

Meeting Date: March 22, 2016

Agenda Item

5

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, approving and authorizing the proper city officials to execute a license agreement between the City of Pompano Beach and Pyrotecnico Fireworks, Inc. for a 4th of July Fireworks Display off the city's fishing pier.

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

Summary of Purpose and Why:

License Agreement between the City of Pompano Beach and Pyrotecnico Fireworks, Inc. for the 2016 Fourth of July Fireworks Display. The fireworks display will take place from the city's fishing pier at 9 p.m. on July 4th. If weather prohibits the fireworks on July 4th, the city and contractor will reschedule between July 5-July 8. 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 8, 2016
(4) Fiscal impact and source of funding: Special Events Funding Account 001-9910-599-82-06 - \$36,750.00

Table with 4 columns: DEPARTMENTAL COORDINATION, DATE, DEPARTMENTAL RECOMMENDATION, DEPARTMENTAL HEAD SIGNATURE. Rows include Parks & Recreation, City Attorney, Risk Management, and Internal Audit.

[Handwritten signature]

X City Manager

[Handwritten signature]

ACTION TAKEN BY COMMISSION:

Table with 4 columns: Ordinance/Workshop, Resolution, Consideration, Results. Rows include 1st Reading and 2nd Reading.

MEMORANDUM

Parks, Recreation & Cultural Arts

Memorandum 16-049

DATE: March 7, 2016

TO: Dennis W. Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator 

SUBJECT: Agenda Item – License Agreement with Pyrotecnico Fireworks, Inc.
4th of July Fireworks Display

Please place the attached license agreement between the City and Pyrotecnico Fireworks, Inc. on the March 22, City Commission Agenda. The license agreement 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 \$36,750, the show will start at 9 p.m. and last approximately 18 minutes. The Parks, Recreation & Cultural Arts Department contracted with Pyrotecnico of Florida, LLC last year for the 4th of July Fireworks Display and would like to continue with the company, who has changed their name to Pyrotecnico Fireworks, Inc. 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 license agreement for the 2016 Fireworks Display.

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

afh



City Attorney's Communication #2016-568
March 7, 2016

TO: Mark A. Beaudreau, Recreation Programs Administrator
FROM: Fawn Powers, Assistant City Attorney
RE: Pyrotecnico Fireworks, Inc.

As requested, the above-referenced Agreement has been prepared and is attached at this time along with the appropriate Resolution captioned as follows:

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

FAWN POWERS

l:cor/regr/2016-568f
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 AND LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PYROTECNICO FIREWORKS, INC. FOR A 4TH OF JULY FIREWORKS DISPLAY OFF THE CITY'S FISHING PIER; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a Service And License Agreement between the City of Pompano Beach and Pyrotecnico Fireworks, Inc. for a 4th of July Fireworks Display off the City's Fishing Pier, a copy of which agreement 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 and License Agreement 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 _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

City of Pompano Beach

PROFESSIONAL SERVICE AND LICENSE AGREEMENT

with

PYROTECNICO FIREWORKS, INC.

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- Exhibit 2 Scope of Services for City
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PROFESSIONAL SERVICE AND LICENSE AGREEMENT

THIS PROFESSIONAL SERVICE AND LICENSE AGREEMENT (“Agreement”), entered into this _____ day of _____, 2016, by and between:

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

and

PYROTECNICO FIREWORKS, INC., 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 1 (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 Exhibits 1 and 3 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 Pyrotecnico Fireworks, Inc.** CONTRACTOR makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. Pyrotecnico Fireworks, Inc. 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 Pyrotecnico Fireworks, Inc. 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 Pyrotecnico Fireworks, Inc. 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 Pyrotecnico Fireworks, Inc. 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, 2017.

Weather permitting, CONTRACTOR agrees the Show shall be of at least eighteen (18) minutes in duration and commence at 9:00 pm on July 4, 2016. Set up for the Show shall commence at 7:00 am on July 2, 2016, and clean up, including the removal of all major debris, shall be completed by 2:00 am on July 5, 2016.

In the event that inclement weather precludes performance of the Show on July 4, 2016, the parties agree that the Show shall be rescheduled for July 5, 2016, 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, 2016, the parties shall mutually agree upon a date for the Show on or before July 8, 2016, 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, 2016, then the parties agree to postpone the Show until another mutually acceptable day/time which shall occur prior to July 4, 2017.

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.

8. 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 2 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 \$36,750.00 (the "Contract Price") for performance of the Work hereunder which shall be paid and/or adjusted as follows:

1. An initial payment of 50% of the Contract Price or \$18,375.00 ("Initial Payment") 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, 2016.

B. For each day after July 5, 2015, and up to July 8, 2016, that inclement weather prevents CONTRACTOR from providing the Show, CONTRACTOR shall be entitled to additional daily compensation of up to \$9,187.50 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, 2016, the parties agree CONTRACTOR shall be entitled to retain \$9,187.50 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 \$9,187.50 or 50% of the Initial Payment shall be credited to CITY to provide the postponed Show to take place before July 4, 2017.

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- \$5.00/shell
- 4-inch shells- \$9.00/shell
- 5-inch shell- \$12.00/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

CONTRACTOR acknowledges that CITY is a public agency subject to Chapter 119, Florida Statutes, and shall comply with Florida's Public Records Law by making available to City for local examination and audit all records related to this Agreement and meet all requirements for retaining and/or destroying public records unless CITY has provided written notice that an audit has been initiated and findings have not been resolved in which case CONTRACTOR and any of its agents hereunder shall be required to retain the aforesaid documentation until resolution of the audit findings. All records stored electronically by CONTRACTOR shall be provided to City in a format compatible with the information technology systems of the CITY.

Any incomplete or incorrect entry in such books, records and accounts shall be a basis for CITY's disallowance and recovery of any such payment. Should the results of such an audit result in discrepancies or unauthorized expenditures and CITY requests the return of such funds, in writing, CONTRACTOR agrees to comply with said request and provide CITY said funds within sixty (60) days thereafter.

CONTRACTOR's failure to comply with the provisions of this Article shall constitute a default and breach of this Agreement which the CITY may enforce in accordance with the provisions of Article 10 herein or as provided by law.

ARTICLE 8 CONTRACTOR'S INDEMNIFICATION OF CITY

A. CONTRACTOR shall at all times indemnify, hold harmless and defend the CITY, its Mayor and Commissioners, 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.

B. 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
NO DISCRIMINATION**

C. 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 13
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 14
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
Pompano Beach, Florida 33061
dennis.beach@copbfl.com
954-786-4601 office
954-786-4504 fax

With a copy to:

Recreation Program Administrator
City of Pompano Beach
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
954-786-4191 office
954-786-4113 fax

For CONTRACTOR:

Lynn Hamed
299 Wilson Road
New Castle, Pennsylvania 16103
724-652-9555
Lhamed@pyrotecnico.com

With a copy to:

Christopher Liberatore
P.O. Box 149
Newcastle, Pennsylvania 16103
954-401-2677
cliberatore@pyrotecnico.com

**ARTICLE 15
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 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: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND, CITY CLERK

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 _____, 2016, 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 are 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
Pennsylvania corporation

Margie Lough

MARGIE LOUGH
Print Name

Lori Tugler

Lori Tugler
Print Name

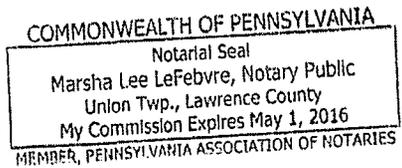
By: Symon Hamad

Title: Corp Sec

STATE OF Pennsylvania
COUNTY OF Lawrence

The foregoing instrument was acknowledged before me this 14th day of March, 2016, by Symon Hamad, as Corporate Secretary of PYROTECNICO FIREWORKS, INC., 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.

NOTARY'S SEAL:



Marsha Lee LeFebvre
NOTARY PUBLIC, STATE OF Pennsylvania

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

1941759
Commission Number

I:agr/reccr/2016-476f
3/9/16

Exhibit 1

Scope of Work

In addition to Contractor's responsibilities as set forth in the Agreement, the Contractor shall:

- Furnish all labor, equipment, supplies, personnel and supervision necessary to provide the Show;
- Ensure all its personnel involved in the set-up, operation, removal and disposal of all fireworks and the Show be experienced pyrotechnic operators licensed to perform such work in the State of Florida;
- Ensure that all transportation and delivery is provided by Pyrotecnico commercially licensed drivers;
- Conduct the Show in accordance with National Fire Protection Association standards and guidelines;
- Provide a choreographed display design to coincide with amplified musical soundtrack preapproved by the City to last the duration of the Show;
- Provide an eighteen (18) minute fireworks display; and
- Be responsible for cleanup of all fireworks, debris and the Pier to the satisfaction of the City.

Opening Presentation

(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

(90) 2.5-inch Assorted Aerial Display Shells*
(120) 3-inch Assorted Aerial Display Shells*
(420) 4-inch Assorted Aerial Display Shells*
(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

(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

(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

Exhibit 2

City Responsibilities

- City will close down Pompano Fishing Pier two days prior to the Fireworks Show to ensure ample time for load in, and will remain closed until 5:00 a.m. the day after the Show was completed.
- City will provide two (2) gators with City personnel for assistance with fireworks load in and load out.
- City will provide Firewatch personnel upon arrival of the fireworks at the Pier and remain until the Show has been completed.
- Prior to the Show, the City's Fire Marshall or his designee will count the number of barrages and shells to ensure compliance with Exhibit 1. After the Show, the Fire Marshall or designee will recount any defective or unspent shells to ensure the City will receive credit for same from by Contractor.
- The City's Fire Marshall or designee will certify start and end time of the Show.
- The City will provide trash bags, receptacles and trash truck for fireworks clean up and load out of the Show.

EXHIBIT 3

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. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the CITY's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to CITY staff responsible for oversight of the subject project/contract.

CONTRACTOR is responsible to deliver to the CITY for 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 limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440. 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	
___	sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate
XX	liquor legal liability	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY:

Minimum \$1,000,000 Per Occurrence and
\$4,000,000 Per Aggregate

XX	comprehensive form
___	owned
___	hired
___	non-owned

REAL & PERSONAL PROPERTY

___	comprehensive form	Agent must show proof they have this coverage.
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EXCESS LIABILITY

Per Occurrence Aggregate

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

Per Occurrence Aggregate

___	* Policy to be written on a claims made basis	\$1,000,000	\$1,000,000
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(3) If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions set forth in the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. If required by law, 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.