

**Agenda Item:** CA-d

**Meeting Date:** March 13, 2023

**Subject:** RESOLUTION NO. 23-18, A RESOLUTION APPROVING A PYROTECHNIC DISPLAY AND SERVICES AGREEMENT WITH TRI-STATE FIREWORKS, INC FOR THE DACONO MUSIC AND SPIRITS FESTIVAL

**Presenter:** Stephanie Lutzinger, Community Relations and Event Coordinator

**Background:** Resolution 23-18 , 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 \$15,000.

**Recommended Action:** Staff recommends approval of Resolution 23-18.

RESOLUTION NO. 23-18

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 13<sup>th</sup> day of March, 2023.

CITY OF DACONO, COLORADO

\_\_\_\_\_  
Adam Morehead, Mayor

ATTEST:

\_\_\_\_\_  
Valerie Taylor, City Clerk

## Agreement For Services

This Agreement ("Agreement") is made and entered into this Twenty First day of February, 2023 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 City.

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

**1. Scope of Services.** City agrees to retain Contractor to provide Fireworks Display on August 5, 2023. 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 Fifteen Thousand Dollars (\$15,000). City shall pay contractor for goods and services in two equal installments – Seven Thousand Five Hundred Dollars (\$7,500) "Initial Payment" upon signing of this agreement and the remaining \$7,500 shall be paid on or before August 30, 2023. Unpaid accounts are subject to a 1 1/2% interest charge per month after fifteen days.

**3. Term.** The Term of this Agreement shall be for one August 5, 2023 fireworks display in Dacono, Colorado.

**4. License or Permits.** Contractor will obtain federal and state license or permits required to execute the pyrotechnic display contemplated herein. City shall pay fire department fees or other City permits associated with the execution of display. Contractor shall provide all necessary information; proof of insurance in accordance with paragraph six below, and other items required by the licensing authorities for issuance of such fire department permit.

**5. 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.

Contractor is not entitled to workers' compensation benefits from City and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.

**6. 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 of Dacono and others requested by the City of Dacono, 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, and excess/aggregate of Four Million Dollars (4,000,000) 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 of Dacono and others requested by the City of Dacono against 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) and excess/aggregate of Four Million Dollars (4,000,000) each occurrence.

**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 City.

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

**D. Workers' Compensation and Other Insurance.** During the term of this Agreement, Contractor shall procure and keep in force workers compensation insurance and all other insurance required by any applicable law.

**7. Indemnification.** Contractor hereby covenants and agrees to Indemnify, save, and hold harmless City, its 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.

**8. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Weld, State of Colorado.

**9. Assignability.** Contractor shall not assign this Agreement without City's prior written consent.

**10. 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.

**11. 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.

**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. Termination.** This Agreement shall terminate at such time as the work described in the Scope of Services is completed and the requirements of this Agreement are satisfied. If the City terminates the contract within ninety (90) days of the date of the display, the Contract may retain the deposit but no further compensation shall be paid by the City. Prior to the scheduled display date, It is agreed that the City may request postponement of the display to a mutually agreed upon future date within the 2023 calendar year

**14. Postponement/Cancellation.** 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, mutually agreed upon, inclement weather date within the 2023 calendar year.


**A.** If the displayed is cancelled pursuant to paragraph (14) above, the City may request postponement of the display to a mutually agreed upon future date within the 2023 calendar year, additional set-up charges may apply. In the event the display cannot be postponed, the Contractor is entitled to retain the deposit made by the City, but no further compensation shall be paid.

**15. 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.

**16. 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.

Tri-State Fireworks, Inc

City of Dacono

By:   
\_\_\_\_\_

By: \_\_\_\_\_

Joe Diaz