

# TAB 5



# City of Palmetto Agenda Item

**Meeting Date**

**12/13/10**

**Presenter:** Allen Tusing

**Department:** Public Works / Parks

**Title:**

Contract for the 2011 Fireworks Display by Pyrotecnico

If we agree to a contract within the next month, Pyrotecnico has agreed to the same price as in the previous two years of \$30,000. This is a three year renewable contract with Pyrotecnico, with 2011 being the final year of three.

The 2010/2011 Parks budget has \$36,000 for the 2011 July 4<sup>th</sup> Festival. The cost of the fireworks will be divided evenly between the City of Palmetto, the City of Bradenton and Manatee County (\$10,000 each).

<b>Budgeted Amount:</b>	\$36,000.00	<b>Budget Page No(s):</b>		<b>Available Amount:</b>	\$36,000.00	<b>Expenditure Amount:</b>	\$30,000.00
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**Additional Budgetary Information:** Revenue Source 001 572 5271

<b>Funding Source(s):</b>	Parks	<b>Sufficient Funds Available:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Budget Amendment Required:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Source:</b>	
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<b>City Attorney Reviewed:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<b>Advisory Board Recommendation:</b>	<input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> N/A	<b>Consistent With:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
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**Potential Motion/ Direction Requested:** Motion to authorize the Mayor to execute the contract with Pyrotecnico for the 2011 4<sup>th</sup> of July Fireworks in the amount of \$30,000.

**Staff Contact:** Allen Tusing 941/723-4580

**Attachments:** Yes, Pyrotecnico Fireworks Display Contract



#### Headquarters

P.O. Box 149  
New Castle, PA 16103  
724. 652. 1288  
info@pyrotecnico.com  
724. 652. 9555  
800. 854. 4705  
www.pyrotecnico.com

#### U.S. Locations

Atlanta, GA	877. 924. 0102
Las Vegas, NV	800. 956. 7976
Montgomery, AL	800. 255. 1199
New Orleans, LA	800. 783. 2513
Tampa, FL	888. 352. 7976

## Fireworks Display Contract

THIS CONTRACT (this "Contract") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between **PYROTECNICO**, a Florida LLC ("Pyrotecnico"), and **City of Palmetto** ("Sponsor"), with its principal place of business located in **Palmetto, Florida**.

WHEREAS, Pyrotecnico is desirous of providing Sponsor with a fireworks exhibition and display for Sponsor's benefit under such terms and conditions as provided herein, and thereby, the parties agree as follows:

### 1. Fireworks Display.

Pyrotecnico shall sell, furnish and deliver to Sponsor certain fireworks which Pyrotecnico agrees to exhibit and display on **July 4, 2011** in accordance with the program set forth and agreed upon at the time of the signing of this Contract, the specifics of which are set forth in the "Fireworks Exhibition and Display Program" attached hereto and incorporated herein by reference thereto (the "Fireworks Display").

### 2. Payment Schedule.

For and in consideration of the Fireworks Display, Sponsor agrees to pay Pyrotecnico the sum of **\$30,000.00** (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 the Fireworks Display.

Sponsor 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 certified check or otherwise as agreed by Pyrotecnico to Pyrotecnico at P.O. Box 149, New Castle, PA 16103. Furthermore, in the event Sponsor 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, Sponsor shall be responsible for all attorneys' fees and costs incurred by Pyrotecnico to collect said sums.

### 3. Display Responsibilities.

Pyrotecnico and Sponsor 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"), (iii) providing adequate private and/or public security, police and fire protection, (iv) 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), (v) securing adequate protection to preclude all individuals, other than those authorized by Pyrotecnico, from entering the security area designated by Pyrotecnico, (vi) keeping unauthorized persons or personal or real property of any kind, including, without limitation, motor vehicles, outside of the Display Site, fallout area or safe zone. Pyrotecnico and Sponsor shall fulfil 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).

### 4. Indemnification and Limitation of Liability.

Sponsor shall indemnify, defend and hold Pyrotecnico and its shareholders, directors, officers, employees, agents, representatives and insurers harmless from any and all demands, claims, causes of action, judgments or liability (including, without limitation, the costs of suit and reasonable costs of experts and attorneys) arising from damage to or destruction of property (including, without limitation, real and personal) or bodily or personal injuries (including, without limitation, death), whether arising from tort, contact or otherwise, that occur directly or indirectly from (a) the gross negligence or wilful misconduct of Sponsor or its employees, agents, contractors or representatives, or (b) the failure of Sponsor to comply with its obligations and responsibilities as set forth herein. Pyrotecnico shall indemnify, defend and hold Sponsor harmless from any and all demands, claims, causes of action, judgments or liability (including, without limitation, the costs of suit and reasonable costs of experts and attorneys) arising from damage to or destruction of property (including, without limitation, real and personal) or bodily or personal injuries (including, without limitation, death), whether arising from tort, contact or otherwise, that occur directly or indirectly from the gross negligence or wilful misconduct of Pyrotecnico or its employees, agents, contractors or representatives. Sponsor shall not under any circumstances be entitled to recover any consequential, incidental, exemplary, special and/or punitive damages from Pyrotecnico, including, without limitation, loss of income, business or profits.

**5. Postponement.**

In the event that weather is such that Pyrotecnico, in its sole and absolute discretion, determines that the Fireworks Display would be impossible, impractical 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. In the event the mutually satisfactory postponement time and/or date is beyond the day following the scheduled Fireworks Display and it is impracticable for the personnel and equipment of Pyrotecnico to remain at Sponsor's location until the rescheduled Fireworks Display date, then Sponsor shall pay the actual expenses incurred by Pyrotecnico related to the postponement, which shall not exceed forty percent (40%) of the Contract Price. Actual expenses include, but are not limited to, expenses for travel, lodging, labor, meals, rentals, permit fees, set-up and/or dismantling of display, additional taxes or surcharges, or any other additional expenses that incurred prior to and/or as a result of the postponement or cancellation. 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 (75%) of the Contract Price as liquidated damages.

**6. Cancellation.**

If (i) Sponsor cancels this Contract for any reason, or (ii) Pyrotecnico is unable to timely complete all tasks relating to the Fireworks Display in accordance with this Contract with the assistance of Sponsor and cancels this Contract despite both parties best efforts, liquidated damages for such cancellation shall be paid by Sponsor to Pyrotecnico as follows: a. In the event the Fireworks Display is cancelled more than thirty (30) days before the date scheduled for the Fireworks Display, twenty-five percent (25%) of the amount of the Contract Price; b. In the event the Fireworks Display is cancelled no more than thirty (30) days and no less than four (4) days before the Contract, fifty percent (50%) of the Contract Price; c. If the Fireworks Display is cancelled no more than three (3) days but before the day scheduled for the Fireworks Display, seventy-five percent (75%) of the Contract Price; or d. On the day scheduled for the Fireworks Display, one hundred percent (100%) of the Contract Price.

In the event that Sponsor chooses to terminate this Contract, it shall do so by written notice via certified mail addressed to Pyrotecnico, P.O. Box 149, New Castle, PA 16103. Notice shall be effective upon receipt of said written notice by Pyrotecnico. Except as provided in Section 5 above with respect to weather postponement, in the event of circumstances beyond the control of either party, such as fire, strikes, delay, acts of God or similar causes which prevent the delivery of materials or performances as set forth herein, the parties hereto release one another from any and all obligations and responsibilities contained herein.

**7. 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 Lawrence County, Pennsylvania and of the federal courts located in the United States District Court for the Western District of Pennsylvania..

**8. 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.

**9. Entire Agreement.**

This Contract and the Fireworks Exhibition and Display Program constitutes the entire agreement between the parties hereto, and there are no other understandings, either oral or written, regarding to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned executed this Contract by and through their authorized representatives whose names appear below.

**PYROTECNICO**

**SPONSOR: City of Palmetto**

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dear Mr. Segar,

Thank you for entrusting Pyrotecnico to be your fireworks entertainment company! We appreciate your past business and look forward to the opportunity to work with you again in 2011. Producing great performances for our customers is our PASSION!

We are working enthusiastically behind the scenes to prepare for the upcoming year. Our fully stocked 2011 inventory is already filled with the latest innovations in fireworks design. Your unique show will sizzle with the brightest colors and one of-a-kind special effects built exclusively for us by our manufacturers.

As a valued Pyrotecnico customer, I am proud to offer you this opportunity to book your show early, take advantage of our huge inventory of new products and have peace of mind in knowing that your show date is reserved.

**If we receive your signed agreement by February 28, 2011 you will receive the same show you had in 2010 at the same price. If you are planning to increase the entertainment value of your show this year, please contact me now so we can make the changes to your show!**

As your Show Producer, I understand how important creativity and event growth are to you. Our creative process continues even after locking in the date with this offer. Our highly specialized staff is ready to design, pack and shoot your show with many additional new effects. We continually strive to find ways to increase the ooh's and aah's in your show while maximizing your savings and show value in 2011.

I sincerely hope you take advantage of this limited time offer. Please sign the attached contract and return it by *February 28 2011*. If you prefer, you may email the contract directly to me at [jfeigert@pyrotecnico.com](mailto:jfeigert@pyrotecnico.com) or simply fax the signed contract to 724-652-1288.

Please do not hesitate to contact me at anytime with any questions or if you need any further information.

Kindest regards,  
Pyrotecnico

*John Feigert*