

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2023-

7

Introduced By: Mayor Matthew Castelli

**A RESOLUTION
AUTHORIZING THE MAYOR AND FINANCE DIRECTOR
TO ENTER INTO A CONTRACT WITH
ZAMBELLI FIREWORKS MANUFACTURING COMPANY**

WHEREAS, the City's purchasing policy requires City Council approval on any single purchase of products or services exceeding \$25,000 or any professional service contract exceeding \$10,000, with the exception of items purchased through or at an amount equal to an approved cooperative purchasing agreement; and

WHEREAS, the City desires to retain the services of a competent and qualified contractor to provide certain products/services to the City; and

WHEREAS, Zambelli Fireworks Manufacturing Company is competent and qualified to furnish products and/or services to the City and has provided a responsive and responsible proposal, and desires to provide the fireworks display for the 2023 Summer in the City Fest.

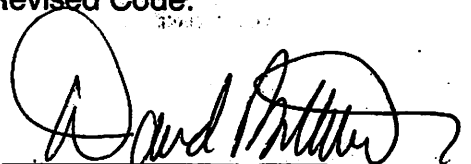
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor and Finance Director are hereby authorized to enter into a contract with Zambelli Fireworks Manufacturing Company to provide certain products and/or services to the City, a copy of which is attached hereto and marked "Exhibit A".

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Passed: _____

1/24/23



President of Council

Attest: M. Meola
Clerk of Council

Approved On: 1-25-23

Presented to Mayor: 1/25/23

Matthew Carst
Mayor

	Yea	Nay
Bortolotto	<u>X</u>	_____
Ali	<u>X</u>	_____
Sage	<u>X</u>	_____
Meany	<u>X</u>	_____
McGregor	<u>X</u>	_____
Ference	<u>X</u>	_____
Grech	<u>X</u>	_____

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res 2003-7 adopted by the Council of the City of Middleburg Hts., on 1/24/23 was posted for a period of fifteen days, beginning 1/24/23 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola
Clerk

CERTIFICATE

I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res 2003-7 passed on the 24th day of January 2023 by said Council.

Mary Ann Meola
Clerk of Council

ZAMBELLI FIREWORKS MANUFACTURING CO.

THIS CONTRACT AND AGREEMENT (this "Contract") is made effective as of this 11th day of Jan 20 23, by and between:

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

-AND-

The City of Middleburg Hts. , OH (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 _____ 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 the signing of this contract.

Display Date: June 17, 2023

Postponement Date: June 18, 2023

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 5 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 \$ 27,500.00 (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 28th through July 7th. 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 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 60 or 45 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 permits and arrange for any security bonds or insurance as required by law. In addition, Zambelli will notify and obtain permission from the FAA and United States Coast Guard, when necessary. 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.
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) 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 and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, excluding its conflict of law rules. The parties agree and consent to the jurisdiction of the courts of the Commonwealth of Pennsylvania and the Federal District Court for the Western District of Pennsylvania 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 15700 Bagley Rd. Middleburg Hts., OH 44130.
- 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. _____

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 _____
date

Charles Bichara

Printed Name and Title

Printed Name and Title

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

Zambelli Fireworks Manufacturing Co.

120 Marshall Drive

Warrendale, PA 15086

724-658-6611

800-245-0397

FAX 724-658-8318

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	
E-mail		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	
Main Contact		A/P Billing 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	
Alternate Contact		Show Day 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!

120 Marshall Dr.
 Warrendale, PA 15086
 (724) 658-6611
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

Name & Address of Display Site Property Owner

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.**

120 Marshall Dr.
Warrendale, PA 15086
(724) 658-6611
www.zambellifireworks.com

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120 Marshall Drive
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724-658-6611

(Fax) 724-658-8318

2021 REQUIRED DIAGRAM AND FIRING SITE INFORMATION

*Our goal is to provide you with the **BEST** possible display for your event dollar, under the safest conditions.*

It is a requirement of our Insurance Carrier and the authority having jurisdiction that a **SCALE** firing site diagram or aerial photograph be provided showing accurate distances in **ALL DIRECTIONS** to buildings, spectators, parking and bulk storage facilities, as well as roadways and highways that will remain open during the fireworks presentation. The scale firing site diagram or aerial photograph must clearly indicate the safety zone lines and limits that have been established for this program. An approved **SCALE** firing site diagram could be kept on file for future reference! Insurance Certificates will not be processed unless an approved firing site diagram or aerial photograph has been submitted.

Please use the following checklist to assist you in submitting your map or diagram. If an item is not applicable to your situation, please insert N/A.

Distances from the firing site to the following:

- 1) Spectators/Audience/Viewing Area _____ Feet
- 2) Parking Areas _____ Feet
- 3) Occupied Buildings: (Residents) _____ Feet
- 4) Public Buildings: (Schools, Churches, Hospitals
Correctional Facilities, Etc.) _____ Feet
- 5) Fuel Pumps/Storage, Explosive/Toxic Material Storage
(Gasoline Stations, Refineries, Etc.) _____ Feet
- 6) Temporary Event Set-ups: (Tents, Carnival Rides,
Concession Stands, Etc.) _____ Feet
- 7) Highways, Roads, Streets, Etc. _____ Feet
- 8) Overhead Obstructions: (Power Lines, Lighting, Etc.) _____ Feet
- 9) Active Railroads _____ Feet
- 10) Operating airports _____ Nautical Miles

Firing Site Location Coordinates

Firing Site Location Latitude: _____ (North)

Firing Site Location Longitude: _____ (West)

Signature

Title

Date

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