

STATE OF TEXAS §
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COUNTY OF DALLAS §
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FIREWORKS AGREEMENT

This Fireworks Agreement (“Agreement”) is made this the ____ day of _____, 2014 by and between **PYROSHOWS OF TEXAS**, (hereinafter referred to as **PYROSHOWS**), and the Town of Addison, Texas (hereinafter referred to as **City**).

For and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and **PYROSHOWS** do hereby contract and agree as follows:

1. **PyroShows of Texas** is a Texas Corporation with its principal place of business in Fort Worth, Texas.

2. The **Town of Addison** is a Texas home rule municipality operating under and pursuant to Article 11, Section 5 of the Texas Constitution, the laws of the State of Texas, and the Charter of the Town of Addison, Texas; and,

3. **CITY** intends to promote, at its own cost and expense, certain festivities celebrating Independence Day in Addison, Texas. This Agreement deals exclusively with the scheduled pyrotechnic demonstration (the “pyrotechnic display”) on the 3rd of July in years 2014, 2015 and 2016 (or the alternate dates set forth in Section 7 below). The show will be fired at 9:35 P.M and the duration of said display is at least twenty-five minutes. Said display will be produced, choreographed, and designed as approved by the **CITY**.

4. **PYROSHOWS** is in charge of all aspects of the production of the pyrotechnic display and will design and choreograph the pyrotechnic display as part of the festivities and pursuant to an agreement of the parties as so enumerated herein. **PYROSHOWS** will perform and execute the pyrotechnic display. In the performance of its duties hereunder, **PYROSHOWS** shall provide technicians who are professional, who have received training on the proper display of fireworks, and who have been and are licensed or certified under any applicable law or regulation to conduct and operate a fireworks display.

6. **PYROSHOWS** will procure all necessary permits and required inspections in connection with this Agreement and will comply with all applicable laws, rules, regulations and standards. **PYROSHOWS** shall purchase and maintain during the term of this Agreement (i) worker’s compensation insurance in the amounts required by State law, and (ii) commercial general liability insurance including personal injury liability, premises operations liability, contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, products/completed operations, and bodily injury and property damage, with limits of liability of not less than \$2,000,000. Coverage under such policies must be on an occurrence basis, and if the commercial general liability insurance contains a general aggregate limit, it shall apply separately to this location and to the event described herein. All such policies of insurance shall (a) be issued by a carrier which is rated A- or better by A.M. Best’s Key Rating Guide (and have a financial size category rating by A.M. Best of VII or better) and licensed to do business in the State of Texas, and (b) name the Town of Addison, Texas, its officials, officers, and employees as an additional insured and contain a waiver of subrogation in favor of the Town of Addison, Texas, and (c) provide for at least thirty (30) days

written notice to the Town of Addison, Texas prior to cancellation or modification. On or before June 1st of each contract year, **PYROSHOWS** shall provide **CITY** with certificates of insurance evidencing such insurance policies together with the declaration page of such policies, along with the endorsement naming the Town of Addison, Texas as an additional insured.

7. In the event the pyrotechnic display described herein is canceled in its entirety and not rescheduled, except as a result of a breach of this Agreement by **PYROSHOWS**, **CITY** agrees to pay **PYROSHOWS** for its reasonable out of pocket expenses and production fees incurred in connection with this Agreement plus 30% of the contract amount set forth in Section 11. In such event and if **PYROSHOWS** has previously received from **CITY** more than 30% of the contract amount, **PYROSHOWS** shall, within 10 days of the date of cancellation, reimburse to **CITY** the difference between the amount actually paid to **PYROSHOWS** (less any expenses and production fees incurred in connection herewith) and 30% of the contract amount. **PYROSHOWS** shall supply to the **CITY** receipts for all expenses and fees incurred pursuant to this Agreement.

In the event of any breach of this Agreement by **PYROSHOWS**, **CITY** may terminate this Agreement and shall have no further or future duties or obligations hereunder. In such event, **PYROSHOWS** shall reimburse to **CITY** all payments received by **PYROSHOWS** under this Agreement.

Every reasonable effort will be made to conduct the pyrotechnic display on July 3rd despite weather conditions prior to, or during, the pyrotechnic display. In the event of weather conditions that will prevent the pyrotechnic display, the **CITY** and **PYROSHOWS** will mutually agree upon a time to decide if the pyrotechnic display will occur on July 3rd, or if the pyrotechnic display will have to be rescheduled. Should **CITY** request rescheduling, the event will take place on July 5th at 9:35 p.m. (the "Rescheduled Date") **CITY** is responsible for the cost of approved extra expenses including any additional costs incurred by or to **PYROSHOWS**, i.e. meals, hotels, transportation, and possible airfare, if **CITY** has first given its written consent (in its sole discretion) to such additional expenses or costs.

8. **PYRO SHOWS** will provide musical score of choreographed and designed pyrotechnic display complete with dramatic cue sheet and backtimed theatrical design. **CITY** will provide ISND line for musical score and **PYROSHOWS** will provide sound and cueing commands from firing area to the radio station via ISND line feed.

9. Given total satisfaction of **CITY** regarding the pyrotechnic display for **CITY**, as determined by **CITY** in its sole discretion, **CITY** may, at its sole option, cause this Agreement to be renewed for the following year (2017) and for the year after that (2018) (each such year being a "Renewal Year") by delivering to **PYROSHOWS** notice of its intent to renew this Agreement (the "Renewal Notice"). In order to exercise its option, **CITY** shall deliver to **PYROSHOWS** the Renewal Notice no later than October 1, 2016 for the July 2017 event and no later than October 1, 2017 for the July 2018 event. Any renewal of this Agreement shall be on the same terms and conditions set forth herein (including, without limitation, the cost set forth in Section 11), except that the dates shall be amended to reflect the then applicable Renewal Year.

10. **PYROSHOWS** assumes no responsibility for security or crowd management relating to said event. **CITY** must provide a safe and secure area (as reasonably defined by **PYROSHOWS**) in which to set off and ignite the display to ensure its ability to properly produce the show and **PYROSHOWS** the security to execute said show. Furthermore,

PYROSHOWS is not liable for crowd behavior on the night of said display, but is the full responsibility of **CITY**. Further, **PYROSHOWS** will not be responsible for any injury to persons or damage to motor vehicles within 560 feet of the FIREWORKS DISCHARGE SITE. **PYROSHOWS** will present a plot plan accepted by the Addison Fire Department and to become part of this contract.

11. The total cost to be paid by **CITY** is Fifty-Two Thousand DOLLARS (\$52,000.00) for all matters relative to the production of the pyrotechnic display under this agreement (provided, however, that in the event the display described in this Agreement is canceled as set forth in Section 7, the terms of Section 7 shall control). Payment to be as follows: Twenty-six Thousand DOLLARS (\$26,000.00) is due no later than June 15th of each contract year, and the remaining Twenty-six Thousand DOLLARS (\$26,000.00) is due on or before July 3rd of each contract year (in the event the pyrotechnic display occurs on the 3rd day of July) or on the business day next following the Rescheduled Date (in the event the pyrotechnic display occurs on the Rescheduled Date). Payment to be made per above schedule to the offices of **PYROSHOWS**.

12. **PYROSHOWS' INDEMNITY OBLIGATION.** **PYROSHOWS** covenants, agrees to, and shall **DEFEND** (with counsel reasonably acceptable to the Town), **INDEMNIFY, AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities each being an "**Addison Person**" and collectively the "**Addison Persons**") from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the Town and/or any other Addison Person, whether directly or indirectly, (the "**Claims**"), that arise out of, result from, or relate to: (i) services of **PYROSHOWS** set forth in this Agreement (including, without limitation, the services set forth in of Sections 4, 6 and 8 of this Agreement), (ii) representations or warranties by **PYROSHOWS** under this Agreement; and/or (iii) any other act or omission under or in performance of this Agreement by **PYROSHOWS**, its owners, directors, officers, shareholders, managers, partners, employees, agents, engineers, architects, consultants, contractors, subcontractors, invitees, patrons, guests, customers, tenants, subtenants, licensees, sublicensees, concessionaires, or any other person or entity for whom **PYROSHOWS** is legally responsible, and their respective owners, directors, officers, shareholders, managers, partners, employees, agents, engineers, architects, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, and concessionaires (collectively, "**PYROSHOWS Persons**"). **SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.** However, **PYROSHOWS'** liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Addison Persons' proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, **PYROSHOWS'** liability for Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Addison

Persons' proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

PYROSHOWS shall promptly advise the Town of Addison in writing of any claim or demand against any Addison Person related to or arising out of PYROSHOWS' or any PYROSHOWS Persons' activities under this Agreement and shall see to the investigation and defense of such claim or demand at PYROSHOWS's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and own expense, to participate in such defense without relieving PYROSHOWS of any of its obligations hereunder.

13. Any notice or document required to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

TO FESTIVAL:

TO PYRO SHOWS OF TEXAS

Town of Addison, Texas
P.O. Box 9010
Addison, Texas 75001
Attn: Chris Terry, Assistant City Manager

PyroShows of Texas
6601 Nine Mile Azle road
Fort Worth, Texas 76135

14. The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. This Agreement shall be performable and all compensation payable in Dallas County, Texas. Venue for any action or proceeding under this Agreement lies in Dallas County, Texas. In the event there is any dispute or litigation with regard to this agreement, the successful party shall be entitled to its attorney's fees and costs.

15. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

TOWN OF ADDISON, TEXAS

PYROSHOWS OF TEXAS

By: _____
Chris Terry, Assistant City Manager

By: _____

(printed/typed name)

Its: _____