

AGREEMENT
between
THE CITY OF COCONUT CREEK
and
ZAMBELLI FIREWORKS MANUFACTURING CO
for
FIREWORKS DISPLAY FOR THE BUTTERFLY FESTIVAL
IFB NO. 09-20-22-12

THIS AGREEMENT is made and entered into this _____ day of _____, 2022 by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "City") and Zambelli Fireworks Manufacturing Co. with offices located at 1060 Holland Drive, Suite J, Boca Raton, FL 33487-2758 (the "Vendor") to provide Fireworks Display for the Butterfly Festival Event pursuant to IFB No. 09-20-22-12.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Vendor agree as follows:

1) The Contract Documents

The contract documents consist of this Agreement, conditions of the solicitation document of IFB No. 09-20-22-12, all addenda issued prior to execution of this Agreement, Vendor's Response to IFB No. 09-20-22-12, and any subsequent properly executed amendments to any of the aforementioned documents. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein. In the event of a conflict between the aforementioned documents, Paragraph 15. "Contractual Agreement," of Section I, "General Terms and Conditions," of IFB No. 09-20-22-12 notwithstanding, this Agreement will control, followed by the IFB documents, any addenda thereto, and Vendor's Response to IFB No. 09-20-22-12, in that order.

2) The Work

The Vendor shall perform all work for the City required by the contract documents and IFB No. 09-20-22-12, as set forth below:

- a) Vendor shall furnish all labor, materials, and equipment necessary as indicated in the specifications herein.
- b) Vendor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Vendor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Vendor shall at all times have a competent supervisor on the job site to enforce these policies and procedures at the Vendor's expense.
- c) Vendor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.

d) Vendor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Vendor, its employees, agents or subcontractors, if any, with respect to the work and services described herein. The Vendor/Contractor further warrants that there has been no violation of copyrights or patent rights either in the United State of America or in foreign countries in connection with the work of the contract.

3) Contract Price

The Agreement shall be performed in current funds with pricing pursuant to Exhibit "A" – Schedule of Proposal Prices and as per the approved budget.

4) Contract Term

The initial Agreement period shall be for three (3) years commencing on the date written on the first page of this Agreement.

5) Contract Extension

The City reserves the right to extend the Agreement for two (2) additional one (1) year periods, providing both parties agree to the extension; all the terms, conditions and specifications remain the same; and such extension is approved by the City. Vendor shall give written notice to the City not less than ninety (90) days prior to renewal date of any adjustment in the initial Contract amount. Agreement renewal shall be based on satisfactory performance, mutual acceptance, and determination that the Contract is in the best interest of the City.

In the event services are scheduled to end because of the expiration of this contract, the Vendor shall continue the service upon the request of the Contract Administrator. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Vendor shall be compensated for the service at the rate(s) in effect when the City invokes this extension clause.

6) Conditions for Emergency/Hurricane or Disaster

It is hereby made a part of this agreement that before, during and after a public emergency, disaster, hurricane, flood or other substantial loss that the City of Coconut Creek shall require a "first priority" basis for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public safety and health, as determined by the City Manager. Awarded Vendor/Contractor agrees to rent/sell/lease all goods and services to the City or other governmental entities, as opposed to a private citizen or corporation, on a first priority basis. The City expects to pay a fair and reasonable price for all products/services in the event of a disaster, emergency or hurricane. Awarded Vendor/Contractor shall furnish a twenty-four (24) hour telephone number in the event of such an emergency.

7) Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Vendor/Contractor is an independent Vendor/Contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Vendor/Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's/Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor/Contractor, which policies of

Vendor/Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Vendor's/Contractor's funds provided for herein. The Vendor/Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor/Contractor and the City and the City will not be liable for any obligation incurred by Vendor/Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

8) Assignment and Subcontracting

No assignment of this Agreement or any right occurring under this Agreement shall be made, in whole or in part, by the Vendor/Contractor without the express written consent of the City Commission which consent shall not be unreasonably withheld. In the event of any assignment, the assignee shall assume the rights, duties and responsibilities of the Vendor/Contractor.

9) Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses. Notice shall be deemed received by the party for whom it is intended after the USPS certified mail process is completed and/or hand delivery.

CITY

Wayne K. Tobey, Director of Parks & Recreation
City of Coconut Creek
1100 Lyons Road
Coconut Creek, FL 33063
Phone: 954-545-6676

With a copy to the City Attorney at:

Terrill C. Pyburn
City Attorney
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063.

VENDOR

Ernie Simmons
Zambelli Fireworks Manufacturing Co.
1060 Holland Drive, Suite J
Boca Raton, FL 33487-2758
Phone: 561-395-0955
Fax: 561-395-1799
Email: epsimms@aol.com
Web Address: www.zambellifireworks.com

10) Purchase by Other Governmental Agencies

Paragraph 40. "Purchase by Other Governmental Agencies," of Section I, "General Terms and Conditions," of ITB No. 09-20-22-12, is deleted in its entirety. This Agreement may not be utilized by other governmental agencies.

11) Agreement Subject to Funding

This Agreement shall remain in full force and effect only as long as the expenditures provided for

in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.

12) Venue

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Agreement is situated exclusively in the Seventeenth Judicial Circuit Court in and for Broward County, Florida or the United States District Court for the Southern District of Florida.

13) Signatory Authority

The Vendor shall provide the City with copies of requisite documentation evidencing that the signatory for Vendor has the authority to enter into this Agreement.

14) Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

15) E-Verify

1) Definitions:

“Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

“Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

2) Effective January 1, 2021, public and private employers, contractors and subcontractors will begin required registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Vendor/Consultant/Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- a) All persons employed by Vendor/Consultant/Contractor to perform employment duties within Florida during the term of the contract; and
- b) All persons (including subvendors/subconsultants/subcontractors) assigned by Vendor/Consultant/Contractor to perform work pursuant to the contract with the Department. The Vendor/Consultant/Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Coconut Creek; and
- c) By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in

the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.

16) Merger; Amendment

This Agreement constitutes the entire Agreement between the Vendor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Vendor and the City.

17) Interpretation

It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and Zambelli Fireworks Manufacturing Co., signing by and through Danielle Fredrickson, CSM/Office Manager, duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Karen M. Brooks, City Manager Date

Joseph J. Kavanagh, City Clerk Date

Approved as to form and legal sufficiency:

Terrill C. Pyburn, City Attorney Date

[Vendor's Signature to Follow]

ZAMBELLI FIREWORKS MANUFACTURING CO.

ATTEST:

Witness

Danielle Fredrickson
CSM/Office Manager

Date

Name of Witness

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, _____, by _____ as _____ for _____.

Signature of Notary Public
State of Florida at Large

Print, Type or Stamp
Name of Notary Public

- Personally known to me or
- Produced Identification

Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath.

EXHIBIT "A"

CITY OF COCONUT CREEK

FIREWORKS DISPLAY FOR THE BUTTERFLY FESTIVAL

IFB No. 09-20-22-12

SCHEDULE OF PROPOSAL PRICES (LUMP SUM COST)

DESCRIPTION	CHARGE
Fireworks Display for The Butterfly Festival	\$30,000.00

NOTE:

Proposer agrees to supply services at the all-inclusive price bid in accordance with the terms, conditions, and specifications contained in IFB No. 09-20-22-12. All price information to be used in the IFB evaluation should be on this page.

Display Price Adjustments

- a) Vendor shall provide a credit of \$4.50 for each 3" shell that is not fired above 2% of the number of shells in the program.
- b) Vendor shall provide a credit of \$40.00 for each Multishot device that is not fired.
- c) Vendor shall provide a 10% credit for more than a ten (10) minute delay in the start time or dead air time that is due to actions of the vendor.
- d) If the display is cancelled due to weather conditions, vendor will bill the City for actual costs involved, trucking and freight, labor, insurance, and any lumber etc. that was used in the set-up of the display.