

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the 8th day of April, 2014, the following Resolution:

A RESOLUTION BY THE GULFPORT CITY COUNCIL APPROVING CONTRACT WITH PYROFIRE DISPLAYS, INC., REGARDING JULY FOURTH FIREWORKS DISPLAY AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

WHEREAS, the City of Gulfport annually presents a fireworks display from Moses Pier at or near the Gulfport Small Craft Harbor on July 4th, in celebration of America's Independence Day; and

WHEREAS, bids for the July 4, 2014, fireworks display were solicited and three (3) bids were received with Pyrofire Displays, Inc., of Southaven, Mississippi, being the lowest and best bid; and

WHEREAS, Pyrofire Displays, Inc., has provided the City with a proposed Contract concerning the said July 4, 2014, fireworks display in the City of Gulfport, which Contract is attached hereto as Exhibit "A" for your consideration.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS, TO WIT:

Section 1. That the matters, facts and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

Section 2. That the proposed Contract attached hereto as Exhibit "A" be and the same is here by approved and the Mayor is, hereby, authorized to execute the same on behalf of the City of Gulfport.

Section 3. That this Resolution be, and it is hereby ordered to be spread on the minutes of the governing Authority, and to be in full force and effect according to law.

The above and foregoing Resolution, after having been first reduced to writing and ready by the Clerk, was introduced by Councilmember Casey, seconded by Councilmember Holmes-Hines, and was adopted by the following roll call vote:

YEAS:

Casey

Dombrowski

Holmes-Hines

Walker

Sharp

Flowers

Pucheu

NAYS:

None

ABSENT:

None

WHEREUPON the President declared the motion carried and the Resolution adopted,
this the 8th day of April, 2014.



Monika S. Coe
CLERK OF THE COUNCIL

ADOPTED:

[Signature]
PRESIDENT OF THE COUNCIL

The above and foregoing Resolution having been submitted to and approved by the
Mayor, this the 9th day of April, 2014.

APPROVED:

[Signature]
MAYOR



April 8, 2014

1) THIS AGREEMENT entered into this 17th day of March 2014 by and between PYROFIRE DISPLAYS, INC.; a Mississippi corporation, hereinafter referred to as "PYROFIRE" and The City of Gulfport, MS hereinafter referred to as "PURCHASER".

2) PYROFIRE agrees to furnish PURCHASER, in accordance with the terms and conditions hereinafter set forth, 1 pyrotechnic production (s) as per Program(s) 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 production(s) will be performed on July 4th, 2014.

3) PURCHASER, at its own expense, agrees to provide PYROFIRE: A) A suitable PRODUCTION SITE in which to stage the pyrotechnic display including a firing and fallout zone reasonably acceptable to PYROFIRE in which the pyrotechnics 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 PYROFIRE into the PRODUCTION SITE. C) Access by PYROFIRE at all times, to the PRODUCTION SITE to set up the production. D) Ensure that the Spectator Area does not infringe on the PRODUCTION SITE; E) PURCHASER shall furnish PYROFIRE any and all certificates of fire retardancy and non-flammability with the return of this executed contract for Material that is within fifty (50) feet of any pyrotechnic effect. The term Material includes, but is not limited to, any and all stage scenery, curtains, pipe and drape, carpet, fluids or anything or object susceptible to combustibility. The failure to supply this certificate may cause PYROFIRE not to produce the said display and Purchaser will be responsible for the contract amount in full. If PURCHASER fails to fully comply with requirement A, B, C, D and/or E set forth above, PYROFIRE shall have no obligation to perform and PURCHASER agrees to pay PYROFIRE the entire contract price plus any additional expenses and damages incurred as a result of said failure.

PURCHASER shall have the sole responsibility to police, monitor and appropriately control spectator access to the Spectator Area and police, monitor and appropriately control the behavior of persons in these areas. It is expressly agreed that PYROFIRE, (including its operators and helpers) shall not inspect, police, monitor or otherwise supervise any area of the site other than the PRODUCTION SITE, except to ensure all spectators are outside the PRODUCTION SITE; and, after completion of the PRODUCTION, that the PRODUCTION SITE is cleared of any pyrotechnic debris originating from the production.

4) PURCHASER shall pay to PYROFIRE the sum of \$14,750.00 (fourteen thousand seven hundred fifty dollars & zero cents). A PURCHASE ORDER will be issued to PyroFire Displays for the full amount of the display in lieu of the 50% deposit. Full payment is due on the day following the next council meeting after the display date. The PURCHASE ORDER will include a non-refundable charge of 10% of the total contract price to initiate the permit and insurance process and is deducted prior to calculating any refunds. If the production proceeds, this amount will be applied towards the remaining balance due. 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 10 days from the date of the display. PURCHASER does hereby authorize PYROFIRE 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 PYROFIRE's control, which may prevent the production from being safely discharged on the scheduled date or the cancellation of any event for which PURCHASER has purchased the production. It shall be within PYROFIRE's sole discretion to determine whether or not the production may be safely discharged on the scheduled date and



at the scheduled time. If, for any reason beyond PYROFIRE's control, including, without limitation, inclement weather, PYROFIRE is unable to safely discharge the production on the scheduled date or should any event for which PURCHASER has purchased the production be cancelled, the parties shall attempt to negotiate a new production date, which shall be within 60 days of the original production date. PURCHASER further agrees to pay PYROFIRE for any actual expenses made necessary by this postponement. Actual expenses include, but are not limited to, expenses for travel, lodging, labor, meals, rentals, permit fees, set-up and/or dismantling of production, additional taxes or surcharges, or any other additional expense that was incurred prior to and/or as a result of the postponement or cancellation. If the parties are unable to agree on a new production date, PYROFIRE shall be entitled to liquidate damages from PURCHASER as if PURCHASER had cancelled the production on the date set for the production as follows.

6) PURCHASER shall have the option to unilaterally cancel this production at any time. If PURCHASER exercises this option, PURCHASER agrees to pay PYROFIRE, as liquidated damages, the following percentages of the agreed contract price. 1) 25% if cancellation occurs seven (7) or more days before the date scheduled for the production, 2) 50% if cancellation occurs between three (3) days prior to and the actual date set for the production, 3) 75% if cancellation occurs on the date set for the production but prior to the time physical set-up of the production actually begins 4) 100% thereafter. If cancellation occurs prior to the date set for the production, PURCHASER, agrees to pay to PYROFIRE, in addition to the above percentages, the value associated with any specific custom work performed by PYROFIRE or its agents including but not limited to music/narration tape production, sponsor logos and/or the costs of all special equipment purchased specifically for the use in this production, including but not limited to all applicable taxes and shipping charges.

7) PYROFIRE reserves the ownership rights and trade names that are used in or is a product of the pyrotechnic production to be performed. Any reproduction by sound, video or other duplication or recording process without the express written permission of PYROFIRE is prohibited. PyroFire will have the sole right to record the display for its own marketing purposes.

8) PYROFIRE agrees to furnish insurance coverage in connection with the Production only, for the following risks and amounts: bodily injury and property damage, 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 PYROFIRE in performing the Production provided for in this Agreement. Such insurance afforded by PYROFIRE 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 PYROFIRE harmless from all claims and suits made against PYROFIRE for bodily injury or property damage arising from A) and B) of this Paragraph, and for any and all willful, wanton or negligent acts of PURCHASER, its employees, agents and or independent contractors.

9) Should PURCHASER fail to pay PYROFIRE any fees, costs or expenses to which PYROFIRE is entitled under the terms of this agreement, PURCHASER shall pay to PYROFIRE, in addition to any other relief to which PYROFIRE may be entitled, all costs of collection, including but not limited to attorney fees



in the minimum amount of 25% of the balance due, court costs and judicial interest from the date of written demand to date of full payment.

10) PURCHASER shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special, and/or punitive damages from PYROFIRE including, without limitation, loss of income, business or profits. Nothing in this paragraph shall be construed as a modification or limitation of the insurance coverage afforded in Paragraph 8 above.

11) It is agreed nothing in this Agreement or in PYROFIRE's performance of the production provided for herein shall be construed as forming a partnership or joint venture between PURCHASER and PYROFIRE. 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.

12) This Agreement shall be governed and interpreted under the laws of the State of Mississippi.

13) 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, and first class, addressed as follows:

PyroFire Displays, Inc. 384 E. Goodman Rd. Ste. 254 Southaven, MS 38671

PURCHASER – City of Gulfport Leisure Services / PO Box 1780 / Gulfport, MS 39502

14) All terms of this Agreement are in writing and may only be modified by written agreement of both parties hereto. The parties acknowledge they have received a copy of said written agreement and agree to be bound by said terms of written Agreement, subject only to any written modifications signed by the parties hereto.

15) If there is more than one PURCHASER, they shall be jointly and severally be 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 PYROFIRE at PYROFIRE's offices in Hernando, MS. 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 agrees and acknowledges that because of the nature of fireworks, an industry accepted level of 3% of the product used in any production 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 March 2014.

Jeremy D. Carlson, Title Administrative Director

PURCHASER, Title Mayor