

# ZAMBELLI FIREWORKS MANUFACTURING CO.

THIS CONTRACT AND AGREEMENT (this "Contract") is made effective as of this 20<sup>th</sup> day of MARCH, 2012 by and between:

Zambelli Fireworks Manufacturing Co. of New Castle, Pennsylvania (hereinafter referred to as "Zambelli"),

-AND-

CITY OF RAPID CITY of RAPID CITY, SD (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:

1. Zambelli agrees to sell, furnish and deliver to Client a 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(s) set forth below (hereinafter referred to as the "Display Date"), or on the postponement date set forth below [if the Display is postponed as provided herein] (hereinafter referred to as the "Postponement Date"), which Display Date and Postponement Date have been agreed upon at the time of signing this Contract.

Display Date: JULY 4, 2012

Postponement Date: JULY 5, 2012

OPTIONAL JULY 4, 2013

Postponement Date: JULY 5, 2013

Display Date: JULY 4, 2014

Postponement Date: JULY 5, 2014

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 as listed below for each year (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. ~~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. The Alternate Date must occur within six months of the original Display Date at a time agreeable to both Zambelli and Client. Generally, Alternate Dates will not include the period from June 28<sup>th</sup> through July 7<sup>th</sup>. 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.

CLIENT SHALL  
NOTIFY ZAMBELLI  
AT LEAST 180 DAYS  
PRIOR TO SHOW DATES  
IF CLIENT INTENDS TO EXERCISE OPTION YEARS

Purchase Price 2012 \$ 30,000  
Purchase Price 2013 \$ 30,000 ?  
Purchase Price 2014 \$ 30,000 ?

D.K.

Client and Zambelli agree that the actual purchase price will be determined on an annual basis. Client will endeavor to raise funds sufficient to meet the stated purchase prices above. If the Client is unable to raise funds in any particular year and determines to cancel the fireworks, this contract will be extended by one year for each year of cancellation. If the fireworks display is cancelled or the purchase price is adjusted due to a lack of funds, Zambelli must be notified in writing of the cancellation or adjustment no later than 60 days prior to the Display Date. If the notice occurs less than 60 days prior to the Display Date, the Client agrees to pay Zambelli 10% of the purchase price for that year as listed above. Zambelli reserves the right to cancel the show if the size of the show is adjusted 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) Client must secure and deliver to Zambelli no later than \_\_\_\_\_ or \_\_\_\_\_ days prior to the Display Date all permits necessary for the Display, including but not limited to police, local, state and United States Coast Guard ("USCG") permits, and arrange for any security bonds or insurance as required by law. Zambelli will assist Client when appropriate in completing permit applications.

[Alternate to (b) above when it is expressly required by regulations that Zambelli obtain the permits. "Zambelli will secure all permits necessary for the Display as required, including but not limited to police, local, state and United States Coast Guard ("USCG") permits, and arrange for any security bonds or insurance as required by law. Client will assist Zambelli when appropriate in completing permit applications."]

★ (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, 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.

DK19 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, and Client will pay any additional amount necessary to equal 50% of the Purchase Price.
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) 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 ~~Commonwealth of Pennsylvania~~ <sup>STATE OF SOUTH DAKOTA</sup> and shall be construed in accordance with the laws of the ~~Commonwealth of Pennsylvania~~ <sup>STATE OF SOUTH DAKOTA</sup>, excluding its conflict of law rules. The parties agree and consent to the jurisdiction of the courts of the ~~Commonwealth of Pennsylvania~~ <sup>STATE OF SOUTH DAKOTA</sup> and the Federal District Court for the ~~Western District of Pennsylvania~~ <sup>PENNINGTON COUNTY SD CIRCUIT COURT</sup> 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 1/2 %) 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.~~ D.K.
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 \_\_\_\_\_.
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.
24. \_\_\_\_\_

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 \_\_\_\_\_  
date

BY *D. K. Kulk* 3/20/12  
date

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

Zambelli Fireworks Manufacturing Co.

PO Box 1463

New Castle, PA 16103

724-658-6611

800-245-0397

FAX 724-658-8318