

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # *B-2

Urgent Routine

AGENDA DATE May 13, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Hold the Thirteenth Annual Fireworks Celebration on Saturday, July 5, 2008 at Woodward Reservoir Regional Park

STAFF RECOMMENDATIONS:

1. Authorize the Department of Parks and Recreation to hold the Thirteenth Annual Fireworks Celebration on Saturday, July 5, 2008 at Woodward Reservoir Regional Park located off of 26 Mile Road in the unincorporated area of Stanislaus County.
2. Authorize the Director of the Department of Parks and Recreation, or her designee, to support the Thirteenth Annual Fireworks Celebration and promote related activities.
3. Authorize the Director of the Department of Parks and Recreation to sign the necessary contractual agreements for the event.

FISCAL IMPACT:

The costs of the celebration and related activities are estimated at \$25,000. These costs are to be offset by revenues collected during the weekend event.

BOARD ACTION AS FOLLOWS:

No. 2008-336

On motion of Supervisor Grover, Seconded by Supervisor DeMartini

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

During the last twelve years, The Department of Parks and Recreation has held an Annual Fireworks Celebration at Woodward Reservoir Regional Park. Prior to the Annual Fireworks Celebration, revenues collected during this holiday weekend were estimated at \$59,000. Over the last twelve years, during this holiday weekend, the average dollars collected have been \$154,000. The inclusion of the Annual Fireworks Celebration has resulted in an increase of approximately 40% in revenue collections during this holiday weekend.

The Department of Parks and Recreation continues to strive for creating community through its park system. Woodward Reservoir provides the County this ability to do so. Through this annual event, the County continues to strengthen its community image and sense of place by providing a celebration for the entire County. America's independence is not forgotten in Stanislaus County. The County, through its Parks and Recreation Department, and this annual event, continues to promote fun and celebration for all families. Pyro Spectaculars North, Inc will provide the fireworks display.

The Stanislaus County Police Activities League (P.A.L.) continues to work with the Department to offer numerous recreational activities during the Annual Fireworks Celebration. Some offerings include face painting, arts and crafts and numerous family games.

The annual celebration will be promoted through Public Service Announcements via newspaper and other media outlets. Fliers and posters will be distributed at both Modesto and Woodward reservoirs, County buildings, the Police Activities League building and businesses throughout the County.

POLICY ISSUES:

The Board of Supervisors should determine if staff's recommendations are consistent with its commitment to ensure a healthy community, a safe community and to strive for effective partnerships.

STAFFING IMPACT:

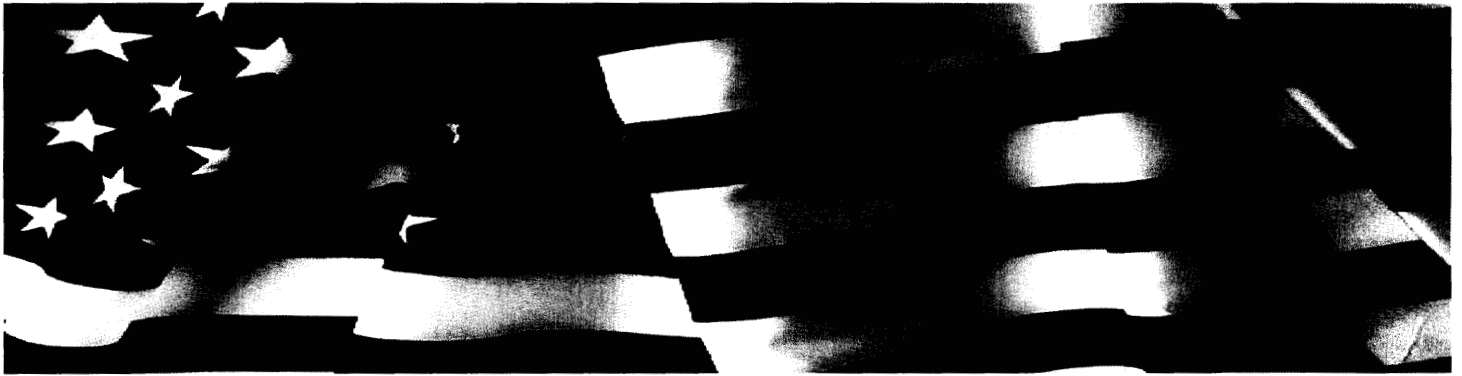
Additional staff from the Department of Parks and Recreation will be temporarily re-assigned from Community Parks, County Centers and Modesto Reservoir to assist with the coordination of this annual event.



Stanislaus County Board of Supervisors

Presents

The 13th Annual Fireworks Celebration



Saturday, July 5, 2008

Woodward Reservoir

Cost: \$8.00 Per Vehicle

Join us for a family Celebration at Woodward Reservoir.

Police Activity League will provide recreational activities from 12-4 p.m.

Enjoy the lake and stay for the spectacular fireworks!

Fireworks Display starts at approximately 9:30 p.m.

Day use ends at 10:00 p.m.



**** Personal Fireworks are not allowed at
Stanislaus County Regional Parks! ****



For more information, please call

Department of Parks and Recreation at 525-6750.

Fireworks display provided by Pyro Spectaculars North, Inc.

Pyro Spectaculars North, Inc.
 5301 Lang Avenue
 McClellan Park, CA 95652
 Tel: 909-355-8120 :: Fax: 909-355-9813

Stanislaus Parks and Recreation
 BOARD OF SUPERVISORS
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2008 MAY 20 A 10: 50

PRODUCTION AGREEMENT

This agreement ("Agreement") is made this 13 day of May, 2008 by and between Pyro Spectaculars North, Inc., a California corporation, hereinafter referred to as ("PYRO"), and Stanislaus Parks and Recreation, 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, at its own expense, shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits 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, at its own expense, shall provide to PYRO the Site (as hereinafter defined), 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 suitability, security, and safety. All other conditions of the Site shall be the responsibility of CLIENT, including, but not limited to, access, use, control, parking and safety with respect to the public, CLIENT personnel and other contractors.

2. **Time and Place** - The Production shall take place on July 5, 2008, at approximately 9:30 pm, at Woodward Regional Park ("Site").

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

3.1 **Fee** - CLIENT agrees to pay PYRO a fee of \$18,000.00 USD (**EIGHTEEN THOUSAND**) ("Fee") for the Production. CLIENT shall pay to PYRO \$9,000.00 USD (**NINE THOUSAND**) of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at \$173.00, for a total of \$9,173.00, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than April 7, 2008. The balance of the Fee shall be paid no later than July 7, 2008.
APR 15, 2008
MAY 13, 2008

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.

Pyro Spectaculars North, Inc.
5301 Lang Avenue
McClellan Park, CA 95652
Tel: 909-355-8120 ::: Fax: 909-355-9813

Stanislaus Parks and Recreation

July 5, 2008

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8. **Permits** - PYRO agrees to apply for permits required for the discharge of pyrotechnics from the **Stanislaus Consolidated Fire Protection District** (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 the Production: (1) commercial general liability insurance, including products, completed operations, and contractual liability under this Agreement; (2) automobile liability insurance, (3) worker's 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. The types and amounts of coverage shall be as set forth in the Scope of Work.

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. **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) cancel the Production and pay PYRO such sums as provided in Section 12, based upon when the Production is canceled, or (ii) reschedule the Production and pay PYRO such sums as provided in Section 13.

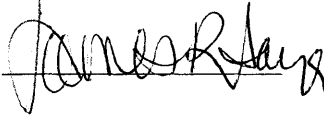
12. **Right To Cancel** - CLIENT shall have the option to unilaterally cancel the Production prior to the scheduled date. If CLIENT exercises this option, CLIENT agrees to pay to PYRO, as liquidated damages, the following percentages of the Fee as set forth in Section 3.1. 1) 50% if cancellation occurs 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.

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. A 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. **Applicable Law** - This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the laws of California. 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.

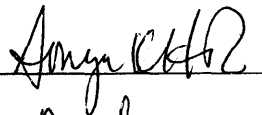
EXECUTED as of the date first written above:

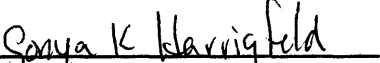
PYRO SPECTACULARS NORTH, INC.

By: 

Its: President

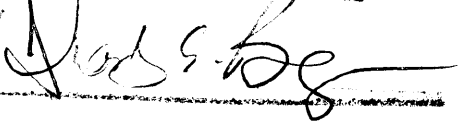
Stanislaus Parks and Recreation

By: 

Its: Director


Print Name

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL

BY: 

SHOW PRODUCER: Steve Souza

Pyro Spectaculars North, Inc.
5301 Lang Avenue
McClellan Park, CA 95652
Tel: 909-355-8120 ::: Fax: 909-355-9813

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PYRO SPECTACULARS NORTH, INC. ("PYRO")
and
Stanislaus Parks and Recreation ("CLIENT")

SCOPE OF WORK

PYRO shall provide the following goods and services to CLIENT:

- One Pyrotechnic Production on **July 5, 2008**, at approximately **9:30 pm**, at **Woodward Regional Park**.
- All pyrotechnic equipment, trained pyrotechnicians, shipping, and pyrotechnic products.
- Application for specific pyrotechnic permits relating to the Production.
- Insurance covering the Production as set forth in the Agreement with the following limits:

<u>Insurance Requirements</u>	<u>Limits</u>	
<u>Commercial General Liability</u>	\$2,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
<u>Business Auto Liability- Owned, Non-Owned and Hired Autos</u>	\$5,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
<u>Workers' Compensation</u>	Statutory	
<u>Employer Liability</u>	\$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 show site or the load site (if different) on the date of the show and all set-up and load-out dates, including water security if applicable, to keep unauthorized people, boats, etc. from entering the Safety Zone.
- 24-hour on-site security for any time that pyrotechnic worksites are unattended by PYRO personnel.
- General Services including, but not limited to, site and audience security, fencing, secure parking for PYRO vehicles, access to washrooms, fire suppression equipment, access to worksites, necessary credentialing, etc., will be required as necessary.