Council Meeting of August 27, 2014

Agenda Item No. 6b

REQUEST FOR COUNCIL ACTION

SUBJECT: 2014 West Jordan Demolition Derby

SUMMARY: Approve payment of $32,000.00 to Stirrin' Dirt Racing for the production of the 2014 West Jordan Demolition Derby.

FISCAL IMPACT: The payment total $32,000.00, which would be paid from the motorsports account.

STAFF RECOMMENDATION:

Staff has concluded that the request is appropriate given city council approval to obtain a derby contractor. Staff recommends approval.

MOTION RECOMMENDED:

"I move to approve the payment of $32,000.00 to Stirrin' Dirt Racing for the production of the 2014 West Jordan Demolition Derby."

Roll Call vote required

Prepared by:

Julie Brown
Events Coordinator

Reviewed by:

Bryce Haderlie
Interim City Manager

Reviewed by:

Darien Alcorn
Deputy City Attorney

BACKGROUND DISCUSSION:

In 2012 the committee/ city hired a contractor from California to produce and run the back end of the derby. We learned after the show that local drivers were offended by the out of state contractor and boycotted the show.

In April of 2012 the committee asked council for additional funds to support using a contractor. The purse will remain the same as the last six years at $15,000.

In researching local derbies there is only one business – Stirrin' Dirt Racing that is available for hire to run a derby. We found a handful of people who produce local derbies but no one would return information due to the insurance requirements.

Stirrin' Dirt will provide the following:

- Promotion and production of a demolition derby - $10,000
- Announcer - $1,000
- Radio buy approved by staff at a lower cost per point, all radio production - $6,000
- Payout of purse and all tax forms - $15,000

AGREEMENT FOR SERVICES

City of West Jordan and

STIRRIN' DIRT RACING, LLC

THIS AGREEMENT FOR SERVICES (the "Agreement") is made this _____ day of _____, 2014 by and between the City of West Jordan, a municipal corporation (hereinafter referred to as "City"), and Stirrin' Dirt Racing, L.L.C. a Utah limited liability company (hereinafter referred to as "'Contractor").

WHEREAS, the City desires to obtain services from Contractor, and Contractor desires to provide these services to City.

NOW THEREFORE, City and Contractor agree as follows:

1. Retention as Contractor. City hereby retains Contractor, and Contractor hereby accepts such engagement, to perform the services described in Paragraph 2 herein. Contractor warrants it has the qualifications, experience and facilities to properly perform these services.

2. Description of Services.

Contractor shall stage and produce a Demolition Derby to be held Saturday September 6, 2014 (the "Event"), and shall perform the following services, at Contractor's sole expense:

a. Supply trophies for winners
b. Purse Distribution
c. Supplies and equipment to inspect all contestant cars
d. Supplies and equipment required to run the event safely and efficiently
e. Derby Officials
f. Announcer
g. Bring in non-competing sponsors

3. Compensation and Payment. The City of West Jordan will pay to Contractor $15,000.00 purse, announcer fee of $1,000 and radio advertising and production $6,000 one week prior to the event and $10,000.00 production fee the night of the event after the grand finale. For informational purposes, prior to receiving payment, Contractor shall provide City with a detailed written description of work performed and a detailed description of costs and expenses.

4. Extra Services. City shall not pay Contractor for any services, costs or expenses not specifically included in this Agreement unless expressly authorized, in writing, as extra services. Unless the City and Contractor have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist.

5. Services by the City. The City shall perform the following services, at City's sole expense:

a. Provide Arena, including clean up, EMS, security, and ticket sales
b. Assist contractor in setting up barriers in arena for derby area

c. Provide and operate Sound System
d. Provide Tractor/fork lift for the Arena and operator to remove immobile vehicles
e. Hospitality for Stirrin' Dirt crew and staff (up to 18 people)
f. Set up/tear down barriers and arena to contractor specifications for safety and show quality
g. Provide water truck and arena groomer

6. Assignment. This Agreement is not assignable by Contractor, without the City's prior consent in writing.

7. Hold Harmless and Insurance.

A. Indemnity.

Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and volunteers harmless from all claims, lawsuits, demands, judgments or liability including, but not limited to, general liability, automobile and professional errors and omissions liability, arising out of, directly or indirectly, the negligent acts, errors and omissions of the Contractor in performing the services described.

B. Contractor's Insurance.

Contractor shall, at Contractor's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry insurance of the types and amounts indicated below.

Type of Insurance	**Limits**	
Commercial General Liability	Per Occurrence General Aggregate	$1,000,000.00 $2,000,000.00
Damage to Rented Premises	Per Occurrence	$100,000.00
Spectator Liability Insurance	Combined single limit for bodily injury or death	$1,000,000.00
Workers' Compensation		Statutory

Except for Workers' Compensation, said insurance shall include as additional insured the following: The City of West Jordan, Utah, its officers, agents, employees and volunteers.

Contractor shall procure worker's compensation coverage, as required by the statutes of Utah, for its employees during the performances and during the times between performances.

All insurance policies shall be issued by a financially responsible company or companies authorized to do business in the State of Utah which are carry a Moody's rating of not less than A Within fourteen (14) calendar days after execution of this Agreement, Contractor shall furnish to City [Attn: West Jordan City Clerk, 8000 South Redwood Road, West Jordan, Utah 84088] an insurance certificate or other evidence of the required insurance.

8. Relationship of Parties and No Third Party Rights. This Agreement does not create any joint venture partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties. The contractual relationship between the City and Contractor out of this Agreement is one of independent contractor and not agency. It is understood that Contractor shall not be deemed an employee of the City, and Contractor has no authority to enter into legally

binding obligations on behalf of the City. It is specifically understood by the parties that: (a) the City has no interest in or responsibilities for or duty to third parties as a result of this Agreement, (b) Contractor shall have full power and authority over services performed subject to the obligations of Contractor set forth in this Agreement.

9. Expiration and Termination. This contract shall expire on September 30, 2014. This contract may be terminated, with cause, by either party in advance of the specified termination date, upon written notice being given to the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. In the event that the City terminates the contract for cause, the City shall not be obligated to pay, and Contractor shall not be entitled to receive, any compensation for any services performed or costs incurred prior to such termination. This contract may be terminated by the City without cause, in advance of the specified expiration date, upon 30 days written notice. In the event that the City terminates for convenience, Contractor shall cease performing services, and City shall pay to Contractor compensation for services actually performed and documented or costs actually incurred and documented prior to termination.

10. Acceptance of Final Payment Constitutes Release. The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release to City from all claims and liabilities for compensation to, or claimed by, Contractor for anything done, finished or relating to the Contractor's work or services. Acceptance of payment shall be any negotiation of the City's check.

11. Waiver: Remedies Cumulative. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

12. Assignment. This Agreement shall not be assignable except at the written consent of the parties, and if so assigned, shall be binding upon the successors and assigns of the parties.

13. Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

14. Integration. Except for Contractor's written proposals for obtaining this Agreement, this Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.

15. Future Appropriations. This Agreement shall not be construed in any manner to bind the

legislative or administrative discretion of the City or its future budget appropriations. The parties recognize that this contract extends beyond the current fiscal year. Where future appropriations are unavailable or insufficient, the City may terminate this Agreement.

16. Construction of Language of Agreement. The provisions of this Agreement shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

17. Mitigation of Damages. In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

18. Captions. The captions or headings in the Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

19. Authorization. Each party has expressly authorized the execution of this Agreement on its behalf and binds said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint ventures, insurance carriers and any others who may claim through it to this Agreement.

20. Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. The Contractor represents that it has not: (a) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than as exempted in the City's Conflict of Interest ordinance; or (c) knowingly influenced (and hereby promises that it will not knowingly influence) a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the City's Conflict of Interest ordinance.

21. Equal Opportunity Clause. The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place.

22. Notices. Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in this United States mail, postage prepaid, or by facsimile with proof of transmission, and addressed as follows:

TO CITY: CITY OF WEST JORDAN
City Clerk
8000 South Redwood Road
West Jordan, Utah 84088

With a copy to the City Attorney
Jeff Robinson, City Attorney
8000 South Redwood Road, 3rd, Floor
West Jordan, Utah 84088

TO CONTRACTOR: STIRRIN' DIRT RACING
4670 South 4650 West
West Haven, Utah 84401

25. Additional Terms/Conditions. Additional terms and conditions of this agreement are:

NONE

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

CITY OF WEST JORDAN

_____
Mayor Kim V. Rolfe

ATTEST:

_____
Melanie S. Briggs, City Clerk/Recorder

CONTRACTOR

By:_____
Its: _____

STATE OF_____)
:SS
COUNTY OF_____)

On this _____ day of _____, 2014, personally appeared before me, _____ _____, who being by me duly sworn did say that he/she is the _____of Stirrin' Dirt Racing, a Utah limited liability company, and that the foregoing instrument was signed in behalf of said company by authority, and he/she acknowledged to me that said company executed the same.

_____
NOTARY PUBLIC

My Commission Expires:

Residing in _____County, _____