

REQUESTED COMMISSION ACTION:

X Consent Ordinance X Resolution Consideration/
 _____ _____ _____ Discussion _____
 Presentation

SHORT TITLE 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
Yuletide Celebration Fireworks Display.

Fiscal Impact - \$2,750 – Special Events Account 001-9910-599-82-06

Summary of Purpose and Why:

The Parks, Recreation and Cultural Arts Department is looking to contract with Pyrotecnico Fireworks, Inc. to provide a fireworks display at the December 3, Yuletide On Atlantic Celebration. The fireworks display will be held at McNab Park during the Yuletide Celebration at approximately 8 p.m. and last for a period of approximately two minutes. The cost of the fireworks display is \$2,750 and will be paid from the Special Events Account (001-9910-599-82-06).



- Great Places: Goal 2.0, Initiative 2.8 – Develop and promote cultural/heritage tourism opportunities.

(1) Origin of request for this action: Staff initiated
 (2) Primary staff contact: Mark Beaudreau, Recreation Programs Adm. Ext. 4191
 (3) Expiration of contract, if applicable: n/a (Event only agreement)
 (4) Fiscal impact and source of funding: \$2,750 – Special Events – 001-9910-599-82-06

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Parks & Recreation	<u>10-1-15</u>	<u>Approved</u>	<u>Mark Beaudreau</u>
City Attorney	<u>10-2-15</u>	<u>✓</u>	<u>[Signature]</u>
Risk Manager	<u>10-6-15</u>	<u>Approved</u>	<u>[Signature]</u>
X City Manager		<u>[Signature]</u>	

ACTION TAKEN BY COMMISSION:

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

MEMORANDUM

Parks, Recreation & Cultural Arts

PARKS AND RECREATION DEPARTMENT
MEMORANDUM 15-A124

DATE: September 30, 2015

TO: Dennis W. Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator *MB*

SUBJECT: Agenda Item – Resolution Service Contract/Yuletide Celebration
Fireworks Display

Please place the attached resolution on the October 13, 2015, City Commission Agenda. The service contract is between the City of Pompano Beach and Pyrotecnico Fireworks, Inc. for a fireworks display to take place at the December 3, 2015, Yuletide Celebration. The Yuletide On Atlantic Parade and Celebration will take place on Thursday, December 3, with the fireworks display taking place at McNab Park. The two minute fireworks display will take place during the lighting of the Yuletide Tree and has become a tradition at the event. The cost of the fireworks is play is \$2,750, which will be paid from the Special Events Account (001-9910-599-82-06).

If you have any questions please call me at 954-786-4191.

MB/afh

cc: Scott Moore, Recreation Manager



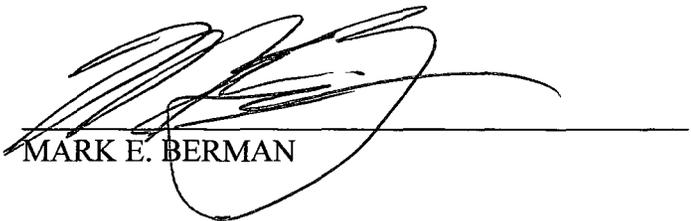
City Attorney's Communication #2015-1684
September 30, 2015

TO: Mark A. Beaudreau, Recreation Programs Administrator
FROM: Mark E. Berman, City Attorney
RE: Resolution – Service Contract / Yuletide Celebration Fireworks Display

Pursuant to your telephone request today, 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 YULETIDE CELEBRATION FIREWORKS DISPLAY; PROVIDING AN EFFECTIVE DATE.

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


MARK E. BERMAN

MEB/jrm
l:cor/recr/2015-1684

Attachment

RESOLUTION NO. 2016-_____

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 YULETIDE CELEBRATION 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 Yuletide Celebration 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 – Yuletide Celebration
December 3, 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 corporation authorized 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 McNab Park at 8 p.m. on December 3, 2015, upon the terms and conditions herein set forth. Set-up shall be done on Thursday, December 3 from 10 a.m. – 7 p.m. The Fireworks Display will take place Thursday, December 3 at 8 p.m. for a period of approximately two minutes. The clean-up will be completed by 11 p.m. on Thursday, December 3.
3. Rain Date. The City and Contractor have agreed there will be no rain date.
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 December 3, 2015. Contractor shall commence set-up for Fireworks Display on December 3, Fireworks Display 8 p.m. on Thursday, December 3. Services will be completed upon execution of Fireworks Display for the City and continue until clean-up is completed at 11 p.m. on December 3.
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 Yuletide Celebration fireworks display. City will provide notification within sixty (60) days of December 3, 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 **\$2,750.00** – 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 fifteen (15) 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 Reitano
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 December 3, 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.

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:

MARK E. BERMAN, 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.

Lori Tingle

By: Lynn Ann Hamed

Print Name: Lynn Ann Hamed

Marika Letebore

Title: Corporate Secretary

Business License No. 25-1700772

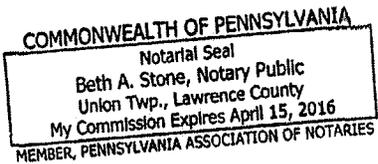
STATE OF PENNSYLVANIA

COUNTY OF LAWRENCE

The foregoing instrument was acknowledged before me this 30th day of September, 2015, by Lynn Ann Hamed as Corporate Secretary of PROTECNICO FIREWORKS, INC. on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

Beth A. Stone
NOTARY PUBLIC, STATE OF FLORIDA
BETH A. STONE
(Name of Acknowledger Typed, Printed or Stamped)



Commission Number _____

Exhibit A
Scope of Services – Yuletide Fireworks
Pyrotecnico Fireworks, Inc.



800. 854. 4705 • www.pyrotecnico.com

Pyrotecnico
P.O. Box 149
New Castle PA 16103
724.652.9555
www.pyrotecnico.com

Proposal

Date 8/11/2015
Proposal # PRO-21762

Expires 10/10/2015
Sales Rep Liberatore, Christ...
Show Date 12/3/2015
Show Name Yuletide
Show Venue McNabb Park

Bill To

City of Pompano Beach
and Pompano Beach CRA
100 West Atlantic Blvd.
Pompano Beach FL 33060

Ship To

City of Pompano Beach
and Pompano Beach CRA
100 West Atlantic Blvd.
Pompano Beach FL 33060

Item	Quantity	Description	Rate	Amount
Special Aerial Display	1	Close Proximity Pyrotechnic Display: 1. 5- 3 second x 18 Ft. green gerbs 2. 5- 3 second x 18 Ft. red gerbs 3. 10- 10 second red flare 4. 10- 20 second x 20 Ft. silver gerb 5. 10- 3 second x 6 Ft. silver gerb 6. 5- 1 second x 65 Ft. silver gerb 7. 10- 1 second x 25 Ft. silver gerb	2,750.00	2,750.00

Total \$2,750.00

EXHIBIT B

INSURANCE REQUIREMENTS

CONTRACTOR shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager who can be reached by phone (954 786-5555) or email (eddie.beecher@copbfl.com) should you have any questions regarding the terms and conditions set forth in this Article. Proof of the insurance coverage required hereunder shall be mailed to Risk Management, PO Box 1300, Pompano Beach, FL 33061.

CONTRACTOR is responsible to deliver to the CITY's Risk Manager for his timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and minimum limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. 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. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance**Limits of Liability**

GENERAL LIABILITY: Minimum \$1,000,000 Per Occurrence and \$5,000,000 Per Aggregate

* Policy to be written on a claims incurred basis

XX	comprehensive form	bodily injury and property damage
XX	premises - operations	bodily injury and property damage
XX	explosion & collapse hazard	
XX	underground hazard	
XX	products/completed operations hazard	bodily injury and property damage combined
XX	contractual insurance	bodily injury and property damage combined
XX	broad form property damage	bodily injury and property damage combined
XX	independent contractors	personal injury
XX	personal injury	
XX	alcohol sales (if alcohol sold)	

AUTOMOBILE LIABILITY: Minimum \$1,000,000 Per Occurrence and Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

XX	comprehensive form
XX	owned
XX	hired
XX	non-owned

REAL & PERSONAL PROPERTY

XX	comprehensive form	Agent must show proof they have this coverage.
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EXCESS LIABILITY Minimum per Occurrence and Aggregate

XX	other than umbrella	bodily injury and property damage combined	\$1,000,000	\$5,000,000
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PROFESSIONAL LIABILITY

___	* Policy to be written on a claims made basis	Per Occurrence	Aggregate
		\$1,000,000	\$1,000,000

C. Employer's Liability. CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.