



City of Clearwater Council Meeting Agenda  
Tuesday May 28, 2019 at 6:30pm  
129 E Ross Clearwater, KS 67026

1. CALL TO ORDER / INVOCATION AND FLAG SALUTE
2. ROLL CALL
3. APPROVAL OF AGENDA
4. PUBLIC FORUM  
Members of the public can address the Mayor and City Council limited to not more than five minutes.
5. CONSENT AGENDA  
Items on the Consent Agenda are considered by staff to be routine business items. Approval of the items may be made by a single motion, seconded, and a majority vote with no separate discussion of any item listed.
  - a. [Minutes 5-14-19 Council Meeting](#)
  - b. [Claims and Warrants](#)
  - c. [Mayoral Appointments](#)
    - i. [Planning Commission – Tanner Peisig](#)
    - ii. [Park Advisory Board – Wes Spohr](#)
    - iii. [Emergency Services – Andy Rakes EMT](#)
    - iv. [Jared Dinwiddie – Interim Fire Chief](#)
6. [STAFF REPORTS](#)
7. BUSINESS
  - a. [Action: Consider Victory Pyrotechnics Contract](#)
  - b. Discussion: Budget
8. ADMINISTRATORS REPORT
9. GOVERNING BODY COMMENTS
10. ADJOURNMENT

Next Assignment Numbers

Charter Ordinance: 21

Ordinance: 1050

Resolution: 08-2019

**NOTICE: SUBJECT TO REVISIONS**

**City of Clearwater, Kansas**  
Sedgwick County  
City Council Meeting - **MINUTES**  
May 14, 2019  
Clearwater City Hall – Council Chambers  
129 E. Ross Avenue Clearwater, KS 67026

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**1. Call to Order/ Invocation and Flag Salute**

Mayor Ussery called the meeting to order at 6:30 p.m. followed the invocation and flag salute.

**2. Roll Call**

The City Clerk called the roll to confirm the presence of a quorum. The following members were present:

Mayor Burt Ussery, Councilmembers; Laura Papish, Shirley Palmer-Witt, Chris Griffin, Yvonne Coon and Tex Titterington were present.

The following staff members were present:

Ron Marsh, City Administrator; Courtney Meyer, City Clerk; Bill Hisle, Chief; Ernie Misak, Public Works Director; Austin Parker, City Attorney; Justin Patrick, Interim EMS Director.

**3. Approval of the Agenda**

Mayor Ussery asked if there were any modifications to the agenda. Marsh stated Item 6a needs to be pulled from the agenda

Mayor Ussery called for a motion to approve the agenda as presented

**Motion: *Griffin*** moved, ***Palmer-Witt*** seconded to accept the agenda as modified. Voted and passed unanimously.

**4. Public Forum**

None

**5. National Police Week Proclamation**

Mayor Ussery read a proclamation stating the week of May 12 – 18 2019 as national police week

**6. Approve Consent Agenda**

Mayor Ussery asked if there was any question on the consent agenda and if not asked for a motion to approve.

Minutes 04/23/19 Council Meeting

Minutes 04/30/19 Council Workshop

Claims and Warrants

05/01/19 = \$144,156.87

05/15/19 = \$63,224.41

Victory Pyrotechnics fireworks contract - pulled

**Motion: *Griffin*** moved, ***Palmer-Witt*** seconded to approve the consent agenda as modified. Voted and passed unanimously.

**7. Best of America Horseback/ Chisholm Trail – Lonnie Stieben**

Lonnie Stieben was unable to attend the meeting. Laura Papish, on behalf of the Chamber spoke of the request.

Laura explained the plans for June 7<sup>th</sup> trail ride:

1. Will be Welcome banner across Main Street and our PA system at City Hall will be playing old western songs similar as to 2017 cattle drive as riders come thru.
2. We are organizing an ice cream social event downtown (1:00 p.m. to -2:30p.m.) to try to attract more people downtown—esp. kids, before the riders arrive in Clearwater
3. I am still firming up arrangements with the Cowskin Creek Farms Clydesdales as well—incidentally, Cowskin Creek was important to early trail days as well. (Believe it actually got its name from the number of cowhides that thrown into the creel from an early day butchering facility—disgusting I know).
4. We will have a manure pit available for those caring to clean-up after their horses.
5. Clearwater will be renting two extra port-a-potties to place at Saddle Club arena—one ADA other regular. (also, bathrooms at arena and if we break at the CLWTR monument)
6. I have arranged for a semi-professional sound system and operator for Del and other speakers that evening.
7. We are thinking for serving line purposes we will have a covered canopy. We checked into a 40x40 tent and 120 chairs and cost is \$1200 so we may forgo that unless you were planning on a reception type meal that evening in Clearwater. (We can provide a few pop-up tents if needed for shade also). If it rains, we may just be a wash-out without the tent. Guess I need to know for sure what Tom's exact thoughts are for that evening.
8. The Haysville Saddle Club Youth Drill team will perform and present colors before we get started with entertainment that evening. Mr. Dyer is still a go as am I.
9. The young lady I had arranged to sing the national anthem had a change in work schedules and will not be available as planned—working on possible young substitute.
10. We are still working to find a small supply of prairie hay in case it is needed for horses.
11. Still not a definite on the Native American Dancers yet either.

Chamber of Commerce is requesting \$500 to offset the cost for the ice cream social. The Chamber and SKT will be donating \$500 each for the event as well.

**Motion:** *Griffin* moved, *Palmer-Witt* seconded to approve the donation of \$500 for the event. Voted and passed unanimously.

**8. Celebrate Clearwater – Cody Hanna & Shelby Robinson**

Cody explained that at 9:30 after the concert the gate to the stadium will open for people to come in for the free firework show. Extra bleacher will be brought in so there will be plenty of places for people to sit even if they don't attend the concert. There will be no assigned seating so as people come in they will be able to choose any open place to sit.

Council asked if there are extra funds raised from selling tickets where will the funds go to. Cody and Shelby explained they don't expect extra funds however if they do get some, they will make a donation to the Clearwater Outlaws as they will be doing the cleanup from the event and if there is extra after that it will be used for next year's event.

**9. Staff Reports**

- a. Police Department – Bill Hisle – Thanked the mayor for the proclamation and asked if council had any questions from his report. Council had no questions.
- b. Public Works – Ernie Misak – Stated they pulled a sample from the wastewater ponds, J. Martin company is pouring concrete at the pool, and Safety Tec will be at the pool on Thursday to clean it.
- c. Fire/ EMS – Ron Marsh – Marsh reported there were 16 calls for EMS – 1 was for the County, 1 Clearwater didn't have anyone to respond, and 4 were first responder calls because Clearwater didn't have 2 people to respond so 1 EMT responded in a squad until Sedgwick County could

come in their ambulance. There were 5 fire calls as well which included 2 water rescues.

#### 10. 1<sup>st</sup> Quarter Financials

Meyer went through 1<sup>st</sup> quarter financials that were included in the packet.

#### 11. Business

##### a. Approve Mayoral Appointments

Council didn't have any comments on the appointments that were included in the packet.

**Motion:** *Papish* moved, *Palmer-Witt* seconded to approve the mayoral appointments. Voted and passed unanimously.

##### b. Approve Minimum Hours Acknowledgement Agreement

In order to meet the requirements of the State of Kansas for Clearwater to maintain its ground ambulance service, we must have an active roster with 2 certified personnel signed up 24/7/365. The City is hiring 3 full time certified personnel to cover one of the two slots on the roster. The volunteers will cover the second slot.

The commitment to the citizens of Clearwater to keep our EMS service local has created the need for active participation of all our volunteers. We are asking City residents to shoulder a heavier tax burden to have an EMS service, and that means the Governing Body and City staff are obligated to put in place policies and procedures that give the City the best chance to succeed. One way to do this is to require all EMS volunteers to sign a minimum hour's requirement agreement in order to continue as a member of Clearwater EMS.

Given the City's current staffing for certified EMS personnel, each volunteer would be required to sign up for two (2) six (6) hours shifts per week in order to ensure blanket coverage in the second slot. Volunteers will be able to sign up for additional shifts if available, and trade, swap or fill-in as circumstances dictate. Not signing for the minimum requirement could lead to dismissal from the Clearwater EMS service.

Mayor Ussery addressed the council and stated he believes this agreement is necessary since council has approved to increase the funding to keep the EMS service in Clearwater. In order for that process to work we are still depending on our volunteers to fill in the roster with the full-time personnel. The volunteers currently on the department will be asked to sign this acknowledgement stating they will be willing to sign up for a minimum number of hours to fill the roster based on whatever the current volunteer numbers are for EMS. The current minimum number of hours, based on volunteer level, is two six hour shifts per week. This will fluctuate based on the number of volunteers. Mayor Ussery also wanted to clarify that we identify the departments as volunteers however because we pay them a stipend, they are actually appointed employees based on expectations by City and State. If any current volunteer for EMS does not want to sign the agreement, then council will recognize that as a resign from Emergency Services. For any new volunteers they will need to sign the agreement prior to being appointment to the department. This will be considered and agreement not an employment contract.

**Motion:** *Palmer-Witt* moved; *Titterington* seconded to approve the minimum hours acknowledgement agreement. Voted and passed unanimously.

##### c. Second Alternate to Sign Checks

City checks require 3 signatures: currently that's the Mayor, Clerk and Treasurer. We also have 2 alternates: The Council President (Laura) and another Council person. Paul Clark had been the 2<sup>nd</sup> alternate, but after he left the Council in 2017, we have not identified his replacement.

It's important we have the 2<sup>nd</sup> alternate in place. Based on availability and accessibility, staff has asked Council member Shirley Palmer-Witt to be the 2<sup>nd</sup> alternate. She has graciously agreed.

**Motion:** *Papish* moved; *Titterington* seconded to approve Shirley Palmer-Witt as a signer on the City checking account. Voted and passed unanimously.

**12. Administrators Report**

- The Kansas Firefighters Regional Training is this weekend, May 18-19 at the high school.
- This weekend the KSANG will be landing Blackhawk helicopters on the practice field by the Middle School and dropping off National Guard members to go through the school's ropes course.
- Also, Jeff Laha is holding a disc golf tournament on Saturday at the disc golf course.
- The new scoreboard has been delivered to the installers and I have been in contact with the installers.
- Budget workshop is Saturday, June 22<sup>nd</sup> from 8:00am to 11:00pm.

**13. Governing Body Comments**

Coon had nothing to report

Papish stated there was high grass by EMS building on Grain that needs addressed

Palmer-Witt stated there was high grass on S. Byers that needed attention. Also, she asked what happens if it rains on July 6<sup>th</sup> for the firework show? Is there a contingency plan? Marsh stated he would bring back an answer to the next meeting.

Titterington stated he has received complaints about standing water at the end of an alley on Southeast Drive. He asked when considering the road plans to consider work on alleys too.

Griffin had nothing to report

Mayor Ussery had nothing to report

**14. Adjournment**

With no further discussion Mayor Ussery called for a motion to adjourn.

**MOTION:** *Palmer-Witt* moved; *Coon* seconded to adjourn the meeting. Voted and passed unanimously. The meeting adjourned at 8:11 PM

**CERTIFICATE**

State of Kansas        }  
County of Sedgwick   }  
City of Clearwater    }

I, Courtney Meyer, City Clerk of the City of Clearwater, Sedgwick County, Kansas, hereby certify that the foregoing is a true and correct copy of the approved minutes of the May 14, 2019 City Council meeting.

Given under my hand and official seal of the City of Clearwater, Kansas, this 28<sup>th</sup> day of May 2019

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Courtney Meyer, City Clerk

# Check Register Report

Date: 05/24/2019

Time: 4:00 pm

Page: 1

City of Clearwater

BANK: EMPRISE BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
<b>EMPRISE BANK Checks</b>							
45069	05/29/2019	Printed		APS1	AAA PORTABLE SERVICES, INC.	BRUSH DUMP	210.00
45071	05/29/2019	Printed		AMA	AMAZON	MATERIALS	325.80
45072	05/29/2019	Printed		AMAZ	AMAZON BUSINESS	PRINTER CABLE	37.91
45073	05/29/2019	Printed		ALB1	ARLENE M. BURROW	STATEMENT	300.00
45074	05/29/2019	Printed		BBL1	B & B LUMBER	SAFETY GLASSES/SLEDGE	156.70
45075	05/29/2019	Printed		BAILEY	BAILEY MATTHEWS	CLASS B LICENSE REIMBURSE	35.88
45076	05/29/2019	Printed		BA01	BARCO	TRAFFIC CONES	179.90
45077	05/29/2019	Printed		BB1	BECKER BROS.	MAINTENANCE CONTRACT/SERV	685.89
45078	05/29/2019	Printed		BH01	BECKY C. HURTIG	PROFESSIONAL SERVICES	915.00
45079	05/29/2019	Printed		BPEC	BUSINESS PROTECTION EQUIP CORP	SHREDDER OIL	57.91
45080	05/29/2019	Printed		CGSI	CASEY'S	STATEMENT	1,916.52
45081	05/29/2019	Printed		CPLP1	CENTER POINT LARGE PRINT	CHRISTIAN SERIES	133.02
45082	05/29/2019	Printed		CR03	CHARLES REITBERGER	MILEAGE TO STERLING	91.64
45083	05/29/2019	Printed		CI W	CIRUS WATER	CITY SHOP	18.00
45084	05/29/2019	Printed		CWAC	CITY OF WICHITA	STATEMENT/STRAY DOG	70.00
45085	05/29/2019	Printed		CCC2	CLEARWATER AREA CHAMBER	SHRED IT SPONSOR	700.00
45086	05/29/2019	Printed		CONT	CONTINENTAL RESEARCH CORP	CLEANING CHEMICAL	229.00
45087	05/29/2019	Printed		COURT	COURTNEY MEYER	MILEAGE TO WSU/BUDGET	31.32
45088	05/29/2019	Printed		DPL1	DAN'S PLUMBING, INC	FAUCET REPLACEMENT AT POOL	87.00
45089	05/29/2019	Printed		DEVON	DEVON STWALLEY	CLASS B LICENSE REIMBURSE	19.75
45090	05/29/2019	Printed		DOS1	DIGITAL OFFICE SYSTEMS	LABOR CHARGES	75.00
45091	05/29/2019	Printed		ERIN B	ERIN BETTLES	MILEAGE TO MEETING	59.16
45092	05/29/2019	Printed		EVAN	EVAN EISENMAN	CLASS BE LICENSE REIMBURSE	35.88
45093	05/29/2019	Printed		GAL1	GALL'S INC.	UNIFORMS	1,001.09
45094	05/29/2019	Printed		GENERAC	GENERAC POWER PLANS	GENERATOR WARRANTY	995.00
45095	05/29/2019	Printed		HI01	HARPER INDUSTRIES, INC.	BLADE SET/OIL FILTER	255.18
45096	05/29/2019	Printed		HAYS	HAYSVILLE RENTAL CENTER	BREAKER HAMMER/PUMP FIX	263.34
45097	05/29/2019	Printed		INDIAN	INDIAN LAKES LEASING	2ND 1/2 TAX REBATE LOT 2 BLK 2	640.46
45098	05/29/2019	Printed		JHS1	J & H STORAGE	RENT	65.00
45099	05/29/2019	Printed		LA LI	J. LARRY LINN	PROSECUTION SERVICES	885.00
45100	05/29/2019	Printed		J. MAR	J. MARTIN CO.	CITY PARK PADS FOR BENCHES	5,110.00
45101	05/29/2019	Printed		KFE1	KANSAS FIRE EQUIPMENT CO.	CITY BUILDING	543.50
45102	05/29/2019	Printed		KIE1	KIEFER	LIFEGUARD UNIFORMS	504.06
45103	05/29/2019	Printed		LFP1	LEASE FINANCE PARTNERS	COPIER LEASE	540.45
45104	05/29/2019	Printed		MERI	MERIDIAN ANALYTICAL LABS, LLC	SEWER ANALYSIS	240.00
45105	05/29/2019	Printed		NOP1	NAVRAT'S OFFICE PRODUCTS	PAST DUE CARDS	466.70
45106	05/29/2019	Printed		RACHEL	RACHEL CARTER	REIMBURSE FINE OVERPAYMENT	32.00
45107	05/29/2019	Printed		REC BK	RECORDED BOOKS, LLC	MATERIALS	103.50
45108	05/29/2019	Printed		RA01	RESERVE ACCOUNT	POSTAGE	300.00
45109	05/29/2019	Printed		RJ01	ROASTER JOE'S	AQUATIC CENTER	385.00
45110	05/29/2019	Printed		SWSC	SALINA WHOLESALE SUPPLY CO	BRASS FITTINGS	533.05
45111	05/29/2019	Printed		0004	SEDGWICK COUNTY ELECTRIC COOP	STATEMENT	1,235.85
45112	05/29/2019	Printed		SMALL	SMALL TOWN CUSTOM TEES	EMERGENCY SERVICE T-SHIRTS	213.00
45113	05/29/2019	Printed		SONJA	SONJA FROGGATTE	DINNER THEATER ERRANDS	52.65
45114	05/29/2019	Printed		STA	STAPLES	STICKY NOTES	45.98
45115	05/29/2019	Printed		TANYA	TANYA LANGE	REIMBURSE SWIM TEAM	15.00
45116	05/29/2019	Printed		TAYLOR	TAYLOR HEALTHCARE PRODUCTS INC	COTS SHEETS FOR AMBULANCE	217.92
45117	05/29/2019	Printed		THE RAD1	THE RADAR SHOP	PARTS/LABOR	47.50
45118	05/29/2019	Printed		TSN1	TIMES-SENTINEL NEWSPAPERS	VARIANCE HEARING	113.00
45119	05/29/2019	Printed		TINA	TINA WELCH	MILEAGE	27.84
45120	05/29/2019	Printed		T2UL	TRUE2U AUTOMOTIVE, LLP	TRAILER TIRE	112.46
45121	05/29/2019	Printed		TT1	TYLER TECHNOLOGIES	FUNDBALANCE AR	1,992.25
45122	05/29/2019	Printed		UMO1	ULTRA MODERN POOL & PATIO	CHEMICAL FOR POOL	183.49
45123	05/29/2019	Printed		UNI	UNIFRIST CORPORATION	STATEMENT	31.55
45124	05/29/2019	Printed		UIN1	UNITED INDUSTRIES, INC.	TIGER SHARK MAINTENANCE	935.70
45125	05/29/2019	Printed		VER	VERIZON WIRELESS	STATEMENT	120.03

# Check Register Report

Date: 05/24/2019

Time: 4:00 pm

Page: 2

City of Clearwater

BANK: EMPRISE BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
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**EMPRISE BANK Checks**

45126	05/29/2019	Printed		VISA	VISA	PLAQUE, FLOWERS, LICENSE RENEW	396.63
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**Total Checks: 57**

**Checks Total (excluding void checks): 24,975.46**

**Total Payments: 57**

**Bank Total (excluding void checks): 24,975.46**



# Check Register Report

Date: 05/24/2019

Time: 4:00 pm

Page: 3

City of Clearwater

BANK:

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
<b>Checks</b>							
183	05/29/2019	Printed		HSB1	EMPRISE BANK	FORD F-150	868.23
184	05/29/2019	Printed		KDR1	KANSAS DEPARTMENT OF REVENUE	SALES TAX APRIL	223.81
185	05/29/2019	Printed		SKT1	SKT	POLICE AND COURT	290.90
186	05/29/2019	Printed		VER	VERIZON WIRELESS	STATEMENT	397.69

**Total Checks: 4**

**Checks Total (excluding void checks): 1,780.63**

**Total Payments: 4**

**Bank Total (excluding void checks): 1,780.63**

**Total Payments: 61**

**Grand Total (excluding void checks): 26,756.09**

**City of Clearwater  
City Council Meeting  
May 24, 2019**

**Mayoral Appointments**

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**Background:** Per City Ordinance 1040 Park Advisory Board and City Code 2-164 Planning Commission, the Mayor appoints representatives for Council approval to the Park Advisory Board and Planning Commission as vacancies occur.

**Analysis:** The following individuals have agreed to serve:

Wes Spohr, Park Advisory Board            2019 – 2022

Tanner Peisig, Planning Commission    2019 - 2022

**Financial:** There is no financial consideration

**Legal Considerations:** Review and comment as necessary

**Recommendations/Actions:** Approve Mayoral appointments to the respective boards.

**City of Clearwater  
City Council Meeting  
May 24, 2019**

**Item: Emergency Services Mayoral Appointment**

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**Background:** Per City Code all volunteers are to be appointed by the Mayor upon approval of the City Council.

**Analysis:** The Mayor is presenting the following individuals for appointment to Clearwater Emergency Services:

Andy Rakes – EMT/Cadet Firefighter

Andy is currently appointed to our cadet program and has recently been certified as an EMT. At 17 years old he meets the state requirements to be an EMT (K.A.R. 109-3-1 & K.S.A. 65-6112), however for City insurance he is not allowed to drive until 18. Since he cannot drive, he will be able to participate in EMS calls only as a third responder and not eligible for on-call pay until he is 18 years old. This will provide good hands on training and experience.

**Financial:** There is no financial consideration

**Legal Considerations:** Review and comment as necessary

**Recommendations/Actions:** Approve the request for appointment

**City of Clearwater  
City Council Meeting  
May 24, 2019**

**Emergency Services Retirement and Appoint Interim Fire Chief**

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**Background:** Per City Code all volunteers are to be appointed by the Mayor with approval of the City Council.

Per K.S.A. 15-204 volunteers appointed by the Mayor upon approval of the City Council shall require majority vote of the Governing Body to remove them from their position.

**Analysis:** The following individual has submitted his intent to retire from the Clearwater Emergency Services with an effective date of 5/31/2019:

Gary Berger – Interim Fire Chief

The following individual has agreed to serve as Interim Fire Chief for the Clearwater Emergency Services effective 5/31/2019:

Jared Dinwidde – Firefighter/EMT

**Financial:** There is no financial consideration

**Legal Considerations:** Review and comment as necessary

**Recommendations/Actions:** Accept the retirement with regret and approve the appointment of the new Interim Fire Chief.

To: Mayor and City Council

From: Bill Hisle  
Police Chief

Date: May 28, 2019

Re: Police Department Staff Report

05/15 19-0415 - Combative Juvenile arrested for Minor in Possession, taken to hospital where his BAC was determined to be .388 (.08 is considered to be legally intoxicated for a DUI)

5/16 19-0420 – 100 block of S. Byers. Person shooting at nuisance squirrels with a pellet gun. He stopped after being advised it was illegal inside the city limits.

05/17 19-0422 – Domestic Disturbance. Female ½ arrested after throwing a coffee table at her husband while becoming disorderly.

05/19 19-0431 – Disorderly Conduct. Ex-boyfriend became involved in a fight with the new boyfriend. As frequently happens, the loser wanted a report.

05/20 19-0432 – Disorderly Conduct. A traffic stop was made in front of Dollar General at 3:30 AM. The driver immediately exited her vehicle and laid out prone on the roadway before being contacted by the officer. After obtaining the subject's drivers license, the driver got back in her car and quickly drove off before stopping in the 600 block of E. Ross where she was handcuffed. The driver, who is from out of state, was eventually booked into jail for disorderly conduct and attempting to flee and elude. Contact was later made with relatives of the driver who advised she is having severe mental problems. Family members responded from Texas to take custody of the subject and get her the mental health services she needs. (And this is the abbreviated version)

06/21 19-0435 – Large alligator snapping turtle (approx. 10-12 inches in diameter) located in the intersection of Hellar and Lee. Turtle was trapped and relocated to a creek in Sumner County.

And this week (5/21 – 5?23) we took many, many phone calls about the conditions of the roadways & flooding in and around Clearwater due to rain and Cheney Lake opening their flood gates. Kudo's to Jo for keeping up with all the weather reports and dispensing the info to the public as they called, some of the same people calling several times a day.

To: Mayor and City Council Members

From: Ernie Misak, Public Works Director

Date: May 28, 2019

Subject: Public Works Summary

1. Daphnia Issue continues at the wastewater ponds. Sampling was performed on May 14<sup>th</sup> and we failed to meet limits on TSS (Total Suspended Solids) as well as BOD. Again, this was due to high counts of daphnia and algae. Will be sampling again, weather permitting, next week. Currently not discharging due to high river water. With rain expected, we, may be prevented to discharge next week also.
2. We have been working on getting the pool ready for opening. A lot of time has been spent in that effort. Pool is now ready to open.
3. Mowing continues every chance we get.
4. Working on rebuilding of the alleys.
5. All leaks have been repaired at the pool.
6. Meters read and reread.

**City Council Meeting  
May 24, 2019**

**Contract with Victory Pyrotechnics**

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**Background:** Cody Hanna, a Clearwater High School graduate, founded his company Victory Pyrotechnics while a student in the Youth Entrepreneurs class at CHS. He has been staging fireworks displays for several years and has teamed up with a light show expert and laser expert to produce musically themed fireworks laser light shows. Victory Pyrotechnics produced a very successful show last year.

**Analysis:** Signing the contract secures the date and scope of the show; outlines the responsibilities of each party; and provides legal protection for both parties.

**Financial:** The contract is for the budgeted amount approved by the Governing Body earlier this year.

**Legal Considerations:** The City Attorney reviewed the contract, made some changes and those changes were accepted by Victory Pyrotechnics. The certificate of liability insurance naming the City of Clearwater as an additional insured is also included.

**Recommendations/Actions:** Recommend approving the contract with Victory Pyrotechnics.

# Victory

PYROTECHNICS & SFX, LLC

14921 W. Morning Dove • Clearwater • Kansas 67026 • Office 316.631.5631 • info@victorypyro.com

## DISPLAY AGREEMENT AND PURCHASE ORDER

**THIS AGREEMENT** (“Agreement”) is entered into on this **20<sup>th</sup> day of May 2019** by and between Victory Pyrotechnics & Special Effects, LLC., a Kansas limited liability company, whose address is set forth above, (“Victory”) and the **City of Clearwater**, whose address is **129 Ross Ave, Clearwater, KS 67026** (“Sponsor”). Victory and Sponsor are sometimes individually referred to as a “Party” and collectively as the “Parties.”

In consideration of the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Proposal.** Victory agrees to supply, and Sponsor agrees to pay for, a firework display on the following designated date(s) and location: **July 6, 2019** at **the Clearwater Football Stadium, 901 Ross Ave, Clearwater, KS 67026**, as detailed in Proposal **#19-1015**, which is attached hereto and incorporated herein by this reference, (the “Display”) in accordance with the program approved by both Parties.
2. **Price and Payment Terms.** Total Price of **FIFTEEN THOUSAND DOLLARS AND NO/100 (\$15,000.00)** is to be paid as follows: 30% of the total price, **\$4,500.00** is due at the time when the contract is signed by both Parties; the remaining balance of the price, **\$10,500.00**, is due in full on or before **July 13, 2019**. Interest will accrue at 2.5% per month (an annual percentage rate of 18% per annum) on all unpaid amounts from the date on which the payment was due.
3. **Victory Duties.** As part of the total price Victory agrees to the following:
  - a. To supply all shells and other pyrotechnics listed on the Proposal;
  - b. Mortars, firing equipment and all other required material necessary to perform its services hereunder;
  - c. To remove all equipment and spent pyrotechnic devices and clean up debris from the immediate Display site. Sponsor acknowledges that additional debris may remain in the fallout zone after Victory’s responsibilities of Display site cleanup have been completed, however Victory agrees to check the entire fallout zone after the show to confirm that no such additional debris is still on fire and/or poses a danger or threat to the public’s health, safety or welfare; and
  - d. To comply with all local and federal guidelines and obtain any necessary permits to perform the Display, unless otherwise notes in Sponsor duties.
4. **Sponsor Duties.**
  - a. Sponsor shall comply with all duties as detailed in the Compliance with Laws/Sponsor Responsibilities portion of this Agreement;
  - b. Sponsor to supply barrier tape to secure fallout area, and is responsible for securing and maintaining fallout area security before, during, and after the display; and
  - c. Sponsor agrees to clean up remaining debris from fallout zone after Victory crew has raked the immediate launch site.



5. **Insurance.** Victory agrees to provide, at its expense, commercial general liability insurance coverage in an amount not less than \$1,000,000 per occurrence. If requested in writing, Victory shall provide Sponsor with a certificate of insurance within ten days of the Display. All entities/individuals listed on the certificate of insurance will be deemed as additional insured pursuant to the Agreement.
6. **Indemnification.** Victory agrees to indemnify, defend and hold harmless the Sponsor, its officers, agents, volunteers, contractors and employees, and those entities/individuals listed on the certificate of insurance referenced in Section 5 above, from and against any and all claims, costs, judgments, damages and expenses, including reasonable attorney's fees, that directly or indirectly arise from the performance of the fireworks display and the performance of Victory under this Agreement to the extent that such claims, costs, judgments, damages and expenses are occasioned by an act or omission of Victory and/or its owners, agents, employees, contractors and volunteers. Sponsor agrees to indemnify, defend and hold harmless Victory and its owners, agents, employees, contractors and volunteers, from and against any and all claims, costs, judgments, damages and expenses, including reasonable attorney's fees, that directly or indirectly arise from the performance of Sponsor under this Agreement to the extent that such claims, costs, judgments, damages and expenses are occasioned by an act or omission of Sponsor and/or officers, agents, volunteers, contractors and employees.
7. **Compliance with Laws.**
  - a. Sponsor Responsibilities: In accordance with NFPA 1123 Outdoor Display of Fireworks 2010 Edition (National Fire Protection Association) 4-1.1.1, Sponsor has consulted with the Authority Having Jurisdiction to determine the level of fire protection required to provide adequate fire protection for the Display and Victory agrees that such consultation was accomplished, and the level of fire protection is adequate for the size of show this Agreement outlines. It is further agreed that in accordance with NFPA 1123 4-1.2, Sponsor shall provide an adequate number of monitors whose sole duty shall be the enforcement of crowd control located around the Display area during the Display and until the discharge site has been inspected by Victory's pyrotechnic operator after the Display.
  - b. Victory's Responsibilities: Victory shall secure and maintain all licenses, permits or certificates that may be required by any regulatory body having jurisdiction over the materials or performance of the series herein contemplated unless otherwise noted above in Sponsor duties. Victory shall exercise full and complete authority over its personnel, shall comply with all workmen's compensation, employer's liability and other federal, state, county and municipal laws, ordinances, rules and regulations required of an employer performing such services, and shall make all report and remit all withholdings or other deductions from the compensation paid its personnel as may be required by any federal, state, county or municipal law, ordinance, rule or regulation. Victory is responsible to ensure that all material and services supplied under this Agreement comply with all laws, rules, and regulations of the state and federal government relating thereto.

8. **Cancellation/Rescheduling by Sponsor.** If the Display is canceled by the Sponsor after receipt of this signed Agreement but prior to **June 6, 2019**, Sponsor agrees to pay 30% of the total price **(\$4,500.00)** for restocking and costs incurred. If the Display is canceled by the Sponsor after **June 29, 2019**, Sponsor agrees to pay 60% of the total price **(\$9,000.00)**. If the Display is canceled by the Sponsor after the physical show setup is complete, Sponsor agrees to pay 100% of the total price **(\$15,000.00)**. If the Sponsor elects to reschedule the Display for an alternate, mutually agreeable date, Victory agrees to facilitate this rescheduling and Sponsor agrees to reimburse Victory for any additional costs associated with this change.

9. **Safety/Weather Forced Cancellation.** Victory agrees that it shall be the responsibility of the pyrotechnic operator in charge, acting on Victory's behalf or the Authority Having Jurisdiction, to cancel or delay the Display if in the operator's judgement circumstances beyond the control of either Party pose an extraordinary risk to the health and safety of any person or property within the vicinity of the Display.

If the product has been damaged as an attempt to execute the Display and cannot be safely reused, 100% of the price is due and Victory has no further obligation under this Agreement. If the product is intact and reusable, Victory agrees to store the product and execute the Display on a mutually agreeable future date. Sponsor agrees to reimburse Victory for reasonable costs associated with the rescheduling of the event.

10. **Force Majeure.** Sponsor assumes the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Victory which may prevent the Display from being safely performed on the scheduled date, which may cause the cancellation of the event for which Sponsor has purchased the Display, or which may affect or damage such portion of the Display as must be replaced and exposed a necessary time before the Display.

11. **Product Performance.** Sponsor recognizes and acknowledges that due to the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of nonperformance is acceptable as full performance.

12. **Limitation on Damages.** In the event that Victory claims that Sponsor has breached this Agreement or was negligent in performing its duties hereunder, Victory shall not be entitled to claim or recover monetary damages from Sponsor in excess of funds actually due and owed from Sponsor to Victory under this Agreement. In the event that Sponsor claims that Victory has breached this Agreement or was negligent in performing its duties hereunder, Sponsor shall not be entitled to claim or recover monetary damages from Victory in excess of funds actually paid by Sponsor to Victory under this Agreement. However, notwithstanding any provision of this Agreement to the contrary, Victory and its owners, agents, employees, contractors and volunteers shall continue to be liable to Sponsor and all others who could make a claim against Victory and/or its owners, agents, employees, contractors and volunteers for matters covered by the insurance obtained by Victory referenced in Section 5 of this Agreement to the full extent of coverage limits of such insurance.

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13. **Time.** Time is of the essence in this Agreement. The Parties expressly recognize that in the performance of their respective obligations, each Party is relying on timely performance by the other Party and will schedule operation and incur obligations to third parties in reliance upon timely performances by the other Party and may sustain substantial losses by reason of any failure of timely performance.
14. **Independent Contractor/No Joint Venture.** The parties agree that Victory is an independent contractor and is not an agent or employee of Sponsor for any purpose. It is further agreed that Victory's employees shall be, and remain, the employees of Victory and not of Sponsor. Nothing in this Agreement or the actions of Victory or Sponsor shall be construed as forming a partnership or joint venture between Sponsor and Victory.
15. **Attorney Fees.** In the event that either Party to this Agreement shall enforce any of the provisions hereof by an action at law or in equity, the unsuccessful Party to such litigation agrees to pay to the prevailing Party all costs and expenses, including reasonable attorney fees, incurred therein by the prevailing party.
16. **Jurisdiction.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of Kansas applicable to contracts.
17. **Severability.** In the event that a court of competent jurisdiction determines that any provision of this Agreement is in violation of any statute, law, rule, regulation, ordinance or applicable public policy, such provision shall be stricken or modified to the extent that such provision no longer violates such statute, law, rule, regulation, ordinance or applicable public policy. All provisions of this Agreement that do not violate any statute, law, rule, regulation, ordinance or applicable public policy shall continue in full force and effect for all purposes. Furthermore, any court order striking or modifying any provision of this Agreement shall modify or strike the provision in as limited a manner as possible to give as much effect as possible to the intentions of the Parties to this Agreement.
18. **Survival.** The terms of paragraphs 5, 6, 12, 15, and 16 shall survive the cancellation or termination of this Agreement.
19. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto respecting the matters within its scope and may be modified only in writing signed by both Parties hereto.

The pricing and product offered in the Proposal shall remain firm if this Agreement is mutually executed by both Parties on or before May 31, 2019.

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Sponsor

Victory Pyrotechnics & Special Effects, LLC.

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Burt Ussery  
Mayor

*Cody Hanna*

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Cody Hanna  
Manager

Date

Date

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Monday, May 20, 2019

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Monday, May 20, 2019

## PROPOSAL #19-1015

**Victory Pyrotechnics & Special Effects, LLC**

14921 W. Morning Dove  
Clearwater, Kansas 67026

**Cody Hanna, Account Manager & Senior Pyrotechnician**

Cell Phone: (316) 631-5631

Email: [Cody.Hanna@VictoryPyro.com](mailto:Cody.Hanna@VictoryPyro.com)

**Proposal To:** Ron Marsh  
City Administrator  
City of Clearwater  
129 Ross Ave  
Clearwater, KS 67026

**Event:** City Fireworks Display  
**Date:** Saturday, July 6, 2019  
**Time:** 9:30-10:00pm  
**Rain Date:** To be determined

**Budget:** Not to exceed \$15,000.

**Location:** Clearwater Football Stadium,  
901 Ross Ave, Clearwater, Kansas 67026

**Display Type:** A fully choreographed multimedia pyromusical (to music), including a completely synced laser light show and pyrotechnics choreographed in Finale Fireworks and electrically fired with Cobra.

**Product Type:** Three, four, five, six, and eight-inch shells, as well as single shots, fan sweeps, and multi-shot cakes. An estimated 5,000 to 5,500 pyrotechnic effects or breaks.

**Display Site:** To be roped and flagged by sponsor, access by truck and trailer required.

**Setup:** State licensed pyrotechnician and support staff provided. Trained lighting professional also included. Requesting to arrive on the display site a day early, Friday, July 5, to begin setup.

**Clean-up:** Provided in compliance with sponsor's guidelines.

**Insurance:** \$1,000,000 per occurrence provided.

**Permits:** Victory Pyrotechnics & Special Effects, LLC will secure the necessary permitting from the local Authority Having Jurisdiction (AHJ).

**Sales Tax:** Tax not included.

**Terms:** A 30% down payment is due at the time of contract signature, with the remaining balance due within seven days after the show.