

Fireworks Event Contract
City of Waukesha – Spielbauer Fireworks Co., Inc.
Independence Day Fireworks

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as the City; and Spielbauer Fireworks Co., Inc., 1975 Lane Road, Green Bay, Wisconsin 54311, referred to as Contractor. Together the City and Contractor are referred to as the Parties.

Recitals

The City requires a public fireworks display as part of its Independence Day celebration, and has determined that Contractor is qualified to perform the display. Contractor is willing to perform the fireworks display.

Now, therefore, the City and Contractor agree and contract as follows:

1. Contractor Obligations.

- a. **Fireworks Shows.** Contractor shall perform fireworks display shows, referred to herein individually as the Show, or together as the Shows, on the evenings of July 4, 2021, July 4, 2022, and July 4, 2023, weather permitting. The Parties may, by their mutual, written agreement, extend this Contract to include Shows on Independence Day after 2023, with all terms and conditions remaining the same except as amended by the extension agreement. The Shows shall include the fireworks shown on the attached Schedule A, unless modified by the mutual written agreement of the Parties. Funding for Shows is dependent on third-party donations, and if sufficient third-party funding is not available for any of the Shows, the City may void this contract in its sole discretion. The Shows shall be conducted according to the usual and customary standards in the industry for a large, civic Independence Day display.
- b. **Labor and Materials.** Contractor shall provide all necessary labor and materials required to perform the Shows. All personnel shall be adequately trained and certified as required for the safe performance of all of Contractor's obligations under this Contract.
- c. **Compliance with Law.** Contractor represents that it is fully licensed and certified in compliance with all applicable laws for the performance of its obligations under this Contract. Contractor shall comply with all applicable laws, statutes, ordinances, regulations and rules. Contractor shall obtain, at its sole expense, all necessary permits. Contractor shall comply with all DOT regulations and placard requirements for the transportation of all materials.
- d. **Safety.** Contractor shall comply with all requirements of NFPA 1123 and 1124 in the performance of all of its obligations under this Contract. Contractor will comply with all direction given by the Waukesha Fire Department. Contractor shall take every precaution and use such judgment as is reasonable, accepted and customary in the fireworks industry, and shall take every step reasonably required to make the Shows as safe for its personnel, the City, and all spectators as possible.

2. City Obligations.

- a. **Fee.** The City shall pay the Contractor the fee shown on Schedule A for each Show that is successfully performed, within 10 days of the receipt of Contractor's invoice.
- b. **Staging Area.** The City shall provide a designated area for Contractor to store materials, and to set up and conduct the Shows. The Contractor acknowledges that it has performed Shows in the past at, and is familiar with, the staging area at the County Fairgrounds, and that it is of adequate size and configuration for it to perform this Contract fully. If the staging area changes for the Shows contemplated by this Contract, then Contractor shall notify the City if it has any objections to the suitability of the area for the staging of the Shows, and the City shall make good-faith efforts to make changes to the staging area as reasonably requested by the Contractor.

10. **Assistance of Counsel, Voluntary Contract.** The Parties acknowledge that they have either had the assistance of legal counsel in the review and execution of this Contract, or have voluntarily waived the opportunity to do so; that they have read and understand each of this Contract's terms, conditions and provisions, and their effects; and that they have executed this Contract freely, of their own volition, and not under conditions of duress.
11. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
12. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
13. **Integration.** This Contract embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
14. **Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the Parties to this Contract.
15. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
16. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
17. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

City of Waukesha

 By Shawn N. Reilly, Mayor
 Date: _____

 Attested by Gina L. Kozlik, City Clerk-Treasurer
 Date: _____

To certify that funds are provided for payment:

 Bridget M. Souffrant, Director of Finance
 Date: _____

Spielbauer Fireworks Co., Inc.

 By Patrick W. Spielbauer, President
 Date: _____