



This Agreement is made this the 14 day of May, 2025, by and between Sky Elements, LLC, a Texas limited liability company, whose address is 820 W Sandy Lake Drive, Coppell TX 75019, and hereinafter referred to as **“Sky Elements”** and The City of Irvine, CA, hereinafter referred to as “Customer.” Sky Elements is in the business of providing drone display services, and Customer desires to have Sky Elements provide drone display services at Customer’s event(s). The parties therefore agree as follows:

1. **Drone Display(s):** Sky Elements agrees to furnish to Customer with drone display services, hereinafter referred to as “Display(s)” The Display(s) will be conducted in accordance with the following specifications:

Display Date(s): 7/4/2025

Drone Count: 100

Display(s) Location: Great Park - 8000 Great Park Blvd - Irvine, CA 92618

Drone Light Show Overview / Deliverables:

Our shows are completely customizable with 10-15 animations.

Each of our displays are 10-15 minutes in length.

Our shows can also be synced with a custom soundtrack.

The cost of the show is all inclusive (shipping, travel, lodging, meals, animation, air permitting, custom music).

Our team arrives with everything we need and do not require any power.

Our team arrives on the day of the show about 6-8 hours prior to the show to begin setting up. After the show, our team is packed up within 1-2 hours.

Once our team has the initial creative call, we can provide a more in-depth timeline with deliverables.

Prior to the show, we also will put together an activation sheet with POC's, site plans, timelines, and instructions.

22184

2. **Payment Terms.** Customer shall pay Sky Elements \$ 38,000 Customer shall submit a 55% deposit immediately upon execution of this Agreement. The balance remaining for each display(s) will be paid to Sky Elements seven days prior to each Display. Customer shall pay the Invoice by wire transfer, ACH, check, or credit card with 3.5% service fee. Failure to pay final balance before Display date could potentially delay the scheduled Display. Late payments are subject to a 6% annual interest charge on outstanding balances more than 10 days past due.
3. **Safety.** The performance of the Display(s) will start at the agreed upon time(s) if the launch site is secure and the conditions are safe to proceed as determined by Sky Elements in its sole discretion. The Parties agree that should unsafe conditions arise during the performance of the Display(s), as determined by Sky Elements in its sole discretion, Sky Elements' Pilot in Command ("PIC") may halt the display. The PIC may resume the Display(s) if the PIC determines that safe conditions are restored.
4. **Statement of Compliance.** Sky Elements complies with federal aviation law. In connection with these obligations, Sky Elements hereby represents and warrants to Customer that Sky Elements is obligated by federal aviation law to conduct all aerial operations within the limitations stated in Federal Aviation Administration Waiver No: 107W-2023-02319 ("**Waiver**"). Customer represents that nothing in this Agreement shall obligate Sky Elements to exceed or violate the terms of the Waiver.
5. **Customer's Obligations.**
 - a) Customer shall be solely and entirely responsible for the following obligations:
 - i) Obtaining all necessary permissions from property owners, controllers, or authorized representatives required for the performance of the Display(s) at least seven days before the performance of the Display(s).
 - ii) Obtaining all necessary permits required by local governmental agencies (excluding FAA) at least seven days before the performance of the Display(s).
 - iii) Maintaining a safe operating area from which the Sky Elements crew will work, uninterrupted.
 - iv) Securing the area of operation to ensure only individuals necessary to the operation ("Participating Persons") are allowed in the area of flight operations as designated by Sky Elements.
 - v) Ensuring that only Participating Persons will be permitted within the perimeter of 100 feet from the area of primary flying.
 - vi) Ensuring that none of the Customer's employees, contractors, or representatives are operating a drone within 2500 feet of the Display(s) location during the performance of the Display, without prior approval by Sky Elements.

- b) Customer, and its employees, representatives, and agents, must respond promptly to any Sky Elements request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Sky Elements to perform the Display(s) in accordance with the requirements of this Agreement.
- c) If Sky Elements' performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its employees, representatives, and agents, Sky Elements shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, if arising directly or indirectly from such prevention or delay.

6. **Cancellation.**

- a) If Sky Elements is unable to perform the Display(s) due to (i) the Parties inability to obtain the requisite permissions to perform the Display(s), (ii) the illness, injury, or death of its employees or personnel who are intended to pilot and coordinate the Display(s), (iii) or due to the damage or destruction of Sky Elements' equipment during transit to the location of the Display(s) (each, an "Unforeseen Event"), and to the extent such Unforeseen Event was not directly caused by Sky Elements or its personnel, Sky Elements may cancel the Display(s) and any of its obligations under this Agreement by providing Customer notice as soon as reasonably possible before the Display(s). If a cancellation under this Section 5(a) is required, Sky Elements will provide Customer a full refund of any amounts Customer paid to Sky Elements at the time of cancellation.
- b) If Customer cancels this Agreement more than 30 days before the scheduled date of the Display(s), the cancellation fee will be 50% of the full Invoice price regardless of whether such fees and expenses are incurred and regardless of whether other external conditions would have prevented the Display(s) from moving forward as scheduled.
- c) If Customer cancels this agreement less than 30 days, but more than 72 hours before the scheduled date of the Display(s), the cancellation fee will be 75% of the full Invoice price regardless of whether such fees and expenses are incurred and regardless of whether other external conditions would have prevented the operations from moving forward as scheduled.
- d) If Customer cancels this agreement less than 72 hours before the scheduled date of the Display(s), the Customer shall pay Sky Elements the total amount of the Invoice, regardless of whether such fees and expenses are incurred and regardless of whether other external conditions would have prevented the operations from moving forward as scheduled.
- e) Sky Elements shall determine what weather conditions, safety, or security concerns prohibit Sky Elements from proceeding with the Display(s); in the case of weather conditions, Sky Elements agrees to conduct the Display(s) on a mutually agreed upon rain/postponement date within one year from the original event date.

7. **Indemnification.**

Contractor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

Contractor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Contractor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

These Indemnification provisions are independent of, and shall not in any way be limited by, the Insurance Requirements of this Agreement. City approval of the insurance contracts required by this Agreement does not in any way relieve the Contractor from liability under this section.

8. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall give Customer the right to instruct, supervise, control, or direct the details and manner of the completion of the Display(s). Nothing in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to Agreement for or bind the other Party.
9. **Intellectual Property.** All intellectual property rights, including images, text, graphics, film, audio, audiovisual works, copyrights, patents, patent disclosures, inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works, and all other rights (collectively, "**Intellectual Property Rights**") in and to the Display(s), work product, and other materials that are delivered to or for Customer under this Agreement shall be owned by Sky Elements.
10. **Confidential Information.**
 - a) Confidential Information disclosed by either Party shall be used by the receiving Party solely for the purposes authorized by this Agreement, unless otherwise approved in advance and in writing by the disclosing Party.

- b) If the receiving Party is legally obliged to disclose any of the Confidential Information, the receiving Party shall promptly notify the disclosing Party so that the disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the terms of this Agreement, at the disclosing Party's sole discretion.
 - c) The Parties shall be entitled to injunctive relief for any violation of this Section.
11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
 12. **Waiver.** No waiver of any right, remedy, power, or privilege under this Agreement ("Right") is effective unless in writing signed by the Party charged with such waiver. No failure to exercise, or delay in exercising, any Right operates as a waiver thereof. No single or partial exercise of any Right precludes any other or further exercise thereof or the exercise of any other Right.
 13. **Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral understandings, agreements, representations, and warranties with respect to such subject matter. the Parties may not amend this Agreement except by written instrument signed by the Parties.
 14. **Amendment & Assignment.** This Agreement may not be sold, assigned, amended, or transferred without the prior written consent of either Party. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.
 15. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.
 16. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall grant to any other person or entity any legal or equitable right, benefit, or remedy of any nature under or because of this Agreement.
 17. **Force Majeure.** If for any reason beyond its control including, but not limited to, strikes, labor disputes, accidents, government requisitions, acts of war, acts of God, epidemic, pandemic, governmental restrictions, or other similar events that would make the event impractical or impossible, the Parties agree Customer's sole remedy is to transfer the display date subject to Sky Element's availability. In no event will Sky Elements be liable for any damages, including, but not limited to consequential damages.
 18. **Choice of Law.** Each party agrees that any legal action to enforce or defend with respect to this Agreement (a "Legal Action") shall be brought only in the District Court of the State of California in Orange County. Each party further accepts for itself, and in respect of its property, generally and unconditionally, the exclusive jurisdiction of that court with respect to any Legal Action and irrevocably waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non convenience, which it may now or hereafter have to the

bringing of any Legal Action in that jurisdiction and venue.

19. **Form of Written Notice.** Each Party shall deliver all communications in writing either in person, by certified or registered mail, return receipt requested and postage prepaid, by facsimile or email (with confirmation of transmission), or by recognized overnight courier service, and addressed to the other Party at the addresses that the receiving Party may designate from time to time in accordance with this Section.
20. **Severability.** If any provision or portion of this Agreement is found to be invalid, unlawful or unenforceable to any extent, such provision of this Agreement will be enforced to the fullest extent permissible by applicable law so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. Upon such determination that any term or other provision of this Agreement is invalid, unlawful, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement to affect the original intent of the Parties as closely as possible in a mutually acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
21. **FAA Approvals and Authorizations.** Sky Elements shall obtain all necessary Federal Aviation Administration (FAA) approvals and authorizations to enable Sky Elements to perform fully hereunder, including airspace authorization needed for the Display(s).
22. **Representation and Warranty.**
 - a) Sky Elements represents and warrants to Customer that it shall perform the Display using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
 - b) In the event of a materially defective Display, being a display that is performed material different than the rendering or missing more than ten percent of the drones in the Display(s), Sky Elements shall, in its sole discretion, either:
 - i) Reperform the Display(s) at a mutual agreed upon date; or
 - ii) Credit or refund the price of the Display at the pro rata Agreement rate.
 - c) The remedies set forth in this section shall be Customer's sole and exclusive remedy and Sky Elements entire liability for any breach of the limited warranty set forth in this section.
 - d) Except for the warranty set forth above, Sky Elements makes no warranty related to its services, including any (a) warranty of fitness for a particular purpose; (b) warranty of title; or (c) warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.
23. **Insurance:** Sky Elements will maintain the following insurance coverages in connection with the Display(s) described in this Agreement.

Commercial General Liability: \$1,000,000

Automobile Liability: \$1,000,000

Umbrella: \$10,000,000

Workers Compensation: \$1,000,000

Aviation Liability: \$5,000,000

Sky Elements also agrees to include Customer as additional insured under the terms of this coverage. Sky Elements will provide a Certificate of Insurance. All entities listed on the certificate will be deemed an additional insured per this Agreement.

Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section.

Insurance Coverage Required. The Insurance obligations under this agreement shall be (1) all the Insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The policies and minimum amounts of insurance required hereunder shall be as follows:

A. Comprehensive General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

(1) Name the City of Irvine and the Great Park Corporation and their Officers, employees, agents, volunteers and representatives (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and

collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

B. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

(1) Name the City of Irvine and the Great Park Corporation and their Officers, employees, agents, volunteers and representatives (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

C. Workers' Compensation Insurance in accordance with the Labor Code of California and covering all employees of the Contractor providing any service in the performance of this Agreement. Such insurance shall be endorsed to:

(1) Waive the insurer's right of Subrogation against the City and City Personnel.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

In the performance of the work under this Agreement, if Contractor does not employ any person in any manner so as to become subject to the workers' compensation laws of California, Contractor agrees to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Contractor's failure to provide such worker's compensation insurance. Contractor agrees that, if firm should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, firm shall forthwith comply with those provisions, immediately furnish insurance certificates evidencing such coverage as set forth herein, and notify the City of the change in status.

E. Evidence of Insurance: Contractor shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

The City project title or description MUST be included in the “Description of Operations” box on the certificate.

The City’s insurance certificate tracking services provider, Exigis, LLC, will send Contractor an email message providing instructions for submitting insurance certificates and endorsements.

Certificate Holder: City of Irvine, California
c/o: Exigis LLC
PO Box 4668 ECM #35050
New York, NY 10168-4668

F. Endorsements: A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements **shall not:**

1. Be limited to “Ongoing Operations”
2. Exclude “Contractual Liability”
3. Restrict coverage to the “Sole” liability of Contractor
4. Contain any other exclusion contrary to the Agreement.

G. Any Deductible in Excess of \$100,000 and/or Self-Insured Retentions must be approved in writing by the City.

H. Acceptability of Insurers. Each policy shall be from a company with current A.M. Best’s rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

I. Insurance of Subcontractors. Contractor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subcontractor’s policies.

24. **Electronic Signatures.** Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.
25. **Marketing Materials.** Should Sky Elements provide marketing collateral, including but not limited to images, videos, mockups, or other such marketing materials to Customer. Subject to the terms and conditions of this Agreement, Sky Elements hereby grants Customer "Licensee" a non-exclusive, non-transferable, revocable, limited license to use the Licensed Material solely for the purpose of promoting the specific upcoming Sky Elements drone show within a period of one (1) year from the Effective Date of this Agreement. All rights not expressly granted by Sky Elements are reserved. No other use is granted. Licensee shall not modify, alter, distribute, sublicense, sell, or create derivative works based on the Licensed Material without prior written consent from Sky Elements. Licensee shall maintain the integrity of the Licensed Material and shall not use it in a manner that discredits or tarnishes the reputation of Sky Elements. Sky Elements retains all copyrights and intellectual property rights to the Licensed Material. Any rights not expressly granted herein are reserved by Sky Elements.
26. **Survival.** Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of this Agreement for 12 months after such expiration or termination; and (b) Section 10 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, shall survive for a period of 24 months after such expiration or termination of this Agreement.
27. **Notices.** All notices required under this Agreement shall be in writing, signed by the party delivering such notice, and delivered to the respective addresses set forth below by overnight courier or by first-class mail with return receipt requested.

Sky Elements

ATTN: Preston Ward

preston@skyelementsdrones.com

(817) 538-3207

820 W Sandy Lake Rd. Suite 200

Coppell, TX 75019

Customer:

All notices shall be effective upon receipt if sent by overnight mail, or three days after deposited via U.S. mail.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SKY ELEMENTS, LLC

DocuSigned by:
BY: Preston Ward
4B420911214C476...

Date: 5/14/2025

Preston Ward, Manager / General Counsel

CUSTOMER

DocuSigned by:
BY: Melissa Haley
72D40AFEBEB14A2...

Date: 5/15/2025

Printed Name: Melissa Haley

Company: City of Irvine

Title: Communications & Engagement, Director

Attest:

Signed by:
By: Carl Petersen
0FCAD91F02E547D...

Carl Petersen

Its: City Clerk

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

DocuSigned by:
BY: Jeff Melching
DABE8686180C4BB...

Jeffrey Melching