

RESOLUTION 110-17

**RESOLUTION AUTHORIZING EXECUTION OF
AGREEMENT BETWEEN THE BOROUGH OF CLAYTON AND
PYROTECNICO FIREWORKS INC.**

WHEREAS, Pyrotecnico Fireworks Inc. and the Borough of Clayton have agreed to enter into an Agreement for Clayton Day Fireworks; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve the attached Agreement between Pyrotecnico Fireworks Inc. and the Borough of Clayton.
2. That the Mayor be and is hereby authorized to execute said contract on behalf of the Borough of Clayton.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton held on April 27, 2017.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, April 27, 2017.



CHRISTINE NEWCOMB, Borough Clerk

FIREWORKS DISPLAY CONTRACT

THIS CONTRACT ("Contract") is made this 27th day of April, 2017, by and between Pyrotecnico Fireworks, Inc. ("Pyrotecnico") and the Borough of Clayton ("Clayton").

WHEREAS, the parties hereto desire that Pyrotecnico provide a fireworks exhibition and display for Clayton under such terms and conditions as provided herein;

NOW, THEREFORE, the parties agree as follows:

1. Fireworks Display

Pyrotecnico shall exhibit and display certain fireworks on June 10, 2017 (Rain Date: June 11, 2017) in accordance with the program set forth in the "Fireworks Exhibition and Display Program" attached hereto and incorporated herein as Exhibit A (the "Fireworks Display"). Pyrotecnico reserves the right to substitute products of equal or greater value.

2. Payment Schedule

For and in consideration of the Fireworks Display, Clayton agrees to pay Pyrotecnico the contract price of \$9,000.00 (the "Contract Price") paid as follows: (a) 50% of the Contract Price due upon the signing of this Contract; (b) the balance of the Contract Price due within ten (10) days of completion of Fireworks Display.

Clayton agrees to pay interest at the rate of 1½ % per month on any delinquent balance of the Contract Price until paid in full. Payment shall be made by check payable to Pyrotecnico and delivered to Pyrotecnico at P.O. Box 149, New Castle, PA 16103. Furthermore, in the event Clayton fails to perform its obligations and responsibilities as set forth herein and it becomes necessary for Pyrotecnico to enforce its rights by hiring an attorney or third party, Clayton shall be responsible for all fees and costs incurred by Pyrotecnico to collect said sums.

3. Display Responsibilities

A. Collaboration. Pyrotecnico and Clayton will collaborate in the performance of all tasks relating to the Fireworks Display. These tasks include, but are not limited to: (i) procuring and furnishing a place suitable for the Fireworks Display (the "Display Site"); (ii) applying for, obtaining and securing all permits, licenses and approvals required by all applicable local, state and federal laws and regulations as well as those required by any local police and fire departments for the Fireworks Display (collectively, the "Required Approvals"), with Clayton responsible for the payment of all governmental fees and expenses imposed or applied to this exhibition including any fees or expenses incurred after the signing and execution of contract for said show; (iii) providing adequate private and/or public security, police and fire protection; (d) securing an acceptable location with private and/or public security personnel to park the Pyrotecnico fireworks truck(s) overnight (or for such longer or shorter period as Pyrotecnico may reasonably require in order to effectively provide the Fireworks Display); (e) securing adequate protection to preclude all individuals, other than those authorized by Pyrotecnico, from entering

the security area designated by Pyrotecnico; (f) removing and keeping unauthorized persons, as well as personal or real property of any kind, including, without limitation, motor vehicles, outside of the area designated by Pyrotecnico as the Display Site, fallout area or safe zone. Pyrotecnico and Clayton shall fulfill their responsibilities as set forth herein in accordance with all local, state and federal rules, laws, orders and regulations, including those of the National Fire Protection Association (NFPA).

B. Display Site Policing and Cleanup. Pyrotecnico shall be responsible for policing the fireworks display and searching for and disposing of unfired and/or unexploded fireworks as soon as possible but not more than twenty-four (24) hours after the fireworks display.

4. Crediting

Clayton agrees to credit Pyrotecnico as "Fireworks by Pyrotecnico" in all advertising/marketing materials that are within Clayton's authority.

5. Hold Harmless and Insurance

Pyrotecnico shall execute and deliver to Clayton the "Fireworks Display Hold Harmless Agreement Between the Borough of Clayton and Pyrotecnico Fireworks, Inc." attached as Exhibit B and agrees to provide Certificates of Insurance naming Clayton as an additional insured and in the coverage amounts set forth therein.

6. Postponement

In the event that weather is such that Pyrotecnico, in its sole and absolute discretion, determines that the Fireworks Display would be impossible or would unnecessarily increase the risk of damage or danger to person and/or property, the parties agree to immediately hold a postponement meeting at which time an attempt to reschedule the Fireworks Display shall be discussed with a view toward reaching a mutually satisfactory postponement time and/or date. If the parties agree to a new scheduled date, then Sponsor shall pay twenty-five percent (25%) of the contract price for expenses Pyrotecnico has incurred. In the event a mutually satisfactory postponement date for the Fireworks Display cannot be determined, this Contract shall become null and void and neither party shall have any further obligation or responsibility hereunder, provided however, that in such event Sponsor shall pay to Pyrotecnico a sum equal to seventy-five percent (75%) of the Contract Price as liquidated damages. All postponed shows must be rescheduled and completed within twelve (12) months from the date in which they were originally scheduled.

7. Scripted Show and Music Soundtracks

Clayton agrees to complete and return signed contract to Pyrotecnico, a minimum of 40 days in advance of show date, for displays designated as "scripted" exhibitions. Furthermore, Clayton agrees to either provide music soundtrack or approve soundtrack created by Pyrotecnico, a minimum of 30 days in advance of show date. If Clayton fails to complete either option, then Pyrotecnico in its sole discretion, reserves the right to complete soundtrack without prior approval from Clayton. Scripting process will be completed based on the soundtrack completed by Pyrotecnico.

8. Miscellaneous

A. Entire Agreement. This Agreement sets forth all the promises, covenants, agreements, conditions and undertakings between the Parties hereto with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and undertakings, inducements or conditions, express or implied, oral or written, between the Parties hereto.

B. Supplements. The Parties shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be required to correct any inconsistent or ambiguous term of the Agreement.

C. Non-Waiver. It is understood and agreed that nothing which is contained in this Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right which is not explicitly waived herein.

D. Amendments. This Agreement may not be amended or modified for any reason without the express prior written consent of the Parties hereto.

E. Severability. In the event that any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

F. Successors/Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and approved assigns.

G. Notices. Unless otherwise provided in writing, any notices to be given or to be served upon any Party hereto, in connection with this Agreement, must be in writing and may be delivered personally or be certified or registered mail and, if so mailed, shall be deemed to have been given and received three (3) business days after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise, shall be deemed to have been given when delivered to and received by the Party to whom it is addressed. Such notice shall be given to the Parties at their following respective addresses or at such other addresses as each Party may hereafter designate to the other Parties in writing:

If to Clayton:

Thomas Bianco, Mayor
Borough of Clayton
Clayton Municipal Building
125 N. Delsea Drive
Clayton, NJ 08312
Phone: (856) 881-2882
Email: tbianco@claytonnj.com

If to Pyrotecnico:

Name: _____
Title: _____
Pyrotecnico Fireworks, Inc.
P.O. Box 149
New Castle, PA 16103
Phone: (724) 652-9555
Email: rflowers@pyrotecnico.com

H. No Personal Liability. No covenant, condition or agreement contained in this Agreement shall be deemed to be the covenant, condition or agreement of any past, present or future officer, agent or employee of the Parties, and neither the officers, agents or employees of the Parties nor any official executing this Agreement shall be liable personally on this Agreement by reason of the execution hereof by such person or arising out of any transaction or activity relating to this Agreement.

I. Governing Law. The terms of this Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed entirely within the State of New Jersey, including all matters of enforcement, validity and performance.

J. Venue. In any action on or relating to this Contract, the parties hereto consent to the exclusive jurisdiction and venue of the state courts located in Gloucester County, New Jersey, and of the federal courts located in the United States District Court for the District of New Jersey.

K. Legal Construction. If any provision of this Contract is held to be illegal, invalid or otherwise unenforceable, then: (a) the same shall not affect other terms or provisions of this Contract; and (b) such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent the intent and agreements of the parties set forth herein.

L. Counterparts. This Agreement, and any other documents required

hereunder, may be executed in counterparts, including by facsimile or electronic form, which together shall be considered an original document.

M. Representation by Counsel. Each party to this Agreement stipulates that it has been represented by and has relied upon the counsel of its choice in the negotiations for the preparation of this Agreement, and that each has read this Agreement and has had its contents and effect fully explained by such counsel and is fully aware of and understands all of its terms and the legal consequences thereof, or has had the opportunity to do so. It is acknowledged that the parties to this Agreement have mutually participated in the preparation of this Agreement, and it is agreed that no provision in this Agreement shall be construed against any party by virtue of the activities of that party or its attorneys.

N. Further Assurances. In addition to the obligations expressly required to be performed hereunder, each of the parties to this Agreement agrees to cooperate with each other and to perform such other acts and to execute, acknowledge and deliver such other instruments, documents and materials as the other party may reasonably request and as shall be necessary in order to fulfill the spirit and intent of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be duly signed, sealed and executed by their respective proper officials as of the day and year first written above.

ATTEST:

Christine Newcomb

Borough of Clayton

By:



Thomas Bianco, Mayor

ATTEST:

Pyrotecnico Fireworks, Inc.

By:

Name:

Title:

EXHIBIT A

Fireworks Exhibition and Display Program

EXHIBIT B

FIREWORKS DISPLAY HOLD HARMLESS AGREEMENT BETWEEN THE BOROUGH OF CLAYTON AND PYROTECNICO FIREWORKS, INC.

1. Pyrotecnico Fireworks, Inc. agrees to release, indemnify and hold harmless the Borough of Clayton of from and against any loss, damage or liability, including attorneys' fees and expenses incurred by the latter entities and their respective employees, agents, volunteers or other representatives arising out of or in any manner relating to the manufacture, installation, firing or disassembly of any pyrotechnic equipment or device and/or the supervision and presentation thereof.

2. Pyrotecnico Fireworks, Inc. has furnished Certificates of Insurance with limits of liability described below:

Workers Compensation/Employers Liability: at Statutory limits including Employers Liability at minimum limits of \$500,000.

General Liability: limits of \$1,000,000 per occurrence combined single limit for bodily injury and property damage with at least \$2,000,000 general aggregate.
Contractual liability must be included.

Automobile Liability: limits of \$1,000,000 per occurrence combined single limit for bodily injury and property damage with no aggregate.

Umbrella Liability: limits of \$1,000,000.

A true copy of the Certificate of Insurance is attached indicating the member entity and applicable associations, recreations or committees formed by the member entity to organize the "event" named as additional insured on all liability policies.

3. The facilities will be used for the following purpose and no other:

Event: fireworks exhibition and display

Date: June 10, 2017 (Rain Date: June 11, 2017)

Rain Date:

ATTEST:

Pyrotecnico Fireworks, Inc.

By:

Name:

Title: