

**PYRO SHOWS
P.O. BOX 1776
LAFOLLETTE, TN 37766**

Contract Agreement

This Agreement, made this 6th Day of March, 2019, by and between **PYRO SHOWS, Inc.**, a Tennessee Corporation, whose address is 115 N. 1st Street, LaFollette, Tennessee 37766, and hereinafter referred to as **PYRO SHOWS** and **City of Gulf Shores** with its principle place of business located at P.O. Box 299, Gulf Shores in the State of Alabama hereinafter referred to as "Customer."

WITNESSETH

In consideration of the mutual promises and undertakings set forth herein, receipt of said consideration being acknowledged, the parties hereby agree as follows:

I. FIREWORKS DISPLAY: PYRO SHOWS agrees to furnish to customer a firework display (hereinafter "Show") pursuant to the display #19AL07-04-C-30278-000198 dated this 6th day of March 2019. The show will be given on the **4th day of July 2019**. Contract is for 3rd year of a five-year term (2017-2021). The schedule of pricing is in Addendum B on page four (4) of this document.

II. CANCELLATION: PYRO SHOWS shall determine what weather conditions prohibit PYRO SHOWS from proceeding with the Show; in which case, PYRO SHOWS agrees to present the Show on the following day or previously agreed upon rain date. In addition to contracted Show cost, Customer shall remit the actual additional expenses PYRO SHOWS shall incur in presenting the show on subsequent occasion to include labor, lodging, per diem, etc.; in no event shall these additional expenses be less than ten percent (10%) of the contracted price of the Show. In the event the Show must be RESCHEDULED to a mutually agreed upon date other than the previously agreed upon rain date, in addition to contracted Show cost, Customer shall remit the actual additional expenses PYRO SHOWS shall incur in presenting the Show on subsequent occasion to include labor, lodging, per diem etc.; in no event shall these expenses be less than thirty percent (30%) of the contracted price of the Show. Should Customer elect to CANCEL the Show for any reason, Customer must provide PYRO SHOWS with a thirty (30) days' written notice by certified mail, return receipt, to PYRO SHOWS' address as set forth above. Customer agrees that PYRO SHOWS shall incur substantial expense in preparation for the Show and, accordingly, agrees to pay PYRO SHOWS fifty (50%) of the total contract price for the show as liquidated damages for cancellation. If the Customer does not provide PYRO SHOWS with notice as set forth herein, Customer shall pay PYRO SHOWS the entire amount or one hundred percent (100%) of the contract price for the Show as liquidated damages.

III. SECURITY AREA: Customer agrees to furnish sufficient space for PYRO SHOWS to properly conduct the Show as determined by NFPA 1123-2014 (hereinafter "Security Area"). Customer agrees to provide adequate security protection to preclude persons unauthorized by PYRO SHOWS from entering the Security Area. For the purposes of the Agreement, "Unauthorized Persons" shall mean anyone other than the employees of PYRO SHOWS or persons specifically designated in writing by the sponsor, and submitted and approved, to PYRO SHOWS prior to the event.

IV. SITE CLEANUP: PYRO SHOWS shall be responsible for basic cleanup of the launch area to include policing of the fallout zone for any unexploded ordnance and removal of all large paper debris, wood, wire, foil, racks, mortars and firing equipment used in the setup for the show. Customer shall be responsible for cleanup of debris located in and around fallout zone.

V. INDEMNIFICATION AND HOLD HARMLESS: Customer agrees to hold PYRO SHOWS harmless from any damages caused to Customer which result as a consequence of unauthorized persons entering the Security Area. Furthermore, Customer agrees to defend and indemnify PYRO SHOWS from any and all claims brought against PYRO SHOWS for damages caused wholly or in part by Unauthorized Person who have entered the Security Area.

VI. AMENDMENT & ASSIGNMENT: This agreement is deemed personal and confidential to Customer, his heirs, executors and administrators only, and may not be sold, assigned, amended, or transferred without the prior written consent of PYRO SHOWS.

VII. COMPLIANCE WITH THE LAWS AND REGULATIONS: Promptly upon the execution of this Agreement, Customer shall apply for the approval hereof to any agency, officer or authority of any government if such approval is required by any applicable law, ordinance, code or regulation. Customer agrees to indemnify and hold harmless PYRO SHOWS from against all claims, suits, and causes of action, demands, penalties, losses or damages which may arise or accrue because of the failure or neglect of customer to obtain such approval. This Agreement is made expressly subject to and Customer expressly agrees to comply with and abide by all applicable laws, ordinances, codes and regulations insofar as the same may be applicable to the terms and conditions of this Agreement, including all rules and regulations now existing or that may be promulgated under and in accordance with any such law or laws.

VIII. PERMITS AND LICENSES: Customer shall assist PYRO SHOWS in the acquisition and maintenance of all necessary permits and licenses to enable PYRO SHOWS to perform fully hereunder unless otherwise forbidden by any other applicable statute, rule or otherwise. Any expenses for security or stand by fire protection shall be the responsibility of the customer. It is hereby stipulated that this Agreement is to be construed and governed by the

laws of the State of Tennessee, and any suit involving this contract shall be brought in the Courts of Campbell County in the State of Tennessee, and the Customer hereby submits itself to the jurisdiction of said Courts and waives its rights to proceed against PYRO SHOWS in and other actions, in any other jurisdiction.

IX. LATE PAYMENT: PYRO SHOWS shall charge, and Customer agrees to pay, one and one half percent (1 1/2%) per month late payment fee for each month until PYRO SHOWS is paid the amount set forth in Paragraph XIV herein. The stated late payment fee shall begin to run from the applicable date(s) established in Section XIV, unless this provision is prohibited by law.

X. ADVERTISEMENT AND PROMOTIONS: Customer agrees to state that fireworks display is being provided by PYRO SHOWS in all advertisements and promotions. Furthermore, Customer agrees to allow PYRO SHOWS to use sponsors name and/or logo in PYRO SHOWS list of clients and any Pyro Shows advertisements and promotions.

XI. COMPLAINTS: In the event that Customer has a complaint concerning the Show, or any material or product used in or pursuant to the Show, or of the conduct of the Show by PYRO SHOWS, or any act or omission of PYRO SHOWS or its agents, either directly or indirectly, without limitation, Customer shall make complaint known to PYRO SHOWS in writing by certified mail to PYRO SHOWS' address as set forth above, within ten (10) days after the date of the Show. In the event that Customer fails to register any complaint in the time and in the manner specified, Customer agrees that it shall not claim such complaint as cause for an offset or withhold any payment due to PYRO SHOWS hereunder on account of or because of such complaint or any matter arising from, relating to or a consequence of the complaint. Furthermore, Customer agrees that should PYRO SHOWS have to collect any amount due PYRO SHOWS hereunder which Customer claims as an offset or which is withheld by Customer on account of, or because of, a complaint not registered with PYRO SHOWS in the time and in the manner specified herein, by law or through an Attorney-at-Law, PYRO SHOWS shall be entitled to collect attorneys' fees in the amount of 15% of the amount owing PYRO SHOWS or the maximum amount allowed by law, whichever is greater, along with all cost of collection.

XII. WORKER'S COMPENSATION/EMPLOYEES: PYRO SHOWS shall provide Worker's Compensation insurance for its employees only.

XIII. INSURANCE: Pyro Shows will provide General Liability Insurance and Automobile Liability in the amount of \$10,000,000.00 combined single limit, covering its activities and services in connection with the show described in this contract. Pyro Shows also agrees to include Customer as additional Insured under the terms of this coverage. Pyro Shows, Inc. will provide a certificate of Insurance. All entities listed on the certificate will be deemed an additional Insured per this contract.

Pyro Shows agrees to include Alabama Department of Conservation/Gulf State Park Pier as additional insured under the terms of this coverage.

XIV. PAYMENT TERMS: City of Gulf Shores shall pay PYRO SHOWS **\$30,278.00** according to the terms and conditions set forth for presenting the Show. Contract is for \$30,000.00 fireworks display and a \$278.00 fee for additional added insurance coverage for the State Park Pier. Customer shall submit a 50% deposit (\$15,139.00) upon return of signed contract by April 8, 2019. Balance will be due in PYRO SHOWS office net thirty (30) days of show.

XV. TAXES: Customer shall be responsible for all applicable sales taxes.

IMPORTANT: Checks must be payable to PYRO SHOWS, INC.

All the terms and conditions set forth on any addendum attached to this Agreement are made part of this Agreement and incorporated by reference herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

PYRO SHOWS, INC.

BY: _____ Date _____
Lansden E. Hill, Jr. President

CUSTOMER

BY: _____ Date _____
Signature Print Name Title

WARRANTY EXCLUSIONS

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

No representation of affirmation of fact including but not limited to statement regarding capacity, suitability for use, or performance of equipment or products shall be, or be deemed to be, a warranty by PYRO SHOWS for any purpose, nor give rise to any liability or obligation of PYRO SHOWS whatsoever.

IN NO EVENT SHALL PYRO SHOWS BE LIABLE FOR ANY LOSS OF PROFITS OR OTHER ECONOMIC LOSS, INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY CLAIMED BREACH OF OBLIGATIONS HEREUNDER.

ADDENDUM "A"

**CONTRACT AGREEMENT
BETWEEN PYRO SHOWS
AND THE CITY OF GULF
SHORES
2019**

This addendum sets out the terms and conditions in extension or amendment of any terms or conditions otherwise set out in the Contract to which it is attached. In the extent of any conflict or inconsistency between the terms and conditions set out in the addendum and terms or conditions set out else wherein the contract, the provision of this Addendum shall control. It contains the complete understanding of the parties hereto and may not be amended, supplemented, varied or discharged except by an instrument in writing. The validity, construction and effect of this Contract shall be governed by the laws of the State of Alabama. The Contract between Pyro Shows, and the City of Gulf Shores dated the 28th of February, for services performed as described in said contract, shall have the following items constituting an Addendum to Contract.

- I. **Security:** Pyro Shows Shores shall provide security personnel at the Fireworks Loading Site when Pyro Shows personnel are not working on site.
- II. **Insurance:** The following shall be named as additional insured: City of Gulf Shores, and State of Alabama.
Pyro Shows agrees to include Alabama Department of Conservation/Gulf State Park Pier as additional insured under the terms of this coverage.
- III. **Indemnifications and Liability:** Pyro Shows shall hold harmless and indemnify the City of Gulf Shores from any demands, claims, causes of action or liability arising from damage to or destruction of real or personal property or bodily or personal injuries, whether arising from tort, contract or otherwise, that occur directly or indirectly from the failure of Pyro Shows to comply with its obligations and responsibilities as set forth in this addendum or contract, including attorney fees and costs. Pyro Shows, shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special and/or punitive damages from the City of Gulf Shores, including, without limitation, loss of income, business or profits.

ACCEPTED AND AGREED

ACCEPTED AND AGREED

Mayor Craft
City of Gulf Shores

Lansden E. Hill, Jr.
Pyro Shows

ADDENDUM "B"

**CONTRACT EXTENSION
AGREEMENT BETWEEN
PYRO SHOWS AND THE
CITY OF GULF SHORES**

PRICING SCHEDULE

(base year plus four (4) additional years if all parties are satisfied with new arrangements)

YEAR OF CONTRACT	SHOW BUDGET	ADDITIONAL INSURANCE FOR STATE PIER	TOTAL PRICE
2017	\$25,500.00	\$263.00	\$25,763.00
2018	\$26,300.00	\$270.00	\$26,570.00
2019	\$30,000.00**	\$278.00	\$30,278.00
2020	\$27,900.00	\$286.00	\$28,186.00
2021	\$28,700.00	\$295.00	\$28,995.00

****Increase in fireworks budget to \$30,000.00 per fireworks meeting on 3/4/2019. Add twenty (20) additional 10" shells.**

City of Gulf Shores, AL July 4, 2019 Fireworks Crew Load In Timeline

July 3, 2019 7:00 AM

Pyro Shows tractor-trailer and crew will arrive at the State Park Pier in a place that has been designated as acceptable to the Fire Marshal, the Pier, and the City to begin off-loading all the non-explosive equipment and material to build the fireworks show. 4 – 6 City of Gulf Shores personnel will arrive with utility vehicles and trailers. Gulf Shores' workers will help Pyro Shows workers unload all the racks that will be used in the show. Pyro Shows workers will nail the racks together to create 3 rack setups. Gulf Shores' workers will load the trailers and help the Pyro Shows workers set the setups out in the staging area and protect them from weather. At whatever time this process is complete, work will be completed for the day.

July 4, 2019 6:00 AM

The State Park Pier will be closed to the public and evacuated. Pyro Shows workers and Gulf Shores' workers will haul all the fireworks equipment to the end of the Pier. While the Gulf Shores workers deliver all the fireworks setups (with no fireworks loaded) to the end of the Pier, the Pyro Shows workers will align all of the setups into their proper firing positions and begin running wire from the setups to the firing panel. The Gulf Shores workers will also bring the sand box components for 8" and 10" shells to the end of the Pier. The Pyro Shows workers will assemble the sand boxes and set the mortars inside the sandboxes on the Pier beams to provide additional support. The Gulf Shores workers will deliver sand and help the Pyro Shows workers fill the sandboxes with sand.

As soon as all construction work is complete, the fireworks will be delivered to the end of the Pier. No Gulf Shores workers will be involved in loading any of the mortars. All Gulf Shores' workers and equipment will be dismissed except for one worker and golf cart that will remain on duty to be available if needed.

July 4, 2019 12:00 NOON

State Park Pier will be re-opened to general public to a point beyond bath house, but a separation distance between general public and Pyro Shows Crew of no less than 300' will be maintained for public safety.

Lunch is delivered to Pyro Shows crew.

July 4, 2019 6:00 PM

Fire Marshal closes pier to acceptable distance for show. No less than 700' for 10" shells.

July 4, 2019 9:00 PM

Show Begins

July 4, 2019 9:00 PM

Show Ends.

July 4, 2019 9:30 PM

Pyro Shows crew clears fireworks mortars and begins teardown process.

July 4, 2019 10:00 PM

Eight men and two gators provided by the City of Gulf Shores return to help clear pier of equipment.

July 5, 2019 6:00 AM

All work will be completed, and pier will be clean.

NOTE:

The time schedule outlined above assumes that weather on July 4 will be good all day and all evening. If, on the day of July 3, it is apparent from the weather forecast that weather on July 4 may prevent the safe loading of the fireworks on schedule, there needs to be a plan in place that would allow the mortars to be transported out on the pier beginning no later than 9:00 pm on the night of July 3. This alternative plan will only be necessary if there is a bad weather forecast for the day of July 4.