

CITY OF BETHLEHEM
INTER-DEPARTMENTAL CORRESPONDENCE

SUBJECT: Request for Approval by City Council of Contract Award or Contract Price Increase Pursuant to City Ordinance, Article 121.05 (a)

Project or Contract Reference: CELEBRATION FIREWORKS

TO: City Council, all members, and Council Solicitor

FROM: JANE PERSA, Department Head

DATE: 4/26/17

On behalf of the Administration, pursuant to City Ordinances, Article 121.05, I request City Council's approval of the following recommendation of the referenced contract award or price increase.

- Check Type of Contract or Change:

The contract is for over \$50,000 and required to be bid under the Third Class City Code. We have advertised the above referenced project and received qualified bids. We recommend award of the contract to the bidder identified and for the reasons stated below.

The recommendation is for a price increase of 10% or more for an existing contract over \$50,000 that was previously bid and awarded under the Third Class City Code.

The contract is for the engagement of professional services. We have received and reviewed a proposal or proposals for professional services in connection with above referenced project or requirement for professional services. We recommend award of the contract.

- Is the contract appropriation or price increase included in this year's budget? yes no
- Identify contract funding sources (general fund, grants, loans, etc.....):

GENERAL FUND - 0090 - 95006

- The name and address of the recommended Contractor/Vendor/Professional Service Provider/Lowest Responsible Bidder are:

CELEBRATION FIREWORKS, INC.

- Term of contract or estimated completion date, subject to standard extensions:

July 4, 2017, RAIN DATE - July 15, 2017

- Description of project or scope of services to be provided:

FIREWORKS

- State the actual or estimated price to the City or the proposed Department budget allowance for the initial term; and state payment rate per unit of service if applicable:

\$ 32,000.00

- Number of renewal term options and duration of each renewal, if any:

0

- Maximum dollar value of all renewals provided for beyond the original term as if all renewals were exercised:

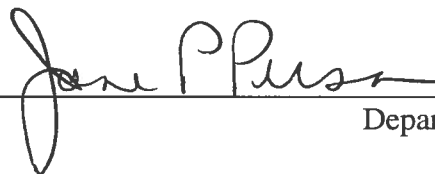
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- Reasons for recommendation of Administration and Council approval of contract:

ALWAYS USED THIS COMPANY

Please approve this recommendation by passing the accompanying resolution. A vote of final approval is requested at the first City Council agenda listing of this matter.

By: _____



Department Head

Copies To: Mayor
Director of Administration
Director of Budget and Finance
Law Bureau
Purchasing Bureau
Controller

Attachment: proposed resolution

RESOLUTION NO. 2017-___

Authorization for Contract or Amendment under Article 121.05(a)

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Contract or Amendment and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related there to, with the following named contractor, for the uses and purposes indicated in the supporting Recommendation of Award of Bid or Contract dated January 25, 2017.

1. Name of Contractor: Celebration Fireworks, Inc.
2. Project or Contract Reference: July 4 Fireworks

Sponsored by: _____

ADOPTED BY COUNCIL THIS DAY OF , 2017.

President of Council

ATTEST:

City Clerk

CELEBRATION FIREWORKS, INC.
7911 7th St., Slatington PA 18080
DISPLAY AGREEMENT

1. This agreement, entered into this 13th day of **January, 2017** between Celebration Fireworks, Inc. hereinafter referred to as "CFI", and **the City of Bethlehem** herein after referred to as PURCHASER.
2. CFI agrees to furnish PURCHASER, in accordance with terms and conditions hereinafter set forth, a fireworks display, ~~together with the services of a pyrotechnic operator~~ licensed for the state of the display to be in charge of, and along with sufficient crew to safely discharge the display. The display is scheduled to be performed on the 4th day of **July, 2017** at **Sand Island (rain date shall be July 5, 2017)**.
3. PURCHASER, at its own expense, agrees to provide to CFI: A) A suitable DISPLAY SITE in which to stage the fireworks display, including a firing and a fallout zone acceptable to CFI in which the fireworks and fireworks 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 not authorized by CFI into the display site. C) The services and cost of standby firemen and/or applicable permit fees as required by state and local statutes, ordinances or regulations. D) Access by CFI, at all times to the DISPLAY SITE to set up the display. If PURCHASER fails to fully comply with all requirements of A, B, C, and/or D set forth above, CFI shall have no obligation to complete the performance and PURCHASER agrees to pay CFI the entire contract price plus any additional expenses incurred because of said failure. If in it's sole discretion, PURCHASER designates an area for members of the public to view the display ("spectator area") and/or area for parking vehicles, ("parking area"), the PURCHASER shall: E) Ensure that the Spectator Area does not infringe on the Display Area; F) Have sole responsibility for insuring 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 insuring 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 Parking Area and police, monitor and appropriately control the behavior of persons in these areas. It is expressly agreed that CFI, (including it's operators and crew) shall not inspect, police, monitor or otherwise supervise any area of the site other than the Display Area, except to insure: I) That any Spectator or Parking Area are outside the Display Area; and J) After completion of the Display, that the Display Area is cleared of any live fireworks debris originating from the program.
4. PURCHASER shall pay to CFI 32,000.00. A deposit of 0% must be paid **at the time of contract acceptance**. Full final payment is due within ten (10) calendar days after the date of the display. A finance charge at a periodic rate of 1.5% per month, 18% annual percentage rate, will be charged on the unpaid balance after 30 days from the date of the display. PURCHASER, by signing this agreement, authorizes CFI to receive and verify financial information concerning PURCHASER from any person or entity.
5. PURCHASER agrees to assume the risk of weather, or causes beyond the control of CFI 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 effect or damage such portion of the exhibits as must be placed and exposed a necessary time before the display. It shall be within CFI'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 CFI's control, including, without limitation, inclement weather, CFI is unable to safely discharge the display on the scheduled date or should any event for which PURCHASER has purchased the display be canceled, the parties shall attempt to negotiate a new display date (rain date shall be July 5, 2017), which shall be within 6 months of the original display date. PURCHASER further agrees to pay CFI for any reasonable additional expenses made necessary by this postponement. If they are unable to agree on a new display date, CFI shall be entitled to liquidated damages from PURCHASER as if PURCHASER had canceled the display on the date set for the display, as provided in the following paragraph.
6. In the event the PURCHASER cancels the display, it will be impractical or extremely difficult to fix the actual amount of CFI's damages. The foregoing represents a reasonable estimate of the damages CFI will suffer if PURCHASER cancels the display.
7. CFI reserves the ownership rights and trade names used in, or 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 CFI is prohibited.
8. PURCHASER agrees to credit Celebration Fireworks Inc. as "Fireworks by Celebration Fireworks" in all advertising and marketing materials that are within the PURCHASER's authority.

9. CFI agrees to furnish insurance coverage in connection with the display only, for the following risks and amounts: bodily injury and property damage liability Ten Million Dollars per occurrence. Such insurance shall include additional insureds (as requested) regarding claims made against PURCHASER for bodily injury or property damage arising from the operations of CFI in performing the Display provided for in this Agreement. Such insurance afforded by CFI shall not include claims made against PURCHASER for bodily injury or property damage arising from A) Failure of PURCHASER, including through or by it's employees, agents, or independent contractors, to perform it's 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 CFI harmless from all claims and suits made against CFI for bodily injury or property damage arising from A) and B) of the 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. This agreement shall be interpreted under the laws of the State of Pennsylvania. It is further agreed that the courts of the State Of Pennsylvania shall have exclusive jurisdiction to adjudicate any disputes arising out of this contract or the performance of the display provided for herein.
11. In the event CFI breaches this agreement, or is otherwise negligent in performing the fireworks display provided herein, PURCHASER shall, under no circumstances be entitled to recover monetary damages from CFI beyond the amount PURCHASER agreed to pay CFI under this agreement. PURCHASER shall not, under any circumstances, be entitled to recover any consequential damages from CFI including, without limitation, for loss of income, business, or profits. Nothing in the paragraph shall be construed as a modification or limit to the insurance afforded in paragraph 8) above.
12. It is agreed, nothing in this Agreement or in CFI's performance of the display provided for herein, shall be construed as forming a partnership or joint venture between PURCHASER and CFI. 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. All terms of this agreement are in writing and may only be modified by written agreement of both parties hereto. Both parties acknowledge that they have received a copy of said written Agreement and agree to be bound by said terms of written agreement only.
13. Any notice to the parties required under this agreement shall be given by mailing such notice in the U.S. Mail, postage prepaid, first class, addressed as follows: CELEBRATION FIREWORKS, INC., 7911 7th St, Slatington PA 18080. PURCHASER's address shall be **c/o Ms. Jane Persa, Dept. of Parks & Public Property, 10 East Church Street, Bethlehem PA 18018.**
14. 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 the PURCHASER and then after it is executed by CFI at CFI's offices in Slatington, Pennsylvania. 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 accepted as full performance.

SIGNED ON THIS DATE 1/25/17. Pricing herein is firm through **July 30, 2017.**

FOR PURCHASER:

Jane Persa, Recreation Director

FOR CELEBRATION FIREWORKS, INC.

JH Kemp

Title: **President**