

Meeting Date: April 14, 2015

Agenda Item

5

REQUESTED COMMISSION ACTION:

<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Ordinance	<input checked="" type="checkbox"/> Resolution	<input type="checkbox"/> Consideration/ Discussion	<input type="checkbox"/> Presentation
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SHORT TITLE A resolution of the City Commission of the City of Pompano Beach, approving and authorizing the proper city officials to execute a service contract between the City of Pompano Beach and Pyrotecnico Fireworks, Inc. for a 4th of July Fireworks Display.

Fiscal Impact: Fireworks Display \$36,750 – Special Events Account (001-9910-599-82-06)

Summary of Purpose and Why:

Service Contract between the City of Pompano Beach and Pyrotecnico of Florida, LLC for the 2015 Fourth of July Fireworks Display. The fireworks display will take place from the city's fishing pier at 9 p.m. on July 4th with a rain date of July 5. The cost of the fireworks display is \$36,750.

- (1) Origin of request for this action: Staff initiated
- (2) Primary staff contact: Mark Beaudreau, Recreation Program Administrator Ext. 4191
- (3) Expiration of contract, if applicable: Term: July 2 – July 5, 2015
- (4) Fiscal impact and source of funding: Special Events Funding Account 001-9910-599-82-06 - \$36,750.00

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Parks & Recreation	<u>3-25-15</u>	<u>Approve</u>	<u>[Signature]</u>
City Attorney	<u>3/26/15</u>	<u>—</u>	<u>[Signature]</u>
Risk Management	<u>3-29-15</u>	<u>Approve</u>	<u>[Signature]</u>

[Signature]

City Manager

[Signature]

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>
<u>Workshop</u>		
1 st Reading	1 st Reading	Results:
2 nd Reading		Results:



MEMORANDUM

Parks, Recreation & Cultural Arts

Memorandum 14-A066

DATE: March 24, 2015

TO: Dennis W. Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator

SUBJECT: Agenda Item – Service Contract with Pyrotecnico of Florida, LLC
4th of July Fireworks Display

Please place the attached Service Contract between the City and Pyrotecnico Fireworks, Inc. on the April 14, City Commission Agenda. The Service Contract is for the 4th of July Fireworks Display to be held on July 4th at the City's Municipal Pier. The price of the fireworks show is \$35,750, the show will start at 9 p.m. and last approximately 20 minutes. The Parks, Recreation & Cultural Arts Department contracted with the same contractor last year for the 4th of July Fireworks Display and would like to continue with their services for the 2015 fireworks display. The contractor has a proven performance record along with references. The Parks, Recreation & Cultural Arts Department recommends the City move forward with entering into the Service Contract for the 2015 Fireworks Display.

If you have any questions or need additional information please call me at 954-786-4191.

afh



City Attorney's Communication #2015-748

March 23, 2015

TO: Mark A. Beaudreau, Recreation Programs Administrator
FROM: Gordon B. Linn, City Attorney
RE: Resolution – Service Contract for a 4th of July Fireworks Display

As requested in your e-mail dated March 23, 2015, the following form of resolution, relative to the above-referenced matter, has been revised and is attached:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SERVICE CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND PYROTECNICO FIREWORKS, INC. FOR A 4TH OF JULY FIREWORKS DISPLAY; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.


GORDON B. LINN

/jrm
l:cor/recr/2015-748

Attachment

RESOLUTION NO. 2015-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SERVICE CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND PYROTECNICO FIREWORKS, INC. FOR A 4TH OF JULY FIREWORKS DISPLAY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Service Contract between the City of Pompano Beach and Pyrotecnico Fireworks, Inc. for a 4th of July Fireworks Display, a copy of which contract is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Service Contract between the City of Pompano Beach and Pyrotecnico Fireworks, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

SERVICE CONTRACT

Fireworks Display – July 4, 2015

THIS AGREEMENT is made and entered into this _____ day of _____ 2015, by the CITY OF POMPANO BEACH, hereinafter referred to as “City” and PYROTECNICO FIREWORKS, INC., a Pennsylvania Corporation registered to do business in the State of Florida, hereinafter referred to as “Contractor.”

WHEREAS, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

WHEREAS, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement; Exhibit “A” – Scope of Work; Exhibit “B” Insurance Requirements.

2. Purpose. City hereby contracts with Contractor to provide a Fireworks Display from the City’s fishing pier at 9 p.m. on Saturday, July 4, 2015, upon the terms and conditions herein set forth. Set-up shall begin on Thursday, July 2, 2015 and continue through Saturday, July 4, 2015. The Fireworks Display will take place at 9 p.m. on Saturday, July 4, 2015, for a period of approximately 20 minutes. The clean-up and removal of all major debris will be completed by 2 a.m. on Sunday, July 5, 2015.

3. Rain Date. In the event of rain or other inclement weather that makes the performance of this contract on July 4 untenable, the parties agree that the Fireworks Display shall be rescheduled for the designated “Rain Date” of Sunday, July 5, 2015, with corresponding time periods for set up and clean up as provided for above in Paragraph 2. In the event that weather continues to prevent performance of the Fireworks Display on Sunday, July 5, 2015, the parties will mutually agree upon a date for the Fireworks Display on or before Wednesday, July 8, 2015, with corresponding time periods for set-up and clean-up as provided for in Paragraph 2.

4. Time Of The Essence. Time is of the essence in the performance of all commitments under this Contract and shall not be extended because of unwarranted delays caused by the Contractor.

5. Scope of Work. Contractor will provide the services to be rendered as set forth in Exhibit “A” (Scope of Work), attached hereto and by reference incorporated herein and made a part hereof.

6. Term of Contract. The term of this Agreement shall be July 2 – July 5, 2015. Contractor shall commence set-up for Fireworks Display on Thursday, July 2, Fireworks Display 9 p.m. on Saturday, July 4. Services will be completed upon execution of Fireworks Display for the City and continue until clean-up is completed at 2 a.m. on July 5 unless a Rain Date is necessary, in which case the contract term shall be extended accordingly. The City will provide

two (2) golf carts, trailers, and personnel to shuttle equipment for set-up of display material and equipment.

7. Renewal. In the event City determines the Contractor to be in full compliance with this contract and Contractor's performance to be satisfactory, then City shall have the option to renew this contract for the 2016 fireworks display. City will provide notification within sixty (60) days of July 5, 2015.

8. Maximum Obligation. City agrees to pay Contractor in consideration for its services described herein. It is the intention of the parties hereby to insure that unless otherwise directed by the City in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract.

9. Price Formula. City agrees to pay Contractor for performance of the services set forth in this Agreement as follows:

Payment of a Fixed Fee of \$36,750.00 – Payment due fifteen (15) days after completion of the Fireworks Display.

10. Invoices. Contractor shall submit the invoices to City's Parks, Recreation and Cultural Arts Department, 1801 NE 6 Street, Pompano Beach, FL 33060 within five (5) days of the event.

11. Payment. All payments by the City shall be made after the service has been provided. All invoices shall be submitted to the City for approval and payment will be issued within ten (10) days of submittal.

12. Default and Disputed Work.

A. If either party believes in good faith that the other is in default of this Agreement, the party shall provide in a written notice to the other a clear and reasonable explanation as to the alleged default and the requested remedy of said default. Said written notice shall be provided in accordance with Section 13, below.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days from the date of the request to cure said default.

C. If the party receiving written notice of default provided written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days, the parties shall agree meet in an effort to reach an amicable resolution. If none can be reached, the parties shall agree upon a third party mediator to whom the facts of the dispute shall be presented and who shall make a determination as to the dispute.

13. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below. Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the

places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

If to Contractor: Pyrotecnico Fireworks, Inc.
Christopher Liberatore
P.O. Box 149
New Castle, PA 16103

If to City: City of Pompano Beach
Recreation Program Administrator
Mark Beaudreau
1801 NE 6 Street
Pompano Beach, Florida 33060

14. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in the carrying out of the work without undue delay.

15. Termination/Cancellation.

A. If City cancels this contract without cause, liquidated damages for such cancellation shall be paid by City to Contractor as follows:

1. In the event the Fireworks Display is cancelled more than thirty (30) days before the date scheduled for the Fireworks Display, twenty-five percent (25%) of the amount of the contract price;

2. In the event that the Fireworks display is cancelled less than 30 days before the date scheduled for the Fireworks Display, seventy-five percent (75%) of the contract price.

B. In the event the City chooses to terminate this contract as provided for in Section 15.A above, it shall do so by written notice via certified mail address to: Pyrotecnico, PO Box 149, New Castle, PA 16103. Notice shall be effective upon receipt of said written notice by Contractor.

C. In the event of inclement weather or of any of the circumstances provided for in Paragraph 16 below which prevent the performance of the Fireworks Display on July 4 or on any Rain Date and which occur within seven (7) days of the scheduled event or Rain Dates, Contractor shall be entitled to twenty-five (25%) of the amount of the contract price. In the event of any such circumstances prior to seven (7) days before the scheduled event, the parties hereto release one another from any and all obligations and responsibilities contained herein. .

16. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

17. Insurance. Contractor shall not begin any work until Contractor has obtained the required insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B" attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days notice to City.

18. Indemnity. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the contract.

19. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.

20. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

21. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

22. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

23. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

24. Mutual Cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

25. Governing Law. This Agreement has been and shall be construed as having been made and delivered within the State of Florida and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

26. Waiver. Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

27. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

28. Headings. The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

29. Severability. Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions here in contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the City by reason of entering into this contract, except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known _____ to _____ me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“CONTRACTOR”:

Witnesses:

PYROTECNICO FIREWORKS, INC.
a Foreign Profit Corporation

[Signature]

By: Lynn Ann Hamed

Print Name: LYNN ANN HAMED

Title: CORP SECY.

[Signature]

Business License No. _____

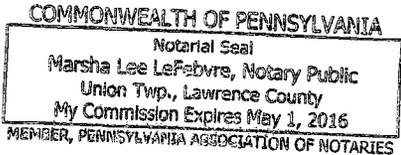
STATE OF ~~FLORIDA~~ Pennsylvania
COUNTY OF York

The foregoing instrument was acknowledged before me this 24th day of March, 2015, by Lynn Ann Hamed as Corp Secy of PYROTECNICO FIREWORKS, INC., a Foreign Profit Corporation on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

Marsha Lee Lefebvre
NOTARY PUBLIC, STATE OF ~~FLORIDA~~ Pennsylvania

MARSHA Lee Lefebvre
(Name of Acknowledger Typed, Printed or Stamped)



1341759
Commission Number

**EXHIBIT A
SCOPE OF WORK**

**Fireworks Display – July 4, 2015 – 9 p.m.
(Rain Date: July 5, 2015 – 9 p.m.)
City of Pompano Beach Fishing Pier**

The Fireworks Display presentation includes:

- All necessary insurance to include 10 million dollar general liability insurance, 10 million in commercial transportation insurance, and state worker's compensation.
- Pyrotecnico trained technicians to produce the display.
- All transportation and delivery costs. Transportation provided by Pyrotecnico commercially licensed drivers.
- All necessary safety precautions to provide a safe and spectacular display, assistance with local and state firework display permits.
- Highly choreographed display design.
- The widest variety of top quality shell and special effects from around the globe that includes Pyrotecnico's own American products.

Opening Presentation:

- The Opening Presentation will start display off “with a bang.” A “mini-finale” will excite the crowd and get them energized for a great show.

- 40 3-inch Titanium Salute Shells
12 4-inch Assorted Color Changing Star Shells
10 5-inch Assorted Color Changing Star Shells
62 total Opening Shells

Body:

- The majority of the display will be fired during the Body Presentation. It will have a balanced pace with constant action. Radiant color combinations like Violet & Lemon, Aqua & Pink, and the always treasured Red, White, and Blue. Amazing effects such as Crossettes, Twitter Glittering, Rings, and color changing chrysanthemums will be mixed in to illuminate the skies!

- 90 2.5-inch Assorted Aerial Display Shells
Note: Above shells will be individually fired or tied in combination flights of two, three, five or ten shells per flight
120 3-inch Assorted Aerial Display Shells
Note: Above shells will be individually fired or tied in combination flights of two, three, five or ten shells per flight
420 4-inch Assorted Aerial Display Shells
Note: Above shells will be individually fired or tied in combination flights of two, three or six shells per flight
145 5-inch Assorted Aerial Display Shells

Note: Above shells will be individually fired or tied in combination flights of two, three or five shells per flight.

775 Total Body Shells

Special Effect Barrages:

- Special effect barrages will enhance the display in ways you haven't seen before. The innovative firings and creative effects matched with imaginative color combinations will give your audience a one-of-a-kind presentation. Wave Willows, Red & Green Falling Leaves, Silver Whirl with Green Glittering Mines, and Lemon & Purple "X" Crossettes are just some of the effects that have brought crowds to their feet with their jaws dropping in amazement.
- 10 49 Shot Assorted Angled Barrages
5 49 Shot Assorted Straight Barrages
8 100 Shot Assorted Angled Barrages
5 100 Shot Assorted Straight Barrages
3 130 Shot Assorted Angled Barrages
3 240 Shot Assorted Angled Barrages
3 300 Shot Assorted Angled Barrages
4,045 Total Barrage Shots

Grand Finale Presentation:

- The Grand Finale Presentation is the ultimate crowd pleaser and most exhilarating part of the display. When the sky erupts with Multi-Color Peonies and Thunderous Salutes, there is no better visual experience. They will end your event in style and leave the audience wanting more!
- 3 2-inch 36 Shot Finale Barrages (108)
260 3-inch Assorted Color Star Shells
120 3-inch Titanium Salutes
48 4-inch Assorted Color Star Shells
30 5-inch Assorted Color Star Shells
566 Total Finale Shells

Pyrotecnico
Vitale Family Fireworks
Christopher Liberatore
Show Producer
954-657-8403 – office
954-401-2677 – cell
ciberatore@pyrotecnico.com

**EXHIBIT B
STANDARDIZED INSURANCE REQUIREMENTS
OF THE CITY OF POMPAÑO BEACH**

Insurance

The vendor/contractor shall not commence operations, labor, construction and/or installation of improvements to complete this project until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Management Division.

The following insurance coverage shall be required.

- A. Workers' Compensation Insurance for all its employees in accordance with the requirements of Florida Statute, Chapter 440. The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

- B. Public/General Liability & Auto Liability Insurance
 - 1) Naming the City of Pompano Beach as an additional insured in connection with the work being done under this contract.

 - 2) The types of insurance and minimum policy limits that are required are indicated by "XXXX" below.

LIMITS OF LIABILITY

Type of Insurance	Each occurrence	aggregate
PUBLIC/GENERAL LIABILITY		
XXXX Comprehensive Form		
XXXX Premises - operations	Bodily Injury \$1,000,000.	\$5,000,000.
XXXX Explosion & collapse hazard	Property Damage \$1,000,000.	\$5,000,000.
XXXX Underground hazard	-- or --	
XXXX Products (if items are sold)	Bodily Injury and	
XXXX Contractual insurance	Property Damage	
XXXX Liquor legal (if items are sold)	Combined..... \$1,000,000.	\$5,000,000.
XXXX Independent contractors		
XXXX Personal injury	Personal Injury \$1,000,000.	\$5,000,000.

AUTOMOBILE LIABILITY

XXXX	Comprehensive Form	Bodily Injury (each person/ each accident)	\$1,000,000.	\$4,000,000.
XXXX	Owned	Property Damage	\$1,000,000.	\$4,000,000.
XXXX	Hired	-- or -- Bodily Injury and		
XXXX	Non-owned	Property Damage combined	\$1,000,000.	\$4,000,000.

EXCESS LIABILITY

XXXX	Umbrella form	Bodily injury and Property damage		
XXXX	other than umbrella	Combined	\$5,000,000.	\$5,000,000.

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

Firm shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within five (5) days after notification of award of contract.

Mail certificate(s) to: City of Pompano Beach, Attention Risk Manager, P.O. Box 1300, Pompano Beach, Florida, 33061.