

PRODUCTION AGREEMENT (Special)

This agreement ("Agreement") is made this _____ day of _____, _____ by and between **Pyro Spectaculars, Inc.**, a California corporation, hereinafter referred to as ("PYRO"), and **City of Riverside**, 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 three (3) fireworks productions ("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 "A", 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, including preproduction services, 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 Productions shall take place on July 4, 2023, July 4, 2024 and July 4, 2025, at approximately 9:00 P.M. each year, at Mount Rubidoux, on top of mountain, Riverside, CA, Site.

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

3.1 **Fee** - For the July 4, 2023 Production, CLIENT agrees to pay PYRO a fee of \$70,000.00 USD (SEVENTY THOUSAND DOLLARS) ("Fee") for the Production. CLIENT shall pay to PYRO \$35,000.00 USD (THIRTY-FIVE THOUSAND DOLLARS) of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at \$00.00 OR an amount to be determined, for a total of \$35,000.00, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than December 5, 2022. The balance of the Fee shall be paid no later than July 5, 2023. 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 **Fee** - For the July 4, 2024 Production CLIENT agrees to pay PYRO a fee of \$77,000.00 USD (SEVENTY-SEVEN THOUSAND DOLLARS) ("Fee"). CLIENT shall pay to PYRO \$38,500.00 USD (THIRTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS) of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at \$00.00, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than February 5, 2024. The balance of the Fee shall be paid no later than July 5, 2024.

3.3 **Fee** - For the July 4, 2025 Production CLIENT agrees to pay PYRO a fee of \$84,700.00 USD (EIGHTY-FOUR THOUSAND SEVEN HUNDRED DOLLARS) ("Fee"). CLIENT shall pay to PYRO \$42,350.00 USD (FORTY-TWO THOUSAND THREE HUNDRED FIFTY DOLLARS) of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at \$00.00, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than February 2, 2025. The balance of the Fee shall be paid no later than July 7, 2025.

3.4 **Option to Extend** - CLIENT shall have the option to extend this Agreement for an additional two (2) years, (July 4, 2026 and July 4, 2027), the times, locations, and fees to be determine and mutually agreed upon by the Parties.

3.5 **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.

3.6 **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.

8. **Permits** - PYRO agrees to apply for permits for the firing of pyrotechnics only from the **Riverside City Fire Department**, FAA, and USCG, if 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 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.

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 or more 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. PYRO shall be and is an independent contractor with CLIENT and not an employee of CLIENT. 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. 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 Riverside, 3900 Main St., Riverside, CA 92522.

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.

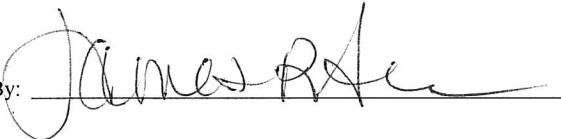
20. **Price Firm** - If any changes or alterations are made by CLIENT to this Agreement or if this Agreement is not executed by CLIENT and delivered to PYRO on or before the PRICE FIRM date shown below, or if the Initial Payment is not paid on or before the due date, then the price, date, and scope of 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 December 5, 2022
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.

City of Riverside

By: 

By: _____

Its: President

Its: _____

Date: 9/20/22

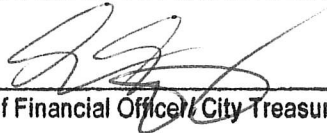


Print Name

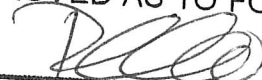
Date: _____

SHOW PRODUCER: Christopher Souza

CERTIFIED AS TO FUNDS AVAILABILITY:

BY: 
Chief Financial Officer/ City Treasurer

APPROVED AS TO FORM

BY: 
Deputy City Attorney

SCOPE OF WORK
PYRO SPECTACULARS, INC. ("PYRO")
and
City of Riverside ("CLIENT")

Pyro shall provide the following goods and services to CLIENT:

- Three (3) Pyro Spectaculars, Inc., Productions on July 4, 2023, July 4, 2024 and July 4, 2025, at approximately 9:00 P.M. each year, at Mount Rubidoux, on top of mountain, Riverside, CA.
- All pyrotechnic equipment, trained pyrotechnicians, shipping, and pyrotechnic product.
- Preproduction Services and Costs for the Production, including advance acquisition of materials and products; design, engineering, programming, handling, staging, storage, and maintenance of products, props, and systems; preparation of drawings, diagrams, listings, schedules, inventory controls, choreography, and computer code; picking, packing, labeling, staging, and loading of equipment, materials, and systems; transportation, and logistics and crew scheduling and support; explosive storage magazines with legally mandated distances, surfaces, security, housekeeping, and access controls; and necessary and appropriate vehicles, including legally mandated insurance, including MCS90 explosives transportation coverage, parking, security, and maintenance.
- 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:

<u>Insurance Requirements</u>	<u>Limits</u>	
<u>Commercial General Liability</u>	\$5,000,000.00	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 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.

PYRO SPECTACULARS

by Souza[®]



Pyrotechnic Proposal

City of Riverside

July 4, 2023, July 4, 2024 & July 4, 2025

September 20, 2022

City of Riverside
Ebony Perkins
6927 Magnolia Ave. 2nd Floor
Riverside, CA 92506

Dear Ms. Perkins,

Pyro Spectaculars, Inc. is happy to provide our pyrotechnic proposal for your July 4, 2023, July 4, 2024 and July 4, 2025 events. The following proposal outlines your custom designed **Sky Concert™** Program "A"s for the amount of \$70,000.00 for July 4, 2023 \$77,000.00 for July 4, 2024 and \$84,700.00 for July 4, 2025.

Our full service program includes necessary preproduction services, music production and choreography, the services of a licensed pyrotechnic operator, specialized crew, an electronic firing system, and pyrotechnic safety equipment used for support and protection. The price also includes insurance coverage, sales tax, and delivery. To help ensure public safety, we work directly with the local fire authority, and we apply for the necessary fireworks related permits. Our winning combination of products, people, and production capabilities help produce the best fireworks entertainment package for your event.

Your organization will be responsible for payment of permit fees and/or standby firemen fees, if any. The Fire Department may bill you directly for any additional standby fees for inspections. Your organization will also be responsible for providing the display location, necessary security for the display site, and other event permits.

Please review the enclosed Proposal, Product Synopsis, Production Agreement, and Scope of Work in detail. In order to reserve your program, it is imperative that you return the fully executed agreement, your initial payment, and applicable permit fees to our office by December 5, 2022, the price firm date in your production agreement. The program, pricing, and show date may not be available beyond the price firm date.

If you wish to discuss your program or need more information, please call either me or your Customer Service Representative Maria Barajas at (909) 355-8120 ext. 228.

Sincerely,

PYRO SPECTACULARS, INC.

Christopher Souza

Christopher Souza
PYRO Show Producer

CS/mb

www.pyrospec.com



Enclosures
Pyro Spectaculars, Inc.
P.O. Box 2329 • Rialto, CA 92377 • Phone: (909) 355-8120 or (888) 477-PYRO • Fax: (909) 355-9813

Product Synopsis • Pyrotechnic Proposal
City of Riverside- Mt. Rubidoux
PROGRAM A– July 4, 2023
\$70,000.00

Main Body - Aerial Shells

<u>Description</u>	<u>Quantity</u>
◆ 4" Souza Designer Selections	210 Shots
◆ 5" Souza Designer Selections	114 Shots
◆ 6" Souza Designer Selections	81 Shots
◆ 8" Souza Designer Selections	24 Shots

Total of Main Body - Aerial Shells 429

Grand Finale

<u>Description</u>	<u>Quantity</u>
◆ 3" Souza Designer Bombardment Shells	180
◆ 4" Souza Designer Bombardment Shells	90
◆ 5" Souza Designer Bombardment Shells	9
◆ 6" Souza Designer Bombardment Shells	6

Total of Grand Finale 285

Grand Total 714

Product descriptions are for specification of product quality, classification, and value. Final product selections will be based on availability, suitability, and overall artistic style.



Product Synopsis • Pyrotechnic Proposal
City of Riverside- Mt. Rubidoux
PROGRAM A– July 4, 2024
\$77,000.00

Main Body - Aerial Shells

<u>Description</u>	<u>Quantity</u>
◆ 4" Souza Designer Selections	210
◆ 5" Souza Designer Selections	114
◆ 6" Souza Designer Selections	81
◆ 8" Souza Designer Selections	24
Total of Main Body - Aerial Shells	429

Grand Finale

<u>Description</u>	<u>Quantity</u>
◆ 3" Souza Designer Bombardment Shells	180
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Total of Grand Finale	285

Grand Total 714

Product descriptions are for specification of product quality, classification, and value. Final product selections will be based on availability, suitability, and overall artistic style.



Product Synopsis • Pyrotechnic Proposal
City of Riverside- Mt. Rubidoux
PROGRAM A– July 4, 2025
\$84,700.00

Main Body - Aerial Shells

<u>Description</u>	<u>Quantity</u>
◆ 4" Souza Designer Selections	210
◆ 5" Souza Designer Selections	114
◆ 6" Souza Designer Selections	81
◆ 8" Souza Designer Selections	24
Total of Main Body - Aerial Shells	429

Grand Finale

<u>Description</u>	<u>Quantity</u>
◆ 3" Souza Designer Bombardment Shells	180
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