

City of Pompano Beach

PROFESSIONAL SERVICE AND LICENSE AGREEMENT

with

**ZAMBELLI FIREWORKS
MANUFACTURING CO.**

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PROFESSIONAL SERVICE AND LICENSE AGREEMENT

THIS PROFESSIONAL SERVICE AND LICENSE AGREEMENT (“Agreement”), entered into this _____ day of _____, 2017, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter “CITY”),

and

ZAMBELLI FIREWORKS MANUFACTURING CO., a Pennsylvania corporation authorized to do business in the State of Florida (hereinafter “CONTRACTOR”).

WHEREAS, the CITY is desirous of CONTRACTOR providing the fireworks display detailed in Exhibit A (the “Show”) on the City’s Fishing Pier in accordance with the terms of this Agreement; and

WHEREAS, CONTRACTOR is able and prepared to provide the Show services and insurance set forth respectively in Exhibit A attached hereto and made a part hereof; and

WHEREAS, CONTRACTOR is authorized to stage the Show on the City’s Fishing Pier (the “Pier”) in accordance with the terms of this Agreement; and

WHEREAS, the CITY has determined entering into this Agreement with CONTRACTOR is in the best interest of the public; and

WHEREAS, the CITY and CONTRACTOR desire to enter into this Agreement setting forth the parties’ mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and CONTRACTOR agree as follows.

ARTICLE 1 REPRESENTATIONS

A. **Representations of CITY.** CITY makes the following representations to CONTRACTOR which CITY acknowledges CONTRACTOR has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. CONTRACTOR shall be entitled to rely upon the accuracy and completeness of any information supplied by CITY or by others authorized by the CITY's Recreation Shows Administrator.

B. **Representations of Zambelli Fireworks Manufacturing Co.** CONTRACTOR makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. Zambelli Fireworks Manufacturing Co. is a foreign for profit corporation duly organized, existing and in good standing under the laws of the Commonwealth of Pennsylvania with the power and authority to enter into this Agreement and to conduct business in Florida pursuant to its registration with the Florida Department of State Division of Corporations.

2. CONTRACTOR's execution, delivery, consummation and performance under this Agreement will not violate or cause Zambelli Fireworks Manufacturing Co. to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which CONTRACTOR is a party or constitute a default thereunder or cause acceleration of any obligation of CONTRACTOR thereunder.

3. The individual executing this Agreement and related documents on behalf of Zambelli Fireworks Manufacturing Co. is duly authorized to take such action which action shall be, and is, binding on CONTRACTOR.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting Zambelli Fireworks Manufacturing Co. or its principals that CONTRACTOR is aware of which would have any material effect on CONTRACTOR's ability to perform its obligations under this Agreement.

5. CONTRACTOR represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. The standard of care for all services furnished by CONTRACTOR and its employees, subcontractors or other agents under this Agreement will be the skill and care used by other professional fireworks display companies currently practicing under similar circumstances in the same locality.

7. CONTRACTOR represents and warrants it has and will continue to maintain all licenses, permits and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

**ARTICLE 2
NON-ASSIGNABILITY AND SUBCONTRACTING**

This Agreement is not assignable and CONTRACTOR agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by CONTRACTOR to assign or transfer any of its rights or obligations under this Agreement without first obtaining the CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of CONTRACTOR's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of CONTRACTOR hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and CONTRACTOR.

**ARTICLE 3
TERM AND RENEWAL**

The term of this Agreement shall commence upon the full execution of this Agreement, end upon CONTRACTOR's fulfillment of its obligations hereunder for providing the Show, and only be effective for the specific dates provided for in this Article. The CITY reserves the right to extend this Agreement for an additional term provided both parties agree in writing to said extension. Renegotiation shall commence at least 120 days prior to July 4, 2018.

Weather permitting, CONTRACTOR agrees the Show shall be of at least twenty-five (25) minutes in duration and commence at 9:00 pm on July 4, 2017. Set up for the Show shall commence at 7:00 am on July 2, 2017, and clean up, including the removal of all major debris, shall be completed by 2:00 am on July 5, 2017.

In the event that inclement weather precludes performance of the Show on July 4, 2017, the parties agree that the Show shall be rescheduled for July 5, 2017, with corresponding time periods for performance, set up and clean up as provided for in the preceding paragraph and no further compensation shall be due to CONTRACTOR.

In the event that inclement weather continues to prevent performance of the Show on July 5, 2017, the parties shall mutually agree upon a date for the Show on or before July 8, 2017, with corresponding time periods for set up and clean up as provided for in the preceding paragraph and CONTRACTOR shall be entitled to additional compensation as provided in Article 6 herein.

In the event that inclement weather prevents performance of the Show by July 8, 2017, then the parties agree to postpone the Show until another mutually acceptable day/time which shall occur prior to July 4, 2018.

ARTICLE 4 RESPONSIBILITIES OF CONTRACTOR

CONTRACTOR shall provide the services set forth below and in Exhibit 1 (collectively the "Work") at the City's Pier.

1. CONTRACTOR shall plan, administer and coordinate all aspects of the Work, including supervising all CONTRACTOR's employees and other representatives or agents.

2. CONTRACTOR is responsible for hiring and managing its own staff, all of which shall be a minimum of eighteen (18) years old, under CONTRACTOR's exclusive direction and control and not deemed employees or agents of the CITY.

3. CONTRACTOR shall be solely responsible for compensating its employees, agents and representatives and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, the provisions of workers' compensation insurance and all other benefits required by law.

4. CONTRACTOR shall be responsible to ensure that all its employees, agents and representatives are suitable for placement at a municipal facility in terms of general character, knowledge, ability, public relations potential, manner and conduct.

5. CONTRACTOR shall promptly respond to complaints from the CITY regarding its employees staff or other representatives and timely take appropriate action as warranted by the circumstances.

6. CONTRACTOR shall immediately inform the CITY's Recreation Program Administrator of any conditions on the Pier which could jeopardize the safety of the CONTRACTOR or the public.

7. CONTRACTOR shall operate and conduct its obligations hereunder in accordance with all applicable federal, state and local laws, including the laws of Broward County and the charter, ordinances and other regulations of the City of Pompano Beach as may now exist or as may hereafter be adopted. CONTRACTOR, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against CONTRACTOR's provision of goods and services under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Program Administrator upon request.

9. CONTRACTOR shall give the CITY prompt written notice of any accidents occurring at Pier in which damage to the Pier or injury to a person occurs.

ARTICLE 5 RESPONSIBILITIES OF CITY

A. CITY is responsible to provide the services set forth in Exhibit A and to also maintain the Pier and surrounding outdoor areas.

B. CITY shall provide CONTRACTOR with the use of Pier for the reasons and on the dates and times set forth herein. Interruptions in availability of Pier due to acts of God or any other circumstance beyond the CITY's control shall not be considered a violation of this paragraph.

ARTICLE 6 PRICE FORMULA AND PAYMENT

A. CITY's agrees to pay CONTRACTOR \$45,000 (the "Contract Price") for performance of the Work hereunder which shall be paid and/or adjusted as follows:

1. An initial payment of 25% of the Contract Price or \$11,250 ("Initial Payment") is due within ten (10) business days of this Agreement's full execution;

2. the remainder of the Contract Price, minus any credit due CITY for time delays and unspent/defective shells or barrage shots, within ten (10) business days of CITY's receipt of a Final Invoice for any monies due for CONTRACTOR's satisfactory completion of the Work hereunder by 2 am on July 5 or 6, 2017.

B. For each day after July 5, 2017, and up to July 8, 2017, that inclement weather prevents CONTRACTOR from providing the Show, CONTRACTOR shall be entitled to additional daily compensation of up to \$11,250 or 25% of the Contract Price subject to CONTRACTOR's provision of, and CITY's approval of, an invoice which details extra costs incurred by CONTRACTOR as a result of the delay.

C. In the event that inclement weather prevents performance of the Show by July 8, 2017, the parties agree CONTRACTOR shall be entitled to retain \$5,625 or 50% of CITY's Initial Payment and also receive additional compensation as noted above in Paragraph B of this Article. The parties further agree the remaining \$5,625 or 50% of the Initial Payment shall be credited to CITY to provide the postponed Show to take place before July 4, 2018.

D. In the event there is a delay in the start of the Show or delay/dead air anytime during the Show, CITY shall receive \$750 credit towards the Contract Price for every 20 minutes of delay or dead air.

E. Subject to a mutually agreed failure rate of 2.5% for all shells and barrage boxes, CITY shall receive credit as follows for any unspent or defective shells or barrages:

- 2.5-inch shells- \$5.00/shell
- 3-inch shells- \$4.50/shell
- 4-inch shells- \$7.00/shell
- 5-inch shell- \$9.00/shell
- Multi shot Barrage Boxes- \$75.00/box

F. CITY may temporarily remove for review any disputed amount, by line item, from any and all invoices submitted by CONTRACTOR and shall timely notify CONTRACTOR of any disputed charge. CONTRACTOR shall provide clarification and a satisfactory explanation to CITY prior to payment of said charge(s). To be deemed proper, all invoices shall be submitted pursuant to the instructions provided by the CITY's Contract Administrator.

G. In the event CITY has a claim against CONTRACTOR for Work performed hereunder which has not been timely remedied in accordance with the provisions of Article 10 herein, CITY may withhold payment for the contested amount, in whole or in part, to protect itself from loss on account of defective Work, claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR, and/or CONTRACTOR's failure to make proper payments to subcontractors or vendors for material or labor. When the reason(s) for withholding payment are removed or resolved in a manner satisfactory to CITY, payment shall be timely made.

H. Resolution of improper payment requests or invoices shall be in accordance with §218.76, Florida Statutes.

**ARTICLE 7
PUBLIC RECORDS, RECORDKEEPING,
INSPECTION AND AUDIT PROCEDURES**

A. CONTRACTOR shall use such accounting methods and procedures as may be prescribed by CITY, in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth in this Article.

B. Public Records.

1. The CITY of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, the LICENSEE shall:

a. Keep and maintain public records required by the CITY in order to perform the service.

b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the LICENSEE does not transfer the records to the CITY.

d. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the LICENSEE, or keep and maintain public records required by the CITY to perform the service. If the LICENSEE transfers all public records to the CITY upon completion of the Agreement, the LICENSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LICENSEE keeps and maintains public records upon completion of the contract, the LICENSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

2. Failure of the LICENSEE to provide the above described public records to the CITY within a reasonable time may subject LICENSEE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

ARTICLE 8 CONTRACTOR'S INDEMNIFICATION OF CITY

A. CONTRACTOR shall at all times indemnify, hold harmless and defend the CITY, its officials, employees and other agents from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising as a direct result of CONTRACTOR's officers, employees, agents, volunteers or contractors or other agents' negligence or misconduct under this Agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other

costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by CONTRACTOR for any causes of action CONTRACTOR has or may have for breaches or defaults by the CITY under this Agreement.

B. CONTRACTOR acknowledges and agrees that the CITY would not enter into this Agreement without this indemnification of CITY by CONTRACTOR. The parties agree that one percent (1%) of the total compensation paid to CONTRACTOR hereunder shall constitute specific consideration to CONTRACTOR for the indemnification provided under this Article. These provisions shall survive expiration or early termination of this Agreement.

C. For Professional Liability claims, CONTRACTOR agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of four (4) years, unless sooner terminated by the applicable statute of limitations. For General Liability claims, Contractor agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of two (2) years, unless sooner terminated by the applicable statute of limitations.

D. CONTRACTOR shall be solely responsible for insuring all stock and inventory at Pier against damage or loss of any nature or kind. CONTRACTOR acknowledges and agrees that CITY assumes no responsibility whatsoever for any property placed at the Pier and that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of CONTRACTOR's performance of the Work hereunder.

ARTICLE 9 INSURANCE

CONTRACTOR shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit 3. CONTRACTOR shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY's Risk Manager

ARTICLE 10 INDEPENDENT CONTRACTOR

Both CITY and CONTRACTOR agree that CONTRACTOR is an independent contractor and not a CITY employee.

ARTICLE 11 DEFAULT AND DISPUTE RESOLUTION

A. Notice of Default; Rights and Remedies Cumulative. If either party fails to perform any material covenant or undertaking hereunder, or if the parties' representations set forth herein are materially untrue or incorrect, then the party alleging default shall give written notice, in which event the party alleged to be in default shall have ten (10) business days to cure or resolve same. If such default or breach is not timely cured or otherwise resolved, the party not in default may institute such proceedings as may be necessary, in its opinion to cure and remedy such default, including, but not limited to, the informal dispute resolution process set forth below, termination of this Agreement, proceedings to compel specific performance and for damages for breach of contract, and any other remedies provided by law, equity or hereunder.

Both parties' rights and obligations, whether provided by law, equity or hereunder, shall be cumulative and the exercise by either party of any one of more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or any of its remedies for any other default at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default.

B. Informal Dispute Resolution Process. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives of their choice present at any such meeting or conference. The informal dispute resolution process described below is non-exclusive and without prejudice to the right of either party to pursue other remedies available at law.

If the parties' Contract Administrators are unable to reach an agreement regarding a dispute or default within ten (10) business days after written notice to the other, they may enlist the assistance of the City Manager, 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, whose decision shall be final. Upon the City Manager's receipt and timely review of said dispute or default, the City Manager in his/her sole discretion, may make a decision or request additional information from either or both parties which shall be timely provided.

If the City Manager issues a written decision regarding the alleged default as he/she deems appropriate under the circumstances and it is not implemented within the deadline set forth therein, the provisions set forth in immediately preceding subsection A shall apply. If the City Manager declines to make a written decision regarding the dispute, he/she shall advise both parties in writing and the ten (10) day advance written notice and remedy provisions set forth in subsection A above shall apply.

C. Jurisdiction, Venue and Waiver of Trial by Jury. This Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CONTRACTOR agree to submit to the jurisdiction of state and federal courts located in Florida. In the event of a dispute as to the interpretation or application of or an alleged breach or default, the parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida, and that such dispute shall be heard by a judge, not a jury. In addition, both parties agree that nothing in this subsection or otherwise shall preclude them from agreeing to submit to non-binding mediation or arbitration.

**ARTICLE 12
GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CONTRACTOR submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 13
NO DISCRIMINATION**

CONTRACTOR, while acting pursuant to this Agreement, shall not discriminate against any worker, employee, patron, or member of the public on the basis of race, creed, religion, age, sex, disability or national origin.

**ARTICLE 14
PUBLIC ENTITY CRIMES ACT**

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, CONTRACTOR certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 15
NOTICES AND DEMANDS**

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:

For CITY:

City Manager
City of Pompano Beach
P.O. Drawer 1300

With a copy to:

Recreation Program Administrator
City of Pompano Beach
1801 NE 6th Street

Pompano Beach, Florida 33061
greg.harrison@copbfl.com
954-786-4601 office
954-786-4504 fax

Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
954-786-4191 office
954-786-4113 fax

For CONTRACTOR:

Edward J. Meyer
1 West Camino Real
Boca Raton, FL 33487
561-395-0955
zambelli@zambellifireworks.com

**ARTICLE 16
CONTRACT ADMINISTRATOR**

The CITY's Recreation Program Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

The CONTRACTOR's lead technician shall serve as CONTRACTOR's Contract Administrator during the performance of services under this Agreement.

**ARTICLE 17
NO CONTINGENT FEE**

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of CONTRACTOR's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 18
ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE 19
FORCE MAJEURE**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or CONTRACTOR are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

ARTICLE 20 WAIVER AND MODIFICATION

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and CONTRACTOR may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 21 RELATIONSHIP BETWEEN THE PARTIES

CONTRACTOR is being contracted by CITY for the purposes and to the extent set forth in this Agreement and, as such, shall be free to dispose of such other portion of its time and skill as does not interfere with its obligations hereunder.

ARTICLE 22 MISCELLANEOUS TERMS AND CONDITIONS

A. Time is of the essence in this Agreement. By execution of this Agreement, CONTRACTOR affirms that it believes the schedule set forth in Article 3 above is reasonable, however, CONTRACTOR also acknowledges that said schedule may need to be modified as the CITY directs.

B. CONTRACTOR shall utilize Pier exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. CONTRACTOR shall

not allow, suffer or permit Pier to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

C. In the conduct of its activities and obligations under this Agreement, CONTRACTOR shall comply with all applicable local, state and/or federal laws, ordinances and regulations and secure all required licenses and permits.

D. A minimum of thirty (30) days prior to the Show, CONTRACTOR shall submit for CITY's review, approval and revision as necessary, the musical soundtrack it proposes to use in tandem with the choreographed display design to last for the duration of the Show.

ARTICLE 23 SEVERABILITY

Should any provision of this Agreement or the application 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 or provisions of this Agreement shall remain in full force and effect.

ARTICLE 24 APPROVALS

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 25 ABSENCE OF CONFLICTS OF INTEREST

CONTRACTOR represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. CONTRACTOR further represents no person having any interest shall be employed or engaged by it for said performance.

CONTRACTOR shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence CONTRACTOR's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that CONTRACTOR intends to undertake and shall request the CITY's opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by CONTRACTOR.

**ARTICLE 26
BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

**ARTICLE 27
NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

**ARTICLE 28
LICENSE NOT LEASE**

Both parties acknowledge and agree this license will not be deemed a lease of the Pier and is granted to give Contractor authority to provide the Show on the City's Pier as contemplated herein.

**ARTICLE 29
ENTIRE AGREEMENT AND INTERPRETATION**

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

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and CONTRACTOR and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by **LAMAR FISHER**, as Mayor, **GREGORY P. HARRISON** 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 are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CONTRACTOR":

Witnesses:

ZAMBELLI FIREWORKS MANUFACTURING CO., a Pennsylvania corporation

[Signature]

By: [Signature]
EDWARD J. MEYER, PRESIDENT

[Signature]
Print Name

[Signature]

[Signature]
Print Name

STATE OF FLORIDA
COUNTY OF PAUM BEACH

The foregoing instrument was acknowledged before me this 23rd day of May, 2017, by EDWARD J. MEYER, as President of ZAMBELLI FIREWORKS MANUFACTURING CO., a Pennsylvania corporation authorized to do business in the State of Florida, on behalf of the corporation, who is personally known to me or who has produced _____ (type of identification) as identification.



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Danielle Frederickson
(Name of Acknowledger Typed, Printed or Stamped)

FF133725
Commission Number

MEB:jrm
5/22/17
L:agr/recr/2017-660



Danielle Frederickson
COMMISSION # FF133725
EXPIRES: Aug. 2, 2018
WWW.AARONNOTARY.COM