

843

America's World Class Fireworks Leader

Display Date: July 4, 2009

FIREWORKS DISPLAY AGREEMENT

AGREEMENT made March 10, 2009 by and between Pyro Engineering, Inc., whose address is 400 Broadhollow Road, Suite 3, Farmingdale, NY 11735 (hereinafter "PEI"); and Town of Nags Head, 5401 South Croatan Highway, Nags Head, NC 27959 (hereinafter "SPONSOR").

WHEREAS, PEI designs, produces, and conducts fireworks displays; and

WHEREAS, SPONSOR wishes to engage PEI to design, produce and perform a fireworks display on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the terms, conditions and covenants hereinafter set forth, the parties hereto do mutually agree as follows:

1. **FIREWORKS DISPLAY:** On, July 4, 2009 (hereinafter "the Display Date"), PEI shall provide the fireworks and equipment for the display at the Fireworks Display location. The display will be under the supervision of a PEI trained technician. It is agreed that PEI shall be the sole fireworks supplier and producer for the event contracted for herein. (Note: The actual start and stop time of the display will be determined by the governmental authorities having jurisdiction over the display).

ALTERNATE DATE: July 5, 2009

2. **COST AND PAYMENTS:**

FIREWORKS DISPLAY PRICE:	\$ 18,000.00
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The total (Fireworks Display Price plus all other applicable charges) sum of \$ 18,000.00 shall be due and payable as follows:

a. The sum of : \$ 9,000.00 upon execution and delivery of this contract.

b. The Balance of : \$ 9,000.00 (which includes any taxes that may be applied to this sale) shall be paid by Official Bank Check made payable to Pyro Engineering, Inc. not later than fifteen (15) days prior to the Display Date.

Please Note: SPONSOR is responsible for the payment of all governmental fees and taxes, including, but not limited to, sales, use, excise, license, permit, entertainment, or other fees, taxes or surcharges imposed or otherwise applied to this exhibition. Also, please see Section 16(c) below.

3. **POSTPONEMENT/RESCHEDULING:** If the display of the fireworks is postponed/rescheduled by reason of inclement weather or by determination by the governmental authority having jurisdiction, or for any other reason beyond the control of PEI, same shall be rescheduled to the Alternate Date set forth above. In the event a postponement/rescheduling is necessary due to inclement weather or by determination by the governmental authority having jurisdiction, or for any other reason beyond the control of PEI a postponement/rescheduling fee will be based on the table below.

Description	% of Fireworks Display Price	Additional Costs
If notified by 12:01 AM on 07/02/09	5%	Any 3 rd Party Vendor Expenses
If notified after 12:01 AM on 07/03/09	15%	Any 3 rd Party Vendor Expenses
Once Bay Fireworks Techs Arrive on Site	20%	Any 3 rd Party Vendor Expenses

Any request made by SPONSOR for rescheduling/canceling shall be directed to help@bayfireworks.com or by phone (516) 233-4132. It is understood and agreed that PEI shall have no obligation to reschedule a display except as required by inclement weather or reasons beyond the control of PEI.

4. **SPONSOR'S AGENT:** Chief Hugh Osborne CELL PHONE:252-305-9325 shall be designated as SPONSOR'S agent to whom all questions and inquiries shall be relayed. Sponsor's agent shall be the only agent of SPONSOR authorized to make decisions on behalf of SPONSOR or to request rescheduling of the fireworks display on the part of SPONSOR.

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CHS
Sponsor

[Signature]
PEI

5. EXHIBITION PLANNER CHECKLIST: It is understood and agreed by the parties hereto that the Fireworks Display shall be contingent upon the strict compliance by SPONSOR with all items specified on the Exhibition Planner Checklist (EPC) which is annexed hereto and made a part hereof. Failure on the part of SPONSOR to comply with all requirements set forth in the EPC to the satisfaction of PEI within the time limits therein set forth shall be deemed to be an event of default of SPONSOR'S obligations hereunder.

6. SECURITY/SAFETY: SPONSOR shall provide and maintain sufficient Security before, during and after the Fireworks Display until the pyrotechnician in charge declares the area clear. Security shall be deemed to include, but not limited to, be all security lines, police protection, snow fencing, rope lines, barricades or any other item deemed necessary by the local government or by PEI. SPONSOR shall also provide and maintain an area clear of any buildings cars and spectators with a minimum radius as specified by NFPA Code 1123, 2000 Edition as a Fire Safety Zone (FSZ) during the entire period commencing from the time the fireworks are delivered to the site until the area is declared clear by the pyrotechnician. It is understood and agreed that PEI will cease all fireworks discharge due to any security breach of the FSZ. PEI shall not be responsible for personal injury, vehicle or property damage occurring within the FSZ as a result of the SPONSOR'S failure to maintain the FSZ in accordance with the standards of NFPA 1123 which, incidentally, are only minimum standards of distances. SPONSOR acknowledges and agrees that PEI'S responsibilities are limited to the Fireworks Display and that PEI is relying on SPONSOR to maintain the aforementioned FSZ and to comply with all Federal, State, municipal and local laws, orders, regulations and ordinances pertaining to the implementation of any and all security measures at the site of the Fireworks Display. Any site visits made during the display setup by or on behalf of SPONSOR shall be in accordance with NFPA 1123-1995, and under the direct supervision of the PEI technician in charge. Any such inspection shall not in any way interfere with the safety, setup or schedule of the preparation for and disassembly after the Fireworks Display. The PEI technician in charge may, at his discretion, cancel any inspection that in his sole opinion may compromise the safety of the setup or the Fireworks Display or the setup schedule. The PEI technician may at any time temporarily discontinue the discharge of fireworks for any reason.

7. CREDITS: As a material inducement to PEI agreeing to enter into this Agreement, SPONSOR shall give PEI program credit as sole fireworks supplier and producer in all press releases, advertising, and any other program announcements, printed or otherwise.

8. INABILITY to DELIVER or CONDUCT FIREWORKS DISPLAY/FORCE MAJEURE. PEI shall not incur any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its reasonable control including without limitation legal or regulatory restrictions, labor disputes of whatever nature, power loss, telecommunications failure, acts of God, or any other cause beyond its reasonable control. In the event PEI is unable to deliver the Fireworks Display on the Delivery Date this contract will remain in full force and effect and the Fireworks Display will be performed on the Alternate Date or if no Alternate Date is stated then on such other date as may be agreed upon by the parties.

9. CONTRACT SUBJECT TO GOVERNMENT REGULATION: This Agreement and PEI'S obligations hereunder are subject to all applicable Federal, State, Municipal and local laws, rules, ordinances, regulations and codes, now or hereinafter in effect, and to the conditions and limitations contained in the permits required to be obtained by SPONSOR prior to the Fireworks Display. In the event any Federal, State, municipal or local law, rule, regulation or ordinance shall be enacted which in any way prohibits, limits or restricts the sale, performance or operation of the exhibition of the Fireworks Display or in the event SPONSOR'S permit in any way limits or restricts the sale, performance or operation of said exhibition, PEI shall limit or restrict its performance or the Fireworks Display so as to comply with such law, rule, regulation or ordinance or limitation or restriction of SPONSOR'S permit. SPONSOR acknowledges that any such limit or restriction placed on the performance or operation of the Fireworks Display shall in no way result in or entitle SPONSOR to a reduction or abatement in the full contract price.

10. GENERAL PROVISIONS:

- a) This agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and may not be changed, modified, renewed or extended except by a written agreement, signed by both parties. SPONSOR acknowledges and agrees that PEI has not made any representations or warranties except those specifically set forth in this contract.

Should any clause, section, or part of this agreement be held or declared to be void or illegal for any reason, all other clauses, sections, or parts of this agreement which can be effected without such illegal clause, section, or part shall nevertheless continue in full force and effect.

- b) SPONSOR is responsible for removal of all debris associated with the Fireworks Display.
- c) PEI is not responsible for procuring barges, towing or dockage. Should SPONSOR require these services, PEI may, upon written request, assist SPONSOR in the location and contracting of such services. All additional costs such as towing, dockage, anchoring, etc. are the responsibility of the SPONSOR. It is specifically understood and agreed that PEI shall not be responsible in any way if any barge, towing, dockage, or any other company with which SPONSOR has contracted for service fails to perform and the display cannot proceed as planned.
- d) SPONSOR is responsible for any additional marine costs, FDNY permit fees, Sea Tow, etc.
- e) In the event SPONSOR cancels the Fireworks Display the full contract price as set forth herein shall become immediately due and payable. SPONSOR will have up to 30 days from the date of cancellation to request PEI to reschedule the Fireworks Display. Fireworks Display shall take place no later than six months from originally scheduled Fireworks Display
- f) PEI agrees to procure liability insurance on behalf of SPONSOR, and to indemnify SPONSOR, to the extent thereof, for all claims arising out of PEI'S negligence in excess of \$2,500.00 (Two Thousand Five Hundred Dollars).

Please Initial each page.

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Sponsor


PEI

11. SPONSOR'S DEFAULT: In the event SPONSOR shall fail to pay any sum when due under the terms of this contract, SPONSOR shall pay, in addition to such amount, interest at the rate of 1.5% per month on the unpaid amount from the original due date. SPONSOR does further agree that it shall pay PEI reasonable attorney fees and other costs in the event PEI shall commence any proceeding (Arbitration or any other proceeding) or incur fees to compel SPONSOR to pay any sums due hereunder or otherwise as a result of SPONSOR'S default of any of the terms and provisions herein contained.

12. LIQUIDATED DAMAGES: It is agreed by and between the parties hereto that in the event of SPONSOR'S default hereunder PEI shall be entitled to receive the entire contract price and same shall be considered "liquidated damages" based upon an understanding between the parties hereto that PEI will have suffered damages due to Sponsor's default. The damages suffered by PEI as a result of Sponsor's default will be substantial, but incapable of determination with mathematical precision. It is, therefore, agreed by the parties that the amount due PEI is not a penalty, but rather a mutually beneficial and reasonable estimate of the damages suffered by PEI.

13. SUBSTITUTIONS: PEI shall have the right, at its discretion, to substitute any fireworks it deems necessary provided same does not detract from the aesthetic value or quality of the program. This includes, but is not limited to, shell sizes, quantities, types and brand names. Any substitutions shall in no way result in or entitle SPONSOR to a reduction or abatement of the full contract price.

14. ARBITRATION: Any and all disputes, differences, or any other type of controversy arising out of or in relation to this Agreement, including as to the meaning or interpretation of any provision hereof, shall be resolved by arbitration in Nassau County, New York, pursuant to the commercial rules then obtaining of the American Arbitration Association. Only one (1) arbitrator shall be required, and the arbitrator may award attorneys' fees. The award of the arbitrator shall be final and binding and judgment may be entered thereon in any court of competent jurisdiction. The arbitrator sitting in such controversy shall have no power to alter or modify any express provision of this Agreement, nor to make any award which by its terms effects any such alteration or modification. Either party may seek from the court of competent jurisdiction any provisional remedy in aid of arbitration, including, but not limited to, injunction, attachment or replevin, pending the determination of any claim or controversy in arbitration. Any and all disputes, controversies, actions, claims, causes of action, or proceedings arising under, out of, or in connection with or relating to the terms of this contract, and any amendment thereof, commenced by, between or against any of the parties of this contract shall be deemed to have arisen from a transaction of business in New York, and shall be resolved by application of the substantive laws of the State of New York.

15. BINDING EFFECT: This contract shall not be binding on PEI until executed by SPONSOR and PEI and PEI is in receipt of the downpayment required hereunder.

16. EXHIBITION PLANNER CHECKLIST (EPC):

- a. **FIREWORKS DISPLAY PERMIT:** (Note: The actual start and stop time of the display will be determined by the governmental authorities having jurisdiction over the display).

SPONSOR'S RESPONSIBILITY: It is Sponsor's responsibility to call your State, City, County, Town, Borough, or Village Fire Marshal or other appropriate authority to file for and obtain the Fireworks Display permit. Upon receipt of your permit, you must send the permit to our office for our records no later than 30 days prior to your display date. Failure to do so could seriously jeopardize your display. You must obtain information on:

1. Filing application deadline and fees.
2. Local and state requirements for fireworks license for transportation and/or display. If a license is required, fax all forms immediately to us.
3. Fire Marshal's requirements for security of fireworks truck upon arrival, and the security of the fire zone before and during the display.
4. Federal regulations require that we carry an accurate route plan to the display site. Fax us a copy of the route instructions from the nearest US Interstate to the display area (approved by the fire marshal or other authority, if necessary).
5. Notify FAA on day of your display, according to the instructions in the FAA Letter of Approval, which will be forwarded to you prior to your display.

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Sponsor


PEI

b. COAST GUARD PERMITS (where required):

1. If the fireworks are to be displayed on or near the water, the following may be required: (Requests for permits must be filed at least 60 days prior to the Display Date (135 days prior for 4th of July events).
2. Coast Guard Application and Permit to Handle Hazardous Materials.
3. Coast Guard Marine Event Permit.

c. SPONSOR RESPONSIBILITIES AND EXPENSES (The following services need to be provided and paid for by the SPONSOR in addition to the Fireworks Display Price.

- 1) **SECURITY: MUST BE PROVIDED FOR FIREWORKS EQUIPMENT AND TO MAINTAIN THE FIRE SAFETY ZONE AT STAGING AREA FROM FIREWORKS TRUCK(S) ARRIVAL, UNTIL COMPLETION AND CLEAN-UP OF DISPLAY AREA AND TRUCK DEPARTURE.**
- 2) Sand: Please provide 0 yards of sand.
- 3) Laborer(s): 0 laborers to arrive at fireworks site on _____ (They will not handle fireworks).
- 4) Hotel Room(s): 0 hotel rooms.
- 5) Vehicle(s): Four-wheel drive vehicle for movement on sand: Yes XX No _____
- 6) If you have ordered a set piece(s), you are responsible for erecting the scaffolding and it must be ready when the crew arrives

d. RADIO SIMULCAST EXPENSES (if applicable):

- 1) Set up and staff a fireworks simulcast command center on site by 1:00 PM on the display date.
- 2) Provide broadcast relay to PEI Firing Center. Call our office for details.
- 3) Speaker system for VIP viewing stands.

e. INSURANCE: Please list below the additional insured, as they should appear on the insurance certificate:

1.	3.
2.	4.

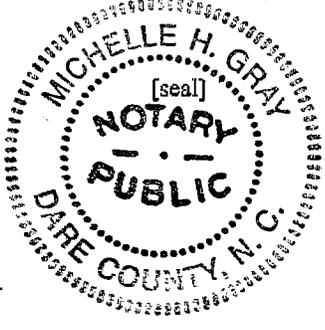
Name of Sponsor	Town of Nags Head	Date	Pyro Engineering/Signature	Date
By: <i>Charles L. Cameron</i>		3-16-09	<i>Barbara Howard</i>	3/24/09
Signed by on behalf of Sponsor (Signature)			Print Name	<i>Barbara J Howard</i>
Charles L. Cameron			Title	<i>Logistics manager</i>
Title of authorized representative of Sponsor				

Town Manager

State of NC
County of Dare

On the 16 day of March, in the year 2009 before me, the undersigned, a Notary Public in and for said State, personally appeared Charles L. Cameron, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Michelle H. Gray
Signature and Office of individual taking acknowledgment
3/27/10



THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET & FISCAL CONTROL ACT

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Sponsor

PEI
PEI

MULTIPLE YEAR FIREWORKS DISPLAY AGREEMENT

Agreement is made on this 10th day of March, 2009 between Pyro Engineering, Inc. whose address is 400 Broadhollow Road, Suite 3, Farmingdale, NY 11735 hereinafter referred to as PEI and Town of Nags Head hereinafter referred to as SPONSOR.

The parties hereto further mutually agree as follows:

1. **DURATION OF COMMITMENT:** In the event that SPONSOR holds, sponsors, or hosts a fireworks display(s) during the term of this agreement, SPONSOR agrees to contract PEI to produce said display(s) during the entire contract period. This contract covers the period of the calendar year (s) 2010 through 2012 inclusive.

2. **PRICING:** In consideration for the commitment stated herein, prices quoted shall be firm for the initial year of the contract term. Thereafter, all extensions shall be subject to a \$500.00 annual cost of living adjustment.

3. **GENERAL PROVISIONS:** There is a minimum budget requirement of \$18,000 (Eighteen Thousand Dollars) for July 4th of any given year.

4. INCORPORATION BY REFERENCE:

a) The parties hereto expressly consent and agree that the Fireworks Display Agreement, of even date herewith is incorporated herein by reference as if fully set forth herein.

b) This constitutes the entire Agreement between the parties relating to the subject matter hereof, and may not be changed, modified, renewed or extended except by a written agreement, signed by the party against whom enforcement of change, modification, renewal or extension is sought. The parties of this Agreement expressly consent and agree to incorporate each and every provision of all Fireworks Sales Agreements executed by the parties during the term of this Agreement.

Should any clause, section or part of this agreement be held or declared void or illegal for any reason, all other clauses, sections, or parts of this agreement which can be effected without such illegal clauses, sections, or part shall nevertheless continue to full force and effect.

PEI reserves the right to make substitutions deemed necessary of any fireworks with equivalent fireworks, as permitted by law.

Name of Sponsor	Town of Nags Head	Date	Pyro Engineering Signature	Date
By	<i>Charles L. Cameron</i>	3-16-09	<i>Barbara J Howard</i>	3/24/09
Signed by on behalf of Sponsor (Signature)			Print Name	<i>Barbara J Howard</i>
Charles L. Cameron, Town Manager			Title	<i>Logistics Manager</i>
Title of authorized representative of Sponsor				

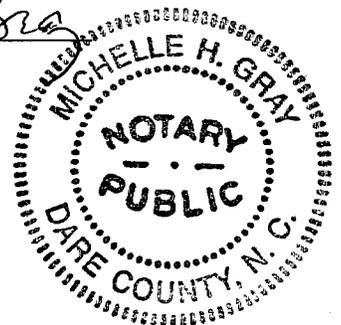
State of: North Carolina County of: Dare

On this 16 day of March, 2009, before me personally came Charles L. Cameron to me known to be the individual described in and who executed the foregoing Multiple Year Fireworks Display Agreement, and acknowledges that he/she executed said Agreement.

Notary: Michelle H. Gray Date: 3/16/2009

Commission Expires: 9/29/2010

Signature: *Michelle H Gray*



Please Initial each page.

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Sponsor

PEI
PEI

PYRO ENGINEERING, INC.

DISPLAY SITE PLAN QUESTIONNAIRE

All items listed below are subject to all governing Federal, State, Municipal and local laws, rules, ordinances, regulations and codes, now or hereinafter in effect, and to the conditions and limitations contained in the permits required or to be obtained by Sponsor.

SPONSOR: Town of Nags Head

Display Date 7/4/2009 **Rain Date:** 7/5/2009 **Budget:** \$18,000.00

Display Location: Nags Head Fishing Pier, Nags Head, NC 27959

Time of Display: 9:25 PM (Note: The actual start and stop time of the display will be determined by the governmental authorities having jurisdiction over the display).

IMPORTANT: PLEASE PROVIDE A SITE PLAN FOR YOUR EVENT LOCATION, INDICATING WITH AN X THE EXACT SPOT WHERE FIREWORKS ARE TO BE SET-UP.

Butch Osborne 252-305-9325

Local Fire Marshal: _____ **Telephone No:** _____

Butch Osborne **Pager No:** 252-305-9325 (cell)

Crew Contact Person: _____ **Telephone No:** _____

Ralph Barile **Pager No:** 252-305-6062 (cell)

The Following information is necessary in order for us to provide your community or organization with a display that conforms with fireworks safety regulations and for the issuance of your insurance certificate.

DISTANCES, IN FEET, FROM THE FIRING AREA TO THE FOLLOWING: FEET

- SPECTATORS, AUDIENCE OR PARKED CARS.....
- OCCUPIED BUILDINGS (HOMES, APARTMENTS, ETC.).....
- PUBLIC BUILDINGS (SCHOOLS, HOSPITALS, CHURCHES, ETC.).....
- TEMPORARY EVENT SET-UPS (CONCESSIONS, TENTS, ETC.).....
- MAIN PARKING AREAS.....
- HIGHWAYS OR ROADS.....
- OVERHEAD OBJECTS (POWER LINES, LIGHT POLES, TREES, ETC.....
- FUEL STORAGE.....

PLEASE PROVIDE DIRECTIONS FROM NEAREST INTERSTATE TO DISPLAY SITE. A MAP WOULD ALSO BE HELPFUL.

Local Motels/Hotels: _____ **Telephone Nos.** _____

Signature _____ **Title:** _____

Date _____

Please initial each page.

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R.C.
Sponsor

[Signature]
PEI