

CITY OF NORTH MIAMI
FIREWORKS SERVICES AGREEMENT
(ITQ No. 28-15-16)

THIS FIREWORKS SERVICES AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2016 between the **City of North Miami**, a Florida municipal corporation, located at 776 N.E. 125 Street, North Miami, FL 33161 (“City”), and **Zambelli Fireworks Manufacturing Company**, a foreign for-profit corporation registered and authorized to do business under the laws of the State of Florida, having its principal business office at 20 S. Mercer Street, New Castle, PA, 16103 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, the City of North Miami (“City”) desires to retain a professional fireworks provider for the purpose of performing Independence Day fireworks display scheduled for July 4, 2016, in celebration of our nation’s Independence Day; and for optional services relating to Christmas tree lighting event fireworks display on or about December 1, 2016 (collectively referred to herein as “Fireworks Display”); and

WHEREAS, on April 26, 2016, the City issued *Invitation to Quote No. 28-15-16* (“ITQ”) seeking the provision of Fireworks Display from qualified, insured and experienced firms in accordance with the terms, conditions and specifications contained in the ITQ (“Services”); and

WHEREAS, on May 9, 2016, the City received a response from Zambelli Fireworks Manufacturing Company (“Contractor”), containing terms and conditions most favorable to the City; and

WHEREAS, on May 24, 2016, the City administration prepared a Recommendation of Award selecting Contractor as currently possessing all necessary qualifications and expertise to perform the Services; and

WHEREAS, the City Manager finds the provision of Services by Contractor to be in the best interest of the City.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made a part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 City of North Miami *Invitation to Quote No. 28-15-16* dated April 26, 2016, attached hereto as “Composite Exhibit A”;

2.1.2 Contractor’s response to the ITQ dated May 9, 2016, attached hereto as “Composite Exhibit A”;

2.1.3 City’s Recommendation of Award dated May 24, 2016, attached hereto as “Composite Exhibit A”; and

2.1.4 Any additional documents which are required to be submitted by Contractor pursuant to Contract Documents.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager’s designee.

2.2.2 This Agreement.

2.2.3 Contractor’s response to ITQ.

ARTICE 3 – TERM

3.1 The Parties agree that the term of this Agreement shall be for a period of one (1) year with Services performed on July 4, 2016; and on or about December 1st 2016, at a time and venue to be determined by the City Manager.

ARTICE 4 – OPTION TO RENEW

4.1 The City Manager shall have two (2) options to renew this Agreement in writing, on a year-by-year basis commencing, subject to the availability and appropriation of funds. The insurance requirements for this Agreement will be subject to an annual review by the City’s Risk Manager.

ARTICLE 5 – COMPENSATION

5.1 Upon completion of the Fireworks Display for the 4th of July celebration, the City shall pay Contractor the amount not to exceed Seventeen Thousand Dollars (\$17,000.00), in accordance with the terms and conditions provided for in the Contract Documents.

5.2 Upon completion of the Fireworks Display for the Christmas tree lighting event fireworks display on or about December 1, 2016, the City shall pay Contractor the amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00), in accordance with the terms and conditions provided for in the Contract Documents.

5.3 The yearly amount for Services payable to Contractor by the City shall not exceed Nineteen Thousand Five Hundred Dollars (\$19, 500.00).

5.4 The amount of compensation herein indicated shall remain fixed throughout the Term period, including Option to Renew periods.

5.5 Payments to Contractor may be withheld by the City Manager in its reasonable discretion on account of: (i) claims filed against Contractor; (ii) damage to public or private property; and (iii) failure to perform Services in accordance with Contract Documents.

5.6 The City shall pay Contractor within thirty (30) days receipt of an invoice provided the City Manager has accepted the Contractor's performance of Services.

5.7 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

ARTICLE 6 – TIME FOR PERFORMANCE

6.1 Subject to authorized adjustments, and unless delayed by weather conditions, the presentation of Services shall commence at approximately 9:00 p.m., at a location to be determined by the City Manager. The City Manager reserves the right to advise Contractor that the City may cancel this Agreement upon not less than twenty-four hours notice should the National Weather Service forecast rain, inclement weather or other Force Majeure conditions that would make the Fireworks Display presentation impracticable, unadvisable, or cause it to be unduly delayed, as determined by the City Manager. In the event of such cancellation, the City shall pay the Contractor the total amount of one-thousand dollars (\$1,000.00), as provided in Section 14.4 below.

ARTICLE 7 – SCOPE OF SERVICES

7.1 Contractor agrees to provide for the benefit of the City, Services as specifically described, and under the special terms, schedules, and conditions set forth in the Contract Documents. Contractor shall furnish all labor, services, materials, supplies, transportation, equipment, insurance, and supervision necessary for the performance of Services. Contractor shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

7.2 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

7.3 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

ARTICLE 8 - INDEPENDENT CONTRACTOR

8.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering Services to the City under this Agreement.

ARTICLE 9 - CONFLICTS OF INTEREST

9.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

ARTICLE 10 - DEFAULT

10.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 11 -CITY'S TERMINATION RIGHTS

11.1 The City Manager shall have the right to terminate this Agreement, in his sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 12 - NOTICES

12.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Contractor: Zambelli Fireworks Manufacturing Co.
 Attn: Tony Sawdey, Project Manager
 1 West Camino Real Blvd., Suite 100
 Boca Raton, FL 33432

To City: City of North Miami
 Attn: City Manager
 776 N.E. 125th Street
 North Miami, Florida 33161

With an additional copy to: City of North Miami
Attn: City Attorney
776 N.E. 125th Street
North Miami, Florida 33161

12.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

12.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 13 - PUBLIC RECORDS

13.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes (2015), and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

ARTICLE 14 - INDEMNIFICATION

14.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of Services under this Agreement.

14.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

14.3 Contractor has visited the work site and is familiar with the local conditions under which the Services are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City Manager.

14.4 The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this Agreement, so that its liability will never exceed the agreed sum of One Thousand Dollars (\$1,000.00). Contractor expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any action or claim for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of One Thousand Dollars (\$1,000.00).

14.5 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2015). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 15 - INSURANCE

15.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured, with respect to the required coverage and the operations of the Contractor under this Agreement. Throughout the term of this Agreement, Contractor shall maintain in force, at its own expense, insurance as follows:

15.1.1 Workers' Compensation Insurance with statutory limits, with statutory limits, including coverage for employer's liability, as required by law.

15.1.2 General Liability with limits not less than Ten Million Dollars (\$10,000,000.00) for each occurrence for bodily injury and property damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. This coverage is required by the Contractor and any sub-contractor or anyone directly or indirectly employed by either of them. The City shall be named additional insured.

15.1.3. Comprehensive Automobile Liability Insurance with not less than one million dollars (\$1,000,000.00) for each occurrence combined single limit for bodily injury and property damage including coverage for owned, hire and non-owned vehicles as applicable. The Contractor and any of its approved sub-contractors shall take out and maintain this insurance coverage against claims for damages resulting from bodily injury, including wrongful death and property damage which may arise from the operations of any owned, hired or non-owned automobiles and/or equipment used in any capacity in connection with the carrying out of this Agreement. The City shall be named as an additional insured.

15.2 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida. The City may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and the insurance carrier.

15.3 Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Manager prior to the start of work under this Agreement. The City reserves the right to request additional documentation, financial or otherwise, prior to giving approval of the deductible or self-insured retention and prior to executing the Agreement. The City's Risk Manager, prior to the change taking effect, must approve any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy.

ARTICLE 16 – HEALTH, SAFETY AND ENVIRONMENTAL

16.1 Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of Services. Contractor shall comply, and shall secure

compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Services. Contractor agrees to utilize protective devices as required by applicable laws and regulations, and to ensure that such protective devices are properly used.

ARTICLE 17 - FORCE MAJEURE

17.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 18 - MISCELLANEOUS PROVISIONS

18.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

18.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

18.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

18.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

18.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

18.6 The City Manager reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

18.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

18.8 The Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive and nothing shall preclude the City Manager from engaging other firms to perform Services.

18.9 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

18.10 This Agreement shall be binding upon the Parties herein, their heirs, partners, executors, legal representatives, successors and assigns.

18.11 All other terms, conditions and requirements contained in Contractor's response to the ITQ, which have not been modified by this Agreement, shall remain in full force and effect.

18.12 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City Manager.

18.13 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

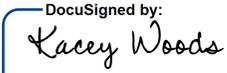
18.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

Zambelli Fireworks Manufacturing Company, a foreign for-profit corporation:
"Contractor"

By: 
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By: 
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Print Name: Kacey woods

Print Name: Danielle Fredrickson

Title: CSM/Office Manager

Date: 6/17/2016

Date: 6/17/2016

ATTEST:

City of North Miami, a Florida municipal Corporation:
"City"

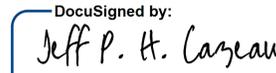
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Michael A. Etienne, Esq.
City Clerk

Larry M. Spring, Jr.
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: 
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Jeff P. H. Cazeau, Esq.
City Attorney