

Fireworks Productions of Arizona
17034 S. 54th St.
Chandler, AZ 85226
Office 480-948-0090 ~ Fax 480-423-5430

FIREWORKS DISPLAY CONTRACT

This Fireworks Display Contract ("Contract") is made this _____ day of April, 2018 by and between FPA, Ltd., an Arizona Corporation DBA Fireworks Productions of Arizona ("FPA") and the City of Coolidge ("City").

FPA is in the business of selling and displaying fireworks; and the City desires to have FPA to provide a fireworks display for City's benefit. The parties therefore agree as follows:

1. **The Display.** FPA will provide and exhibit fireworks for a display on Wednesday, July 4, 2018 (and on July 4th of each additional year of this Contract). The display will begin at approximately 8:30 – 9:00 pm and will substantially comply with the program set forth in Exhibit A.
2. **Contract Price.** The City will pay FPA the sum of \$13,000.00 (the "Contract Price") as consideration for the fireworks display. Payment will be made as follows:
 - a. Signed Contract by no later than **May 15 of each Term year**;
 - b. 50% of the Contract Price ("Deposit") by **May 15 of each Term year**;
 - c. The balance of the Contract Price within twenty (20) days after the completion of the fireworks display.

The City agrees to pay interest at the rate of 2% per month on any delinquent balance not paid within thirty (30) days from the original date it is due until the debt is paid in full.

3. **Term.** The term of this Contract will be three (3) years ("Term"). FPA will provide 4th of July fireworks displays for the years 2018, 2019 and 2020. The Contract price for each year of this Contract shall be \$13,000 with the exception of delivery costs and shipping which shall be equal to Contractor's actual costs. In addition, if market cost for fireworks used in the display increase, FPA and the City will negotiate in good faith a revised Contract Price taking into account such increase in the cost of fireworks.
4. **Termination.** Notwithstanding anything herein to the contrary, the City may terminate the Contract at no cost to the City by providing FPA with no less than sixty (60) days written notice prior to May 15th in each Term year.
5. **Permits.** FPA will advise City of the applicable state and federal permits that must be secured in connection specifically to the fireworks display. FPA will apply for and secure the permits, licenses, and approvals required by local, state, or federal laws and regulations as well as those possibly imposed or required by local police or fire departments specific to the fireworks display. The cost for any such permits, licenses and

approvals is included in the Contract Price. If an additional Special Events permit is required, the securing of and payment for, will be the responsibility of City. If the cost of the permit fee is increased or additional fees are required after the signing of this Display Contract, City will bear the responsibility of the additional costs. If a required permit is denied for any reason and FPA is unable to perform the fireworks display contracted for under this Contract because of such denial, this Contract will be canceled and the Deposit, less FPA's "Actual Expenses" will be refunded to City. As used in this Contract, "Actual Expenses" shall include, but are not limited to, expenses for travel, lodging, meals, rentals, permits and labor incurred by authorized representatives of FPA necessary to present the fireworks display, provided, however, in no event shall Actual Expenses exceed the Deposit.

6. Insurance.

A. Insurance Limits. FPA shall secure and maintain, at all times during the term of this contract a policy or policies of insurance known as: (1) Commercial General Liability in the amount of \$10,000,000. (2) Business Automobile Liability in the amount of \$10,000,000. (3) Worker's Compensation (Industrial Insurance) in the amount of \$1,000,000. Those entities/individuals listed on the certificate of insurance shall be deemed an additional insured per this Contract.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect FPA. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve FPA from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Contract.

D. Primary Insurance. FPA's insurance shall be primary insurance with respect to performance of this Contract and in the protection of the City as an Additional Insured.

E. Use of Subcontractors. If any work under this Contract is subcontracted in any way, FPA shall execute written contract with the subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting the City and

FPA. FPA shall be responsible for executing the contract with the subcontractor and obtaining certificates of insurance verifying the insurance requirements.

7. **Display Site.** City will procure and furnish a place suitable to FPA for the fireworks display. The site will be sufficient to accommodate spectator viewing areas, vehicle parking areas, and the Display Site. "Display Site" means the discharge site, the fallout site, and the required separation distance from mortars to the spectator viewing areas in compliance with the most recent edition of the National Fire Protection Association 1123 Code for Fireworks Display. *For the purpose of this show, land Parcel 209240110 will be used for the Display Site.* City will make all arrangements directly with *the property owner* for use of their property. City will be responsible for any fees in association with the use of the property.
8. **Security and Indemnification.** As required, City will furnish all necessary materials for and will set up restraining lines pursuant to instructions supplied by FPA and in compliance with most recent edition of the National Fire Protection Association 1123 Code for Fireworks Displays. The City will hold harmless and indemnify FPA from any demands, claims, causes of action or liability arising from damage to or destruction of real or personal property or bodily or personal injuries, whether arising from tort, contract, or otherwise, that occur directly from the failure of the City to comply with its security obligations and responsibilities as set forth in this Paragraph 8, including reasonable attorney fees and costs. City will hire and provide, at its own cost and expense, adequate private or public security personnel to ensure that no vehicles are parked within the Display Site and that no individuals, other than those specifically authorized by FPA, enter the Display Site. The security personnel will remain on the perimeter of the Display Site and will not enter the Display Site before, during, or immediately following the fireworks display.
9. **Cleanup of Display Area.** Following the display, FPA will be responsible for cleanup of all boxes and equipment and policing of the display area including the removal of all unexploded fireworks, removal of frames and lumber. Any additional clean-up required by the venue will be the responsibility of City.
10. **Weather or Safety Cancellation.** FPA or the Authority Having Jurisdiction (AHJ) may determine that the time or length of the display of fireworks may need adjustment based on wind/weather/safety conditions. If FPA or the Authority Having Jurisdiction (AHJ) determines that the fireworks display on the date and at the time set forth in Paragraph 1 (the "Original Date") would be impossible or impractical because of inclement weather or safety concerns, the fireworks display will be canceled and the Deposit, less FPA's Actual Expenses (as defined in Paragraph 5) will be refunded to the City, provided, however, in no event shall Actual Expenses exceed the Deposit.
11. **Interruption and Continuation of the Fireworks Display.** There are instances or situations where a fireworks display may require to be interrupted due to safety, weather or equipment damage due to debris or fire. If repairs can be effected or the situation passes, City has the option to continue or cancel the remainder of the display. Regardless

of continuation or cancellation, City will not be refunded any portion of the Contract Price if the display can safely continue. In the event the display begins but is halted due to wind, weather or safety conditions, FPA will refund or credit City the applicable deposit minus Actual Expenses (as defined in Paragraph 5) plus costs and taxes on the fireworks provided prior to the stopping of the display. In the event a product fails to function (here to be classified as a Dud), City will be entitled to a refund or credit of that individual product's purchase price, plus tax, only.

12. **Cancellation.** Except as otherwise provided in Paragraph 4, Paragraph 10 and Paragraph 14, the parties acknowledge that, if City cancels this Contract for any reason other than due to a breach by FPA, FPA will suffer damages. They further acknowledge that those damages will be uncertain as to amount and difficult to prove. Except as otherwise provided in Paragraph 4, Paragraph 10 and Paragraph 14, in the event that City does cancel this Contract for any reason other than a breach by FPA, FPA will be entitled to recover, not as a penalty, but as liquidated damages, an amount set forth below:
 - a. If cancellation occurs more than thirty (30) days before the Original Date, an amount equal to 10% of the Contract Price;
 - b. If cancellation occurs no more than thirty (30) days and no less than one (1) day before the Original Date, an amount equal to 50% of the Contract Price;
 - c. On or after the Original Date, an amount equal to 100% of the Contract Price.
13. **Not a Partnership.** This Contract shall not be construed so as to create a partnership, joint venture, employment, or agency relationship between the parties.
14. **Acts of God.** In the event of fire, accident, strike, act of God, terrorism or other causes beyond the reasonable control of either party that prevent performance of either or both parties' obligations under this Contract (other than inclement weather or safety concerns as described in Paragraph 10) each party hereby releases the other from any and all obligations hereunder, except for liabilities that have already accrued to such time.
15. **Indemnifications.** FPA shall defend, indemnify, and hold the City, its agents, representatives, officers, directors, officials and employees harmless from any and all loss, damage, claim for damage, liability, expense or cost, including reasonable attorney's fees, which arise out of, or is in any way directly connected with the performance of services under this Contract by FPA or any of FPA's employees, agents or subcontractors, and from all claims by FPA's employees, subcontractors and agents for compensation for services rendered to FPA in the performance of this Contract, notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of FPA or FPA's employees, subcontractors or agents. This paragraph shall survive the expiration or early termination of this Contract.
16. **Arbitration.** The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim of controversy must first be presented in writing, with supporting documentation, to the agent of the other party.

The recipient shall have seven (7) days to prepare and deliver a response. Thereafter, in the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by FPA and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and FPA shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and FPA. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

17. **Federal Regulations.** Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. FPA acknowledges, by signature to this Contract, that: FPA is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; FPA's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.
18. **Undocumented Workers.** FPA understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, FPA hereby warrants to the City that FPA and each of its subcontractors, if any, will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A).
19. **Conflict of Interest.** This Contract is subject to the conflict of interest provisions set forth in A.R.S. §38-511.
20. **Israel Boycott.** FPA shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01
21. **Applicable Law and Venue.** This Contract will be governed by and construed according to the laws of the State of Arizona and any applicable federal law without regard to any conflict of law principles. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Contract shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other State or County.
22. **Entire Agreement.** This Contract, including Exhibit A hereto, represents the entire agreement between the parties and supersedes all prior negotiations, representations or agreements wither express or implied, written or oral. No statement, promise, or

inducement made by either party or agent of either party that is not contained in this Contract will be valid or binding. This Contract may not be enlarged, modified, or altered, except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly authorized representatives as of the day and year first above written.

FPA, Ltd.

City of Coolidge

(Authorized Signature)

Jon Thompson, Mayor

Title:

Title:_____

Date:

Date:_____

EXHIBIT A