

Public  
Safety  
3-19-18

# CONSENT

18-0241

**SPECTRUM PYROTECHNICS, INC.**  
W9285 HIGHWAY 16 & 60  
REESEVILLE, WISCONSIN 53579

## **FIREWORKS DISPLAY CONTRACT**

This AGREEMENT made this 21st day of February, 2018, by and between **SPECTRUM PYROTECHNICS, INC.** of Reeseville, Wisconsin, hereinafter referred to as "SPECTRUM", and City of Manitowoc (Hereinafter referred to as "SPONSOR"),

For and in consideration of all mutual covenants and considerations as attested to herein and after, both Parties hereto agree as follows:

SPECTRUM is engaged in the sale, exhibition and display of fireworks, and Spectrum shall provide unto Sponsor a fireworks display and exhibition (hereinafter referred to as an "Exhibition") for the Sponsor's benefit; and

Sponsor requests SPECTRUM to provide Sponsor with an Exhibition on the 17<sup>th</sup> day of March, 2018.

1. **SPECTRUM Obligations.** SPECTRUM shall provide all freight, cartage, transportation of equipment, material and tools for said Exhibition together with all necessary trained and experienced pyrotechnic operators to set up and conduct said Exhibition; and

Spectrum shall provide Fireworks Liability Insurance coverage up to an amount of 5 Million, for any claims, damages, suits, injuries or expenses incurred as a result of SPECTRUM's breach of any of the provisions set forth herein or by any negligent act or omission of any employee, independent contractor or agent of SPECTRUM or by any of the Fireworks supplied or displayed by SPECTRUM; and

SPECTRUM shall be responsible for removing their equipment and any live or unfired material from the Exhibition site, as well as inspecting the Exhibition area the following morning for any additional live material that may have gone undiscovered in the darkness following the Exhibition. Sponsor shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special and/or punitive damages from SPECTRUM, including, but not limited to, loss of income, business or profits. Those entities/individuals listed on the certificate of insurance shall be deemed an additional insured per this contract.

2. **SPONSOR Obligations.** Sponsor shall hold harmless and indemnify SPECTRUM from any demands, claims, causes of action or liability arising from damage

to or destruction of real or personal property or bodily injuries, whether arising from tort, contract or otherwise, for any incidents arising directly or indirectly from the failure of Sponsor to comply with its obligations set forth herein. Sponsor shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special and/or punitive damages from SPECTRUM, including, but not limited to, loss of income, business or profits.

The Sponsor shall provide adequate security, fire and police protection, parking, traffic and crowd control, as well as all materials to cordon off the Fireworks Safety Area and fallout zones from unauthorized persons. Furthermore, Sponsor shall be solely responsible for providing adequate Spectator Safety, including but not limited to seating and ground surfaces.

Sponsor shall be responsible for all clean up, except as stated above, including, but not limited to, debris, paper, foil, trash, wood, back filling holes, repairs to grass, sod or other surfaces, removal of all barricades or return of rental items not their property.

Sponsor shall be responsible for obtaining all State and local permits required for said Exhibition, as well as all costs related thereto. Spectrum shall aid and assist the Sponsor with obtaining such permits. This, however, in no way modifies the Sponsor's responsibility for all costs incurred.

Sponsor agrees to name SPECTRUM PYROTECHNICS, INC. as the primary vendor of Sponsor in all news/media releases, advertisements, publicity, programs and announcements.

3. **Payment.** Upon signing this Agreement, Sponsor shall pay unto SPECTRUM, a non-refundable deposit of 50 percent (%) of the total amount of this contract (listed below), as modified in writing. The balance thereof shall be paid by check or money order following the Exhibition. All checks shall be made payable to: SPECTRUM PYROTECHNICS, INC., W 9285 Highway 16 & 60, Reeseville, WI 53579.

The total (known to date) amount of this contract is \$1,500.00 (U.S. Currency).

4. **Independent Acts.** SPECTRUM shall NOT be responsible for delay, postponements or cancellations due to acts of Nature or God, labor disputes, strikes, wars, accidents or other reasons beyond their knowledge or reasonable control.

5. **Cancellation.** In the event that Sponsor cancels this contract as provided below, liquidated damages for such cancellations shall be paid by Sponsor as follows:

- A. In the event the Exhibition is cancelled more than thirty (30) days before the date scheduled for the Exhibition, twenty-five (25) percent (%) of the amount of the contract price.
- B. In the event the exhibition is cancelled not more that thirty (30) days and no less than five (5) days before the date scheduled for the Exhibition, thirty-five (35) percent (%) of the amount of the contract price.
- C. In the event the Exhibition is cancelled no more than four (4) days but before the date scheduled for the Exhibition, fifty (50) percent (%) of the amount of the contract price.
- D. In the event the Exhibition is cancelled on the day scheduled for the Exhibition, seventy-five (75) percent (%) of the amount of the contract price.

In the event the Sponsor chooses to terminate the contract, it shall do so by written notice via registered mail addressed to SPECTRUM PYROTECHNICS, INC., W9285 HWY 16 & 60, Reeseville, WI 53579. Notice shall be effective upon RECEIPT of said written notice by SPECTRUM PYROTECHNICS, INC.

6. **Governing Laws.** The parties agree that this contract shall be interpreted, construed, enforced and governed by the laws of the State of Wisconsin.

7. **Modification.** Except as provided herein, the terms of this agreement shall not be modified, amended or rescinded except by written agreement signed by authorized representatives of its parties hereto. This contract is the final and complete agreement between the parties hereto. Sponsor agrees that Spectrum has made no representations verbally, by conduct or otherwise that are, different or in addition to the terms contained herein and Sponsor covenants not to sue Spectrum in contract or tort based upon any representations, whether made verbally, by conduct or otherwise, that are different or in addition to the terms contained herein.

~~8. **Binding Arbitration.** The parties agree to submit all controversies, claims and matters of difference to make arbitration in Wisconsin, according to the rules and practices of the American Arbitration Association. This submission and agreement to arbitrate shall be specifically enforceable. The parties agree to abide by all awards rendered in such proceedings. All awards may be filed with the clerk of the district court in Madison, Wisconsin, as a basis of judgment and of issuance of execution for its collection and, at the election of the party making such filing, with the clerk of one or more other courts, state or federal, having jurisdiction over the party against whom such an award is rendered.~~

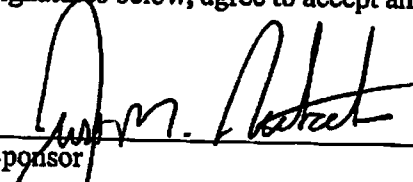
struck  
per email  
KMM

9. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be

enforceable to the fullest extent permitted by law. Without limiting the generality of the foregoing sentence, to the extent any provision of this Agreement is prohibited or ineffective under the Act or common law, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act or common law.


10. **Authorization.** All contracts shall be approved by the then acting President of SPECTRUM PYROTECHNICS, INC. in order to be binding upon SPECTRUM.

IN WITNESS HERETO, We the undersigned being duly authorized to enter into this agreement on behalf of the respective Parties hereto, acknowledge reading and understanding the terms and conditions of this agreement as listed herein, and by our signatures below, agree to accept and comply with them.

  
Sponsor \_\_\_\_\_ Date 02/21/2018

Justin M. Nickels  
Print Name \_\_\_\_\_

Mayor, City of Manitowoc  
Title \_\_\_\_\_

  
Spectrum Pyrotechnics, Inc. \_\_\_\_\_ Date 2/21/18