

CITY OF FRUITA, COLORADO

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**CONTRACT**

This CONTRACT made and entered into this 5<sup>th</sup> day of March, 2024 by and between the **City of Fruita, Colorado**, a home-rule municipality in the County of Mesa, State of Colorado (the “Owner”), and **Zambelli Fireworks**, a Pennsylvania corporation whose principal address is 120 Marshall Drive, Warrendale, PA 15086, (the “Contractor”) (collectively the “Parties”).

WITNESSETH:

WHEREAS, the Owner received a quote for from the Contractor to furnish all labor, tools, permits, supplies, equipment, materials, and everything necessary and required for the **City of Fruita 3<sup>rd</sup> of July Firework Show – 2024** (the “Work”).

WHEREAS, the Contract has been awarded to the above-named Contractor by the Owner, and said Contractor is now ready, willing, and able to perform the Work specified in accordance with the Contract Documents.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

ARTICLE 1

**Contract Documents**: It is agreed by the Parties hereto that the following list of instruments and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the “Contract Documents,” and all of said instruments and documents taken together as a whole constitute the entire agreement between the parties hereto, and they are fully a part of this Contract as if they were set out verbatim and in full herein:

The order of contract document governance shall be as follows:

- a. The body of this Contract;
- b. General Contract Terms and Conditions;
- c. Contractor’s Quote;
- d. Work Change Requests (directing that changed work be performed);
- e. Field Orders
- f. Change Orders.

ARTICLE 2

**Definitions**: The clauses provided in the Terms and Conditions apply to the terms used in the Contract and all the Contract Documents.

### ARTICLE 3

Contract Work: The Contractor agrees to furnish all labor, tools, permits, supplies, equipment, materials, and all that is necessary and required to complete the tasks associated with the Work described, set forth, shown, and included in the Contract Documents.

### ARTICLE 4

Contract Price and Payment Procedures: The Contractor shall accept as full and complete compensation for the performance and completion of all of the Work specified in the Contract Documents, the sum of **Thirty Thousand and 00/100 Dollars (\$30,000.00)**. The amount of the Contract Price is and has heretofore been appropriated by the City of Fruita for the use and benefit of the Work. The Contract Price shall not be modified except by written Change Order or other written directive of the Owner. The Owner shall not issue a Change Order or other written directive which requires additional work to be performed, which work causes the aggregate amount payable under this Contract to exceed this amount, unless and until the Owner provides Contractor written assurance that lawful appropriations to cover the costs of the additional work have been made. Notwithstanding the foregoing, the parties agree that the Owner's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

### ARTICLE 5

Contract Binding: The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contract Documents constitute the entire agreement between the Owner and Contractor and may only be altered, amended or repealed by a duly executed written instrument. Neither the Owner nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part its interest under any of the Contract Documents and specifically, the Contractor shall not assign any monies due or to become due without the prior written consent of the Owner.

### ARTICLE 6

Severability: If any part, portion or provision of the Contract shall be found or declared null, void or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having the authority thereover, only such part, portion or provision shall be affected thereby and all other parts, portions and provisions of the Contract shall remain in full force and effect.

ARTICLE 7

Choice of Law; Venue: The parties agreed that this Contract shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall be in the courts of competent jurisdiction in Mesa County, Colorado.

IN WITNESS WHEREOF, City of Fruita, Colorado, has caused this Contract to be subscribed and sealed and attested in its behalf; and the Contractor has signed this Contract the day and the year first mentioned herein.

The Contract is executed in two counterparts.

**City of Fruita, CO**

By: \_\_\_\_\_  
Mike Bennett, City Manager

\_\_\_\_\_  
Date

**Zambelli Fireworks**

By: \_\_\_\_\_

\_\_\_\_\_  
Date

## SECTION 1.0: GENERAL CONTRACT TERMS AND CONDITIONS

- 1.1. Execution, Correlation, Intent, and Interpretations:** The Contract Documents shall be signed by the Owner and Contractor. By executing the contract, the Contractor represents that they have familiarized themselves with the local conditions under which the Work is to be performed and correlated their observations with the requirements of the Contract Documents. The Contract Documents are complementary, and what is required by anyone, shall be as binding as if required by all. The intention of the documents is to include all labor, materials, equipment, services and other items necessary for the proper execution and completion of the Scope of Work as defined in Section 4.0. Any drawings, specifications and copies furnished by the Owner are, and shall remain, Owner property. They are not to be used on any other project.
- 1.2. Permits, Fees, & Notices:** The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the Work as it relates to the use of fireworks in Mesa County, Colorado. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance in any respect, Contractor shall promptly notify the Owner in writing, and any necessary changes shall be adjusted by change order/amendment. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, Contractor shall assume full responsibility and shall bear all costs attributable.
- 1.3. Responsibility for those Performing the Work:** The Contractor shall be responsible to the Owner for the acts and omissions of all their employees and all other persons performing any of the Work with the Contractor.
- 1.4. Use of the Site:** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.
- 1.5. Cleanup:** The Contractor at all times shall keep the site free from accumulation of waste materials or rubbish caused by their operations. At the completion of the Work, Contractor shall remove all their waste materials and rubbish from and about the site, as well as all their equipment and surplus materials.
- 1.6. Payment:** The Contract Sum is stated in the Contract and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

- 1.7. Protection of Persons & Property:** The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing safeguards for safety and protection, and all reasonable precautions, including posting danger signs or other warnings against hazards promulgating safety regulations and notifying owners and users of adjacent utilities. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct by the Contractor in the execution of the Work, or in consequence of the non-execution thereof by the Contractor, they shall restore, at their own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or it shall make good such damage or injury in an acceptable manner.
- 1.8. Changes in the Work:** The Owner, without invalidating the contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. All such changes in the Work shall be authorized by Change Order and shall be executed under the applicable conditions of the Contract Documents. A Change Order is a written order to the Contractor signed by the Owner issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time.
- 1.9.** Intentionally omitted.
- 1.10.** Intentionally omitted.
- 1.11. Acceptance Not Waiver:** The Owner's acceptance or approval of any work furnished hereunder shall not in any way relieve the Contractor of their present responsibility to maintain the high quality, integrity and timeliness of their work. The Owner's approval or acceptance of, or payment for, any services shall not be construed as a future waiver of any rights under this Contract, or of any cause of action arising out of performance under this Contract.
- 1.12. Change Order/Amendment:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders/amendments to the Contract shall be made in writing by the Owner Purchasing Division.
- 1.13. Assignment:** The Contractor shall not sell, assign, transfer or convey any contract resulting from this quote, in whole or in part, without the prior written approval from the Owner.
- 1.14. Compliance with Laws:** Contractor must comply with all Federal, State, County and local laws governing or covering fireworks displays and use of fireworks. Contractor hereby warrants that it is qualified to assume the responsibilities and

render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

- 1.15. **Debarment/Suspension:** The Contractor hereby certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Governmental department or agency.
- 1.16. **Confidentiality:** All information disclosed by the Owner to the Contractor for the purpose of the Work to be done or information that comes to the attention of the Contractor during the course of performing such work is to be kept strictly confidential.
- 1.17. **Conflict of Interest:** No public official and/or Owner employee shall have interest in this Contract.
- 1.18. **Contract:** The Contract represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only with written Change Orders, Field Orders, or Amendment.
- 1.19. **Project Manager/Administrator:** The Project Manager, on behalf of the Owner, shall render decisions in a timely manner pertaining to the Work proposed or performed by the Contractor. The Project Manager shall be responsible for approval and/or acceptance of any related performance of the Scope of Work.
- 1.20. **Contract Termination:** This Contract shall remain in effect until either the completion of the Work or for convenience terminated by either party with a written *Notice of Cancellation* stating therein the reasons for such cancellation and the effective date of cancellation at least thirty days past notification.
- 1.21. **Employment Discrimination:** During the performance of the Work, the Contractor agrees to the following conditions:
  - 1.21.1. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, citizenship status, marital status, veteran status, sexual orientation, national origin, or any legally protected status except when such condition is a legitimate occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 1.21.2.** The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an Equal Opportunity Employer.
- 1.21.3.** Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- 1.22. Immigration Reform and Control Act of 1986 and Immigration Compliance:** The Contractor certifies that it does not and will not during the performance of the Contract employ workers without authorization or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986 and/or the immigration compliance requirements of the State of Colorado outlined in C.R.S. § 8-17.5-101, *et seq.* (House Bill 06-1343).
- 1.23. Ethics:** The Contractor shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official, or agent of the Owner.
- 1.24. Failure to Deliver:** In the event of failure of the Contractor to perform the Work in accordance with these Terms and Conditions, the Owner, after due oral or written notice, may procure services from other sources and hold the Contractor responsible for any costs resulting in additional purchase and administrative services. This remedy shall be in addition to any other remedies that the Owner may have.
- 1.25. Failure to Enforce:** Failure by the Owner at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the Owner to enforce any provision at any time in accordance with its terms.
- 1.26. Force Majeure:** The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by the Contract due to legal strikes, fires, riots, rebellions, and acts of God beyond the control of the Contractor, unless otherwise specified in the Contract per the specific terms of payment/cancellation set forth in the Contractor's quote.
- 1.27. Indemnification:** The Contractor shall defend, indemnify and save harmless the Owner and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the Contractor, or of any Contractor's agent, employee, subcontractor or supplier in the execution of, or performance under, the Contract Documents. The

Contractor shall pay any judgment with cost which may be obtained against the Owner growing out of such injury or damages.

- 1.28. Independent Firm:** The Contractor shall be legally considered an Independent Firm and neither the Firm nor its employees shall, under any circumstances, be considered servants or agents of the Owner. The Owner shall be at no time legally responsible for any negligence or other wrongdoing by the Firm, its servants, or agents. The Owner shall not withhold from the Contract payments to the Firm any federal or state unemployment taxes, federal or state income taxes, Social Security Tax or any other amounts for benefits to the Firm. Further, the Owner shall not provide to the Firm any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Owner for its employees.
- 1.29. Oral Statements:** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract Documents or any subsequent amendments. All amendments to the Contract must be made in writing and signed by both Parties.
- 1.30. Patents/Copyrights:** The Contractor agrees to protect the Owner from any claims involving infringements of patents and/or copyrights. In no event shall the Owner be liable to the Contractor for any/all suits arising on the grounds of patent(s)/copyright(s) infringement. Patent/copyright infringement shall null and void the Contract.
- 1.31. Remedies:** The Contractor and Owner agree that both Parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.
- 1.32. Venue:** The Contract is made in, and shall be construed and interpreted in accordance with, the laws of the City of Fruita, Mesa County, Colorado.
- 1.33. Expenses:** Any expenses incurred in preparation, submission and presentation of the Contractor's quote are the responsibility of the Contractor and cannot be charged to the Owner.
- 1.34. Sovereign Immunity:** The Owner specifically reserves its right to sovereign immunity pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as a defense to any action arising in conjunction to this Contract.
- 1.35. Public Funds/Non-Appropriation of Funds:** The Contractor acknowledges and agrees that the Owner's payment of any monies under this Contract is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The Contractor further agrees that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.



- 1.36. Gratuities:** The Contractor certifies and agrees that no gratuities or kickbacks were paid in connection with this Contract, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the Owner may, at its discretion, terminate this Contract without liability to the Owner.
- 1.37. OSHA Standards:** The Contractor agrees and warrants that services performed under this Contract shall conform to the standards declared by the US Department of Labor under the Occupational Safety and Health Act of 1970 (“OSHA”). In the event the services do not conform to OSHA Standards, the Owner may require the services to be redone at no additional expense to the Owner.
- 1.38. Performance of the Contract:** The Owner reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the Owner in the event of breach or default.
- 1.39. Benefit Claims:** The Owner shall not provide to the Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the Owner for its employees.
- 1.40. Default:** The Owner reserves the right to terminate the Contract immediately in the event the Contractor fails to meet delivery or completion schedules, or otherwise perform in accordance with the accepted quote. Breach of contract or default authorizes the Owner to purchase like services elsewhere and charge the full increase in cost to the defaulting Contractor.
- 1.41. Definitions:**
- 1.41.1.** The term “Work” includes all labor, materials, equipment, and/or services necessary to produce the requirements of the Contract Documents.
- 1.41.2.** “Contractor” is the person, organization, firm or consultant identified as such in the Contract and is referred to throughout the Contract Documents. The term Contractor means the Contractor or their authorized representative. The Contractor shall carefully study and compare the Contract Documents, including these Terms and Conditions, and shall at once report to the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner for any damage resulting from such errors, inconsistencies or omissions. The Contractor shall not commence the Work without clarifying Drawings, Specifications, or Interpretations, if applicable.
- 1.42. Public Disclosure Record:** If the Contractor has knowledge of their employee(s) or sub-proposers having an immediate family relationship with an Owner employee or elected official, the Contractor must provide the Purchasing Representative with

the name(s) of these individuals. These individuals are required to file an acceptable "Public Disclosure Record," a statement of financial interest, before conducting business with the Owner.

## SECTION 2.0: INSURANCE REQUIREMENTS

**Insurance Requirements:** The selected Contractor agrees to procure and maintain, at its own cost, insurance sufficient to protect against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Section. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The Contractor shall procure and maintain and, if applicable, shall cause any Subcontractor of the Contractor to procure and maintain insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Owner. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Minimum coverage limits shall be as indicated below unless specified otherwise:

(a) Worker Compensation: Contractor shall comply with all State of Colorado Regulations concerning Workers' Compensation insurance coverage.

(b) General Liability insurance with minimum limits of:

ONE MILLION ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$1,195,000) each occurrence and ONE MILLION ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$1,195,000) per job aggregate.

The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(c) Comprehensive Automobile Liability insurance with minimum limits for bodily injury and property damage of not less than:

ONE MILLION DOLLARS (\$1,000,000) each occurrence and  
ONE MILLION DOLLARS (\$1,000,000) aggregate

With respect to each of Contractors owned, hired, or non-owned vehicles assigned to be used in performance of the Work. The policy shall contain a severability of interests provision. The policies required by paragraph (b) above shall be endorsed to include the Owner, and the Owner's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Owner, its officers, or its employees, or carried by or provided through any insurance pool of the Owner, shall be excess and not contributory insurance to that provided by Bidder. No additional insured endorsement to any required policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Bidder shall be solely responsible for any deductible losses under any policy required above.

### **SECTION 3.0: SPECIFICATIONS/SCOPE OF WORK**

#### **3.1. Project Description:**

##### 3.1.1 Fireworks show specifications:

- A. Date of the fireworks show shall be July 3, 2024, beginning at 9:30pm.
- B. Length of fireworks show shall be between 16-20 minutes.
- C. Location of the fireworks show will be either at Snooks Bottom Open Space parking lot, 1051 Kingsview Road, Fruita CO 81521 or at James M. Robb State Park depending on fire conditions and shall be designated and confirmed by Owner to Contractor 24 hours prior to the display..
- D. Please see the attached map which indicates the Fireworks Safety Zone for the City of Fruita 3<sup>rd</sup> of July Fireworks Show.

3.1.2 Contractor shall work closely with the Project Manager to coordinate all aspects of the fireworks show, and to ensure maximum public safety.

3.1.4 Contractor shall provide to City at least one week prior to July 3, 2024, the timeline of when the fireworks and staff will arrive, and state any requirements, if any, that it needs from Owner or its staff staff.

3.1.5 Owner or its staff shall at no time take possession of or responsibility for any fireworks or related equipment or supplies provided by Contractor including, but not limited to: shipment, receiving, storing, moving, setup, handling, etc.

3.1.6 Contractor shall ensure that their products, supplies, materials and equipment are secured at all times. Owner shall provide one security guard once fireworks arrive on site, until the time of the show.

3.1.7 Contractor shall provide copies of proper licensing, notices, permits, and any other completed and authorized paperwork required to perform such fireworks shows.

3.1.8 Owner shall provide the logistical type permits for such items as; special event permit, traffic control permit, security permit. The fireworks company shall acquire any and all required permits to operate, provide, and perform the fireworks show itself such as; State of Colorado permits and the City's local fireworks permit (Lower Valley Fire District). **All licensing, permits, notices shall be submitted to the City no later than May 15.**

3.1.9 Owner shall provide Fire Department and EMS crews during the show.

3.1.10 Invoices shall be submitted via email to Marc Mancuso of the City of Fruita, Parks & Recreation Department.

### **3.2. Special Conditions & Provisions:**

**3.3.1 Limited Contract Term:** The Contract shall be only for the City of Fruita 3<sup>rd</sup> of July Fireworks Show, including any related setup and cleanup.

# Zambelli

FIREWORKS

## Product List: City of Fruita Co. July 3, 2024

### Opening Finale

10-3" finale salute shells

12-4" color finale shells

### Body of Program

144-4" color and pattern shells

90-5" color and pattern shells

90-6" color and pattern shells

### Grand Finale

30-3" finale salute shells

180-4" color finale shells

30-5" cor finale shells

### Cancellation or postponement fees:

Cancelled or postponed by June 15-No charge fee

Cancelled or postponed between June 15 and July 1, 25% fee

Cancelled or postponed after July 1, 50% 50% fee

### Cost Breakdown

<u>Product cost</u>	<u>\$9,000.00</u>
<u>Labor and technician expenses</u>	<u>\$6,000.00</u>
<u>Trucking and freight</u>	<u>\$3,000.00</u>
<u>Insurance</u>	<u>\$3,000.00</u>
<u>Company overhead</u>	<u>\$6,000.00</u>
<u>Net profit</u>	<u>\$3,000.00</u>
<u>Total cost</u>	<u>\$30,000.00</u>

