

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this 17th day of April, 2019 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and Tri-State Fireworks, Inc. an independent contractor with a principal place of business at P.O. Box 31, Brighton, Colorado 80601 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required services.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in Exhibit A, attached hereto and incorporated herein by this reference and known as: 2019 July 3rd Town of Erie Fireworks Display at Colorado National Golf Club.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 90 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

C. Contractor shall have sole, exclusive and final determination of the suitability of the weather conditions at the time of the display, and in the event Contractor should determine that the weather conditions are such that an unsafe or hazardous condition may exist, Contractor shall have the exclusive right and option to postpone the starting time of the display or delay the display in its entirety, until conditions have improved and are appropriate for the safety of all involved, or

until the alternative, mutually agreed upon, inclement weather date, within the Calendar year. Contractor reserves the right to prematurely end or place a hold on the continuance of the display in progress so as not to create unsafe or hazardous situations.

D. In the event of inclement weather or other adverse conditions which cause postponement of the display, the Town shall notify Contractor regarding the postponement date. If the Town will not re-schedule the display within the calendar year, or completely cancels the display, the Town agrees to surrender the deposit to Contractor. Contractor shall be solely responsible for failure of the performance of the fireworks display for any reason under Contractor's control. In the event of cancellation of the performance for any reason under Contractor's control, Contractor shall refund the deposit paid by the Town. The refund of the deposit shall in no way limit any legal recourse or claim the Town may have as a result of Contractor's failure to perform the display.

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$ 35,000. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. The Town shall pay 50% of the total compensation, or \$17,500 (the "Initial Payment") by May 1, 2019, with the balance due July 20, 2019.

IV. RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$5,000,000 each occurrence and \$5,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent

of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly

hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

DEPARTMENT PROGRAM AFFIDAVIT

*[To be completed only if Contractor participates in the
Department of Labor Lawful Presence Verification Program]*

I, Joe Diaz/Tri-State, as a public contractor under contract with the Town of Erie
(the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are
newly hired for employment to perform work under this public contract for services
("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. §
1324a, which verify the employment eligibility and identity of newly hired employees who
perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly
hired employees who perform work under this Agreement.

Signature

4/17/19

Date

STATE OF COLORADO)

) ss.

COUNTY OF Adams)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17th
day of April, 2019, by Joe Diaz as President of
Tri State Fireworks Inc.

My commission expires: 7-19-2021

(S E A L)

Ciara Wollert Garduno
Notary Public

CIARA WOLLERT GARDUNO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174030442
MY COMMISSION EXPIRES 07/19/2021

EXHIBIT A SCOPE OF SERVICES

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Contractor shall put on a fireworks display at Colorado National Golf Club at the Town's "Independence Day" celebration on July 3, 2019, at the time specified by the Town.
- Contractor shall secure, prepare and deliver fireworks as outlined in **Exhibit B**, or make necessary substitutions of equal or greater value.
- Contractor will coordinate with Mountain View Fire Protection District prior to the display.
- Contractor will perform a thorough review with the shoot site and show design prior to the display.
- Contractor shall inspect the shoot site after the presentation of the fireworks display for any "duds" or other material, which might not have ignited after the display. Contractor shall also inspect the shoot site the following morning at first light, for any material which may not have ignited.
- Contractor shall obtain all required permits, clearances and other documentation regarding the pyrotechnics, whether federal, state or municipal.
- Contractor will arrange with Colorado National Golf Club: equipment load-in prior to display date. Product load, in set up and wiring shall commence on morning of July 3, 2019.
- Contractor will provide all necessary personnel to handle the load-in, firing, load-out and inspection tasks under this Agreement.

EXHIBIT B

EVENT: Independence Day Celebration
DATE: July 3, 2019

MAIN BODY

THREE-INCH SHELLS (250)

Selected from:

Titanium Salute
Salute w/ Whistle
Red Peony
White Peony
Blue Peony
Yellow Flower
Green Crossette
Blue Crossette
Golden Peony
Silver Spider
Red & Blue Peony
Red & Green Peony
Red & Silver Peony
Golden Flashing
White Flashing
Silver to Purple
Golden Wave to Silver
Time Rain Coconut Tree
Colors Dahlia
Silver Wave to Asst Colors
Purple to Golden Crackling Flower
Green Crackling Willow
Golden & Silver Peony
Assorted Color Peony
Green strobe Peony
White Strobe Peony
Variegated Strobe
Red Strobe
Red Wave
Blue Wave
Silver Wave
Mines (R,G,B,P)
Crackling Coconut
Gold Willow
Red Falling Leaves

Whistling Willow
Red to Blue
Orange Yellow to White
GreenChrys to White Glittering
Blue to Crack
Gold Coconut Glittering
Red & Blue Crossette
Go Getters Asst Colors
Lime Green Sizzling
Purp Red Sizzling
New Color Crossette
Lime Green
Sea Blue Dahlia
Orange Dahlia
Brocade Crown
Gold Crown
Spider Willow
Tourbillions
Asst Color Fish
Silver Willow
Red Star Comet
Purple Comet
Color Changing Shells
Golden Crackling
Half Red Half Blue
Dragon Eggs
R,G,B, Ball
1/2 Purple & Green
Brocade Red
Brocade Yellow
Diadem Chrys
Brocade Crown w/Strobe Pist

AND OTHERS...

FOUR-INCH SHELLS (180)

Selected from:

Multi Color Strobe Ring
Dragon Eggs
Red w/Crackling
Green w/Crackling
Silver w/Crackling
Charcoal Willow
Green to Purple
Blue to Red
Yellow to Purple
Golden to Blue
Silver to Blue
Green to Crackling
Blue to Crackling
Purple to Crackling
Red to Crackling
Multi Color to Crackling
Green Strobe to Green
Red, White & Blue
Red & Yellow
White Strobe
Red to Purple Crackling
Red Flashing
Glittering Silver
Variegated Glittering
Blue Peony w/Red Comet
Brocade Crown Silver Flashing Ring
Green to Purple Ring w/Crackling Pistil
Golden to Crackling Ring w/Pistil
Two Crackling Silver Sparkling Rain
Silver Chrysanthemum w/Clustering Strobe
Silver Sparkling Rain
Strobe Falling Leaves
Green Falling Leaves
Red Falling Leaves
Purple Falling Leaves
Green Silver Sparkling Rain Cr Pistil
Multicolor Silver Spark Rain
Color Peony w/Crackling Rain Pistil
Five Time Flower
Red & Green Bees
Asst Scattering (P,Y,G)
Mix Y & P Chrysanthemum w/Whistles
Red & Silver Peony w/Reports
Crack Willow Flowers
Crackling Octopus

Twice Presented Flowers
Strobe Palm Tree
Crossette Strobe
White Shining Ray
Multi Color Crisscross
Stained Glass
Haga Color Peony w/Crack
Haga Multi-color Silver Sparkling Rain
Haga Green strobe Falling Leaves
Silver Chrysanthemum Cluster Star Pistil
Sparkling Rain w/Red Pistil
Color Peony
Three Ring Chrysanthemum
Double Annulus Chrysanthemum
Go-Getter (R,G,Y,P,S)
Go Getter Rings
Red Sky Mine
Strobe Sky Mine
Red & Blue
Green & Purple Crossettes
Sun Flower
Heart Shells
Bees (Asst Colors)
New Color Crossette
Tourbillions w/Pistil
Silver Dragon Cylinder w/Blue Ring
Silver Dragon Cylinder w/Red Crossette
Whistle W/Pistil
Ghost Ring (Red)
Red, White, Blue Stars

AND OTHERS...

LARGE MULTI SHOT - SPECIAL BARRAGES (6,714 Shots)

2 - 100 Shot Z Fan Green Tail to Silver Whirl to Red Strobe

2 - 210 Shot X Purple and Gold Crossette

2 - 300 Shot 5 Angle Brocade Crown to Blue

2 - 500 Shot Strange Color Blooming

2 - 150 Shot Multi Color Blooming with Crackling

2 - 300 Shot W Red, White, and Blue Scenery

3 - 8 x 5 40 Shot Golden Crossette

3 - 300 Shot Z Rainbow

3 - 108 Shot W Shaped Blue and Gold Horsetail

3 - 100 Shot V Purple and Green Crossette

3 - 100 Shot Crackling Flower Mine to Dragon Eggs

3 - 300 Shot Fan Gold Strobe Tail & Green Tail

3 - 100 Shot New Type Color Crossettes

3 - 150 Shot Fan Silver Whistling

GRAND AERIAL FINALE (370 Shots)

3-INCH SHELLS (180)

100 - 10 Chains Red White & Blue

50 - 10 Chains Gold Brocade Crown Chains

30 - 10 Chains Titanium Salutes Chains

4-INCH SHELLS (40)

20 - 4 Chains Red White & Blue Chains

20 - 4 Chains Gold Brocade Crown Chains

150 Shot Quick Salute Barrage (3 x 50)

Tri-State reserves the right to substitute product of equal or greater value

MISCELLANEOUS

- Choreographed Musical Program
- Display Insurance (additional Insured included)
- Electronically Fired
- State & Federal Permits
- Electronically Fired

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

TRI-STATE FIREWORKS, INC.

By: _____
Joe Diaz

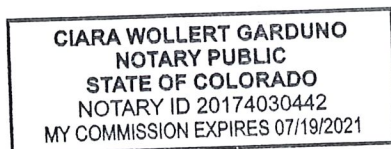
STATE OF COLORADO)
COUNTY OF Adams) ss.
)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17th day of April, 2019, by Joe Diaz as owner of Tri State Fireworks Inc.

My commission expires: 7.19.2021

(S E A L)

Ciara Wollert Garduno
Notary Public



NO EMPLOYEE AFFIDAVIT

[To be completed only if Contractor has no employees]

1. Check and complete one:

☐ I, _____, am a sole proprietor doing business as _____. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Erie (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☒ I, Joe Diaz, am the sole owner/member/shareholder of Tri-State Fireworks, Inc. a Corporation [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

☐ I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

4/17/19
Date