

RESOLUTION NO. 04- 222

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE AGREEMENT BETWEEN THE TOWN OF MIAMI LAKES AND ZAMBELLI FIREWORKS MANUFACTURING CORPORATION FOR THE TOWN'S FOURTH OF JULY FIREWORKS DISPLAY; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Miami Lakes (the "Town") Cultural Affairs Committee (the "Committee") reviewed proposals from three (3) fireworks providers for the Town's Fourth of July fireworks display; and

**WHEREAS**, after reviewing the credentials, reputations and price of the providers, the Committee recommends Zambelli Fireworks Manufacturing Corporation ("Zambelli"); and

**WHEREAS**, the Town desires to engage the professional services of Zambelli to conduct the Town's Fourth of July fireworks display.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing Recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval of Agreement.** The Agreement between the Town of Miami Lakes and Zambelli Fireworks Manufacturing Corporation for the Town's Fourth of July fireworks display (the "Agreement"), a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form

and legality by the Town Attorney, is approved.

**Section 3. Authorization of Town Officials.** The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Agreement.

**Section 4. Authorization of Fund Expenditure.** The Town Manager is authorized to expend budgeted funds, up to the amount of the Agreement, to implement the terms and conditions of the Agreement.

**Section 5. Execution of Agreement.** The Mayor is authorized to execute the Agreement on behalf of the Town.

**Section 6. Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2004.

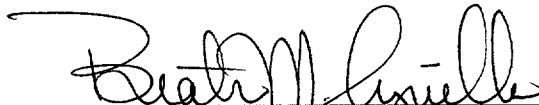
Motion to adopt by Collins, second by Alonso.

FINAL VOTE AT ADOPTION

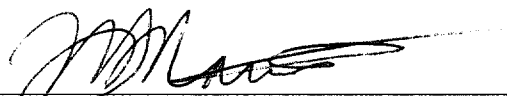
Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

  
\_\_\_\_\_  
Beatris M. Arguelles, CMC  
TOWN CLERK

Approved as to form and legality for the use  
and benefit of the Town of Miami Lakes only:

  
\_\_\_\_\_  
Weiss, Serota, Helfman, Pastoriza Guedes  
Cole & Boniske, P.A.  
TOWN ATTORNEY

702001/Resolutions/Approving Zambelli Fireworks

## FIREWORKS DISPLAY AGREEMENT

THIS AGREEMENT (the or this "Agreement") is made as of 4, 9, 2004 between the TOWN OF MIAMI LAKES (the "Town"), a Florida municipal corporation and ZAMBELLI FIREWORKS MANUFACTURING CORPORATION, a Pennsylvania corporation ("Zambelli").

### RECITALS

Town and Zambelli wish to enter into an agreement, for Zambelli to supply fireworks display services for a Town special event (the "Event") on July 4, 2004 (the "Event Date") at Graham Park.

### AGREEMENT

IN CONSIDERATION of the mutual covenants in this Agreement, Town and Zambelli agree as follows:

1. Agreement to Provide Services. Zambelli agrees to provide to Town the fireworks display services set forth in this Agreement. The services to be provided by Zambelli include all labor, equipment, materials, and other miscellaneous items necessary to provide a first-class aerial fireworks display, including transportation, set-up, firing, and clean up of the fireworks display to be provided under this Agreement. Zambelli agrees that all services required by this Agreement will be rendered in a professional manner by trained and qualified employees and contractors.

2. Term and Termination.

2.1. Term. This Agreement will be in effect from the date of execution to July 6, 2004 (the "Termination Date"). Any terms or conditions of this Agreement that require actions beyond the Termination Date shall survive such termination or expiration.

3. Event. Zambelli agrees to provide Town with a fireworks display on July 4, 2004.

3.1. Cancellation or Postponement of Events. Town has the right to cancel or postpone the Event at any time prior to the start of the Event for any one of the following reasons:

3.1.1. inclement weather;

3.1.2. winds exceeding 20 miles per hour; or

3.1.3. governmental prohibition of fireworks displays due to inadequate rain, excessive dryness or other causes.

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If the Town cancels the Event for any of the reasons listed in 3.1 above, all actual verifiable costs incurred by Zambelli plus a re-stocking charge of \$1,000 will be paid by the Town to Zambelli. If Town elects to postpone (instead of cancel) the Event, Town and Zambelli will reschedule the Event to a mutually acceptable date. All actual verifiable costs of postponement incurred by Zambelli will be reimbursed to Zambelli by the Town.

3.2. Cancellation Fees. If for any reason other than those listed in paragraph 3.1, Town cancels the Event, Town will pay to Zambelli all actual verifiable costs incurred by Zambelli plus a \$1,000 re-stocking charge as a cancellation fee. If Zambelli cancels this Agreement or the Event for any reason other than: (1) inclement weather, (2) force majeure or (3) nonperformance by or material breach of the terms of this Agreement by Town, all monies paid to Zambelli by Town will be refunded and Town will have no further obligation under this Agreement.

4. Event Cost. The cost of the Event will be \$20,000. An initial installment of \$10,000 (50%) is due by Town to Zambelli at the signing of this Agreement, the balance of \$10,000 (50%) is due on or before July 4, 2002.

5. Inventory of Fireworks. Zambelli will provide all proposed bombshells, mortars, igniting and launching materials for the fireworks display for the Event.

5.1. Opening Inventory. Zambelli must provide to Town at least five (5) days prior to the Event a complete opening inventory listing all explosive materials to be expended during the Event by size, type, and quantity. Under no circumstances will the Town accept broken boxes of materials. All cartons of materials to be utilized for the Event must be fresh and unopened and contain the number of items labeled on the carton. Product expiration dates listed on the cartons must not be exceeded.

5.2. Closing Inventory. Prior to Zambelli leaving the site where the fireworks are set off (the "Shoot Site") after the Event, Zambelli must provide to Town's designee a complete closing inventory. The closing inventory must list all shells fired (including those that exploded and those that did not explode), by size, type, and quantity, and an inventory of all non-exploded (unused) shells, by size, type, and quantity. Town expects the closing inventory to match the opening inventory so that all explosive materials are accounted for before Zambelli leaves the Shoot Site. The closing inventory must be verified and signed by Zambelli and approved and accepted by Town before Zambelli leaves the Shoot Site.

6. Security. Town will be responsible for providing police and fire security at the site where the fireworks will be set off (the "Shoot Site") before, during, and after the Event. Town will also provide supervision of parking areas and will ensure adequate patrol of the Safety Zone (defined below) during the Event until Zambelli advises that such patrol is no longer necessary.

7. Compliance with Governmental and Other Requirements. Zambelli will comply with all governmental and third party requirements and standards now in effect or enacted during the term of this Agreement and applicable to Zambelli, its employees, agents, and subcontractors, with respect to the work and services described in this Agreement, including the standards of the National Fire Protection Association (“NFPA”).

7.1. Maintenance of Safety Zone. Town acknowledges that NFPA Code 1123-1995 requires a safety zone (the “Safety Zone”) of 70 feet per inch of fireworks shell diameter between the Shoot Site and any spectators, cars or buildings. The Town will be responsible for providing Zambelli with an adequate Safety Zone for the fireworks display option selected by Town for the Event. If Town is unable to provide the Safety Zone mandated by NFPA standards for any given Event, Zambelli will adjust the fireworks display for the Event in order to comply with the NFPA standards. Zambelli reserves the right to terminate the Event fireworks display if any persons, animals or vehicles enter the Safety Zone and Town’s police, fire or security personnel is unable or unwilling to promptly remove the intruders from the Safety Zone

8. Licenses and Permits. Zambelli represents that it holds the license required by the United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms to perform the services contemplated by this Agreement (the “License”).

Zambelli warrants and represents to Town that the License is in full force and effect on the date of this Agreement. Zambelli further represents that it holds any other licenses required by any other governmental authority or agency to perform the services contemplated by this Agreement. Zambelli will maintain the License and any additional licenses or permits which may be required by any governmental authority after the date of this Agreement in full force and effect throughout the term of the Agreement. Zambelli will provide Town with copies of any License renewals and any additional permits that may be required during the term of the Agreement.

9. Insurance.

9.1. Liability Insurance. Zambelli will provide Town with the following insurance coverages for the Event:

9.1.1. General Liability. Commercial general liability insurance in amounts not less than \$5,000,000 per occurrence/\$5,000,000 general aggregate with a \$4,000,000 each occurrence excess, issued by an insurance carrier acceptable to Town.

9.1.2. Automobile Liability. Automobile liability insurance in amounts not less than \$5,000,000 combined single limit, issued by an insurance carrier acceptable to Town.

9.2. Insurance Requirements. All insurance policies provided by Zambelli will be issued by companies licensed to do business in Florida and rated at least A VII by Best's Key Rating Guide. All policies provided will be on Occurrence forms, and not Claims Made forms. All liability policies must be endorsed to add Town as an Additional Insured. Each insurance policy provided by Zambelli must state that its coverage is primary over any insurance or self-insurance program available to Town. Zambelli will be responsible for all deductibles and self-insured retentions on its liability policies. All insurance policies required by this Agreement will contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or not renewed until at least 30 days after written notice of such cancellation, change or non-renewal has been given to the Town by certified mail. Zambelli will provide Town with appropriate Certificates of Insurance showing Town as an Additional Insured. Town reserves the right to make changes or additions to the insurance requirements set forth in this Agreement during the term of the Agreement, if Town believes such changes are appropriate.

9.3. Workers' Compensation Insurance. Throughout the term of this Agreement, Zambelli will maintain in full force and effect Workers' Compensation insurance covering all employees who render services under this Agreement. Zambelli will require all subcontractors rendering services under this Agreement to maintain Workers' Compensation insurance. Zambelli will indemnify the Town and hold the Town harmless from any liability arising out of the failure of Zambelli or any subcontractor of Zambelli to maintain Worker's Compensation insurance.

10. Indemnification. Zambelli agrees to indemnify and hold harmless Town, its officers, agents, and employees, against any loss, damage or expense (including all costs and reasonable attorneys' fees) suffered by Town as a result of (a) any breach by Zambelli of this Agreement, (b) any inaccuracy in or breach of any of the representations, warranties or covenants made by Zambelli in this Agreement or (c) any claims, suits, actions, damages or causes of action arising out of any personal injury, loss of life or property damage sustained by reason of this Agreement, its execution or Zambelli's performance or failure to perform under this Agreement.

10.1. Limitation. Neither Zambelli nor its employees, agents, contractors or licensees will be liable for damages arising out of injury, loss of life or damage to persons or property caused by or resulting solely from the negligence of Town, its officers, agents or employees. Nothing in this Agreement will be construed to affect in any way the Town's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes. The provisions of this section will survive the termination or expiration of this Agreement.

11. Designation of Town's Contact. The Town Manager, or his designee, will be the Town's agent and contact for purposes of answering questions, addressing problems, and otherwise dealing with Zambelli in implementing the terms of this Agreement.

12. Conflict Between Documents. If there is any conflict or inconsistency between this Agreement or its exhibit, the provisions of this Agreement will prevail.

13. Notices. Any notice, request, demand, instruction or other communication to be given to either Town or Zambelli will be in writing and will either be (a) hand-delivered, (b) sent by Federal Express or a comparable overnight mail service, (c) mailed by U.S. registered or certified mail, return receipt requested, postage prepaid or (d) sent by telephone facsimile transmission with an original copy of the transmission mailed by regular mail, to Town or Zambelli, as applicable, at the following addresses:

Town:                   Town of Miami Lakes  
6853 Main Street  
Miami Lakes, Florida 33014  
Attention: Alex Rey, Town Manager  
(305) 558-8244 Telephone  
(305) 558-8211 Facsimile

With Copy to: Nina L. Boniske, Esq.  
Town Attorney  
Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.  
2665 South Bayshore Drive - Suite 420  
Miami, Florida 33133  
(305) 854-0800 Telephone  
(305) 854-2323 Facsimile

Zambelli:             Zambelli Fireworks Manufacturing Corporation  
P.O. Box 1463  
New Castle, PA 16103  
Attention: \_\_\_\_\_  
(724) 658-6611 Telephone  
(724) 658-8318 Facsimile

Notice will be effective upon delivery or refusal of delivery of notice. Either party may change its address for notice by sending to the other party written notice of the change. Until delivery of written notice of a change in address, the last addressee and address stated in this Agreement continues in effect for all purposes.

14. Miscellaneous Provisions.

14.1. Amendment. No modification or amendment of this Agreement will be of any force or effect unless in writing and executed by both Town and Zambelli.

14.2. Attorneys' Fees. If any litigation arises out of this Agreement, the prevailing party is entitled to recover its Attorneys' Fees and costs.



14.3. Computation of Time. Any time period referenced in this Agreement which ends on a Saturday, Sunday or legal holiday will extend to 5:00 p.m. on the next full day that the Town is open for business.

14.4. Construction of Contract. Both parties to this Agreement have participated freely in its negotiation and preparation. Accordingly, this Agreement will not be more strictly construed against any one of the parties.

14.5. Counterparts. This Agreement may be signed in any number of counterparts, each of which constitutes the contract of the parties and each of which will be treated as an original.

14.6. Gender. In this Agreement, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular, as the context requires.

14.7. Governing Law. This Contract will be interpreted and enforced in accordance with Florida law.

14.8. Section and Paragraph Headings. The section and paragraph headings contained in this Agreement are for purposes of identification only and are not to be considered in construing this Agreement.

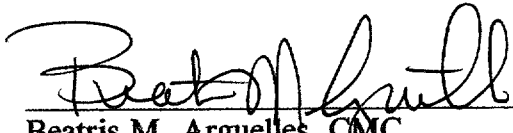
14.9. Time is of the Essence. Time is of the essence in the performance of all obligations by Zambelli under this Agreement.

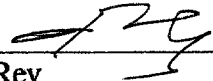
14.10. Waiver. No express or implied consent or waiver by a party to or of any breach or default by the other party in the performance by such other party of its obligations under this Contract will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure by a party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, will not constitute a waiver by such party of its rights hereunder. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

The parties have signed this Agreement on the dates shown below their respective signatures.

Attest:


TOWN OF MIAMI LAKES  
a Florida municipal corporation

  
Beatris M. Arguelles, CMC  
Town Clerk

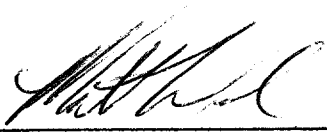
By:   
Alex Rey  
Town Manager

Date: 4-28-04

APPROVED AS TO FORM:

By:   
Weiss Serota Helfman Pastoriza Guedes  
Cole & Boniske, P.A., Town Attorney

ZAMBELLI FIREWORKS  
MANUFACTURING CORPORATION

By:   
Date: 4/9/04