

## DISPLAY APPROVAL AND HOLD HARMLESS AGREEMENT

**THIS AGREEMENT** (the “Agreement”) is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between, on the one hand, **The City of Pascagoula, Mississippi** (the “City”), and, on the other hand, **Artisan Pyrotechnics** (the “Vendor”). The City and Vendor may be severally referred to as a “Party” or collectively referred to as the “Parties.”

### WITNESSETH:

**WHEREAS**, the City, a political subdivision of the State of Mississippi, desires to host a public fireworks display for an Independence Day Celebration on or about July 4, 2023; and

**WHEREAS**, Vendor is a company that performs and provides firework and pyrotechnic displays; and

**WHEREAS**, the City desires to engage Vendor to perform and provide a firework and pyrotechnic display for an Independence Day Celebration (the “Display”); and

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby mutually enter and agree to this Agreement, each for itself and its successors and assigns, as follows:

#### **Section 1. Display Approval.**

1.1. The City approves Vendor’s quote, attached hereto, and authorizes payment to Vendor in the amount of \$18,000.00. The City shall issue payment to Vendor between 45 and 60 days following performance of the Display.

1.2. Vendor agrees to perform the Display on July 4, 2023 consistent with the attached quote; provided, however, that the City and Vendor may agree to reschedule the Display in the event weather or other circumstances require such rescheduling.

**Section 2. Hold Harmless.** Vendor agrees, swears, and affirms to release and hold harmless the City and its employees, officers, and agents for any and all loss, damage, injury, claim, or liability (including, without limitation, attorneys’ fees) arising from Vendor’s performance of the Display.

#### **Section 3. Defense and Indemnity.**

3.1. In consideration of the City’s approval of the Display and the compensation stated in this Agreement, and to the fullest extent permitted by law, the Vendor shall

defend, indemnify, and hold harmless the City and its employees, officers, and agents and any other person or entity that the City is required to defend or indemnify (collectively, the “Indemnities”), from and against any and all demands, claims, causes of action, liens, fines, penalties, losses, damages, costs, and expenses (including legal fees), of every kind and nature, regardless of whether in law or in equity, or whether nominal, actual, direct, indirect, consequential, special, punitive, or otherwise (collectively, the “Liabilities”), arising out of, or related to, performance of the Display by the Vendor.

3.2. Upon notice from any of the Indemnities of any Liabilities covered above, the Vendor shall, at its sole cost, expense, and risk: (1) defend against all Liabilities that may be brought or instituted by any person or entity against any of the Indemnities; (2) pay, satisfy, or otherwise settle all Liabilities, including without limitation, any fine, penalty, award, judgment, or decree that may be rendered against any of the Indemnities; and (3) reimburse each of the Indemnities for all actual legal fees, expenses, costs, and damages, and pay any amounts paid out in satisfying or otherwise settling any Liabilities for which the Vendor has failed to perform its defense and indemnity obligations, regardless of whether incurred in or out of court or arbitration, on appeal, or as part of any regulatory, administrative, bankruptcy, or other dispute resolution proceeding, or in enforcing this defense and indemnity obligation or any other provision of this Agreement. The defense and indemnity obligations contained herein shall survive the expiration of this Agreement.

3.3. If any portion of the foregoing indemnity clause is determined to be in contravention of applicable law or otherwise invalid or unenforceable, that portion shall be deemed severable and the foregoing indemnity clause shall be reformed to provide the maximum enforceable defense and indemnity in favor of the Indemnities permitted by applicable law.

**Section 4. General Liability.** The City shall not be liable for any damage to property of Vendor or of others entrusted to Vendor, nor for the loss of, or damage to, any property of Vendor or of others entrusted to Vendor by theft, fire, explosion, or otherwise. The City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, water, or rain, or by any other cause of any nature whatsoever.

**Section 5. Liability Insurance.** Vendor shall be responsible for providing liability insurance for the Display and shall purchase, pay for, and carry public liability insurance with limits in an amount no less than \$1,000,000.00 per incident and \$3,000,000.00 in the annual aggregate, and Vendor shall furnish to the City within thirty (30) days of the Effective Date of this Agreement written evidence of the existence of such insurance. The City shall be named in said policy as an additional insured.

## **Section 6. Assignment.**

6.1. This Agreement, or any interest therein, shall not be assigned, transferred, or otherwise encumbered under any circumstances by Vendor without the prior written consent of the City.

6.2. Subject to the requirements of Section 6.1, and to the extent authorized by law, covenants and conditions herein contained shall apply to and bind the successors and assigns of all the Parties hereto.

## **Section 7. Severability and Modification.**

7.1. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any breach of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of any subsequent breach.

7.2. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both Parties.

## **Section 8. Survival and Remaining Obligations.**

8.1. This Agreement and all covenants and warranties contained herein shall survive indefinitely unless agreed otherwise in writing by the Parties.

8.2. Termination of this Agreement, unless expressly provided herein, shall not relieve or release any Party from any rights, liabilities, or obligations that it has accrued prior to the date of such termination and those rights, liabilities, and obligations expressed herein of the Parties upon the termination of this Agreement.

**Section 9. Relationship of the Parties.** Vendor's relationship with City is that of an independent contractor, and nothing in this Agreement is intended to or shall be constructed as creating a partnership, agency, joint venture, employment, or similar relationship.

## **Section 10. Notices.**

10.1. Any notice required or permitted to be sent to the City hereunder shall be deemed given when deposited in the United States mail, postage prepaid, certified mail, to the City at the addresses below:

City of Pascagoula  
c/o City Manager  
Post Office Drawer 908  
Pascagoula, Mississippi 39568

10.2. Any notice required or permitted to be sent to the Vendor hereunder shall be deemed given when deposited in the United States mail, postage prepaid, certified mail, to the Vendor at the addresses below:

Artisan Pyrotechnics  
Post Office Box 250  
Wiggins, Mississippi 39577

**Section 11. Governing Law and Venue.** This Agreement shall be governed and construed in accordance with Mississippi law. Nothing in this Agreement shall be construed to negate, abrogate, or otherwise modify the rights of the City under the Mississippi Tort Claims Act. In the event any litigation arises between the Parties in connection with this Agreement, venue for such litigation shall lie exclusively in Jackson County, Mississippi, to the exclusion of all other venues.

**Section 12. Representations and Warranties.**

12.1. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has the full power and authority to make, deliver, enter into, and perform pursuant to the terms and conditions of this Agreement, and (ii) it has taken all necessary action to authorize the execution, delivery, and performance of the terms and conditions of this Agreement.

12.2. Each Party represents and warrants to the other Party that it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendation of the Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

**Section 13. Counterparts.** This Agreement and any amendment or supplement hereto or any waiver granted in connection herewith may be executed in any number of counterparts and by the different Parties on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed and caused this Agreement to be effective as of the Effective Date first written above.

Michael Silverman

By: \_\_\_\_\_  
Michael Silverman, City Manager  
City of Pascagoula, Mississippi

STATE OF MISSISSIPPI

COUNTY OF JACKSON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named Michael Silverman, and that he signed and delivered the above and foregoing instrument for and on his behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_

[NAME]

By: \_\_\_\_\_  
[NAME]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named \_\_\_\_\_, and that he/she signed and delivered the above and foregoing instrument for and on her behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_