

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO SIGN A CONTRACT FOR A FIREWORKS SHOW TO BE HELD AT THE NATIONAL NIGHT OUT EVENT AT THE CITY PARK ON TUESDAY AUGUST 6, 2019 WITH BRILLIANT SKIES FIREWORKS.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS, WIT:

Section 1. The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a contract with Brilliant Skies Fireworks substantially under the terms set forth in the form attached hereto as (Exhibit A”).

Total expenditures authorized under this contract shall not exceed Two Thousand Dollars (\$2,000).

Section 2. The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 3. This Ordinance shall be in full force and effect from date of passage and approval by the Mayor.

READ FIRST TIME: June 20, 2019 READ SECOND TIME: July 2, 2019

I hereby certify that the above Ordinance No. 19.43 was duly passed on July 2, 2019 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes 6 Nays 0 Abstain: 0 Absent: 0

This Ordinance is hereby transmitted to the Mayor for his signature.

July 2, 2019
Date

Tara Berreth
Tara Berreth, City Clerk

Approval as to form:

Edward B. Rucker
Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 19.43.

John Olivarri
John Olivarri, Mayor

July 2, 2019
Date

Tara Berreth
Tara Berreth, City Clerk

ATTEST



City of Osage Beach Fireworks Contract

Fireworks Display Contract

THIS CONTRACT (this "Contract") is made this 2nd day of July, 2019 by and between Brilliant Skies Fireworks.

("Brilliant") and The City of Osage Beach ("Sponsor"), with its principal place of business located in Osage Beach, Missouri.

WHEREAS, Brilliant Skies Fireworks is desirous of providing Sponsor with a fireworks exhibition and display for Sponsor's benefit under such terms and conditions as provided herein, and thereby, the parties agree as follows:

1. Fireworks Display.

Brilliant Skies Fireworks shall sell, furnish and deliver to Sponsor certain fireworks which Brilliant Skies Fireworks agrees to exhibit and display on DATE: August 6, 2019 /Rain Dates: August 7, 2019 in accordance with the program set forth and agreed upon at the time of the signing of this Contract, the specifics of which are set forth in the "Fireworks Exhibition and Display Program" attached hereto and incorporated herein by reference thereto (the "Fireworks Display").

2. Payment Schedule.

For and in consideration of the Fireworks Display, Sponsor agrees to pay Brilliant Skies Fireworks the contract price of \$2,000.00 (the "Contract Price") paid as follows: 100% of the Contract Price due the day of Fireworks Display.

Sponsor agrees to pay interest at the rate of 1½ % per month on any delinquent balance of the Contract Price until paid in full. Payment shall be made by certified check or otherwise as agreed by Brilliant Skies Fireworks to Brilliant Skies Fireworks at 5736 Pheasant Place, Osage Beach, Mo 65065.

3. Display Responsibilities.

Brilliant Skies Fireworks and Sponsor will collaborate in the performance of all tasks relating to the Fireworks Display. These tasks include, but are not limited to, (i) procuring and furnishing a place suitable for the Fireworks Display (the "Display Site"), (ii) applying for, obtaining and securing all permits, licenses and approvals required by all applicable local, state and federal laws and regulations as well as those required by any local police and fire departments for the Fireworks Display (collectively, the "Required Approvals") Sponsor is responsible for the payment of all governmental fees and expenses imposed or applied to this exhibition including any fees or expenses incurred after the signing and execution of contract for said show, (iii) providing adequate private and/or public security, police and fire protection, (iv) securing an acceptable location with private and/or public security personnel to park the Brilliant Skies Fireworks fireworks truck(s) overnight (or for such longer or shorter period as Brilliant Skies Fireworks may reasonably require in order to effectively provide the Fireworks Display), (v) securing adequate protection to preclude all individuals, other than those authorized by Brilliant Skies Fireworks, from entering the security area designated by Brilliant Skies, (vi) removing and keeping unauthorized persons, as well as, personal or real property of any kind, including, without limitation, motor vehicles, outside of the area designated by Brilliant Skies Fireworks as the Display Site, fallout area or safe zone. Brilliant Skies Fireworks and Sponsor shall fulfill their responsibilities as set forth herein in accordance with all local, state and federal rules, laws, orders and regulations, including those of the National Fire Protection Association (NFPA).

4. Indemnification and Limitation of Liability.

Sponsor shall not under any circumstances be entitled to recover any exemplary, special and/or punitive damages from Brilliant Skies Fireworks, including, without limitation, loss of income, business or profits. Brilliant Sky is required to provide the City with a One Million Dollar (1,000,000.00) liability insurance policy listing the City as additionally insure.

5. Postponement.

In the event that weather is such that Brilliant Skies Fireworks, in its sole and absolute discretion, determines that the Fireworks Display scheduled for August 6, 2019 would be impossible or would unnecessarily increase the risk of damage or danger to person and/or property, the parties agree to hold the show the evening of August 7, 2019. In the event that weather is such that Brilliant Skies Fireworks, in its sole and absolute discretion, determines that the Fireworks Display would be impossible or would unnecessarily increase the risk of damage or danger to person and/or property on August 6, 2019 and August 7, 2019 this contract shall become null and void and neither party shall have further obligation or responsibility hereunder; and the City of Osage Beach agrees to pay Brilliant Skies Fireworks a total of \$1,000.00 in set up fees for the cancelled shows.



City of Osage Beach Fireworks Contract

6. Cancellation.

If (i) Sponsor cancels this Contract for any reason, or (ii) Brilliant Skies Fireworks is unable to timely complete all tasks relating to the Fireworks Display in accordance with this Contract with the assistance of Sponsor and cancels this Contract despite both parties best efforts, liquidated damages for such cancellation shall be paid by Sponsor to Brilliant Skies Fireworks as follows: a. In the event the Fireworks Display is cancelled more than thirty (30) days before the date scheduled for the Fireworks Display, twenty-five percent (25%) of the amount of the Contract Price; b. In the event that the Fireworks Display is cancelled less than 30 days before the date scheduled for the Fireworks Display, seventy-five percent (75%) of the amount of the Contract Price.

In the event that Sponsor chooses to terminate this Contract, it shall do so by written notice addressed to Brilliant Skies Fireworks at 5736 Pheasant Place, Osage Beach, Mo 65065. Except as provided in Section 5 above with respect to weather postponement, in the event of circumstances beyond the control of either party, such as fire, strikes, delay, or similar causes which prevent the delivery of materials or performances as set forth herein, the parties hereto release one another from any and all obligations and responsibilities contained herein, provided however, sponsor shall pay to Brilliant Skies Fireworks 25% of contract price as liquidated damages.

7. Venue.

In any action on or relating to this Contract, the parties hereto consent to the exclusive jurisdiction and venue of the state courts located in Camden County, Missouri and of the federal courts located in the United States District Court for the Western District of Missouri.

8. Legal Construction.

If any provision of this Contract is held to be illegal, invalid or otherwise unenforceable, then: (a) the same shall not affect other terms or provisions of this Contract; and (b) such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent the intent and agreements of the parties set forth herein. Brilliant Skies Fireworks reserves the right to substitute products of equal or greater value.

9. Entire Agreement.

This Contract and the Fireworks Exhibition and Display Program constitutes the entire agreement between the parties hereto, and there are no other understandings, either oral or written, regarding to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned executed this Contract by and through their authorized representatives whose names appear below.

Brilliant Skies Fireworks:

By: _____

Title: _____

CLIENT (SPONSOR):

By: John Devarri

Title: Mayor