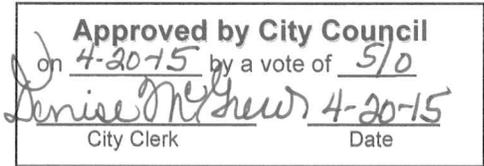


# CITY OF GREENACRES

Council Agenda Memo  
2015.03MP2.01

**TO:** Mayor and City Council  
**THRU:** Wadie Atallah, City Manager  
**THRU:** Thomas A. Hughes, Finance Director  
**FROM:** Monica Powery, Purchasing Administrator  
**SUBJECT:** RFP NO. 15-004 – Fireworks Display  
**DATE:** March 17, 2015  
**COPIES:** Michele Thompson, Director of Leisure Services



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## **BACKGROUND:**

The City of Greenacres sponsors a July 4<sup>th</sup> celebration each year at Community Park for its citizens which include a fireworks display by a qualified firm.

The procurement for the fireworks display was advertised on February 15, 2015 as a Request for Proposal with evaluation criteria that each company submitting a proposal must fulfill. Additionally, four vendors were sent Request for Proposal Notices.

## **ANALYSIS:**

The RFP closed on March 15, 2015 with one proposal received from Zambelli Fireworks. The proposal from Zambelli Fireworks complies with all of the RFP requirements. Their fireworks proposal offers a creative program fired by electronic detonation. Zambelli Fireworks has consistently worked with the City of Greenacres producing fireworks displays for City events for approximately twenty consecutive years.

## **FINANCIAL INFORMATION:**

\$15,000 has been allocated in the Leisure Services cost center for FY 2015 budget in account number 001-60-65-48-4. The Leisure Services Department receives sponsorships for the July 4<sup>th</sup> event for additional fireworks and those funds are recognized as revenue and added expenditures for this event.

**LEGAL:**

Proposals were reviewed in accordance with applicable City Code requirements.

**STAFF RECOMMENDATION:**

Award RFP No. 15-004, Fireworks Display, and authorize an agreement in the base amount of \$15,000 plus any additional sponsorship amounts received to Zambelli Fireworks Manufacturing Company for the July 4<sup>th</sup> fireworks display.



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Monica Powery, CPPB  
Purchasing Administrator

Attachments:   1. Response to the RFP  
                  2. Agreement

Proposal Closing:  
March 15, 2015  
3:00 P.M.

**Proposals Received for  
RFP NO 15-004  
Fireworks Display**

COMPANY		CONTACT PERSON	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
1	Zambelli Fireworks	Mason Meyer	1 West Camino Real Blvd, Ste 100	Boca Raton	FL	33432	(561) 395-0955

**Opened by:**

Monica Powery  
Purchasing Administrator

**Witnessed by:**

Randi Whitcomb  
Finance/Purchasing Assistant

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**AGREEMENT BETWEEN**

CITY OF GREENACRES  
and  
ZAMBELLI FIREWORKS MANUFACTURING CO.  
D/B/A ZAMBELLI FIREWORKS INTERNATIONALE

For  
FIREWORKS DISPLAY

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THIS AGREEMENT made and entered into this 9th day of April, 2015, by and between the **City of Greenacres**, a municipal corporation of the State of Florida, hereinafter referred to as the CITY through its City Council, and **Zambelli Fireworks Manufacturing Co., d/b/a Zambelli Fireworks Internationale**, hereinafter referred to as CONTRACTOR:

WHEREAS, the CITY intends to provide a Fireworks Display on July 4, 2015, for the citizens of the City of Greenacres at Community Park, 2905 Jog Road, Greenacres, Florida 33467 at 9:00 PM; and,

WHEREAS, the CITY requires certain professional services in connection with providing a Fireworks Display for its citizens; and,

WHEREAS, the CONTRACTOR represents that it is capable and prepared to provide such Services:

NOW THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

**ARTICLE I**  
**SCOPE OF SERVICES**

CONTRACTOR agrees to provide services for a complete production of a fireworks display as identified in City of Greenacres' Request for Proposal No. 15-004, titled Fireworks Display, dated February 15, 2015 attached hereto as Attachment "A" (hereinafter the "RFP") and CONTRACTOR'S proposal response dated March 9, 2015 attached hereto as Attachment "B" (hereinafter "Response to RFP") and both by this reference made a part hereof.

**ARTICLE II**  
**TERM**

The term of this Agreement shall be for a period of one (1) year beginning on the effective date. The effective date of this Agreement shall be when the last party executes and dates same. CITY shall have the option to renew the agreement for up to four (4) additional years. Option for renewal will only be exercised upon written mutual agreement and with all original terms and conditions. Any renewal will be subject to appropriation of funds by the City Council.

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**ARTICLE III**  
**CONTRACTOR RESPONSIBILITIES**

The CONTRACTOR shall perform the services as specified in RFP 15-004 to provide a Fireworks Display for the July 4<sup>th</sup> Celebration on July 4, 2015 at the City of Greenacres Community Park. The time for performance of the services of this Agreement shall be on July 4, 2015 at 9:00 PM. Displays and equipment shall be in place at the designated location not later than 5:30 PM, local time on July 4, 2015.

If the fireworks need to be rescheduled for any reason, the CITY reserves the right to reschedule the fireworks display for a later date. The City will provide the CONTRACTOR a minimum of seven (7) calendar days notice of changes in the event schedule. Schedule changes shall be performed at no additional cost to the City.

The CONTRACTOR shall be properly licensed and insured to provide pyrotechnical displays in the State of Florida and provide sufficient trained, licensed personnel to present the fireworks display and the necessary security upon arrival until departure at the loading and firing locations. This shall include direct cell phone or 2-way radio communication with City representatives for logistical needs and to authorize show time.

The CONTRACTOR shall be responsible for all labor, costs and expenses of set up and removal of all equipment and apparatus used in conducting the firing. The CITY will not be held responsible for the security or storage of such equipment.

The CONTRACTOR shall be responsible for the cleanup of the display area including the removal of all unexploded fireworks, frames, sets, and lumber and the refilling of holes. The area of the firing shall be cleaned of all debris and litter and left in the same condition as it was before the firing within 48 hours of the completion of firing.

The CONTRACTOR shall not make modifications or substitutions to the Schedule of Services set forth herein without prior approval of the CITY. These changes must be reasonable, necessary and not affect the price, time of delivery, functional character, or the ambiance of the fireworks display or compromise the integrity of the display.

The CONTRACTOR shall file for and obtain all necessary firework display permits. The CITY will waive all CITY related permit fees however; the successful vendor must pay all applicable City of Greenacres occupational license fees. A copy of these licenses and permits shall be submitted prior to commencement of work.

CONTRACTOR and CITY agree that in the event of a dispute regarding interpretations of the above-mentioned documents, they shall be interpreted in the following order of preference:

1. This Agreement
2. City issued RFP 15-004
3. Contractor's Response to City's Request for Proposal dated March 9, 2015.

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**ARTICLE IV**  
**COMPENSATION**

The CITY agrees to pay CONTRACTOR as compensation for professional services under the terms of this Agreement a fixed fee of fifteen thousand dollars (\$15,000). This contract amount shall include all transportation of personnel, equipment, and fireworks costs including set-up and clean up after the event.

In the event of a failed firing attempt of any illuminant, CONTRACTOR shall supply additional illuminant to compensate for misfiring or by discounting the CITY'S price for the display.

Payment will be made within thirty (30) days after successful performance as specified, compliance with site clean-up requirements, and receipt of a correct invoice.

**ARTICLE V**  
**MODIFICATION OF AGREEMENT TERMS**

The terms of this agreement may be modified by mutual consent to increase or decrease the scope of work, adjust prices in subsequent agreement periods, or for such other purposes as shall become necessary during the conduct of the agreement period. Such amendments shall be accomplished in writing as an addendum to the Agreement.

**ARTICLE VI**  
**MISCELLANEOUS**

**6.1 TERMINATION**

This Agreement may be terminated by either party for cause, or by CITY for convenience, upon thirty (30) days written notice from the terminating party to other party. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated by CITY, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination.

In the event CITY is prohibited from conducting the fireworks display contemplated by this agreement due to governmental rule, regulation, policy or edict, this Agreement shall be cancelled and the CITY shall be released in full from all payments due to CONTRACTOR pursuant to Article IV herein.

For purposes of this Agreement, termination by CITY for cause includes, but is not limited to, the following:

1. CONTRACTOR'S failure to keep, perform and observe each and every provision of this Agreement and such failure continues for a period of more than seven (7) days after delivery to CONTRACTOR of a written notice of such breach or default; and/or
2. CONTRACTOR'S abandonment of the work for a period of seven (7) days or more during the course of a year. Such days need not be consecutive; and/or

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**6.1 TERMINATION- *Continued***

3. Any material misrepresentation, written or oral, made by the CONTRACTOR to the CITY; and/or
4. Failure by the CONTRACTOR to timely perform and/or observe any or all of the covenants, rules, regulations, guidelines or terms and conditions of this Agreement; and/or
5. Insolvency, bankruptcy, and/or suggestion of bankruptcy on the part of the CONTRACTOR or the assignment of assets for the benefit of creditors by the CONTRACTOR.

CONTRACTOR recognizes and agrees that in the event of the termination or expiration of this Agreement, it will be necessary to assist the CITY and/or a selected successor to CONTRACTOR with an orderly transition of work. CONTRACTOR shall be paid in accordance with Article III for all services rendered through the date of termination.

**6.2 EQUAL OPPORTUNITY EMPLOYMENT**

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, and national origin, disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

**6.3 PUBLIC ENTITY CRIMES ACT**

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

**6.4 ASSIGNMENT**

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by CONTRACTOR, under any circumstances, without the prior written consent of CITY.

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## 6.5 INDEMNIFICATION OF CITY

CONTRACTOR shall at all times hereafter, indemnify, hold harmless, and defend CITY, its agents, and employees from and against any claim, demand, or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, or employees in the performance of services under this Agreement.

CONTRACTOR further agrees, at all times hereafter, to indemnify, hold harmless and defend CITY, its agents, and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under this Agreement for which CITY, its agents, or employees are alleged to be liable.

CONTRACTOR acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by CONTRACTOR, and that CITY'S entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the CITY'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

## 6.6 INSURANCE

During the performance of the Services under this Agreement, Contractor shall maintain the following insurance policies and provide originals or certified copies of all policies. Policies shall be written by insurance company(ies) authorized to do business in Florida.

6.6.1 Worker's Compensation Insurance: The Contractor shall procure and maintain for the life of the Agreement, Workers' Compensation Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws. This coverage must extend to any sub consultant that does not have their own Workers' Compensation and Employer's Liability Insurance. The policy must contain a waiver of subrogation in favor of the City of Greenacres, executed by the insurance company. Thirty (30) days notice of cancellation is required and must be provided to the City of Greenacres via Certified Mail.

6.6.2 Comprehensive General Liability: The Contractor shall procure and maintain, for the life of the Agreement, Comprehensive General Liability Insurance. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Premises and/or Operations.
- Independent Contractors.
- Broad Form Property Damage.
- Broad Form Contractual Coverage applicable to this specific Agreement.

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## **6.6 INSURANCE- *Continued***

Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability. This policy shall provide coverage for death, personal injury, or property damage that could arise directly or indirectly from the performance of the Agreement.

The Minimum Limits of Coverage shall be \$6,000,000 per occurrence, Combined Single Limit for bodily injury liability and property damage liability.

The City must be named as an additional insured unless Owners and Contractors' Protective Coverage is also provided, or required. Thirty (30) days written notice must be provided to the City via Certified Mail in the event of cancellation.

**6.6.3 Business Automobile Liability:** The Contractor shall procure and maintain, for the life of the Agreement, Business Automobile Liability Insurance. The minimum limits of coverage shall be \$5,000,000 per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" type policy. The City must be listed as an Additional Insured under the Policy.

In the event that sub consultants used by the Contractor do not have insurance, or do not meet the insurance limits, Contractor shall indemnify and hold harmless the CITY for any claim in excess of the sub consultants' insurance coverage, arising out of negligent acts, errors or omissions of the sub consultants.

**Notice of Cancellation and/or Restriction:** The policy(ies) must be endorsed to provide CITY with thirty (30) days notice of cancellation and/or restriction. Contractor shall not commence work under the Agreement until all insurance required as stated herein has been obtained and the City has approved such insurance.

## **6.7 INDEPENDENT CONTRACTOR**

It is expressly agreed that CONTRACTOR is and shall be in the performance of all work, services, and activities under this Agreement, an independent contractor and not an employee, agent, or servant of CITY. All persons engaged in any work, service, or activity performed pursuant to this Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision, and control. CONTRACTOR undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance. CONTRACTOR shall work closely with the CITY in performing Services under this Agreement.

## **6.8 COMPLIANCE WITH LAWS**

In performance of the Services under this Agreement, CONTRACTOR will comply with applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria and standards.

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## **6.9 UNCONTROLLABLE FORCES**

Neither the CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event that results in the prevention or delay of performance by a part of its obligation under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party, shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

## **6.10 GOVERNING LAW AND VENUE**

This agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County, and the Agreement will be interpreted according to the laws of Florida.

## **6.11 NONWAIVER**

A waiver by either CITY or CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

## **6.12 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

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### **6.13 REPRESENTATIVE OF CITY AND CONTRACTOR**

The parties recognize that questions in the conduct of the performance will arise. The Contract Administrator for the CITY shall be Michele Thompson, Department of Leisure Services, Greenacres, Florida Telephone: (561) 642-2180. All communications pertaining to the conduct of the performance shall be addressed to the CITY'S Contract Administrator.

CONTRACTOR has informed the CITY that Mason Meyer, Project Manager will be CONTRACTOR'S representative to whom matters involving the performance of the Fireworks Display shall be addressed.

### **6.14 ALL PRIOR AGREEMENTS SUPERSEDED**

This Agreement is adopted by the CITY and CONTRACTOR as a complete and exclusive statement of the Agreement between the CITY and CONTRACTOR. This agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONTRACTOR pertaining to the Services, whether written or oral.

The Agreement may not be modified unless such modifications are evidenced in writing signed by both the CITY and CONTRACTOR.

### **6.15 NO CONTINGENT FEES**

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the 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 the CONTRACTOR, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

### **6.16 ATTORNEY'S FEES**

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

### **6.17 AUTHORITY TO ENGAGE IN BUSINESS**

CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

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**6.18 NOTICE**

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As to CITY:

Director of Finance  
City of Greenacres  
5800 Melaleuca Lane  
Greenacres, Florida 33463

As to CONTRACTOR:

Mason Meyer, Project Manager  
Zambelli Fireworks Manufacturing Co.  
1 W. Camino Real Blvd., Ste 100  
Boca Raton, FL 33432

Notices shall be effective when received at the address specified above. Any party may make changes in the respective addresses to which such notice may be directed from time to time by written notice to the other party. Facsimile or e-mail is acceptable notice effective when received, however, facsimiles received (i.e.; printed) after 5:00 PM or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONTRACTOR and CITY.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals this 20<sup>th</sup>  
day of April, 2015.

(Seal)

Denise McGrew  
City Clerk

**CITY OF GREENACRES**  
A Municipal Corporation of the State of  
Florida.  
**ATTEST:**  
Thomas A. Hughes  
Director of Finance/  
Purchasing Agent

ENDORSED AS TO FORM  
AND SUFFICIENCY:

Pamela S. Terranova  
Pamela S. Terranova  
City Attorney

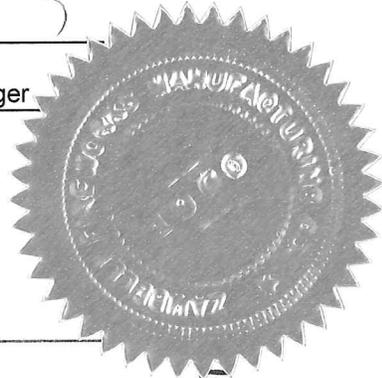
Zambelli Fireworks Mfg. Co.

WITNESSES:

Kathy D'Aglio  
Marilyn Fredrickson

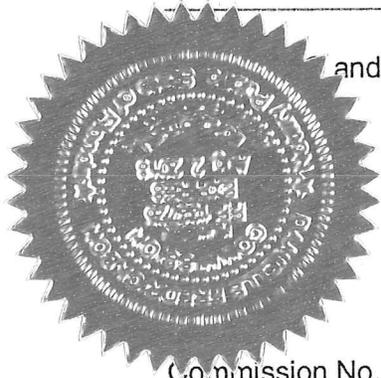
(Corporate Seal)

By: Mason Meyer  
Mason Meyer, Regional Manager  
Print Name and Title



and SUBSCRIBED before me this 9th day of April, 2015.

Signature: Marilyn Fredrickson  
Notary Public - State of Florida  
Danielle Fredrickson  
Printed Name



Commission No. FF133725 Commission Expires: Aug. 2, 2018

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

