

RESOLUTION NO. 4193

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING THE SPONSORSHIP OF THE 'SOLEDAD FIESTA DAYS 2008 AND
AUTHORIZING THE PROVISION OF IN-KIND SUPPORT SERVICES AT AN
ESTIMATED COST OF \$17,354.83**

WHEREAS, the Soledad Community Fiesta Committee also known as "Fiesta Committee," is a community-based organization establishing as its goal, a time of celebration, enjoyment and friendship for all the citizens of Soledad; and

WHEREAS, the Fiesta Committee is a recognized non-profit charitable organization; and

WHEREAS, through its activities, the Fiesta Committee provides cash grants for community organizations i.e School District, Eden Valley, Latino Police Officers, YMCA, and scholarships to enrich and better the quality of life for the citizens of Soledad; and

WHEREAS, the Fiesta Committee sponsors an annual "Soledad Fiesta Days" festivity, along with other fund raising projects and events; and

WHEREAS, the Fiesta Committee's goals and objectives support the community and City as a whole; and

WHEREAS, the Fiesta Committee has planned to hold "Soledad Fiesta Days" at Vosti Park on May 29th – June 1st and has requested the City to act as co-sponsor of "Soledad Fiesta Days" and to provide in-kind support services; and

WHEREAS, the request for services is from Monday, May 26th through the following Tuesday, June 2nd; and

WHEREAS, the City will incur costs for Public Works, Police and Fire support for the event, at an estimated cost of \$17,354.83.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Soledad as follows:

1. All of the recitals set forth above are true and correct to the best of the Council's knowledge and by this reference, are incorporated herein.
2. The City Council hereby agrees to sponsor the Soledad Fiesta Days 2008 Event with the following provisions: **a) delivery of the heavy equipment in the day time to avoid the flags marking the sprinkler heads; b) put the heavier rides and equipment away from the soccer field area; c) bring in the heavy equipment on the outside edge of the park; and, d) to put in a gate coming in by the corporation yard.**

3. The City Council of the City of Soledad does hereby authorize the City Manager to direct staff to provide reasonable assistance and support for "Soledad Fiesta Days 2008" and other activities sponsored by the Soledad Community Fiesta Committee, as long as such efforts comply with City policies, rules and regulations and do not require the expenditure of unbudgeted City funds. Any request contrary to City policies, rules and regulations or requiring the expenditure of City funds in excess of those referenced herein shall be brought before the City Council for due consideration.

4. The Council agrees to provide in-kind services to the Soledad Fiesta 2008 in an amount not to exceed \$17,354.83.

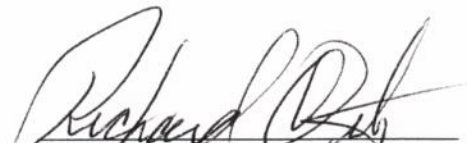
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 2nd day of April 2008 by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Mayor Pro Tem Christopher Bourke, Mayor Richard Ortiz

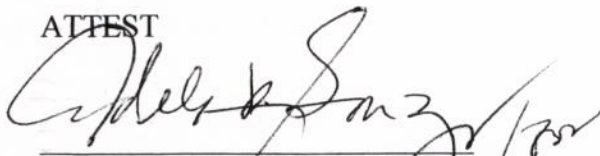
NOES, Councilmembers: None

ABSENT, Councilmembers: Patricia Stephens

ABSTAIN, Councilmembers: None


RICHARD V. ORTÍZ, Mayor

ATTEST


NOELIA F. CHAPA, City Clerk

PYRO SPECTACULARS, INC.
Display Agreement

1) THIS AGREEMENT, entered into this 17th day of April 2008, by and between PYRO SPECTACULARS, INC., a California corporation hereinafter referred to as "PYRO" and _____
City of Soledad hereinafter referred to as "PURCHASER."

2) PYRO agrees to furnish PURCHASER, in accordance with the terms and conditions hereinafter set forth, 1 fireworks display as per Program A, 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, 2008 at _____
Open Field West of Orchard Lane; Soledad, 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 firework 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 firework debris originating from the program.

4) PURCHASER shall pay to PYRO the sum of TWELVE THOUSAND ONE HUNDRED Dollars (\$12,100.00). A deposit of \$6,050.00 and fire department fees approximated at \$ 00.00 must be paid by April 18, 2008. 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 ten 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 cancelled, 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 cancelled 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) 50% if cancellation occurs 30 to 90 days prior to the scheduled date of the display, 2) 75% if cancellation occurs 15 to 29 days prior to the date set for the display, 3) 100% if cancellation occurs 14 or fewer days prior to the date set for the display. If cancellation occurs 30 days or more 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.

(continued on reverse)

Display Agreement

- 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: bodily injury and property damage, including products liability ONE MILLION DOLLARS (\$1,000,000) 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.
- 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 coverages 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.

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. It is further agreed that the Central Judicial District of San Bernardino County, California, shall be proper venue for any such action.

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. PURCHASER - City of Soledad: 218 Main Street, Soledad, CA 93960 - July 4, 2008 - Program "A"

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.

In Witness Whereof the parties hereto, by and through their duly authorized agents, have set their hands and seals this 17th day of April, 2008.

James R. Souza, Title PRESIDENT
 JAMES R. SOUZA
 PYRO SPECTACULARS, INC.

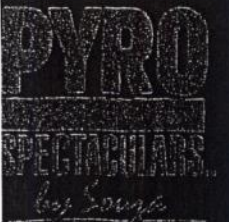
Noelia F. Chapa, Title City Manager
 PURCHASER

Noelia F. Chapa
 PRINT NAME

X ASFC Initial Here

- ♦ Purchaser is responsible for payment of fire department permit and standby fees, if applicable.
- ♦ Purchaser to provide firing site, communication, and security.
- ♦ Price firm through April 18, 2008.

Show Producer: Mark Silveira



RECEIVED

APR 11 2008

CITY OF SOLEDAD

April 7, 2008

City of Soledad
Richard Ortiz
218 Main Street
Soledad, CA 93960

Dear Mr. Ortiz,

Pyro Spectaculars is pleased to provide our pyrotechnic products and services for your July 4, 2008 fireworks display.

We are proposing our full service Program "A" in the amount of \$12,100.00. This program price includes a licensed pyrotechnician, permit application, insurance coverage, sales tax and delivery. City of Soledad will be responsible for provision of security and payment of the City of Soledad Fire Department permit fee and/or standby firemen fees, if any. The fire department may bill you directly for any standby fees.

Enclosed you will find a Product Synopsis, Display Checklist, and Display Agreements for signature and initialing. Please have one copy of this fully executed agreement returned to our office by April 18, 2008 along with your deposit.

Please take the time to review this proposal in detail. If you wish to make any changes in your program or need more information, please call either myself or your Customer Service Representative Jessica Murphy at (909) 355-8120 ext. 210.

Regards,

PYRO SPECTACULARS, INC.

Mark Silveira
PYRO SHOW PRODUCER

MS/ao

Enclosures

Product Synopsis

Pyrotechnic Proposal for

City of Soledad

Program A

\$12,100.00

Opening		
<u>Description</u>		<u>Quantity</u>
◆ 3" Souza Designer Opening Salutes		30
	Total of Opening	30
Main Body - Aerial Shells		
<u>Description</u>		<u>Quantity</u>
◆ 3" Souza Designer Selections		198
◆ 4" Souza Designer Selections		120
	Total of Main Body - Aerial Shells	318
Grand Finale		
<u>Description</u>		<u>Quantity</u>
◆ 2.5" Souza Designer Bombardment Shells		36
◆ 2.5" Souza Designer Finale Shells		30
◆ 3" Souza Designer Bombardment Shells		25
◆ 3" Souza Designer Finale Shells		30
◆ 4" Souza Designer Finale Shells		20
	Total of Grand Finale	141
	Grand Total	489

Display Checklist

City of Soledad Agrees to:

- Return contract by April 18, 2008.
- Send 50% deposit and applicable fire department permit fees to arrive by April 18, 2008.
- Send balance of payment to arrive by July 7, 2008.
- Provide suitable firing site.
- Provide security.
- Provide two-way communication to the pyrotechnician.

Pyro Spectaculars Agrees to:

- Manufacture, supply, insure, ship, install, fire, and tear down all display materials.
- Provide general liability insurance and transportation insurance in the amounts of \$1 million and \$5 million respectively, as well as workers compensation coverage.
- Apply for all federal, state, and local fireworks display permits and licenses as required by law.
- Provide a licensed pyrotechnic operator and crew.
- Provide all necessary pyrotechnic equipment.