

**AGREEMENT FOR GOODS AND SERVICES
(Fourth of July Fireworks Display)**

THIS AGREEMENT is made _____, between the **City of Lake Worth Beach**, Florida, a municipal corporation ("CITY"), with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **Explosive Touch Enterprises LLC**, a limited liability company authorized to do business in the State of Florida ("CONTRACTOR") with their principal address at 4260 Amelia Plantation Ct., Vero Beach, FL 32967.

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the CITY issued Request for Proposals #23-208 for the purpose of providing a fireworks display for Fourth of July festivities at Bryant Park located on the Intracoastal Waterway, Lake Worth Beach (hereinafter "RFP") two times; and

WHEREAS, the City received no submissions in response to the RFP and subsequently canceled the RFP; and

WHEREAS, in accordance with the City's Procurement Code and Policy, the City approached the market to obtain the required services; and

WHEREAS, the City received two quotes in response to the search; and

WHEREAS, the CONTRACTOR provided a quote that was the lowest compliant quote and meets the City's requirements; and

WHEREAS, the CITY desires to accept the CONTRACTOR's quote in order for CONTRACTOR to render the goods and services to the CITY as provided herein pursuant to the terms and conditions of this Agreement; and

WHEREAS, as there were no responses to the RFP, the CITY may utilize the waiver process in accordance to the CITY's Procurement Code Sec. 2-112 (g); and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term of this Agreement for Goods and Services ("Agreement") shall be for three (3) years, with the option to renew for two (2) additional one (1) year renewals periods upon the mutual agreement of both parties and dependent on the annual appropriation of funds by the

CITY's City Commission. The renewal terms may be approved by the City Manager. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

2. SCOPE OF WORK

2.1 The Scope of Work includes providing a fireworks display for Fourth of July festivities at Bryant Park located on the Intracoastal Waterway, Lake Worth Beach set forth in the Scope of Work, which is attached hereto as **Exhibit A** and incorporated herein by this reference. CONTRACTOR shall supply, transport, set-up, fire, tear down and dispose as necessary a community firework display for a minimum of eighteen (18) minutes per show. The show shall include a grand finale display. The length of the display should be identified as well as the quantity and type of fireworks being proposed. The Scope of Work to be provided under this Agreement shall generally include all personnel, labor, vehicles, travel, materials and equipment necessary to provide the all-inclusive package set forth in the CONTRACTOR's Proposal which is attached hereto as **Exhibit B** and incorporated herein. The show shall take place at 9:00 PM from land within areas located at the City's Golf Course. Work shall commence upon the issuance of a Purchase Order by the City. CONTRACTOR shall provide a fireworks display on July 4th, 2024, July 4th, 2025 and July 4th, 2026 with the potential for two (2) single year renewals for July 4th, 2027 and July 4th, 2028. In the event, the CITY cancels the display for convenience and not for cause, the parties agree as follows:

If the CITY cancels a display from twenty-one (21) to thirty (30) days prior to a display date, the CITY agrees to pay CONTRACTOR a cancellation fee equal to ten percent (10%) of the fee set forth herein plus Additional Third Party charges, as defined below.

If the CITY cancels a display from five (5) to twenty (20) days prior to a display date, the CITY agrees to pay CONTRACTOR a cancellation fee equal to twenty percent (20%) of the fee set forth herein plus Additional Third Party charges, as defined below.

If the CITY cancels a display less than five (5) days prior to a display date, the CITY agrees to pay CONTRACTOR a cancellation fee equal to forty percent (40%) of the fee set forth herein plus Additional Third Party charges, as defined below.

"Additional Third Party Charges" shall mean all adequately documented reasonable costs and expenses incurred by CONTRACTOR and paid or payable (non-cancellable only) to third parties in connection with the Display, including, security fees, permits and licensing fees and expenses, barge and tow expenses, and firewatch fees.

If the CITY cancels a display and is required to pay a cancellation fee and Additional Third Party Charges as set forth above, the maximum amount the CITY will be required to pay the CONTRACTOR for said cancellation fee and Additional Third Party Charges shall not exceed the total fee set forth herein for such display (or set forth in any amendment hereto).

However, if a display is cancelled due to inclement weather (as determined in the sole discretion of the CITY) or any other cause not within the control of the CITY, then the display shall be postponed and fired on the postponement date. The postponement date shall be agreed to by the parties. If the CITY wishes to cancel a display instead of scheduling a postponement date, the display will be cancelled, and the CITY will pay the CONTRACTOR a cancellation fee equal to twenty percent (20%) of the fee set forth herein (or set forth in an amendment hereto) for the display. If the display is postponed due to inclement weather or other cause not within the control of the CITY and the display is rescheduled, the CITY shall not be subject to any cancellation fees, postponement fees or any additional charges resulting from the postponement from third parties or otherwise unless otherwise agreed to in writing by the CITY.

2.2 The CONTRACTOR represents to the CITY that the materials and services provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the CONTRACTOR's work shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner and consistent with all applicable laws, ordinances, licenses, permits, rules, and regulations.

2.4 The Scope of Work shall be completed in accordance with the CITY issued Purchase Order, the terms and conditions set forth in this Agreement.

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

3.1 The CONTRACTOR is and shall be, in the performance of the Scope of Work under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the Scope of Work performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Scope of Work.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the Scope of Work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

4. SERVICES

4.1 The CONTRACTOR shall provide all services as more specifically set forth in a CITY issued Purchase Order, Exhibit A, and this Agreement.

5. FEE AND ORDERING MECHANISM

5.1 For goods and services to be rendered under this Agreement, the CONTRACTOR shall be entitled to a fee for the goods and services provided and accepted by the CITY at the rates set forth in CONTRACTOR's Proposal. The price set forth in Exhibit B shall remain fixed for the first three (3) years of this Agreement. If due to applicable and documented price escalations and/or reductions which impact the CONTRACTOR's price in Exhibit B, the CITY and CONTRACTOR may execute a written amendment to this Agreement to establish new rates for the renewal term(s). The City Manager may approve changes in the CONTRACTOR's price based on the recommendation of the City's Leisure Services Director or designee.

5.2 Should the CITY require additional services, not included in this Agreement, rates and payment for such work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code and policy prior to any such additional services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism for the Scope of Work (including each order of specific services) under this Agreement will be by a CITY issued Purchase Order(s); however, the terms and conditions stated in a CITY issued Purchase Order(s) shall not apply. CONTRACTOR shall not provide services under this Agreement without a CITY issued Purchase Order specifically for the stated services requested. Each Purchase Order shall be approved in accordance to the CITY's procurement code and policy. CONTRACTOR shall provide the amount of requested goods and services listed in each CITY issued Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess goods, services or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The CITY cannot authorize the purchase of goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the CITY's City Commission. Additionally, the CITY must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the CITY will issue a new Purchase Order(s) each Fiscal Year for required and approved goods and services.

6. MAXIMUM COSTS

6.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to complete the Scope of Work in accordance with this Agreement will be set in each CITY issued Purchase Order and no additional costs shall be authorized without prior written approval from the CITY.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for the provided goods and services.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

8. AUDIT BY CITY

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not

limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

9. COPIES OF DATA/DOCUMENTS

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

10. OWNERSHIP

10.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

11. WRITTEN AUTHORIZATION REQUIRED

11.1 The CONTRACTOR shall not make changes in the Scope of Work or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

12. DEFAULTS, TERMINATION OF AGREEMENT

12.1 If the CONTRACTOR fails to timely perform the Scope of Work or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

12.2 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

13. INSURANCE

13.1. Prior to commencing the Scope of Work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured", on a primary, non-contributing basis and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

13.5. The insurance provided by the CONTRACTOR shall apply on a primary basis. Any insurance or self-insurance maintained by the CITY shall be in excess of, and shall not contribute with, the insurance provided by the CONTRACTOR. Compliance with these insurance requirements shall not limit the liability of the CONTRACTOR. Any remedy provided to the CITY by the insurance provided by the CITY shall be in addition to and not in lieu of any other remedy.

13.6. Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required under this Contract.

13.7. The CONTRACTOR's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this Contract. In the event of any termination or suspension, the CITY may use the services of another contractor without the CITY incurring any liability to the CONTRACTOR. At its sole discretion, the CITY may obtain or renew the CONTRACTOR's insurance, and the CITY may pay all or part of the premiums. Upon demand, the CONTRACTOR shall repay the CITY all monies paid to obtain or renew the insurance. The CITY may offset the cost of the premium against any monies due the CONTRACTOR from the CITY.

14. WAIVER OF BREACH

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

15. INDEMNITY

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including but not limited to, personal injury, accidental death, patent and copyright infringement, and property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses and fees) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

15.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time. The provisions and limitations set forth in Section 768.28, Florida Statutes, are deemed to apply to this Agreement to claims or actions arising in tort and/or contract.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

16.1 This Agreement consists of the terms and conditions provided herein; **Exhibit A** (the Scope of Work) and **Exhibit B** (the Contractor's rates); and any CITY issued Purchase Orders. To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with any CITY issued Purchase Order(s) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

17. ASSIGNMENT

17.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

17.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

18. SUCCESSORS AND ASSIGNS

18.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

19. WAIVER OF TRIAL BY JURY

19.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

20. GOVERNING LAW AND REMEDIES

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

20.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

21. TIME IS OF THE ESSENCE

21.1 Time is of the essence in all respects under this Agreement.

22. NOTICES

22.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City Manager
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Explosive Touch Enterprises LLC
4260 Amelia Plantation Ct.
Vero Beach, FL 32967

23. SEVERABILITY

23.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

24. DELAYS AND FORCES OF NATURE

24.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion may be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

25. COUNTERPARTS

25.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. This Agreement may be executed electronically.

26. LIMITATIONS OF LIABILITY

26.1 Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

27. PUBLIC ENTITY CRIMES

27.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

28. PREPARATION

28.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

29. PALM BEACH COUNTY INSPECTOR GENERAL

29.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

30. ENFORCEMENT COSTS

30.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

31. PUBLIC RECORDS

31.1 CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.

- (b) Upon request from the CITY's custodian of public records, provide the CITY 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 in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said 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 term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR BY MAIL AT CITY OF LAKE WORTH BEACH, ATTN: City Clerk, 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

32. COPYRIGHTS AND/OR PATENT RIGHTS

32.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

33. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

33.1 CONTRACTOR certifies that all material, equipment, etc., contained in this proposal meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

34. FEDERAL AND STATE TAX

34.1 The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will sign an exemption certificate submitted by the successful Proposer.

Vendors or contractors doing business with the CITY shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall any Vendor/Contractor be authorized to use the CITY's tax Exemption Number in securing such materials.

35. PROTECTION OF PROPERTY

35.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

36. DAMAGE TO PERSONS OR PROPERTY

36.1 The responsibility for all damage to person or property arising out of or on account of work done under this Contract shall rest upon the CONTRACTOR, and he/she shall save the CITY, its officials, employees, and agents harmless from all claims made on account of such damages.

37. SAFETY: ACCIDENT PREVENTION.

37.1 In the performance of this Agreement, the CONTRACTOR shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation including without limitation Chapter 23 CFR 635. The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the CITY, may determine to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

37.2 It is a condition of this Agreement, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Agreement (if authorized), that the CONTRACTOR and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

37.3 Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

38. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Applicable to all federally funded contracts and any subcontracts of \$100,000 or more).

38.1 By execution of this Agreement, CONTRACTOR, if applicable, will be deemed to have stipulated as follows:

- (a) Any CITY facility or property that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- (b) CONTRACTOR agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (c) CONTRACTOR shall promptly notify the CITY of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a CITY facility or property that is or will be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.

39. SCRUTINIZED COMPANIES

39.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

39.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

39.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

39.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

39.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

39.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

40. E-VERIFY

Pursuant to Section 448.095(5), Florida Statutes, the CONTRACTOR shall:

40.1. Register with and use the E-Verify system to verify the work authorization status of all new employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' new employees;

40.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

40.3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

40.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

40.5. Be aware that a violation of section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited), shall be grounds for termination of this Agreement; and,

40.6. Be aware that if the CITY terminates this Agreement under Section 448.095(5)(c), Florida Statutes, the CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

41. SURVIVABILITY

41.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Goods and Services (Fourth of July Fireworks Display) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, MMC, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo
Financial Services Director

CONTRACTOR:

Explosive Touch Enterprises LLC

[Corporate Seal]

By: _____
Print Name: EJ Weppel
Title: President

STATE OF Florida)
COUNTY OF Indian River)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 6 day of October 2023, by Elwood Weppel, as the Contractor [title] of **Explosive Touch Enterprises LLC**, a limited liability company authorized to do business in the State of Florida, who is personally known to me or who has produced FL DL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

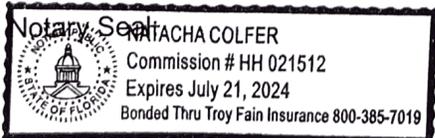


EXHIBIT "A"

**RFP #23-208
FOURTH OF JULY FIREWORKS DISPLAY**

SCOPE OF SERVICES

The City of Lake Worth Beach is seeking proposals from qualified vendors for the purpose of providing a fireworks display on July 4th, 2024, July 4th, 2025 and July 4th, 2026 with the potential for two (2) single year renewals for July 4th, 2027 and July 4th, 2028. The Fourth of July festivities take place each year at Bryant Park located on the Intracoastal Waterway, Lake Worth Beach. The selected firm will be issued a three (3) year contract with two (2) single year options to renew at the sole discretion of the City of Lake Worth Beach.

Qualified service providers shall submit a proposal to supply, transport, set-up, fire, tear down and dispose as necessary a community firework display for a minimum of eighteen (18) minutes show. The proposal should include a grand finale display. The length of the display should be identified and well as the quantity and type of fireworks being proposed. The show shall take place at 9:00 PM from land within areas located at the City's Golf Course.

Each proposal should include an itemized list and description of all fireworks to be included in the display and any other visuals and an explanation that assists in describing the show. Services to be performed must be in compliance with all provisions of local, State and national regulations and all other applicable laws and regulations, including, without limitation, using one licensed pyrotechnic operator in connection with the handling or display of fireworks, combing the grounds for any live materials around the site immediately preceding the fireworks display, providing sufficient personnel at fireworks discharge site in order to ensure a safe public display, and obtaining all necessary licenses and permits.

The City will provide all concessions, entertainment, crowd control services, attendee parking and event promotion for the general public. A representative(s) from the selected firm shall be available for an introductory meeting with the City of Lake Worth and two subsequent planning meetings minimally. The US Coast Guard and FDOT require permits, documentation and meetings to organize and plan the closure of Lake Worth Bridge and roads. Attendance and filing of all necessary paperwork for permits is the responsibility of the selected firm.

It is the sole responsibility of the successful Respondent to communicate, arrange, and schedule directly with all subcontractors for the entirety of the show. Any insurance requirements, fees, parking, loading/unloading and equipment/logistical needs shall be the responsibility of the successful Respondent.

1. **METHODOLOGY, APPROACH AND IMPLEMENTATION:** A complete description of the methodology of the Respondent that would allow it to provide the services outlined in this Request for Proposals. Complete description of type, number and size of shells and any special effects used during the fireworks display shall be provided in detail. Complete description of type, number and size shell and the effect of the opening display and the grand finale.
2. **FIRM QUALIFICATIONS:** This section of the Proposal should give a description of the firm, including the size, range of activities, etc. Particular emphasis should be given as to how the firm-wide experience and expertise in the area of management of fireworks for similar entities will be brought to bear on the proposed work.

3. **CERTIFICATIONS**: Currently held certifications and/or licenses by Respondent and staff.
4. **SAFETY**: Safety policies and procedures to insure the safety of event attendees.

The City reserves the right to delete or amend any of the services as listed and described herein in negotiations with the selected firm.

END OF SCOPE OF SERVICES



A Spectacular Division of...

EXPLOSIVE
TOUCH ENTERPRISES

WE CREATE BLASTING IMPRESSIONS!

City of

Lake Worth Beach

Fireworks Display

July 4th, 2024

About Angry Unicorn Displays:

Angry Unicorn Displays was established in 2018 and is a sister company of Explosive Touch Enterprises. It is branded to coincide with ETE's Import Company Angry Unicorn Imports and evolved from the experience of a decade old fireworks company that originated in the Theme Park Entertainment Capital of the World, Orlando, FL.

Angry Unicorn Displays will be your direct source of fireworks and special effect entertainment especially with our sister company Angry Unicorn Imports supplying all of our High Quality Fireworks.

We have experience with all types of events which range from small backyard type displays to Major Professional Aerial Productions. To achieve success with all of our events, we use state of the art digital electronic firing systems and design software that gives us the availability to produce world class displays using the most brilliant and unique effects the industry has to offer. From large sky filling displays, to concise choreographed pyro-musicals... we can do it all!

In closing, Angry Unicorn Displays offers our (AIS) All-Inclusive solution in producing the fireworks and special effects elements of your show or event. All of our events include site inspections, display permits, Coast Guard permits (if necessary), FAA clearance (if necessary) \$1,000,000.00 General and \$5,000,000.00 Auto Liability Insurance, Fire Marshal Fire Watch fees, Fire Truck Standby Fee (If Required), all travel costs, professional and trained pyrotechnics crew, and of course cleanup.



The Diamond - Richmond, VA



Wild Adventures Theme Park - Valdosta, GA

Our Displays

Our pyrotechnic displays include over 100 different types of pyrotechnic effects and patterns. We have the highest selection of premium products from all over the world including, but not limited to Europe, Asia, and the United States. We combine the pyrotechnic effects from these countries to provide you with the best possible design or synchronization to reflect the musical score of your show.

We have the newest and most technologically advanced computerized digital firing systems to ensure the effects are perfectly and safely fired or choreographed to any genre of live or pre-recorded music.



Featured Manufacturers:

1.3G Display Fireworks:



1.4G UN0431 Articles Pyrotechnics:





The Westin Resort Cape Coral, FL
Wedding Fireworks



Titusville, FL Air Show



First Baptist Orlando 2017 Singing
Christmas Trees

Indoor Airbursts

Our Team and Crews

The leadership at Angry Unicorn Displays has over 50 combined years of experience working with fireworks and special effects for some of the largest entertainment companies and venues in the world. We ensure that our technicians are educated annually on all applicable safety standards including new ATF regulations, NFPA Codes, DOT standards and more, ensuring that your show will meet and exceed all safety standards.

EJ Weppel - CEO and President

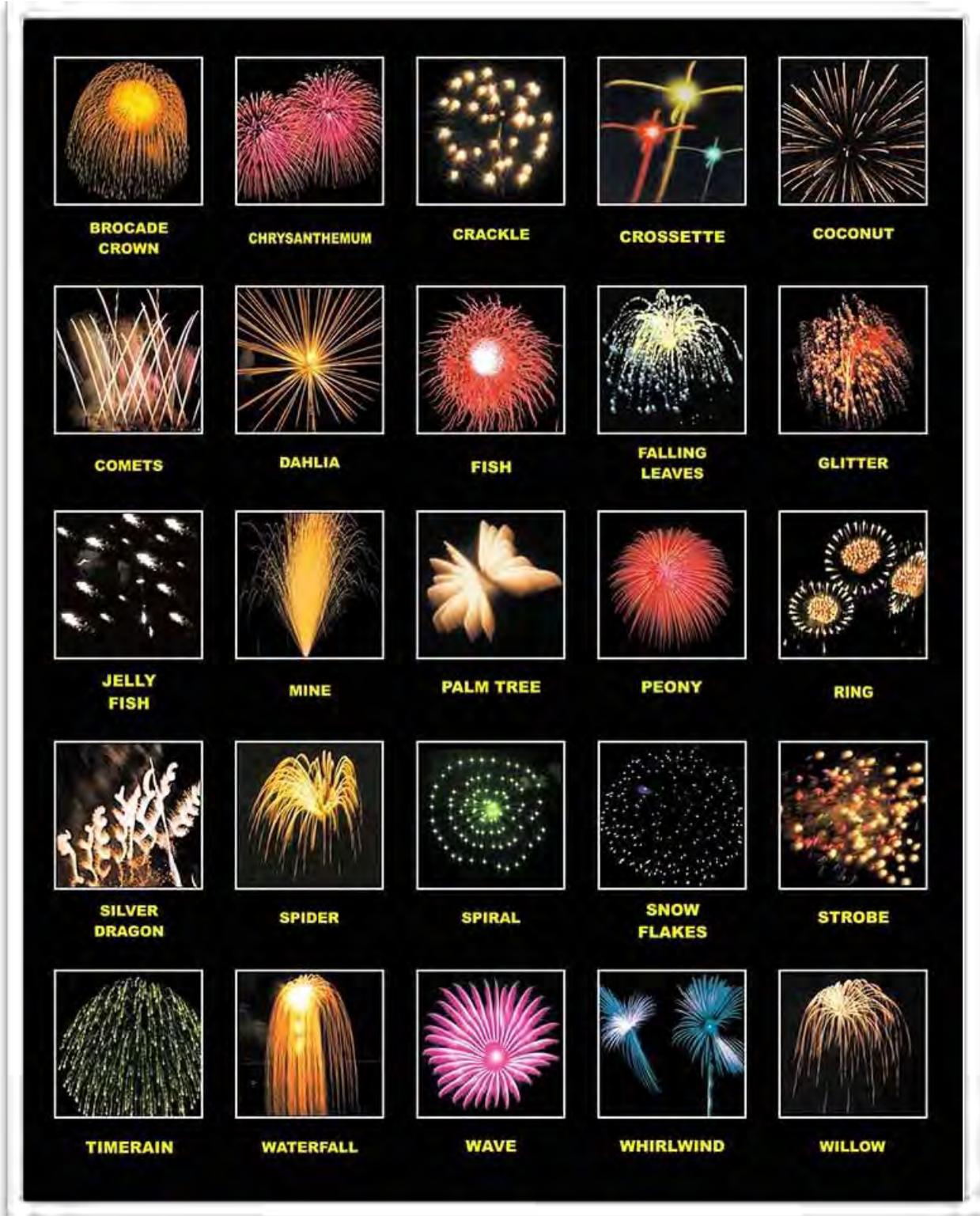
EJ is the founder of Angry Unicorn Displays. He began his career working for a major theme park in Orlando, FL. When he left there, he continued his path to pyrotechnic greatness working with a large competing company. From there, he decided to branch out on his own and Angry Unicorn Displays was born.

Pyrotechnic Crew

Angry Unicorn Displays has a vast pool of pyrotechnicians that work with us on a regular basis. Senior Shooters have been with the company since the beginning and have been trained and certified each year. Most of them have other full-time jobs for some of the biggest names in the Entertainment Industry and shoot their shows regularly. All our show site assistants are 100% trained in the company policies of safe handling of materials and under the direction of the onsite shooter. Assistants have a wide range of skill sets and most are working toward being full fledged pyrotechnic shooters within the company.



Our most commonly used effects inventory used to create a unique display keeping your audience excited and craving more!



Pyrotechnic Effect Definitions



Brocade – A spider like effect in the sky, much like fine lace. The brocade effect is generally a golden tail effect, and is brighter than the willow or tiger tail effect. Most brocade effects use glitter to produce the long brocade tails.

Chrysanthemum – A flower-like aerial pattern, usually resulting from a cake or mortar.

Comet – A type of star that leaves a long trail of sparks as it flies through the air.

Crossette – A type of comet that breaks into multiple comets, usually forming a cross shape.

Pearls – Bright balls of color that fly through the sky and burn themselves out after reaching maximum height.

Dragon Eggs – A delayed crackle effect displayed in egg-shaped patterns with loud crackle near the end.

Waterfall – Glowing embers that fall slowly in the air, creating a willow or waterfall effect.

Flying Fish – An aerial effect that looks like a swarm of objects squirming though the air. This effect usually lasts only a few seconds. Fish are a type of fuse that propels itself through the air, creating a swimming effect.

Palm Tree – An aerial effect that produces a gold or silver stem as the shell rises into the sky (known as a rising tail), followed by a brocade or willow effect that creates palm fronds. It resembles a gold or silver palm tree in the sky.

Peony – An aerial effect that looks like a spherical ball of colored lights in the sky. A very common aerial effect on most fireworks displays.

Ghost - An aerial effect that creates a disappearing and re-appearing color trail new to the fireworks industry.

Rising Tail – A rising tail is a gold or silver tail effect that is created when a shell is shot into the sky, similar to the trunk of a tree. Commonly used with palm tree shells.



Strobe – A strobe is a blinking effect. When used in a shell with hundreds of strobe stars, the strobe effect looks like shimmering water in the sky. Strobes can be a variety of colors, including white, green, blue, and orange.

Tourbillion – Another name for a serpent. A tourbillion is a type of star that spins in the sky and gives off large quantities of gold, silver, or white light.

Willow – An aerial effect that looks like a giant gold willow tree in the sky. A true willow effect has delicate golden trails that hang in the sky ten seconds or more.

Pattern - An aerial effect including but not limited to Smiles, Hearts, Squares, Diamonds, Stars, 3D Cubes always a crowd pleaser



What is included in your All-Inclusive Package

SITE INSPECTION

FIREWORKS DISPLAY PERMIT

COAST GUARD PERMIT (IF REQUIRED)

FAA CLEARANCE (IF REQUIRED)

MINIMUM \$1,000,000.00 GENERAL LIABILITY INSURANCE

\$5,000,000.00 AUTO LIABILITY INSURANCE AS REQUIRED BY THE US DOT

FIRE MARSHAL FIRE WATCH FEES

FIRE TRUCK STANDBY FEE (IF REQUIRED)

ALL TRAVEL/LOGISTICS COSTS

PROFESSIONAL PYROTECHNICS CREW

100% ELECTRONICALLY FIRED DISPLAY

STRIKE/CLEAN UP

