract for all purposes. This Contract and all the rights and powers granted by this Contract shall bind and inure to the benefit of the Parties and their respective successors and assigns.

21. The Vendor will provide Ten Million Dollars (\$10,000,000) of Liability Insurance along with Workers Compensation and Automobile Coverage. The General Liability Coverage will name the School Board as additional insured and will provide the School Board with a certificate of insurance.
22. All officers, contractors and/or other agents working for the Vendor at the school site shall undergo the necessary background screening as required by the District's Department of Safety and Security and otherwise comply with its directives as to security at the site. Any expense for the screening shall be borne by the Vendor.
23. As provided for under common law, and to the extent specifically authorized by state and federal law, the Vendor hereby agrees to indemnify and hold the School Board harmless from and against any and all damages of any nature whatsoever which are caused or materially contributed to by the negligent, reckless, or intentional acts of any officer, employee, agent or other representative of the Vendor.
24. The Parties agree that nothing in this Agreement may be construed as a waiver of the School Board's sovereign immunity.
25. The Parties agree to each pay their own attorneys' fees and costs relative to the negotiation of this Agreement and in relation to any action to enforce hereof.

Any confidentiality provisions in this Agreement shall be read in harmony with Florida's Public Records Act, Chapter 119, Florida Statutes. No provisions in this Agreement can be exercised to frustrate the requirements of the law for the release of records. The Parties recognize that the School Board is a governmental entity, subject to Florida law regarding public access to records under Florida Statute, Chapter 119. As such, the Parties agree that only such information as is exempt and confidential under the provisions of law shall be considered confidential under the Term of this Agreement. To the extent that the Vendor provides the School Board any information which it believes is confidential or exempt, the Vendor shall notify the School Board of the specific information that it believes is confidential, as well as the basis for the exemption. To the extent that the Vendor maintains information that is subject to public record request, it shall provide the public access to such records in accordance with, and subject the applicable statutory terms and fees. Failure to do so will be considered a material breach of the original Agreement resulting in immediate termination with no penalty to the School Board, and the Vendor will indemnify and hold the School Board harmless for any and all damages and expenses suffered as a result of the material breach and Contract termination.

(signatures on the following page)

IN WITNESS WHEREOF, we set our hands and seals to this Agreement in duplicate the day and year first above written.

HERNANDO COUNTY SCHOOL BOARD
(the "School Board")

Approved as to Form

Nancy McClain Alfonso

General Counsel, HCSB

BY: _____

NAME: _____

(SEAL)

TITLE: Board Chairperson

(the "Vendor")

BY: Charles McKinley

NAME: _____

(SEAL)

TITLE: _____

Please sign this Agreement where indicated and return all originals for final acceptance to:

