

CITY OF LOS ALAMITOS

3191 Katella Ave.
Los Alamitos, CA 90720

CITY COUNCIL AGENDA SPECIAL MEETING

Monday, June 1, 2020 – 5:00 p.m.

SAFETY ALERT –NOTICE REGARDING COVID-19

Due to COVID-19, the City of Los Alamitos City Council Special Meeting on June 1, 2020 will be conducted by videoconference pursuant to the provisions of the Governor's Executive Orders N-25-20 and N-29-20. The public may access the meeting electronically or telephonically.

Pursuant to the Executive Orders and given the current health concerns, **members of the public may not attend the meeting in person.** Members of the public can access the meeting by phone by dialing +1 (301) 715-8592 and enter the Meeting ID: 854 1296 7490. Your microphone will be disabled upon entry for the duration of the meeting.

The public can submit comments to cityclerk@cityoflosalamitos.org with the subject line "PUBLIC COMMENT ITEM #" (insert the item number relevant to your comment) or "PUBLIC COMMENT NON-AGENDA ITEM." Comments **received by 3:00 p.m.** will be compiled, provided to the City Council, and made available to the public before the start of the meeting. Staff will not read email comments at the meeting but the official record will include all email comments received until the close of the meeting.

Members of the public wishing to verbally deliver comments via the telephone conference can submit their requests to cityclerk@cityoflosalamitos.org **until the start of the meeting.** The City Clerk will compile a list of speakers who have indicated a desire to speak. Before the close of the meeting, the City Clerk will announce each speaker, enable the speaker's microphone, and begin the three minute timer. The speaker's microphone will automatically be disabled at the end of three minutes.

All speakers shall observe civility, decorum and good behavior. Any item submitted to the City Council during the meeting shall become public record and subject to applicable disclosure laws.

NOTICE TO THE PUBLIC – This Agenda contains a brief general description of each item to be considered. Except as provided by law, action or discussion shall not be taken on any item not appearing on the agenda. Supporting documents, including staff reports, are available for review at City Hall in the City Clerk's Office or on the City's website at www.cityoflosalamitos.org once the agenda has been publicly posted.

Each matter on the agenda, no matter how described, shall be deemed to include any appropriate motion, whether to adopt a minute motion, resolution, payment of any bill, approval of any matter or action, or any other action. Items listed as "for information" or "for discussion" may also be the subject of an "action" taken by the City Council at the same meeting.

Any written materials relating to an item on this agenda submitted to the City Council after distribution of the agenda packet are available for public inspection online at www.cityoflosalamitos.org.

It is the intention of the City of Los Alamitos to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee, or a participant at this meeting, you will need special assistance beyond what is normally provided, please contact

1. CALL TO ORDER

2. ROLL CALL

Mayor Murphy
Mayor Pro Tem Chirco
Council Member Doby
Council Member Grose
Council Member Hasselbrink

3. SPECIAL ORDERS OF THE DAY

A. Award of Contract for the 2020 Fireworks Display at the Annual 4th of July Fireworks Spectacular (Recreation)

This report recommends award of a contract for the 2020 Fireworks Display. The display would be launched from the Joint Forces Training Base, but no spectators would be permitted onsite.

Recommendations:

1. Award the contract for the 2020 Fireworks Display to Fireworks & Stage FX America in the amount of \$32,000; and,
2. Authorize the Mayor to execute the Professional Service Agreement with Fireworks & Stage FX America for the 2020 Fireworks Display.

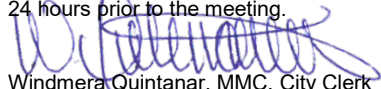
4. CLOSED SESSION

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to § 54956.9(b): (1 potential case)

5. ADJOURNMENT

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at City Hall, 3191 Katella Ave., Los Alamitos, CA 900720 and on the City's website at www.cityoflosalamitos.org not less than 24 hours prior to the meeting.



Windmera Quintanar, MMC, City Clerk
Date: May 29, 2020

City of Los Alamitos

CITY COUNCIL AGENDA REPORT

MEETING DATE: June 1, 2020

ITEM NUMBER: 3A

To: Mayor Richard D. Murphy and Members of the City Council

Via: Chet Simmons, City Manager

Presented By: Ron Noda, Acting Deputy City Manager

Subject: Award of Contract for the 2020 Fireworks Display at the Annual 4th of July Fireworks Spectacular

SUMMARY

This report recommends award of a contract for the 2020 Fireworks Display, The display would be launched from the Joint Forces Training Base, but no spectators would be permitted onsite.

RECOMMENDATIONS

1. Award the contract for the 2020 Fireworks Display to Fireworks & Stage FX America in the amount of \$32,000; and,
2. Authorize the Mayor to execute the Professional Service Agreement with Fireworks & Stage FX America for the 2020 Fireworks Display.

BACKGROUND

The COVID-19 pandemic has altered the landscape in Los Alamitos. The California Department of Public Health and the Orange County Health Department have placed prohibitions on large public gatherings, requirements on social distancing, and sanitizing protocols making it difficult to implement the traditional 4th of July celebration.

City Council held a discussion about the 4th of July Fireworks Spectacular at its May 18, 2020 Regular meeting. The City Council Directed staff to (1) explore the possibility of providing a firework show, without attendees on the Joint Forces Training Base (JFTB), for residents that surrounds JFTB to view, and (2) return with a proposed 2020 Fireworks Display agreement with Fireworks FX America.

DISCUSSION

Bids for the 2019 Firework Display at the 4th of July Fireworks Spectacular were publicized in the local newspaper the week of February 25, 2019. The bid called for a one-year agreement (2019) with two, one-year extensions (2020, 2021). Proposals that were submitted were opened on March 6, 2019 at 10:00 am.

One bid was received from Fireworks & Stage FX America.

Show Option	Price
Option A: Total of 2,422 shots and includes 3", 4", 5", 6" and 8" shells	\$32,000
Option B: Total of 2,263 shots and includes 3", 4", and 5" shells	\$20,500
Option C: Total of 1,469 shots and includes on 3" and 4" shells	\$15,000

Council approved the agreement with Fireworks & Stage FX America on March 18, 2019 for the 2019 Firework Display. The 2019 Agreement did not include any optional extensions. However, Fireworks & State FX America has proposed the same pricing for a 2020 Firework Display. The budgeted cost estimate of thirty-two thousand dollars (\$32,000) includes the purchasing of the fireworks, choreograph of the fireworks display, deliver to the project site, setup and launching of the firework display, and cleanup of the firework display area.

FISCAL IMPACT

The projected cost of the firework show will be incorporated into the 4th of July Fireworks Spectacular budget in the Recreation and Community Services Department special event division. The expenditures of the cost of the fireworks is offset by the Republic Services' sponsorship (\$15,000), event proceeds from the 2020 Race on the Base (\$14,000), and contribution from the City of Seal Beach (between \$5,000-\$7,000).

Submitted by: Ron Noda, Acting Deputy City Manager

Approved by: Chet Simmons, City Manager

Attachment: 1. Fireworks & Stage FX America Professional Services Agreement

FIREWORKS DISPLAY AGREEMENT

Fireworks and Stage FX America, Inc.

THIS FIREWORKS DISPLAY AGREEMENT (the "Agreement") is made, entered into, and effective this 1st day of June 2020, by and between the CITY OF LOS ALAMITOS, a California charter city and municipal corporation ("City"), and FIREWORKS AND STAGE FX AMERICA, LLC., a California limited liability company, dba FIREWORKS AMERICA ("FA").

RECITALS

- A. FA designs, produces, and conducts public fireworks displays; and
- B. City desires to engage FA to design, produce and perform a public fireworks display on July 4, 2020, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein, both parties hereto do mutually agree as follows.

AGREEMENT

1. Engagement. City hereby engages FA to provide to City one public fireworks display ("Display"), and FA accepts such engagement upon all of the promises, terms and conditions hereinafter set forth.

1.1 FA Duties. FA shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits (the cost of which, including standby fees, shall be paid by City) relating to the Display, and insurance covering the Display. Subject to Paragraph 18, FA shall provide the Display in substantial conformance with the duration, quantities and format outlined in the Scope of Work, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by this reference and made a part of this Agreement as though set forth fully herein. In the event of any inconsistency between the terms contained in Exhibit "A" and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 City Duties. City shall provide the Site, as defined in Paragraph 2, for the discharge of the Display, access to the Site, security for the Site as set forth in Paragraph 11, and any authorization necessary for FA to utilize the Site for the Display.

1.3 FA Performance. As a material inducement to the City entering into this Agreement, FA acknowledges and understands that the Display contracted for under this Agreement requires specialized skills and abilities and that, consistent with this understanding, FA represents and warrants that it shall conduct the Display and perform all related services and work under this Agreement in a skillful and competent manner, and that it shall be held to a standard of quality and performance prevalent in the pyrotechnic industry for such Display service and work and with the standards recognized as being employed by contractors in the pyrotechnic field in the State of California. FA further represents and warrants that it is skilled in the field of public

fireworks displays and that it holds the necessary skills and abilities to satisfy the standard of quality and performance as set forth in this Agreement. FA further represents and warrants that it and all of its employees and subcontractors, if approved, providing services under this Agreement shall have sufficient skill and experience to perform the Display services and work assigned to them. All Display services and work shall be completed to the reasonable satisfaction of the City.

1.4 Term. This Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of all Display services and work.

2. Time and Place. The Display shall take place on July 4, 2020 ("Scheduled Date"), at approximately 9:00 p.m. ("Scheduled Time"), at the Joint Forces Training Base located at 11200 Lexington Avenue, Los Alamitos, CA ("Site"). The Display will be under the direct supervision and control of a lead FA pyrotechnician as set forth in Paragraph 3. It is agreed that FA shall be the exclusive fireworks supplier and producer for the Display contracted for herein. City reserves the right to determine the actual start and stop time of the Display.

3. Lead Pyrotechnician.

3.1 Experience. The Display shall be conducted by and discharged under the direct supervision and control of a lead FA pyrotechnician that: (i) has a minimum of three years of experience providing public fireworks displays; and/or (ii) has successfully provided no less than ten public fireworks displays.

3.2 Verification of Credentials. FA shall furnish City with the name of the lead FA pyrotechnician responsible for the Display, a copy of his/her Basic Commercial or Special Effects 1st Class License, and a written summary of his/her prior experience and credentials. FA shall provide the documentation required by this Paragraph to the City by no later than June 12, 2020.

4. Fees, Interest, and Expenses.

4.1 Fee. City agrees to pay FA a fee of \$32,000.00 (Thirty Two Thousand Dollars) ("Display Fee") for the Display. City shall pay to FA \$8,000.00 (Eight Thousand Dollars) of the Display Fee as a deposit ("Deposit") upon execution of this Agreement by both parties. Except as otherwise provided below, the balance of the Display Fee shall be paid by City no later than July 31, 2020.

4.2 Interest. In the event that the Display Fee is not paid in a timely manner, City will be responsible for the payment of 1.5% interest per month or 18% annually on the unpaid balance.

4.3 Expenses. FA shall pay all normal expenses directly related to the Display including, but not limited to, freight, insurance as set forth herein, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics, and those additional items outlined as FA's responsibility under this Agreement. City shall pay all costs related to the Display not supplied by FA including, but not limited to, all governmental fees and taxes, including sales, use, excise, license, permit, entertainment, or other fees, taxes or surcharges imposed or otherwise applied to the Display.

5. Force Majeure. City agrees to partially assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, pandemic, and other causes beyond the control of FA or City, which may prevent the Display from being safely discharged on the Scheduled Date, including, but not limited to, State or County Health orders restricting the City's ability to conduct the Display or the public's ability to gather and observe the Display. If, for any such reason, the City cancels its 2020 Fourth of July celebration and Display and/or FA is not reasonably able to safely discharge the Display on the Scheduled Date, City may: (i) reschedule the Display on a mutually agreed upon date occurring no later than September 6, 2021, pay to FA any applicable cancellation fees as provided in Subsection 5.1, and the balance of the Display Fee within 15 business days of completion of the rescheduled Display; or (ii) cancel the Display, pay to FA any applicable cancellation fees as provided in Subsection 5.1, forfeit the Deposit, and be relieved of any obligation to pay to FA the balance of the Display Fee.

5.1 COVID-19 Pandemic Cancellation Fee(s): If the City cancels its 2020 Fourth of July celebration and Display in response to the COVID-19 pandemic it shall pay to FA: (i) no additional fees, if the City notifies FA of the cancellation at least 15 days prior to the Scheduled Date; \$1,300.00 (One Thousand Three Hundred Dollars), if the City notifies FA of the cancellation less than 15 days prior to the Scheduled Date; or \$3,975.00 (Three Thousand Nine Hundred Seventy Five Dollars), if the City notifies FA of the cancellation on or after July 3, 2020.

6. Rescheduling. City shall have the option to unilaterally reschedule the Display at any time prior to the Scheduled Date. Except as provided otherwise in Paragraph 5, if City elects to reschedule the Display, it shall pay to FA the balance of the Display Fee within 15 business days of completion of the rescheduled Display plus: (i) 5% of the Display Fee, or \$1,600.00 (One Thousand Six Hundred Dollars), if the City notifies FA of the request to reschedule before 12:00 a.m. on July 3, 2020; or (ii) 15% of the Display Fee, or \$4,800.00 (Four Thousand Eight Hundred Dollars), if the City notifies FA of the request to reschedule on or after 12:00 a.m. on July 3, 2020. The Display shall be rescheduled on a mutually agreed upon date occurring no later than six months from the Scheduled Date.

7. Right to Cancel, Substantial Delay or Postponement.

7.1 Right to Cancel. City shall have the option to unilaterally cancel the Display at any time prior to the Scheduled Date. If City elects to cancel the Display prior to the Scheduled Date for any reason other than force majeure pursuant to Paragraph 5, FA's inability to perform as a result of operator error, or malfunction or failure of pyrotechnic equipment or materials as provided in Paragraph 7.2(C), or FA's failure to fulfill its obligations under this Agreement, FA shall retain the Deposit, and the City shall pay to FA as liquidated damages: (i) 50% of the balance of the Display Fee, or \$12,000.00 (Twelve Thousand Dollars), if the City notifies FA of the cancellation at least 30 days prior to the Scheduled Date; (ii) 75% of the balance of the Display Fee, or \$18,000.00 (Eighteen Thousand Dollars), if the City notifies FA of the cancellation 15 to 29 days prior to the Scheduled Date; or (iii) 100% of the balance of the Display Fee, or \$24,000.00 (Twenty Four Thousand Dollars), if the City notifies FA of the cancellation less than 15 days prior to the Scheduled Date.

7.2 Substantial Delay or Postponement. Both parties agree that the City will suffer damages as a result of any substantial delay or postponement of the Display resulting from operator error, or malfunction or failure of the pyrotechnic equipment or materials, and therefore agree to the following liquidated damages provisions:

A. If FA, as a result of operator error, or malfunction or failure of the pyrotechnic equipment or materials, is unable to start the Display within 5 to 15 minutes after the Scheduled Time, or if at any time after the Display has begun and is underway, there is/are a gap(s) or break(s) in the program lasting 2 to 5 minutes in total, FA shall pay to the City as liquidated damages 20% of the Display Fee, or \$6,400.00 (Six Thousand Four Hundred Dollars).

B. If FA, as a result of operator error, or malfunction or failure of the pyrotechnic equipment or materials, is unable to start the Display more than 15 to 30 minutes after the Scheduled Time, or if at any time after the Display has begun and is underway, there is/are a gap(s) or break(s) in the program lasting more than 5 to 15 minutes in total, FA shall pay to the City as liquidated damages 50% of the Display Fee, or \$16,000.00 (Sixteen Thousand Dollars).

C. If FA, as a result of operator error, or malfunction or failure of the pyrotechnic equipment or materials, is unable to start the Display for more than 30 minutes after the Scheduled Time, or at any time after the Display has begun and is underway, there is/are a gap(s) or break(s) in the program lasting more than 15 minutes in total, the City, in its sole discretion, may cancel the Display without incurring any liability for payment to FA and without any obligation to reschedule the Display. In either event, it is expressly agreed that FA shall pay to the City as liquidated damages 100% of the Display Fee, or \$32,000.00 (Thirty Two Thousand Dollars).

8. Notice of Rescheduling or Cancellation.

8.1 Notice Prior to Scheduled Date. In the event that the City elects to reschedule or cancel the Display prior to the Scheduled Date, the City shall communicate its decision to Matt Biolchino of FA at matt@fireworksamerica.com and/or by phone to (714) 875-0307.

8.2 Notice on Scheduled Date. In the event that the City elects to reschedule or cancel the Display on the Scheduled Date, the City shall communicate its decision to Matt Biolchino of FA at matt@fireworksamerica.com and/or by phone to (714) 875-0307. In addition, the City shall inform the lead FA pyrotechnician onsite of its decision as appropriate.

9. City Contract Officer. The City Manager, or their designee, shall be solely authorized to make decisions concerning this Agreement and the Display including, but not limited to, requests to reschedule or cancel the Display.

10. Safety. FA shall comply with applicable federal, state and local laws and regulations and employ safety policies and procedures, programs, protocols and other measures consistent with recognized applicable industry standards and practices. At all times before and during the Display, it shall be within FA's sole discretion and control to determine whether or not the Display may be safely discharged or continued. It shall not constitute a breach of this Agreement by FA to

determine that the Display cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of FA. Conditions or circumstances resulting from operator error, or malfunction or failure of the pyrotechnic equipment or materials shall not be deemed "beyond the reasonable control of FA" for purposes of this Paragraph and shall remain subject to the liquidated damages provisions set forth in Paragraph 7.2.

11. Security. City shall provide and maintain sufficient security personnel, barricades, and police services before, during and after the Display until the lead FA pyrotechnician declares the Site clear. The City shall also provide and maintain a shell casing fallout area clear of any buildings, cars and spectators with a minimum 800-foot radius, or as may otherwise be specified by the current edition of *National Firework Protection Association 1123: Code for Fireworks Display* ("NFPA 1123"), as a Fire Safety Zone ("FSZ") from the time the fireworks are delivered to the Site until the lead FA pyrotechnician declares the Site clear. It is understood and agreed that FA will cease the discharge of all fireworks due to any security breach of the FSZ. FA shall not be responsible for personal injury, vehicle or property damage occurring within the FSZ as a result of the City's failure to maintain the 800-foot radius FSZ clear of any buildings, cars, or spectators. Furthermore, City shall be responsible for any property damage to the Joint Forces Training Base solely within the FSZ caused by ordinary fallout from the Display. City acknowledges and agrees that FA's responsibilities are limited to the Display and that FA is relying on City to maintain the aforementioned FSZ and to comply with all Federal, State, and local laws, orders, regulations and ordinances pertaining to the implementation of any and all security measures at the FSZ. Any inspections of the FSZ by or on behalf of City made during setup of the Display shall be in accordance with the current edition of NFPA 1123, and under the direct supervision of the lead FA pyrotechnician. Any such inspection shall not interfere with the safety of the setup, discharge, or disassembly of the Display. The lead FA pyrotechnician may, at his/her sole discretion, cancel any inspection that in his/her opinion may compromise the safety of the setup, discharge, or disassembly of the Display.

12. Continuity. FA shall establish Display "continuity" (i.e., test and confirm the functionality of electrically fired pyrotechnic lines, channels and circuits) by no later than 7:00 p.m. on the Scheduled Date, or no less than two hours prior to the Scheduled Time as such time may be modified by the City.

13. Contract Subject to Government Regulation. This Agreement and FA's obligations and FA's performance hereunder are subject to all applicable Federal, State, and local laws, rules, ordinances, regulations and codes, now or hereinafter in effect, and to the conditions and limitations contained in any necessary permits, as set forth in Paragraph 14 ("Display Permits"). In the event any Federal, State, or local law, rule, regulation or ordinance shall be enacted which in any way prohibits, limits or restricts the sale, performance or operation of the exhibition of the Display or in the event the Display Permits in any way limit or restrict the sale, performance or operation of said exhibition, FA shall limit or restrict its performance of the Display so as to comply with such law, rule, regulation or ordinance or limitation or restriction of Display Permits. The City acknowledges that any such limit or restriction placed on the performance or operation of the Display shall in no way result in or entitle City to a reduction or abatement in the full contract price.

14. Permits. FA agrees to apply for permits for the firing of pyrotechnics from the Orange County Fire Authority, and if required, the FAA. The City shall be responsible for any fees associated with these permits, including standby fees. The City shall be responsible for obtaining any other necessary permits, paying associated fees, and making other appropriate arrangements for police services, other fire departments, road closures, event/activity or land use permits or any permission or permit required by any local, regional, state or federal government.

15. Cleanup. FA shall be responsible for the removal of all Display equipment and any live pyrotechnics from the Site. FA is responsible for the cleanup of the fireworks launching area. The City shall be responsible for cleaning the FSZ.

16. Insurance and Indemnification.

16.1 Insurance. FA shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to City, public liability and property damage insurance against any and all claims for injuries against persons or damages to property resulting from FA's performance under this Agreement. FA shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof, and shall not be cancelable without thirty (30) days written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City of Los Alamitos and the Military Department of the State of California, their elected and appointed officials and officers, employees, agents, and volunteers as additional insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of FA's obligation to indemnify City and the Military Department of the State of California, their elected and appointed officials and officers, agents, employees, and volunteers.

16.1.1 Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

A. Comprehensive general liability and personal injury with limits of at least five million dollars (\$5,000,000.00) per occurrence, six million dollars (\$6,000,000.00) in the general aggregate, and six million dollars (\$6,000,000.00) for products and completed operations; the commercial general liability policy shall name the City of Los Alamitos and the Military Department of the State of California as additional insureds;

B. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

C. Workers' compensation insurance in the statutory amount as required by the State of California, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

For any claims related to this Agreement, FA's insurance coverage shall be primary insurance as respects City and the Military Department of the State of California, and their

respective elected and appointed officials and officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City or the Military Department of the State of California and their respective elected officials, officers, employees, agents, and volunteers shall be in excess of FA's insurance and shall not contribute with it. For workers' compensation and employer's liability insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected and appointed officials and officers, employees, agents, and volunteers.

16.1.2 Sufficiency of Insurers. Insurance required herein shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Eligible Surplus Lines Insurers (LESLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund.

16.1.3 Verification of Coverage. FA shall furnish City with both certificates of insurance and original endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City by no later than June 12, 2020. City reserves the right to require FA's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for workers' compensation policies.

16.1.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and the Military Department of the State of California, their elected officials, officers, employees, agents, and volunteers; or, FA shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

16.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City and the Military Department of the State of California, their directors, officials, officers, employees, agents, and volunteers.

16.2 Indemnification. To the fullest extent permitted by law, FA shall defend (at FA's sole cost and expense with legal counsel reasonably acceptable to the City), indemnify, protect, and hold harmless City and the Military Department of the State of California, their elected and appointed officials, officers, directors, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (FA's employees included), for damage to property, including property owned by City and the Military Department of the State of California, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to FA's performance under this Agreement. Under no circumstances shall

the insurance requirements and limits set forth in this Agreement be construed to limit FA's indemnification obligation or other liability hereunder.

17. Attorney Fees. In the event any dispute between the parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding.

18. Substitutions. FA shall have the right, at its discretion, to substitute any fireworks it deems necessary provided same does not detract from the aesthetic value or quality of the Display. This includes, but is not limited to, shell sizes, quantities, types and brand names. Any substitutions shall in no way result in or entitle City to a reduction or abatement of the full contract price.

19. California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and FA covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof, and may not be changed, modified, renewed or extended except by a written agreement, signed by both parties.

21. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder

22. Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

23. Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of FA, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, FA shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. FA shall not contract with any other entity to perform the Display service and work required without prior written consent of City. If FA is permitted to subcontract any part of this Agreement by City, FA shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any approved FA subcontractor and City.

24. Independent Contractor.

A. The legal relationship between the parties is that of an independent contractor, and nothing herein shall be deemed to make FA a City employee. During the performance of this Agreement, FA and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Display services under this Agreement on behalf of FA shall at all times be under FA's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of FA or any of its officers, employees, or agents, except as set forth in this Agreement. FA, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of FA's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. FA shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of FA in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. FA shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to FA, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional fees paid to FA as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to FA for the performance of the Display services and work under this Agreement. City shall not be liable for compensation or indemnification to FA, its officers, employees, or agents, for injury or sickness arising out of performing the Display services and work hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 4 herein of any nature relating to salary, taxes, or benefits of FA's officers, employees, servants, representatives, subcontractors, or agents, FA shall indemnify City for all such financial obligations.

25. Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties. The terms of this Agreement are contractual and the result of negotiation between the parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

26. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. Any waiver by the parties of any default or breach of any covenant, condition, or term

contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the parties from enforcing the full provisions hereof.

27. Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

28. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

29. Third Party Beneficiary. Except as may be expressly provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

30. Notice. Except as set forth in Paragraph 8, any notice, request, demand, direction, or other communication required or permitted hereunder shall be in writing, and shall be personally delivered, sent by registered or certified mail, postage prepaid, return-receipt-requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City:

City of Los Alamitos
Attention: Recreation Manager
10911 Oak Street
Los Alamitos, CA 90720
Telephone: (562) 430-1073
Facsimile: (562) 594-9657

To Fireworks and Stage FX America, Inc.:

Fireworks America
Attention: Matt Biolchino, Southern CA
Regional Manager
PO Box 488
Lakeside, CA. 92040
Telephone: (714) 875-0307

31. Binding Effect. This Agreement shall not be binding on either party until executed by both City and FA.

32. Corporate Authority. Each of the undersigned represents and warrants that (i) the party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the party for which he/she is signing, (iii) by so executing this Agreement, the party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the party for which he/she is signing is bound.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

“CITY”
City of Los Alamitos

Date: _____

By: _____
Richard D. Murphy,
Mayor

APPROVED AS TO FORM:

ATTEST

By: _____
Michael S Daudt,
City Attorney

By: _____
Windmera Quintanar, MMC
City Clerk

“FA”
Fireworks and Stage FX America, Inc.

Date: _____

By : _____
Kevin Brueckner, President

Date: _____

By : _____
Scott Danielson, General Manager

Exhibit A

Scope of Work for City of Los Alamitos 2020 Fourth of July Fireworks Display

Announcement Barrage

- **Aerial Titanium Flash Salutes**
 - 3" – 10
- **Color and Multi-Color Finale Shells**
 - 3" – 10

Aerial Show Presentation

- **Aerial Titanium Flash Salutes**
 - 3" – 5
- **Color and Multi-Color Aerial Shells**
 - 3" – 100
 - 4" – 70
 - 5" – 73
 - 6" – 47
 - 8" – 10
- **Flitter, Glitter, Electric Color and Color Changing Shells**
 - 3" – 70
 - 4" – 30
 - 5" – 65
 - 6" – 19
 - 8" – 3
- **Distinctive and Unique Aerial Shells**
 - 3" – 20
 - 4" – 20
 - 5" – 30
 - 6" – 10
 - 8" – 2
- **Premium Aerial Shells**
 - 3" – 20
 - 4" – 12
 - 5" – 12
 - 6" – 2

Aerial Grand Finale

- **Color and Multi-Color Finale Shells**
 - 3" – 100
 - 4" – 24
 - 5" – 8
- **Aerial Flash Salutes**
 - 3" – 100
- **Finale Crown**
 - 6" – 2
 - 8" – 1