

**RESOLUTION NO. 2023- 2963**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT AND ADDENDUM WITH ZAMBELLI FIREWORKS MANUFACTURING CO. FOR FOURTH OF JULY FIREWORKS DISPLAY SERVICES; PROVIDING FOR AUTHORIZATION TO EXECUTE THE AGREEMENT AND ADDENDUM; PROVIDING FOR WAIVER OF COMPETITIVE BIDDING; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on July 4, 2023 and 2024, the Town of Surfside ("Town") will host a community event at the Town Community Center that concludes with a fireworks display (each a "Fourth of July Event"); and

**WHEREAS**, for several years, the Town has contracted with Zambelli Fireworks Manufacturing Co. ("Contractor") to provide the fireworks display at the Fourth of July Event (the "Services") and is pleased with Contractor's performance; and

**WHEREAS**, Town Staff recommends that the Town continue working with Contractor to provide the Services for the Town's Fourth of July Events; and

**WHEREAS**, the Town conducted a good faith review of available sources as to price, delivery and terms, and wishes to waive competitive bidding for the Services pursuant to Section 3-12 of the Town's Code of Ordinances ("Code") and finds that it is in the best interests of the Town to expeditiously obtain the Services and ensure provision of the Services for the Town's Fourth of July Events; and

**WHEREAS**, pursuant to Section 3-13(7)(c) of the Town's Code, the Town Commission also finds that the Services provided by the Contractor are exempt from the competitive procurement requirements of Chapter 3 of the Town's Code as the Services

provided by the Contractor are artistic services benefitting the citizens of the Town and the general public; and

**WHEREAS**, Town desires to approve and authorize the Town Manager to execute an Agreement and Addendum with the Contractor for the Services, in substantially the form attached hereto as Exhibit "A" (collectively, the "Agreement"); and

**WHEREAS**, the Town Commission finds that this Resolution is in the best interest and welfare of the Town and its residents.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:**

**Section 1. Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval and Authorization.** The Town Commission hereby approves the Agreement in substantially the form attached hereto as Exhibit "A." The Town Manager is hereby authorized to execute the Agreement and the Addendum attached hereto as Exhibit "A," together with such non-substantive changes as may be approved by the Town Manager and Town Attorney for legal sufficiency.

**Section 3. Waiver of Competitive Bidding.** The Town Commission waives competitive bidding procedures pursuant to Section 3-12 of the Town Code, upon the recommendation of the Town Manager, and finds that such waiver is in the best interests of the Town in order to expeditiously obtain the Services and ensure provision of the Services for the Town's Fourth of July Events. Furthermore, pursuant to Section 3-13(7)(c) of the Town's Code, the Town Commission finds that the Services provided by the Contractor are exempt from the competitive procurement requirements of Chapter 3

of the Town's Code as the Services are artistic services benefitting the citizens of the Town and the general public.

**Section 4. Implementation.** The Town Manager and/or designee are authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

**Section 5. Effective Date.** This Resolution will become effective upon adoption.

PASSED AND ADOPTED this 10th day of January, 2023.

Motion By: Vice Mayor Rose  
Second By: Commissioner Landsman

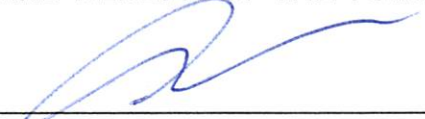
**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>

  
\_\_\_\_\_  
Shlomo Danzinger, Mayor

**ATTEST:**  
  
\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

  
\_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

**ZAMBELLI FIREWORKS MANUFACTURING CO.**

THIS CONTRACT AND AGREEMENT (this "Contract") is made effective as of this 23 day of December 20, 2023 and between:

**Zambelli Fireworks Manufacturing Co.** of Warrendale, Pennsylvania (hereinafter referred to as "Zambelli"),

-AND-

Town of Surfside Florida (hereinafter referred to as "Client").

WHEREAS, Zambelli is in the business of designing and performing exhibitions and displays of fireworks; and

WHEREAS, Client desires that Zambelli provide an exhibition and display of fireworks for Client's benefit pursuant to the terms and conditions hereof, and Zambelli desires to perform an exhibition and display of fireworks for Client's benefit pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained:

Zambelli, intending to be legally bound, agrees as follows: Electronic firing

- 1. Zambelli agrees to sell, furnish and deliver to Client 19-20 minute fireworks display [per the program submitted by Zambelli to Client, accepted by Client and made a part hereof] (hereinafter referred to as the "Display") to be exhibited on the display date set forth below (hereinafter referred to as the "Display Date"), or on the postponement date set forth below (hereinafter referred to as the "Postponement Date") if the Display is postponed as provided herein, which Display Date and Postponement Date have been agreed upon at the time of signing this Contract.

**Display Date:** 07-04-2023 **Postponement Date:** na **Budget:** 24000.00

**Display Date:** 07-04-2024 **Postponement Date:** na **Budget:** 24000.00

- 2. Zambelli agrees to furnish the services of display technicians (hereinafter referred to as "Display Technicians") who are sufficiently trained to present the Display. Zambelli shall determine in its sole discretion the number of Display Technicians necessary to take charge of and safely present the Display.
- 3. Zambelli agrees to furnish insurance coverage in connection with the Display for bodily injury and property damage, including products liability, which insurance shall include Client as additional insured regarding claims made against Client for bodily injury or property damage arising from the operations of Zambelli in performing the Display provided for in this Contract. Such insurance afforded by Zambelli shall not include claims made against Client for bodily injury or property damage arising from failure of Client, including through or by its employees, agents and independent contractors, to perform its obligations under this Contract, including without limitation those set forth in paragraphs 5 and 6 below. Client shall indemnify and hold Zambelli harmless from all claims and suits made against Zambelli for bodily injury or property damage arising from failure of Client, including through or by its employees, agents and independent contractors, to perform its obligations under this Contract, including without limitation those set forth in paragraphs 5 and 6 below.

Client, intending to be legally bound, agrees as follows:

- 4. Client agrees to pay Zambelli the sum of \$ 24,000.00 (hereinafter referred to as the "Purchase Price"), fifty percent (50%) of which is due upon signing this Contract and the balance of which is due at noon three (3) days prior to the Display Date. All credit card payments will be subject to a 3.9% surcharge. Zambelli reserves the right to add to Client's invoice an equitable transportation surcharge in the event of any material increase in transportation costs (including the cost of fuel and third party shipping costs) to Zambelli after the date of this Contract. In addition, Client agrees to pay a postponement fee of fifteen percent (15%) of the Purchase Price plus Additional Third Party Charges (as defined in paragraph 11 below) if the Display is fired on the Postponement Date, or twenty-five percent (25%) of the Purchase Price plus Additional Third Party Charges if the Display is fired on a date other than the Display Date or the Postponement Date ("Alternate Date"). The

Alternate Date must occur within six months of the original Display Date at a time agreeable to both Zambelli and the Client. Generally, Alternate Dates will not include the period from June 28<sup>th</sup> through July 7<sup>th</sup>. This Checks shall be made payable to Zambelli Fireworks Manufacturing Co., unless otherwise authorized in writing by Zambelli. NO CASH shall be paid to any agent or employee of Zambelli, unless otherwise authorized in writing by Zambelli. There shall be no refund of the Purchase Price due and payable under this paragraph 4, except as specifically provided in paragraph 11 below.

5. Client agrees to meet all deadlines outlined in the Design and Production Provisions, which has been provided to Client, including but not limited to the following:
  - (a) Client must select a suitable place for the Display, including a firing and debris zone reasonably acceptable to Zambelli (hereinafter referred to as the "Display Area") and submit such selection to Zambelli no later than sixty (60) days prior to the Display Date. The Display Area shall adhere to or exceed applicable National Fire Protection Association ("NFPA") standards including the Zambelli guideline that the Display Area have a radius of at least 100 feet per inch (or as mutually agreed to between Zambelli and Client) of the largest diameter pyrotechnic from the firing site in all directions to any parking area, spectators, inhabited buildings, public roads, or active railroad. Client shall submit a site map (attached hereto as Exhibit A) to Zambelli accurately representing the physical characteristics of the Display Area as pertains to NFPA and Zambelli guidelines. The content of the Display may be limited by the selection of the Display Area due to the requirement to provide sufficient safety zones.
  - (b) Zambelli will secure all Fireworks permits necessary for the Display as required, including but not limited to police, local, and state permits, and arrange for any security bonds or insurance as required by law. In addition, Zambelli will notify and obtain permission from the FAA to display fireworks. Client will assist Zambelli when appropriate in completing permit applications. Client shall be responsible for any Special Event permits required by City. It is the responsibility of the Client to contact the City's Special Events Department regarding their event.
  - (c) **If the Display is choreographed to music, the final selection of the music must be submitted to Zambelli by Client no later than ninety (90) days prior to the Display Date.**
6. If, in its sole discretion, Client designates an area for members of the public to view the Display (hereinafter referred to as the "Spectator Area") or an area for vehicular parking (hereinafter referred to as the "Parking Area"), Client shall (a) ensure that the Spectator Area does not infringe on the Display Area, (b) have sole responsibility for ensuring that the terrain of the Spectator Area and any structures thereon, including but not limited to grandstands and bleachers are safe for use by spectators, (c) have sole responsibility for ensuring that the Parking Area is safe for use, (d) have sole responsibility to police, monitor and appropriately control spectator access to the Spectator Area and the Parking Area and police and monitor and appropriately control the behavior of persons in these areas. It is expressly agreed that Zambelli shall not inspect any area other than the Display Area, except to ensure that any Spectator or Parking Areas are outside the Display Area.
7. Prior to, during, and immediately following the Display, Client shall monitor the Display Area and will be solely responsible to keep all persons and property not authorized by Zambelli out of the Display Area and behind safety zone lines and limits.
8. Following the Display, Client shall be solely responsible for policing of the Display Area and for cleanup except as specifically provided in the sentence immediately following. Zambelli shall be responsible for the removal of unexploded fireworks and the cleanup of material debris, the removal of frames, sets and lumber from the Discharge Area, and the refilling of holes created by Zambelli or on behalf of Zambelli within the Discharge Area.
9. Client will include a direct reference to "Zambelli Fireworks" in all promotional material, including but not limited to event schedules; radio, television, newspaper and internet announcements; newspaper articles; and other media.

The parties, intending to be legally bound, mutually agree as follows:

10. It is agreed and understood by the parties hereto that should inclement weather prevent firing of the Display on the Display Date, as determined by the Authority Having Jurisdiction (as defined in paragraph 14 below) or as reasonably determined by Zambelli, then the program shall be postponed and fired on the Postponement Date.

If there is no Postponement Date and the Display is not fired on the Display Date, or if inclement weather prevents firing of the Display on the Postponement Date, as determined by the Authority Having Jurisdiction or as reasonably determined by Zambelli, the Display will be cancelled and there will be no refund of the Deposit or fifty percent (50%) of the Purchase Price, whichever is greater.

11. Client's cancellation of the Display will only be effective upon receipt by Zambelli of a written notice from an authorized person representing Client. In the event of cancellation of the Display, the parties agree as follows:
  - (a) If Client cancels the Display more than sixty-one (61) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to ten percent (10%) of the Purchase Price plus Additional Third Party Charges, as defined below.
  - (b) If Client cancels the Display from thirty-one (31) to sixty (60) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to twenty percent (20%) of the Purchase Price plus Additional Third Party Charges, as defined below.
  - (c) If Client cancels the Display from five (5) days prior the Display to thirty (30) days prior to the Display Date, Client agrees to pay Zambelli a cancellation fee equal to thirty percent (30%) of the Purchase Price plus Additional Third Party Charges, as defined below.
  - (d) If Client cancels the Display less than five (5) days prior to the day of the Display, Client agrees to pay Zambelli a cancellation fee equal to fifty percent (50%) of the Purchase Price plus Additional Third Party Charges, as defined below.
  - (e) "Additional Third Party Charges" shall mean all costs and expenses incurred by Zambelli and paid or payable to third parties in connection with the Display, including but not limited to security fees, permits and licensing fees and expenses, barge and tow expenses, and firewatch fees.
12. Zambelli reserves the exclusive right to make minor modifications and substitutions to the Display, provided that such changes are reasonable and necessary and do not materially adversely affect price, time of delivery, functional character or performance of the Display.
13. It shall be within Zambelli's and/or the Authority Having Jurisdiction's discretion to terminate the firing of the Display if any unsafe or unsuitable condition is identified. If such condition is not corrected, Zambelli may cancel the Display without further liability to Client for such cancellation.
14. The parties agree to cooperate with the regulatory authorities having jurisdiction over the Display, including, but not limited to local fire and police departments, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Transportation, the Department of Homeland Security, and the USCG (any such authority having jurisdiction over the Display is sometimes referred to herein as, the "Authority Having Jurisdiction"). The parties acknowledge that such governmental regulatory authorities having jurisdiction over the Display have the right to prohibit the Display until unsafe or unsuitable conditions are corrected.
15. This contract shall be deemed made in the State of Florida and shall be construed in accordance with the laws of the State of Florida, excluding its conflict of law rules. The parties agree and consent to the jurisdiction of the courts of the State of Florida and the Federal District Court for the Southern District of Florida to decide all disputes regarding this Contract.
16. If Client becomes bankrupt or insolvent, or if a petition in bankruptcy is filed by or against Client or if a receiver is appointed for Client, Zambelli may refuse to perform under this Contract and may terminate this Contract without prejudice to the rights of Zambelli. If Client's financial condition becomes unsatisfactory to Zambelli, Zambelli may require that Client deposit the balance of the Purchase Price in escrow or provide sufficient proof of its ability to pay the balance of the Purchase Price.
17. Except to the extent, if any, specifically provided to the contrary herein, in no event shall Zambelli be liable to Client for any indirect, special, consequential, incidental or punitive damages or lost profits, however caused and on any theory of liability (including negligence of any kind, strict liability or tort) arising in any way out of this contract, whether or not Zambelli has been advised of the possibility of damages.

- 18. If Client fails to pay the monies due under this Contract, Zambelli is entitled to recover the balance due plus interest at one and one-half percent (1 ½ %) per month on amounts past due sixty (60) days or more. Further, on balances outstanding one hundred twenty (120) days or more, Zambelli is entitled to recover the balance due, plus accrued interest, plus attorneys fees of ten percent (10%) of the amount past due, plus court costs, or, if less, the maximum amount permitted by law.
- 19. This Contract shall not be construed to create a partnership or joint venture between the parties or persons mentioned herein.
- 20. Each party hereunder shall be excused for the period of delay in the performance of any of its obligations hereunder and shall not be liable for failure to perform or considered in default hereunder, when prevented from so performing by a cause or causes beyond its reasonable control, including but not limited to fire, storm, earthquake, flood, drought, accident, explosion, operation malfunction, or interruption, strikes, lockouts, labor disputes, riots, war (whether or not declared or whether or not the United States is a member), Federal, state, municipal or other governmental legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain materials, supplies, equipment, fuel, power, labor or other operational necessity, interruption or curtailment of power supply, or act of God, nature or public enemy.
- 21. This Contract constitutes the sole and entire understanding of the parties with respect to the matters contemplated hereby and supersedes and renders null and void all prior negotiations, representations, agreements and understandings (oral and written) between the parties with respect to such matters. No change or amendment may be made to this Contract except by an instrument in writing signed by each of the parties.
- 22. Notices, consents, requests or other communications required or permitted to be given by either party pursuant to this Contract shall be given in writing by first class mail, postage prepaid addressed as follows: if to Zambelli, to the address set forth below; if to Client, to Town of surfside FL
- 23. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument. The exchange of copies of this Contract and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Contract as to the parties and may be used in lieu of the original Contract for all purposes. This Contract and all the rights and powers granted by this Contract shall bind and inure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, we set our hands and seals to the agreement in duplicate the day and year first above written.

**FOR Client:**

**FOR: Zambelli Fireworks Manufacturing Co.**

BY \_\_\_\_\_

BY \_\_\_\_\_

PRINT Carlos Malvarez \_\_\_\_\_

PRINT \_\_\_\_\_

DATE \_\_\_\_\_

DATE \_\_\_\_\_

Please sign contract where indicated for Client and return all copies for final acceptance to:

**Zambelli Fireworks Manufacturing Co.**  
**1060 Holland Drive, Suite J**  
**Boca Raton, FL 33487**  
 561-395-0955                      FAX 561-395-1799

# Zambelli

## FIREWORKS

### Communication Sheet

Communications Sheet must be completed in its entirety each year.

***Our insurance carrier requires a newly completed form each year.***

A Zambelli Fireworks representative will use this sheet to contact you.

Customer Information		Show Information	
Customer Name	_____	Show Date	_____
Address	_____	Rain Date	_____
City, State, Zip	_____	Time of Show	_____
		Duration of Show	_____
Firing Site Location		Storage Site Location	
Description	_____	Description	_____
Site contact Name	_____	Site Contact Name	_____
Phone Number	_____	Phone Number	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Contact Person		Alternate Contact #1	
Name	_____	Name	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Home Phone Number	_____	Home Phone Number	_____
Fax Number	_____	Fax Number	_____
Office Number (& ext.)	_____	Office Number (& ext.)	_____
Cell Number	_____	Cell Number	_____
E-Mail	_____	E-Mail	_____
Alternate Contact #2		Day of Show Contact	
Name	_____	Name	_____
Address	_____	Address	_____
City, State, Zip	_____	City, State, Zip	_____
Home Phone Number	_____	Home Phone Number	_____
Fax Number	_____	Fax Number	_____
Office Number (& ext.)	_____	Office Number (& ext.)	_____
Cell Number	_____	Cell Number	_____
E-Mail	_____	E-Mail	_____

SAFE SHOWS ARE A RESULT OF PROPER PLANNING!

1060 Holland Drive – Suite J  
 Boca Raton, FL 33487  
 (561) 395-0955  
[www.zambellifireworks.com](http://www.zambellifireworks.com)





***Required Insurance Requisition Form***

Customer Name

Address

City

State

Zip

Display Date

Rain Date

Location of Display

City

State

Zip

Name all Additional Insured

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Name & Address of Display Site Property Owner

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Certificate to be issued to:

Address

City

State

Zip

Title

Phone

**\* This form must be returned with your signed contract for the insurance certificate to be processed. Our insurance company requires that we have this form in addition to the signed contract prior to the certificate being issued.**

1060 Holland Drive – Suite J  
Boca Raton, FL 33487  
(561) 395-0955  
www.zambellifireworks.com

**ADDENDUM TO CONTRACT AND AGREEMENT  
BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND  
ZAMBELLI FIREWORKS MANUFACTURING CO.**

**FOURTH OF JULY FIREWORKS DISPLAY**

**THIS ADDENDUM TO CONTRACT AND AGREEMENT** (“Addendum”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2023, by and between **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (hereinafter referred to as “Town” or “Client”) and **ZAMBELLI FIREWORKS MANUFACTURING CO.**, a Pennsylvania Corporation (hereinafter referred to as “Zambelli” or “Contractor”).

**WITNESSETH:**

**WHEREAS**, the Town and Contractor wish to enter into that certain Contract and Agreement together with this Addendum for the purpose of Contractor providing a 19-20 minute fireworks display on July 4, 2023, and July 4, 2024 at the Town of Surfside Community Center located at 9301 Collins Avenue, Surfside, Florida 33154 (“Premises”), (hereinafter, the “Agreement”); and

**WHEREAS**, the Town and Contractor desire to add to and amend certain provisions of the Agreement as hereinafter provided.

**NOW, THEREFORE**, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Town and Contractor desiring to be legally bound, do hereby agree and covenant, notwithstanding the terms and conditions of the Agreement, as follows:

1. **Addendum Controls.** In the event of any conflict between this Addendum and the Agreement, the terms of this Addendum shall prevail and govern.
2. **Defined Terms.** All initial capitalized terms used in this Addendum shall have the same meaning as set forth in the Agreement unless otherwise provided.
3. **Recitals.** The recitals set forth above are incorporated herein and made a part of this Addendum.
4. **Insurance.**
  - 4.1. Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by

the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 4 and may be increased by the Town as it deems necessary or prudent.

- 4.2. Commercial General Liability coverage with limits of liability of not less than a \$10,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$10,000,000 each.
- 4.3. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to the Agreement who is not covered by Worker's Compensation insurance.
- 4.4. Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- 4.5. Transportation Liability Insurance with minimum limits of \$5,000,000 per Occurrence as required by the United States Department of Transportation.
- 4.6. **Certificate of Insurance**. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured, no later than ten (10) days after award of this Agreement and prior to the execution of the Agreement by Town and prior to commencing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of the Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to the Agreement and shall state that such insurance is as required by the Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be

provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

- 4.7. **Additional Insured.** The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Contractor in performance of the Agreement. The Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 4.8. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- 4.9. The provisions of this section shall survive termination of the Agreement.
5. **Indemnification.** Contractor shall protect, defend, indemnify, save and hold harmless the Town, all departments, agencies, boards and commissions, its officers, agents, servants and employees, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of the Display or services and any negligent act or omission of the Contractor, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the Town as a result of any claim, demands, and/or causes of action. Nothing in this indemnification or the Agreement is intended to act as a waiver of the Town's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of the Agreement.
6. **Notices/Authorized Representatives.** Any notices required by the Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town:                      Town of Surfside  
Town Manager  
9293 Harding Avenue  
Surfside, Florida 33154

With a copy to:                    Town Attorney  
Town of Surfside

9293 Harding Avenue  
Surfside, Florida 33154

For the Contractor: Zambelli Fireworks Manufacturing Co.  
Attention: Tony Sawdey, Project Manager  
1 West Camino Real Blvd., Suite 100  
Boca Raton, FL 33432

7. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.
8. **Ownership and Access to Records; Public Records.** Notwithstanding anything to the contrary in the Agreement, the Agreement and all Work, deliverables and services provided by the Contractor are subject to Florida's Public Records Law (Chapter 119, Florida Statutes, including but not limited to the following:
- 8.1. All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing the Work to the Town under the Agreement shall be the property of the Town.
- 8.2. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under the Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- 8.3. Upon request from the Town custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 8.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 8.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and

exempt from public records disclosure requirements.

- 8.6. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 8.7. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of the Agreement by the Town.

**Section 119.0701(2)(a), Florida Statutes**

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

**Custodian of Records:                      SANDRA MCCREADY,  
MMC,    TOWN CLERK**

**Mailing address:                              9293 Harding Avenue  
    Surfside, Florida 33154**

**Telephone number:                        305-887-9541**

**Email:  
[smccready@townofsurfsidefl.gov](mailto:smccready@townofsurfsidefl.gov)**

9. **Compliance with Laws.** Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out the Display, deliverables or services under the Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Display and services under the Agreement.
10. **Amendments.** This Agreement may only be amended by the prior written approval of the parties or by execution of an amendment executed by both parties.
11. **Controlling Agreement; No Construction against Drafter.** The Agreement, as supplemented and modified by this Addendum, is the sole expression of the agreement between the Town and Contractor as to the subject matter thereof.
12. **Counterparts.** This Addendum may be executed in counterparts and any counterpart evidencing signature by one party may be delivered by telecopy, facsimile or electronic mail. Each executed counterpart of this Addendum will constitute an original document and all executed counterparts, together, will

constitute the same Agreement.

**13. Attorney's Fees and Waiver of Jury Trial.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

**14. Assignment and Subcontractors.** Contractor shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the Town Manager. Any such assignment without prior approval shall be void ab initio. All subcontractors shall be approved in advance by the Town before providing the Display. The Contractor agrees and represents that any approved subcontractors possess the requisite skills to perform the Display and that the Display shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to the Town.

**15. Paragraph 1 of Agreement.** Paragraph 1 of the Agreement is replaced in its entirety as follows:

Zambelli agrees to sell, furnish and deliver to Client a minute fireworks display per the program submitted by Zambelli to Client, accepted by Client and made a part hereof as Exhibit "A" (hereinafter referred to as the "Display") to be exhibited on the display date set forth below (hereinafter referred to as the "Display Date"), or on the postponement date set forth below (hereinafter referred to as the "Postponement Date") if the Display is postponed as provided herein, which Display Date and Postponement Date have been agreed upon at the time of signing this Contract. The term of this Agreement is from the Effective Date through completion of the Display in 2024 (the "Term").

Display Date: 07-04-2023 Postponement Date: 07-05-2023 Budget: \$24,000.00

Display Date: 07-04-2024 Postponement Date: 07-05-2024 Budget: \$24,000.00

**16. Paragraph 3 of Agreement.** Paragraph 3 of the Agreement is replaced in its entirety as follows:

"Zambelli agrees to furnish insurance coverage in connection with the Display for bodily injury and property damage, including products liability, which insurance shall include Client as additional insured regarding claims made against Client for bodily injury or property damage arising from the operations of Zambelli in performing the Display provided for in this Contract. Such insurance afforded by Zambelli shall not include claims made against Client for bodily injury or property damage arising from failure of Client, including through or by its employees, agents and independent contractors, to perform its obligations under this Contract, including without limitation those set forth in paragraphs 5 and 6 below."

All insurance shall be provided by Contractor as set forth in Section 4 of this Addendum.

**17. Paragraph 9 of Agreement.** Paragraph 9 of the Agreement is stricken in its entirety.

**18. Paragraph 10 of Agreement.** Paragraph 10 of the Agreement is replaced in its entirety as follows:

“It is agreed and understood by the parties hereto that should inclement weather prevent firing of the Display on the Display Date, as determined by the Authority Having Jurisdiction (as defined in paragraph 14 below) or as reasonably determined by Zambelli, then the program shall be postponed and fired on the Postponement Date. If there is no Postponement Date and the Display is not fired on the Display Date, or if inclement weather prevents firing of the Display on the Postponement Date, as determined by the Authority Having Jurisdiction, the Display will be cancelled and there will be no refund of the Deposit or fifty percent (50%) of the Purchase Price, whichever is greater.”

**19. Paragraph 11 of Agreement.** Paragraph 11(e) of the Agreement is stricken in its entirety. No Additional Third Party Charges will be imposed for cancellation of the Display.

**20. Paragraph 15 of Agreement.** Paragraph 15 of the Agreement is stricken in its entirety.

**21. Paragraph 17 of Agreement.** Paragraph 17 of the Agreement is stricken in its entirety.

**22. Paragraph 18 of Agreement.** Paragraph 18 of the Agreement is replaced in its entirety as follows:

“If Client fails to pay the monies due under this Contract, Zambelli is entitled to recover the balance due plus interest at one and one-half percent (1 ½ %) per month on amounts past due sixty (60) days or more.”

**23. Termination Due To Lack of Funding.** This Agreement is subject to the condition precedents that: (i) Town funds are available, appropriated and budgeted, for the Services annually for each year of the Term; (ii) the Town secures and obtains any necessary proceeds, grants or loans for the accomplishment of the Services pursuant to any borrowing legislation adopted by the Town Commission relative to the Services; and (iii) Town Commission enacts legislation or other necessary resolutions, which awards and authorizes the execution of this Agreement and the annual appropriation and budgeting for the Services. In the event the Town Commission fails to appropriate funds for the particular purpose of this Agreement during any year of the Term hereof, then this Agreement shall be terminated upon twenty (20) days written notice and the Contractor shall be compensated for the Services satisfactorily performed through the effective date of termination. Town represents to Contractor that Town has adopted a resolution authorizing execution of this Agreement.



