

Agenda Item: CA-6

Meeting Date: March 28, 2022

Subject: RESOLUTION NO. 22-25, A RESOLUTION APPROVING A PYROTECHNIC DISPLAY AND SERVICES AGREEMENT WITH TRI-STATE FIREWORKS, INC FOR THE DACONO MUSIC AND SPIRITS FESTIVAL

Presenter: Kaylin Miller, Community Outreach and Event Coordinator

Background: Resolution 22-25 , approves agreement between the City of Dacono and Tri-State Fireworks, Inc. for fireworks for the Dacono Music and Spirits Festival. The cost for the fireworks display is \$14,200.

Recommended Action: Staff recommends approval of Resolution 22-25.

RESOLUTION NO. 22-25

A RESOLUTION APPROVING A PYROTECHNIC DISPLAY AND SERVICES AGREEMENT WITH TRI-STATE FIREWORKS, INC FOR THE DACONO MUSIC AND SPIRITS FESTIVAL

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. The proposed agreement between the City and Tri-State Fireworks, Inc. for Pyrotechnic Display services at the Dacono Music and Spirits Festival is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

Section 2. The Mayor is hereby authorized to execute the Agreement on behalf of the City, and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 28th day of March, 2022.

CITY OF DACONO, COLORADO

Adam Morehead, Mayor

ATTEST:

Valerie Taylor, City Clerk

Agreement For Services

This Agreement (“Agreement”) is made and entered into this Ninth day of March, 2022 by and between the City of Dacono ("City") and Tri-State Fireworks, Inc. (“Contractor”).

WHEREAS, City desires to retain Contractor to perform Services set forth in this Agreement; and

Whereas, Contractor desires to provide those services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

- 1. Services.** City agrees to retain Contractor to provide the services. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the services on the terms and conditions set forth herein.
- 2. Compensation.** City agrees to pay Contractor a sum of \$14,200.00 (Fourteen Thousand Two Hundred Dollars). City shall pay total contract amount, on or before August 20, 2022. Unpaid accounts are subject to one and one half percent (1 1/2%) interest charge per month after fifteen days.
- 3. License and Permits:** Contractor will obtain any state license and permits necessary to execute the fireworks display contemplated herein. City shall pay for local, city, or fire department fees necessary to perform the fireworks display. Contractor shall provide information required by the licensing authorities for issuance of such license or permits.
- 4. Term.** The Term of this Agreement shall be for one August 6, 2022 fireworks display and include set-up, execution and supplies to complete the fireworks display.
- 5. Monitoring and Evaluation.** City reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City and other applicable monitoring and evaluating criteria and standards.
- 6. Independent Contractor.** The parties agree that the Contractor shall be an independent contractor and shall not be an employee, agent, or servant of the City.
- 7. Insurance Requirements.**
 - A. Comprehensive General Liability Insurance.** Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Contractor and naming the City, as additional insured against

any liability for personal injury, bodily injury, or death arising out of the performance of the services with at least Two Million Dollars (\$2,000,000) general aggregate and One Million Dollars (\$1,000,000) each occurrence.

B. Comprehensive Automobile Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring Contractor and naming the City as additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Contractor which are used in connection with the Project, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

C. Terms of Insurance. Insurance required by this Agreement shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than A+3A as set forth in the most current edition of "Best's Insurance Report" and may provide for deductible amounts as Contractor deems reasonable for the Services. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except thirty (30) days prior written notice to the City. Contractor shall not do or permit to be done anything that shall invalidate the policy.

(ii) The policies described in subparagraphs A and B above shall be for the mutual and joint benefit and protection of Contractor and the City. Such policies shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the City may carry.

8. Indemnification. Contractor hereby covenants and agrees to Indemnify, save, and hold harmless the City, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any breach of contract or negligent act or omission or other tortious conduct of Contractor, its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

9. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns.

10. Survival Clause. The "Indemnification" provision set forth in this Agreement shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

11. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

12. Severability. In the event a court of competent jurisdiction holds any provisions of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

13. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

14. Postponement/Cancellation. In the event of early termination by the City or weather cancellation (generally excessive wind and/or precipitation), an alternate date during the 2022 calendar year may be designated the City and agreed upon by Contractor. In the event the display cannot be postponed to a mutually agreed upon alternate date, Contractor shall have the right to retain, and the City agrees to pay Contractor, forty percent(40%) of the total contract price per display for expenses incurred and services rendered.

a) It is agreed and understood by and between the parties hereto that Contractor shall have sole, exclusive and final determination of the suitability of the weather conditions at the time of the display, and in the event Contractor should determine that the weather conditions are such that an unsafe or hazardous condition may exist, Contractor shall have the exclusive right and option to postpone the starting time of the display and/ or delay the display in its entirety, until conditions have improved and are appropriate for the safety of all involved, or until the alternative inclement weather date as set forth hereinabove. As a part of the authority stated hereunder, Contractor reserves the right to prematurely end or place a hold on the continuance of the display in progress so as not to create unsafe or hazardous situations.

Tri-State Fireworks, Inc

City of Dacono

By: 

By _____