

Council Meeting  
May 1, 2007

Honorable Mayor and Members  
of the Torrance City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT:** General Services - Contract for 4<sup>th</sup> of July Fireworks Show at Wilson Park  
Expenditure: \$25,500

**RECOMMENDATION:**

The General Services Director recommends the City Council award a contract to Pyro Spectaculars Inc. for \$25,500 for the annual 4<sup>th</sup> of July fireworks show at Wilson Park.

**FUNDING**

Funding is available in the General Fund Community Promotions Operating Budget.

**BACKGROUND/ANALYSIS**

Every year the City of Torrance puts on a wonderful 4<sup>th</sup> of July event for the public at Wilson Park. The event, which lasts all day, includes games, prizes, food, and music and culminates with a dynamic fireworks show starting at 9:00 PM.

The show includes a variety of fireworks and lasts twenty minutes in length. The program is set to music and is electronically fired to create a memorable event, often with a patriotic theme. This year's program will include an additional 100 firework shells in the main body of the program, which will enhance the program for all spectators.

Pyro Spectaculars, Inc has been providing the fireworks program for the City of Torrance for many years; and every year, the company provides an entertaining, fantastic, and safe program for the citizens. In the past, other fireworks companies were asked to provide the City of Torrance with a comparable program but unfortunately were not found to have a good safety record and therefore not chosen.

# Independence Day 2007

## Product Synopsis Pyrotechnic Proposal City of Torrance Program B \$25,500.00

### Opening

<u>Description</u>	<u>Quantity</u>
◆ 3" Souza Designer Opening Salutes	10
<b>Total of Opening</b>	<b>10</b>

### Main Body - Aerial Shells

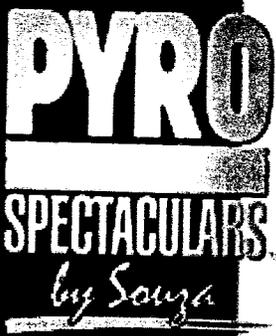
<u>Description</u>	<u>Quantity</u>
◆ 3" Souza Designer Selections	100
◆ 4" Souza Designer Selections	195
◆ 5" Souza Designer Selections	130
◆ 6" Souza Designer Selections	74
<b>Total of Main Body - Aerial Shells</b>	<b>499</b>

### Grand Finale

<u>Description</u>	<u>Quantity</u>
◆ 3" Souza Designer Finale Shells	60
◆ 4" Souza Designer Finale Shells	60
◆ 5" Souza Designer Finale Shells	12
◆ 6" Souza Designer Finale Shells	9
<b>Total of Grand Finale</b>	<b>141</b>

**Grand Total      650**

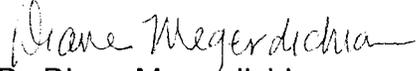
WWW.PYRO-SPECTACULARS.COM



With approval by the City Council, the General Services Director recommends awarding a contract with Pyro Spectaculars, Inc for \$25,500 for the annual 4<sup>th</sup> of July fireworks show at Wilson Park.

Respectfully submitted,

SHERYL BALLEW  
General Services Director

  
By Diane Megerdichian  
Business Manager

CONCUR:

  
Sheryl Ballew  
General Services Director

  
LeRoy J. Jackson  
City Manager

Attachment: Pyro Spectaculars, Inc Contract

# **PYRO SPECTACULARS, INC.**

Display Agreement (Special)

- 1) THIS AGREEMENT, entered into as of \_\_\_\_\_, 2007, by and between PYRO SPECTACULARS, INC., a California corporation hereinafter referred to as "PYRO" and the CITY OF TORRANCE, a municipal corporation, hereinafter referred to as "PURCHASER".
- 2) PYRO agrees to furnish PURCHASER, in accordance with the terms and conditions hereinafter set forth, one fireworks display as per Program "B", submitted, accepted and made part hereof, including the services of a licensed pyrotechnic operator to take charge of and, along with sufficient helpers, safely discharge the display. The said display is scheduled to be performed on July 4, 2007, at Charles Wilson Park, 2200 Crenshaw Blvd., Torrance, CA
- 3) PURCHASER, at its own expense, agrees to provide to PYRO:
  - A) A suitable DISPLAY SITE in which to stage the fireworks display, including a firing and fallout zone reasonably acceptable to PYRO in which the fireworks and fireworks debris may be exhibited, rise and fall safely.
  - B) Adequate policing, guard protection, roping, fencing and/or other crowd control measures to prevent the access of the public or its property or any other people or property not authorized by PYRO into the DISPLAY SITE.
  - C) The services and cost of standby firemen and/or any applicable permit fees as required by state and local statutes, ordinances or regulations.
  - D) Access by PYRO, at all times, to the DISPLAY SITE to set up the display.

If PURCHASER fails to fully comply with requirements A, B, C and/or D set forth above, PYRO shall have no obligation to perform and PURCHASER agrees to pay to PYRO the entire contract price plus any additional expenses incurred because of said failure.

If, in its sole discretion, PURCHASER designates an area for members of the public to view the Display ("Spectator Area") and/or an area for vehicular parking ("Parking Area"), the PURCHASER shall:

- E) Ensure that the Spectator Area does not infringe on the Display Area;
- F) Have sole responsibility for ensuring that the terrain of the Spectator Area and any structures thereon, including, but not limited to grandstands and bleachers are safe for use by spectators;
- G) Have sole responsibility for ensuring that the Parking Area is safe for use;
- H) Have sole responsibility to police, monitor and appropriately control spectator access to the Spectator Area and the Parking Area and police, monitor and appropriately control the behavior of persons in these areas.

It is expressly agreed that PYRO, (including its operators and helpers) shall not inspect, police, monitor or otherwise supervise any area of the site other than the Display Area, except to ensure:

- I) That any Spectator or Parking Areas are outside the Display Area; and
- J) After completion of the Display, that the Display Area is cleared of any live fireworks debris originating from the program.

- 4) PURCHASER shall pay to PYRO the sum of Twenty-Five Thousand Five Hundred Dollars (\$25,500.00). **A deposit of \$12,750.00 and fire department fees approximated at (\$00.00) must be paid by May 3, 2007.** Full final payment is due the first regular business day after the date set for the display. A finance charge at a periodic rate of 1.5% per month, 18% annual percentage rate, or the maximum rate permitted by law, whichever is less, will be charged on the unpaid balance after 30 days from the date of the display. PURCHASER, by signing this Agreement, authorizes PYRO to receive and verify financial information concerning PURCHASER from any person or entity.
- 5) PURCHASER agrees to assume the risk of weather, or other causes beyond PYRO's control, which may prevent the display from being safely discharged on the scheduled date, which may cause the cancellation of any event for which PURCHASER has purchased the display, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the display. It shall be within PYRO's sole discretion to determine whether or not the display may be safely discharged on the scheduled date and at the scheduled time. If, for any reason beyond PYRO's control, including, without limitation, inclement weather, PYRO is unable to safely discharge the display on the scheduled date or should any event for which PURCHASER has purchased the display be canceled, the parties shall attempt to negotiate a new display date, which shall be within 60 days of the original display date. PURCHASER further agrees to pay PYRO for any additional expenses made necessary by this postponement. If they are unable to agree on a new display date, PYRO shall be entitled to liquidated damages from PURCHASER as if PURCHASER had canceled the display on the date set for the display, as provided in the following paragraph.
- 6) PURCHASER shall have the option to unilaterally cancel this display prior to the date of the display. If PURCHASER exercises this option, PURCHASER agrees to pay to PYRO, as liquidated damages, the following percentages of the agreed contract price. 1) 25% if cancellation three (3) or more days prior to the scheduled day of the display, 2) 50% if cancellation occurs within two (2) days of the actual date set for the display, 3) 75% if cancellation occurs on the date set for the display but prior to the time physical set-up of the display actually begins, 4) 100% thereafter. If cancellation occurs prior to the date set for the display, PURCHASER agrees to pay PYRO in addition to the above percentages, the value associated with any specific custom work performed by PYRO or its agents including but not limited to music/narration tape production and/or sponsors logos.
- 7) In the event PURCHASER cancels the display, it will be impractical or extremely difficult to fix the actual amount of PYRO's damages. The foregoing represents a reasonable estimate of the damages PYRO will suffer if PURCHASER cancels the display.

- 8) PYRO reserves the ownership rights and trade names that are used in or are a product of the pyrotechnic display to be performed herein. Any reproduction by sound, video or other duplication or recording process without the express written permission of PYRO is prohibited.
- 9) PYRO agrees to furnish insurance coverage in connection with the Display only, for the following risks and amounts:
  - a) Commercial General liability including bodily injury, property damage, and products liability with THREE MILLION DOLLARS (\$3,000,000) combined single limits. Such insurance shall include PURCHASER as an additional insured regarding claims made against PURCHASER for bodily injury or property damage arising from the operations of PYRO in performing the Display provided for in this Agreement. Such insurance afforded by PYRO shall not include claims made against PURCHASER for bodily injury or property damage arising from A) Failure of PURCHASER, including through or by its employees, agents and/or independent contractors, to perform its obligations under this Agreement, including, without limitation, those contained in Paragraph 3 of this Agreement; B) Failure of the PURCHASER to provide discretionary Spectator and Parking Areas referred to in Paragraph 3 of this Agreement. PURCHASER shall indemnify and hold PYRO harmless from all claims and suits made against PYRO for bodily injury or property damage arising from A) and B) of this Paragraph.
  - b) Automobile liability, including owned, non owned and hired vehicles, with at least the following limits of liability:
    - (i) Primary Bodily Injury with limits of at least \$250,000 per person, \$500,000 per occurrence; and
    - (ii) Primary Property Damage of at least \$100,000 per occurrence; or
    - (iii) Combined single limits of at least \$500,000 per occurrence.
  - c) Workers Compensation with limits as required by the Labor Code of the State of California and Employers Liability with limits of at least \$500,000 per occurrence.
- 10) If any legal action is brought to enforce or interpret the terms or provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to any other relief to which they may be entitled.
- 11) In the event PYRO breaches this agreement, or is otherwise negligent in performing the fireworks display provided for herein, PURCHASER shall, under no circumstances, be entitled to recover monetary damages from PYRO beyond the amount PURCHASER agreed to pay PYRO under this Agreement. PURCHASER shall not, under any circumstances, be entitled to recover any consequential damages from PYRO including, without limitation, for loss of income, business or

profits. Nothing in this paragraph shall be construed as a modification or limitation on the insurance coverage afforded to Paragraph 9 above.

- 12) It is agreed, nothing in this Agreement or in PYRO's performance of the display provided for herein, shall be construed as forming a partnership or joint venture between PURCHASER and PYRO. The parties hereto shall be severally responsible for their own separate debts and obligations and neither party shall be held responsible for any agreements or obligations not expressly provided for herein.
- 13) This Agreement shall be governed and interpreted under the laws of the State of California. It is further agreed that the courts of the State of California shall have exclusive jurisdiction to adjudicate any disputes arising out of this contract or performance of the display provided for herein.
- 14) Any Notice to the parties permitted or required under this Agreement may be given by mailing such Notice in the United States Mail, postage prepaid, first class, addressed as follows: PYRO - Pyro Spectaculars, Inc., P. O. Box 2329, Rialto, California 92377, Fax (909) 355-9813. PURCHASER -CITY CLERK, City of Torrance, 3031 Torrance Boulevard, Torrance, California 90509-2970, Fax (310) 618-2931
- 15) All terms of this Agreement are in writing and may only be modified by written agreement of both parties hereto. Both parties acknowledge they have received a copy of said written Agreement and agree to be bound by said terms of written Agreement only.
- 16) If there is more than one PURCHASER, they shall be jointly and severally responsible to perform PURCHASER's obligations under this Agreement. This Agreement shall become effective after it is executed and accepted by PURCHASER and after it is executed by PYRO at PYRO's offices in Rialto, California. This Agreement may be executed in several counter parts, including faxed copies, each one of which shall be deemed an original against the party executing same. This Agreement shall be binding upon the parties hereto and upon their heirs, successors, executors, administrators and assigns. PURCHASER recognizes that because of the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of nonperformance is acceptable as full performance. Price firm through May 3, 2007, signed Agreement must be received by that date to hold price. Price includes full electronic firing. PURCHASER to provide sound and playback equipment, communications and sand.
- 17) No officer or employee of the PURCHASER may have any financial interest, direct or indirect, in this Agreement nor may any officer or employee participate in any decision relating to the Agreement that affects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in

which the officer or employee is, directly or indirectly, interested, in violation of any law, rule or regulation.

18) No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

19) This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either PURCHASER or PYRO without the prior written consent of the other.

IN WITNESS WHEREOF the parties hereto, by and through their duly authorized agents, have set their hands and seals as of the date first written above.

CITY OF TORRANCE,  
a Municipal Corporation

PYRO SPECTACULARS, INC.:  
a California Corporation



\_\_\_\_\_  
Frank Scotto, Mayor

By: \_\_\_\_\_  
James R. Souza, President

ATTEST:

\_\_\_\_\_  
Sue Herbers  
City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

Attachments:        Exhibit A        Program B