



## **PYROTECHNIC DISPLAY AND SERVICES AGREEMENT**

THIS PYROTECHNIC DISPLAY AND SERVICES AGREEMENT: (hereinafter referred to as "Agreement"), made and entered into this 4<sup>th</sup> day of September, 2024 by and between:

Quick Fuse Xtremes LLC  
5401 Soledad Ln.  
El Paso, TX 79932  
(hereinafter referred to as "SELLER")

AND

Town of Horizon City  
14999 Darrington Rd,  
Horizon City, Texas 79928  
(hereinafter referred to as "Buyer").

**1. TIME AND PLACE: POSTPONEMENT/CANCELLATION:**

SELLER agrees to design and execute a fireworks show, otherwise known as a Pyrotechnic Display, at approximately: 8:00pm on the following dates:

Date	Theme	Budget
Tuesday, October 1, 2024	Horizon Police Social 12 minute Fireworks Display	\$18,000.00

Weather permitting. It is agreed and understood, by and between the parties hereto that the SELLER shall have the sole, exclusive and final determination of the suitability of the weather conditions at the time of the display, and in the event SELLER should determine that the weather conditions are such that a unsafe or hazardous condition may exist, SELLER 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 is agreed upon. As a part of the authority stated hereunder, SELLER reserves the right to prematurely end or place a hold on the continuance of the display if, in the opinion of SELLER, the weather conditions change during the time the display is in progress so as to create unsafe or hazardous situations. In the event of any postponement or delay due to weather, BUYER shall be responsible for the actual expenses incurred as a result of additional time and /or expenses related to the postponement or delay, and it is specifically acknowledged that SELLER hereunder shall be in no way held responsible financially or otherwise, for the exercise of any judgment or assertion based on the weather of any authority hereunder. In the event the display cannot be postponed to an alternate date, SELLER shall have the right to retain, and BUYER agrees to pay SELLER, 50% of the total contract price hereunder for expenses incurred and services rendered. If the display is rescheduled, by agreement of BUYER and SELLER, to an alternate date, and BUYER cancels the display, the SELLER has the right to retain, and BUYER agrees to pay SELLER, 100% of the total contract price hereunder agreed for expenses incurred and services rendered. If the display rescheduled on an alternate date, is canceled due to FORCE MAJEURE: (paragraph 12.), the SELLER has the right to retain, and BUYER agrees to pay SELLER, 50% of the total contract price hereunder.

## 2. MUSIC:

The following indicated (X) provision(s) shall apply to music and/or soundtracks, which may be a part of the display, contemplated hereunder:

[ ] The subject display will have no musical accompaniment soundtrack script with which the pyrotechnic display must be coordinated.

[X] BUYER will furnish music soundtrack approximately 18 minutes in duration. The musical track needs to be a mp3 file, at 44100Hz

## 3. INSURANCE:

SELLER agrees to provide a Certificate of Insurance, with applicable endorsements and accords showing SELLER and BUYER to be insured for liability and property damage. In the event greater liability insurance limits are required, the additional cost is to be paid by BUYER.

The BUYER, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the SELLER including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the SELLER's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

SELLER shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of work/services hereunder and the results of that work by the Contractor, his agents, representatives, employees, independent contractors or subcontractors.

The minimum scope and limit of insurance shall be no less than the following:

Commercial General Liability – providing coverage on an “Occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence.

Automobile Liability - Automobile Liability insurance covering any auto, or if Contractor has no owned autos, hired, and non-owned autos, with limit no less than \$1,000,000 per accident for bodily injury and property damage.

Primary Coverage - For any claims related to this contract, the SELLER's insurance coverage shall be primary insurance as respects the BUYER, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the BUYER, its officers, officials, employees, or volunteers shall be excess of the SELLER's insurance and shall not contribute with it.

Notice of Cancellation -Each insurance policy required above shall provide that coverage shall not be canceled except with 30 days' notice to the BUYER.

Waiver of Subrogation - SELLER hereby grants to BUYER a waiver of any right to subrogation which any insurer of said SELLER may acquire against the BUYER by virtue of the payment of any loss under such insurance. SELLER agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the BUYER has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers - Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the BUYER.

#### **4. EQUIPMENT:**

SELLER shall be responsible to install, set up, and remove the equipment and supporting hardware of the pyrotechnic display. BUYER shall provide sufficient trash receptacles for cleanup after execution of the display.

#### **5. SECURITY/SAFETY:**

BUYER is responsible for procuring and managing the following: adequate security personnel, barricades, ropes with flags, etc., to barricade all closed (dangerous) areas to spectators; traffic patrolmen, as necessary; security guards for crowd control and cleanup personnel to remove litter left by spectators or any persons other than SELLER; trash receptacles, as necessary for spectators; "No Parking" signs and directional signs, clearly designated by stakes, rope or fence, in a safe location, as reasonably designated by SELLER and agreed to by BUYER, for the proper and safe display of said pyrotechnic program, such space to be clear and free of all persons except those employed or expressly authorized by SELLER and clear of any and all equipment, vehicles, structures, or items of any other kind not authorized or put in place by SELLER; adequate fire protection for the area in which SELLER shall operate the display, and the surrounding spectator areas, for which Fire protection might be necessary: areas of sufficient clearance surrounding the display operation area, or ground upon which the display shall be operated. BUYER specifically acknowledges and affirms that it understands that the pyrotechnic display contracted for herein can cause substantial, severe and irreparable damage to persons and property.

#### **6. OPERATIONS OF DISPLAY:**

SELLER shall be responsible for all aspects of the setup, removal and operation of the display.

#### **7. PLACEMENT:**

BUYER and SELLER shall mutually determine and agree upon the placement and arrangement of fireworks display devices, set pieces, props, spectator viewing areas, and any and all equipment involved with the pyrotechnic display or sound system to ensure the highest degree of show integrity and character, and present the audience the most aesthetic, artistic, and safest program possible. SELLER shall have sole discretion over placement necessitated by applicable federal, state or local safety, fire, or other regulations.

**8. LICENSES OR PERMITS:**

BUYER shall be responsible to obtain, for SELLER'S benefit, any city, state, or other licenses or permits required to execute the pyrotechnic display contemplated herein. SELLER shall provide BUYER with any necessary information, proof of insurance in accordance with paragraph 3 above, and other item required by the licensing authorities for issuance of such license or permits

**9. COMPENSATION:**

Compensation shall be made to the SELLER hereunder as follows:

*The total price for this contract is \$18,000.00. There will be one down payment of \$9,000.00 due upon acceptance of this proposal and a final payment of \$9,000.00 due on or before October 1, 2024.* If, for any reason other than as addressed herein above, BUYER wishes to cancel this Agreement, there will be a cancellation fee in the amount of twenty-five percent (25%) of the total contract price hereunder, to be paid to or retained by SELLER if notice of cancellation is given by BUYER to SELLER at least fourteen (14) days before the date set forth in paragraph 1, and seventy percent (70%) if notice of cancellation is given less than fourteen (14) days before the date set forth in paragraph 1, which is to be paid to or retained by SELLER.

If SELLER cancels this Agreement or the pyrotechnic display, for any reason other than; (1) inclement weather, (2) force majeure, or (3) nonperformance by or material breach of the terms of this Agreement by BUYER, all monies paid to SELLER by BUYER to the date of such cancellation will be refunded to BUYER and BUYER will have no further obligation under this Agreement. Any applicable state or local taxes will be payable by the BUYER.

**10. ACCOMMODATIONS: N/A None**

**11. INDEMNIFICATION:**

To the fullest extent permitted by law the Seller shall indemnify and hold harmless the Buyer, its agents, volunteers and employees from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees, provided that such claim, damage, loss, or expense is attributable to the bodily injury, sickness, disease or death, or to injury to or destruction of tangible property caused in whole or in part by the Seller, its agents, employees, volunteers, or subcontractors in the performance of this contract.

**12. FORCE MAJEURE:**

Subject to the provision of paragraph one (1) herein above, any failure or omission of BUYER or SELLER under this Agreement due to an act of GOD, enactment, rule, order of any act of government instrumentality (whether federal, state, or local), or other causes beyond the control of BUYER or SELLER, or force majeure will not constitute a breach or default under this Agreement.

**13. CONSTRUCTION/APPLICABLE LAW:**

If any term, provision, covenant, or condition of this Agreement is held by any court of competent jurisdiction to be invalid, void or unenforceable, or if any such provision is waived or not enforced by any party hereunder, the remainder to the provisions of this agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated. This Agreement, including any documents incorporated or referred to herein, constitutes the entire Agreement between the Parties, and this Agreement may not be altered or amended except by written addendum to this Agreement executed by both BUYER and SELLER. It is agreed and understood by and between the parties hereto that this Agreement is subject to, and shall be interpreted under, the laws of the State of Texas, and that any aspect of this Agreement shall be controlled by and interpreted under the laws of the State of Texas, as they may exist from time to time.

THIS CONTRACT / Agreement is binding only after it has been signed by all parties hereto and returned to SELLER with the required deposit, as set forth hereinabove.

Company: Quick Fuse Xtremes LLC

Signed By: 

Date: September 4, 2024

Rod Smith, Manager

Company: Town of Horizon City  
Signed By: 

Date: 09/09/2024

Victoria Hernandez  
Printed Name

Officer  
Title