Council Meeting of
April 28, 2009

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

Members of the Council:

SUBJECT: Community Services – Approval of a Contract for 4th of July Fireworks Show at Wilson Park

Expenditure: $29,000

RECOMMENDATION:

Recommendation of the Community Services Director that City Council award a contract to Pyro Spectaculars, Inc., in the amount of $29,000 for the annual 4th of July fireworks show at Wilson Park.

Funding

Funding is available in the Community Promotions Operational Budget.

BACKGROUND/ANALYSIS

This year the City of Torrance will be hosting the 29th Annual Old Fashioned 4th of July Celebration at Charles H. Wilson Park. The event, which lasts all day, includes an Arts and Crafts Boutique, a Vendors Faire, Train Rides, Games, Food, and Music, and culminates with a dynamic fireworks show. The show includes a fireworks program that is set to music and electronically fired to create a memorable event, often with a patriotic theme.

Last year's fireworks show was spectacular, with extremely positive feedback from many who enjoyed the show. Much of the success was due to the additional shells that were provided to the City by the vendor, Pyro Spectaculars by Souza, to make up for the previous year's unfired shells. Last year's show ran for 20 minutes and included 834 shells of various sizes and types, and resulted in many happy viewers. This year, however, the City will not be receiving any 'free' shells from the vendor, which provided the City with double the number of shells in the finale.

For this year's event there were three program options provided by the vendor. The length of show, number of shells, and cost per program are as follows:

2008 Show	20 minutes	834 Shells	$25,500
Program A – 2009	20 minutes	791 Shells	$34,000
Program B – 2009	***20 minutes***	***650 Shells***	***$29,000***
Program C – 2009	17 minutes	591 Shells	$25,500

Pyro Spectaculars, Inc., has been providing the fireworks program for the City of Torrance for many years, and with the exception of 2007, the company has provided an entertaining, exciting, and safe program to our community. In past years, staff have sought bids from other fireworks companies, however none were found to have the safety record of Pyro Spectaculars, Inc.

In selecting a Program for this year's event staff considered both the success of last year's show and the financial challenges of today. As the Old Fashioned 4th of July is an event that serves all Torrance residents, as well as those from surrounding communities, staff felt it necessary to keep the show the same length, while reducing the overall shell count as a means of keeping costs down.

Therefore, the Community Services Director recommends awarding a contract to Pyro Spectaculars, Inc., for Program B, in the amount of $29,000 for the annual 4th of July fireworks show at Wilson Park. While last year's show did raise the expectations of the public, staff are confident that Pyro Spectaculars, Inc., will provide an equally exciting show, despite the decrease of 184 shells.

Respectfully submitted,

John Jones
Community Services Director

CONCUR:

LeRoy J. Jackson
City Manager

Attachment: A) Contract from Pyro Spectaculars, Inc.

JM:JJ:tlk:csrestrict\specevents\july4\2009\4thofJuly fireworks 4-28-09ci

Pyro Spectaculars, Inc.
P.O. Box 2329
Rialto, CA 92377
Tel: 909-355-8120 :::: Fax: 909-355-9813

PRODUCTION AGREEMENT

This agreement ("Agreement") is made this _____day of _____, 2009 by and between **Pyro Spectaculars, Inc.**, a California corporation, hereinafter referred to as ("PYRO"), and City of Torrance, hereinafter referred to as ("CLIENT"). PYRO and CLIENT are sometimes referred to as "Party" or collectively as "Parties" herein.

1. **Engagement** - CLIENT hereby engages PYRO to provide to CLIENT one fireworks production ("Production"), and PYRO accepts such engagement upon all of the promises, terms and conditions hereinafter set forth. The Production shall be substantially as outlined in Program "B", attached hereto and incorporated herein by this reference.

1.1 **PYRO Duties** – PYRO 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 CLIENT) relating to the Production, insurance covering the Production and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work ("Scope of Work"), attached hereto, incorporated herein by this reference, and made a part of this Agreement as though set forth fully herein.

1.2 **CLIENT Duties** – CLIENT shall provide to PYRO a suitable site ("Site") for the Production, security for the Site as set forth in Paragraph 6 hereof, access to the Site, any permission necessary to utilize the Site for the Production, and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work. All Site arrangements are subject to PYRO's reasonable approval as to pyrotechnic safety, suitability, and security. All other conditions of the Site shall be the responsibility of CLIENT, including, but not limited to, access, use, control, parking and general safety with respect to the public, CLIENT personnel and other contractors.

2. **Time and Place** - The Production shall take place on **July 4, 2009**, at approximately **9:00 p.m.**, at **Charles Wilson Park** , Site.

3. **Fees, Interest, and Expenses** -

3.1 **Fee** - CLIENT agrees to pay PYRO a fee of **$29,000.00** USD (**Twenty Nine Thousand**) ("Fee") for the Production. CLIENT shall pay to PYRO **$14,500.00** USD (**Fourteen Thousand Five Hundred**) of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at **$ amount to be determined**, for a total of **$14,500.00**, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than **April 3, 2009.**. The balance of the Fee shall be paid no later than **July 6, 2009**. CLIENT authorizes PYRO to receive and verify credit and financial information concerning CLIENT from any agency, person or entity including but not limited to credit reporting agencies. The "PRICE FIRM" date, the date by which the executed Agreement must be delivered to Pyro, is set forth in paragraph 20.

3.2 **Interest** - In the event that the Fee is not paid in a timely manner, CLIENT will be responsible for the payment of 1.5% interest per month or 18% annually on the unpaid balance. If litigation arises out of this Agreement, the prevailing party shall be entitled to reasonable costs incurred in connection with the litigation, including, but not limited to attorneys' fees.

3.3 **Expenses** – PYRO shall pay all normal expenses directly related to the Production including freight, insurance as outlined, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics and those additional items as outlined as PYRO's responsibility in the Scope of Work. CLIENT shall pay all costs related to the Production not supplied by PYRO including, but not limited to, those items outlined as CLIENT's responsibility in this Agreement and Scope of Work.

4. **Proprietary Rights** - PYRO represents and warrants that it owns all copyrights, including performance rights, to this Production, except that PYRO does not own CLIENT-owned material or third-party-owned material that has been included in the Production, and as to such CLIENT-owned and third-party-owned material, CLIENT assumes full responsibility therefore. CLIENT agrees that PYRO shall retain ownership of, and all copyrights and other rights to, the Production, except that PYRO shall not acquire or retain any ownership or other rights in or to CLIENT-owned material and third-party-owned material and shall not be responsible in any way for such material. If applicable, CLIENT consents to the use of CLIENT-owned material and represents that it has or will obtain any permission from appropriate third parties sufficient to authorize public exhibition of any such material in connection with this Production. PYRO reserves the ownership rights in its trade names that are used in or are a product of the Production. Any reproduction by sound, video or other duplication or recording process without the express written permission of PYRO is prohibited.

5. **Safety** - PYRO and CLIENT shall each comply with applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Production, it shall be within PYRO's sole discretion to determine whether or not the Production may be safely discharged or continued. It shall not constitute a breach of this Agreement by PYRO for fireworks to fail or malfunction, or for PYRO to determine that the Production cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of PYRO.

6. **Security** - CLIENT shall provide adequate security personnel, barricades, and Police Department services as may be necessary to preclude individuals other than those authorized by PYRO from entering an area to be designated by PYRO as the area for the set-up and discharge of the Production, including a fallout area satisfactory to PYRO where the pyrotechnics may safely rise and any debris may safely fall. PYRO shall have no responsibility for monitoring or controlling CLIENT's other contractors, providers or volunteers; the public; areas to which the public or contractors have access; or any other public or contractor facilities associated with the Production.

7. **Cleanup** - PYRO shall be responsible for the removal of all equipment provided by PYRO and clean up of any live pyrotechnic debris made necessary by PYRO. CLIENT shall be responsible for any other clean up which may be required of the Production or set-up, discharge and fallout areas including any environmental clean-up.

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8. **Permits** - PYRO agrees to apply for permits required for the discharge of pyrotechnics from the Torrance Fire Department (or other authority having jurisdiction), FAA, USCG, and the State of California, as required. CLIENT shall be responsible for any fees associated with these permits including standby fees. CLIENT shall be responsible for obtaining any other necessary permits, paying associated fees, and making other appropriate arrangements for Police Departments, 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.

9. **Insurance** - PYRO shall at all times during the performance of services herein ensure that the following insurance is maintained in connection with PYRO's performance of this Agreement: (1) commercial general liability insurance, including products, completed operations, and contractual liability under this Agreement; (2) automobile liability insurance, (3) workers' compensation insurance and employer liability insurance. Such insurance is to protect CLIENT from claims for bodily injury, including death, personal injury, and from claims of property damage, which may arise from PYRO's performance of this Agreement, only. The types and amounts of coverage shall be as set forth in the Scope of Work. Such insurance shall not include claims which arise from CLIENT's negligence or willful conduct or from failure of CLIENT to perform its obligations under this Agreement, coverage for which shall be provided by CLIENT.

The coverage of these policies shall be subject to reasonable inspection by CLIENT. Certificates of Insurance evidencing the required general liability coverage shall be furnished to CLIENT prior to the rendering of services hereunder and shall include the following: (1) that it may not be canceled or modified without the insurance carrier providing at least thirty (30) days prior written notice to CLIENT; and (2) that the following are named as additionally insured: CLIENT; Sponsors, Landowners, Barge Owners, if any; and Permitting Authorities, with respect to the operations of PYRO at the Production. Pyrotechnic subcontractors or providers, if any, not covered under policies of insurance required hereby, shall secure, maintain and provide their own insurance coverage with respect to their respective operations and services. Evidence of other insurance shall be provided upon CLIENT's written request to PYRO.

10. **Indemnification** - PYRO represents and warrants that it is capable of furnishing the necessary experience, personnel, equipment, materials, providers, and expertise to produce the Production in a safe and professional manner. Notwithstanding anything in this Agreement to the contrary, PYRO shall indemnify, hold harmless, and defend CLIENT and the additional insureds from and against any and all claims, actions, damages, liabilities and expenses, including but not limited to, attorney and other professional fees and court costs, in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of PYRO, their officers, agents, contractors, providers, or employees. CLIENT shall indemnify, hold harmless, and defend PYRO from and against any and all claims, actions, damages, liability and expenses, including but not limited to, attorney and other professional fees and court costs in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of CLIENT, its officers, agents, contractors, providers, or employees. In no event shall either party be liable for the consequential damages of the other party.

11. **Limitation of Damages for Ordinary Breach** - Except in the case of bodily injury and property damage as provided in the insurance and indemnification provisions of Paragraphs 9 and 10, above, in the event CLIENT claims that PYRO has breached this Agreement or was otherwise negligent in performing the Production provided for herein, CLIENT shall not be entitled to claim or recover monetary damages from PYRO beyond the amount CLIENT has paid to PYRO under this Agreement, and shall not be entitled to claim or recover any consequential damages from PYRO including, without limitation, damages for loss of income, business or profits.

12. **Force Majeure** - CLIENT agrees to assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of PYRO which may prevent the Production from being safely discharged on the scheduled date, which may cause the cancellation of any event for which CLIENT has purchased the Production, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the Production. If, for any such reason, PYRO is not reasonably able to safely discharge the Production on the scheduled date, or at the scheduled time, or should any event for which CLIENT has purchased the Production be canceled as a result of such causes, CLIENT may (i) reschedule the Production and pay PYRO such sums as provided in Paragraph 13, or (ii) cancel the Production and pay PYRO such sums as provided in Paragraph 14, based upon when the Production is canceled.

13. **Rescheduling Of Event** - If CLIENT elects to reschedule the Production, PYRO shall be paid the original Fee plus all additional expenses made necessary by rescheduling plus a 15% service fee on such additional expenses. Said expenses will be invoiced separately and payment will be due in full within 5 days of receipt. CLIENT and PYRO shall agree upon the rescheduled date taking into consideration availability of permits, materials, equipment, transportation and labor. The Production shall be rescheduled for a date not more than 90 Days subsequent to the date first set for the Production. The Production shall not be rescheduled to a date, or for an event, that historically has involved a fireworks production. The Production shall not be rescheduled between June 15th and July 15th unless the original date was July 4th of that same year, or between December 15th and January 15th unless the original date was December 31st of the earlier year unless PYRO agrees that such rescheduling will not adversely affect normal business operations during those periods.

14. **Right To Cancel** – CLIENT shall have the option to unilaterally cancel the Production prior to the scheduled date. If CLIENT exercises this option, CLIENT agrees to pay to PYRO, as liquidated damages, the following percentages of the Fee as set forth in Paragraph 3.1. 1) 50% if cancellation occurs 30 to 90 days prior to the scheduled date, 2) 75% if cancellation occurs 15 to 29 days prior to the scheduled date, 3) 100% thereafter. In the event CLIENT cancels the Production, it will be impractical or extremely difficult to fix actual amount of PYRO's damages. The foregoing represents a reasonable estimate of the damages PYRO will suffer if CLIENT cancels the Production.

15. **No Joint Venture** - It is agreed, nothing in this Agreement or in PYRO's performance of the Production shall be construed as forming a partnership or joint venture between CLIENT 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.

16. **Applicable Law** - This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the laws of California. It is further agreed that the Central Judicial District of San Bernardino County, California, shall be proper venue for any such action. In the event that the scope of the Production is reduced by authorities having jurisdiction or by either Party for safety concerns, the full dollar amounts outlined in this Agreement are enforceable.

17. **Notices** - 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, or for overnight delivery to 3196 N. Locust Avenue, Rialto, California 92377. CLIENT –City of Torrance, 3350 Civic Center Dr, Torrance, CA 90503.

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18. **Modification of Terms** – All terms of the 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.

19. **Severability** – If there is more than one CLIENT, they shall be jointly and severally responsible to perform CLIENT's obligations under this Agreement. This Agreement shall become effective after it is executed and accepted by CLIENT and after it is executed and accepted by PYRO at PYRO's offices in Rialto, California. This Agreement may be executed in several counterparts, including faxed and emailed 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.

20. **Price Firm** – If any changes or alterations are made by CLIENT to this Agreement or if this Agreement is not executed by CLIENT and delivered to PYRO on or before the PRICE FIRM date shown below, then the price, date, and scope of the Production are subject to review and acceptance by PYRO for a period of 15 days following delivery to PYRO of the executed Agreement. In the event it is not accepted by PYRO, PYRO shall give CLIENT written notice, and this Agreement shall be void.

PRICE FIRM through April 3, 2009
EXECUTED AGREEMENT MUST BE DELIVERED TO PYRO BY THIS DATE.
See PRICE FIRM conditions, paragraph 20, above.

EXECUTED as of the date first written above:

PYRO SPECTACULARS, INC.

By: _____

Its: President

SHOW PRODUCER: **Paul Souza**

City of Torrance

By: _____

Its: Community Services Director

John Jones
Print Name

_____
LeRoy J. Jackson, City Manager

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

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SCOPE OF WORK
PYRO SPECTACULARS, INC. ("PYRO")
and
SPONSOR ("CLIENT")

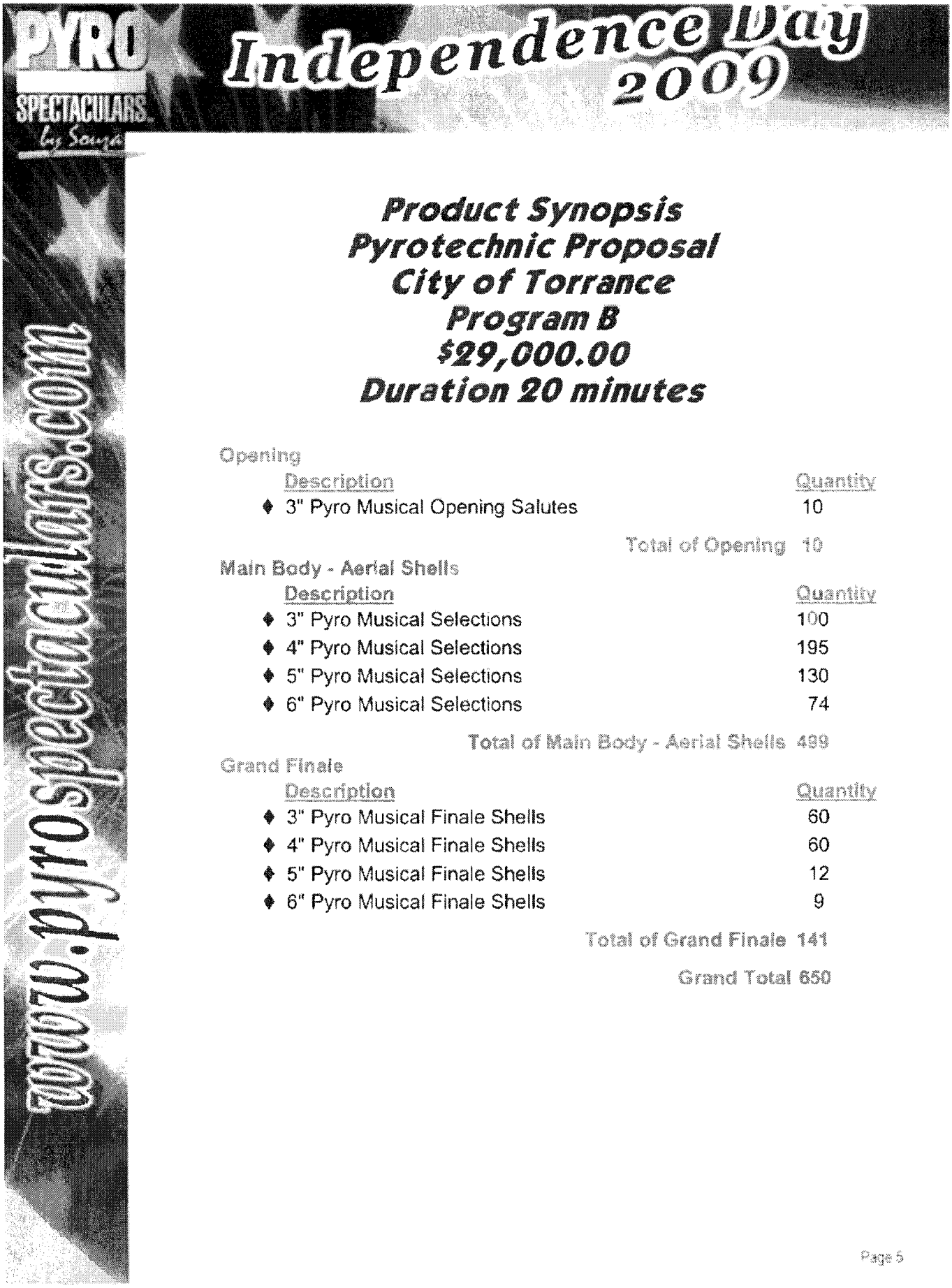
Pyro shall provide the following goods and services to CLIENT:

- One Pyro Spectaculars, Inc., Production on **July 4, 2009**, at approximately **9:00 p.m.** at **Charles Wilson Park**.
- All pyrotechnic equipment, trained pyrotechnicians, shipping, and pyrotechnic product.
- Application for specific pyrotechnic permits relating to the Production.
- Musical soundtrack for the Production supplied in agreed upon format.
- Insurance covering the Production as set forth in the Agreement with the following limits:

Insurance Requirements	***Limits***	
Commercial General Liability	$3,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
Business Auto Liability- Owned, Non-Owned and Hired Autos	$5,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
Workers' Compensation	Statutory	
Employer Liability	$1,000,000	Per Occurrence

CLIENT shall provide to PYRO the following goods and services:

- All on-site labor costs, if any, not provided or performed by PYRO personnel including, but not limited to, local union requirements, all Site security, Police and Fire Dept. standby personnel, stagehands, electricians, audio and fire control monitors, carpenters, plumbers, clean-up crew. All these additional personnel and services shall be fully insured and the sole responsibility of CLIENT.
- Coordination and any applicable non-pyrotechnic permitting with the local, state or federal government that may hold authority within the Production.
- Costs of all permits required for the presentation of the Production and the event as a whole.
- Provision of a Safety Zone in accordance with applicable standards and all requirements of the authorities having jurisdiction throughout the entire time that the pyrotechnics are at the Site or the load site (if different) on the date of the Production and all set-up and load-out dates, including water security to keep unauthorized people, boats, etc. from entering the Safety Zone.
- A professional grade Audio System including all necessary equipment, installation of such equipment and trained audio engineers for operation based on audio and communications requirements provided by PYRO.
- General Services including, but not limited to, Site and audience security, fencing, adequate work light, dumpster accessibility, a secure office for PYRO personnel within the venue, secure parking for PYRO vehicles, access to washrooms, tents, equipment storage, hazmat storage, electrical power, fire suppression equipment, access to worksites, necessary credentialing, etc., will be required as necessary.



Product Synopsis
Pyrotechnic Proposal
City of Torrance
Program B
$29,000.00
Duration 20 minutes

Opening

Description	Quantity
♦ 3" Pyro Musical Opening Salutes	10
Total of Opening	10

Main Body - Aerial Shells

Description	Quantity
♦ 3" Pyro Musical Selections	100
♦ 4" Pyro Musical Selections	195
♦ 5" Pyro Musical Selections	130
♦ 6" Pyro Musical Selections	74
Total of Main Body - Aerial Shells	499

Grand Finale

Description	Quantity
♦ 3" Pyro Musical Finale Shells	60
♦ 4" Pyro Musical Finale Shells	60
♦ 5" Pyro Musical Finale Shells	12
♦ 6" Pyro Musical Finale Shells	9
Total of Grand Finale	141
Grand Total	650