

**1. Requested Motion:**

**Meeting Date: Dec 3, 2012**

Approve the recommendation in response to Request For Proposals (RFP) 12-16-PR Choreographed New Year's Eve Fireworks Display of Garden State Fireworks as the #1 ranked pyrotechnics firm and authorize staff to enter into an agreement with the top ranked pyrotechnics firm.

**Why the action is necessary:**

Town Council authorization is required to enter into agreement for services. This solicitation was conducted in accordance with Town of Fort Myers Beach Procurement Policy.

**What the action accomplishes:**

Authorization allows staff to proceed to secure all necessary local, state and marine permitting.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff (P & R Director)  
 Town Attorney

**5. Background:**

RFP 12-16-PR was issued for a Choreographed New Year's Eve Fireworks Display on October 26, 2012 with a proposal deadline of November 9, 2012. Three (3) proposals were received Derek Bargmann, Contracts Manager. Selection was based upon: budget; number of shells; size of shells; proposal presentation; pyro-musical production; and show dynamics.

The following background material is provided:

1. Request for Proposal RFP 12-16-PR Choreographed New Year's Eve Fireworks Display.
2. Submittals by each firm are available at Town Hall for Town Council review if desired.

**6. Alternative Action:**

Take no action.

**7. Management Recommendations:**

Approve staff recommendation and authorize staff to proceed with finalization of the Town's Annual New Year's Eve Fireworks Display and Birthday Celebration with Garden State Fireworks, Inc.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
					<i>Patti Evans</i> 11.20.2012	

**9. Council Action:**

Approved     Denied     Deferred     Other

# THE TOWN OF FORT MYERS BEACH



**REQUEST FOR PROPOSALS  
TO PERFORM A**

**CHOREOGRAPHED NEW YEAR'S EVE FIREWORKS DISPLAY**

**FOR THE TOWN OF FORT MYERS BEACH  
# RFP-12-16-PR**

Prepared by:

Town of Fort Myers Beach  
2523 Estero Blvd.  
Fort Myers Beach, FL 33931

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**TOWN OF FORT MYERS BEACH  
ADVERTISEMENT - REQUEST FOR PROPOSALS #RFP-12-16-PR**

The Town of Fort Myers Beach invites proposal submissions from qualified firms to perform a New Year's Eve choreographed fireworks display for the Town of Fort Myers Beach #RFP-12-16-PR. The Town Hall is located at 2523 Estero Boulevard, Fort Myers Beach, Florida 33931. Sealed proposals must be received in Town Hall, attention Contracts Manager, no later than **3:30 PM** local time, **Friday, November 9, 2012**. Any proposal received by the Town later than the above time will be returned unopened.

The scope of the project includes choreographing, programming, storing, wiring and firing the display for the New Year's Eve Celebration. Contractor shall provide all qualified personnel, transportation, storage, locating equipment, and any other required materials to perform the services as required in accordance with the applicable laws.

This project requires the Respondent(s) selected to be qualified to do business in the State of Florida at the time of submittal and during the entire course of services rendered. The Local Vendor/Contractor preference will not apply to this procurement.

Interested parties must obtain the package of project documents for **New Year's Fireworks #RFP-12-16-PR**. The package may be obtained from [www.demandstar.com](http://www.demandstar.com), [www.fortmyersbeachfl.gov](http://www.fortmyersbeachfl.gov), or by calling (239) 765-0202, Extension 116.

Respondents are solely responsible for checking the Town web site for the issuance of any addenda prior to submitting a proposal, and for providing the Town with a current email address and facsimile number for this purpose. If the package is not obtained directly from the Town of Fort Myers Beach, or is modified in any manner, the Proposal will not be accepted for consideration by the Town.

No later than **3:30 PM** local time, **Friday, November 9, 2012**, Respondents shall submit one (1) original proposal and five (5) identical copies of the Respondent's proposal with an electronic copy of the same as a PDF on CD/DVD in a sealed envelope which is clearly and visibly marked on the outside, "**New Year's Fireworks #RFP-12-16-PR**." Respondent's complete name and address shall also appear on the exterior of the proposal package.

The Town of Fort Myers Beach reserves the right, in its sole judgment in the best interest of the Town, to waive any informalities in any proposals; to make award(s) including multiple awards; to waive any non-substantive, in Town's sole judgment, irregularity or technicality in proposals received, and/or to reject any or all proposals.

The Town's Selection Committee meeting dates will be posted at Town Hall and/or listed on the Town website or please contact the Town at (239) 765-0202 for such information.

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TOWN OF FORT MYERS BEACH	Legal Ad:
Michelle Mayher, Town Clerk	RUN DATE: <u>Friday, October 26, 2012</u>

Please return affidavit of Publication to the Town Clerk.

Received at the News Press by \_\_\_\_\_

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

## NEW YEAR'S FIREWORKS RFP-12-16-PR

Notice is hereby given that the Town of Fort Myers Beach, hereinafter known as the Town, invites proposal submissions from qualified firms to perform a New Year's Eve choreographed fireworks display for the Town of Fort Myers Beach. The Town Hall is located at 2523 Estero Boulevard, Fort Myers Beach, Florida 33931. Sealed proposals must be received in Town Hall, attention Contracts Manager, no later than **3:30 PM** local time, **Friday, November 9, 2012**. Any proposal received by the Town later than the above time will be returned unopened.

This project requires the Consultant(s) selected to be qualified to do business in the State of Florida at the time of submittal and during the entire course of services rendered. The Local Vendor/Contractor preference will not apply to this procurement.

The scope of the project includes choreographing, programming, storing, wiring and firing the display for the New Year's Eve Celebration. Contractor shall provide all qualified personnel, transportation, storage, locating equipment, and any other required materials to perform the services as required in accordance with the applicable laws.

Interested parties must obtain the package of project documents for **New Year's Fireworks #RFP-12-16-PR**. The package may be obtained from [www.demandstar.com](http://www.demandstar.com), [www.fortmyersbeachfl.gov](http://www.fortmyersbeachfl.gov), or by calling (239) 765-0202, Extension 116.

Respondents are solely responsible for checking the Town web site for the issuance of any addenda prior to submitting a proposal, and for providing the Town with a current email address and facsimile number for this purpose.

A **pre-proposal conference** will not be held for this project.

### DEFINED TERMS

Terms used in this solicitation are defined and have the meaning assigned to them. The term "Respondent" means one that submits a proposal directly to the Town of Fort Myers Beach. The terms "Selected Respondent", "Provider" or "Contractor" means the qualified, responsible and responsive Respondent to whom the Town of Fort Myers Beach (on the basis of TOWN's evaluation as hereinafter provided) makes an award. The term "TOWN" refers to the Town of Fort Myers Beach, a municipal corporation of the State of Florida. The term "RFP" refers to this Sealed REQUEST FOR PROPOSALS. The term "solicitation" refers to the entire RFP package and the Respondent's submittal as a response to this RFP. The term "submittal" refers to all documentation and information as submitted by the Respondent in response to this solicitation.

### A. PROPOSAL SUBMITTAL:

Submit one (1) original and five (5) identical copies of the complete proposal, and an electronic copy of the same as a PDF on CD/DVD. Proposals must be submitted by mail or in person to Town of Fort Myers Beach, Town Hall, on the second floor, 2523 Estero Boulevard, Fort Myers Beach, FL 33931, not later than **3:30 PM on November 9, 2012**.

All Proposals shall be in a sealed envelope clearly marked – "**New Year's Fireworks #RFP-12-16-PR**". For proper identification, the Respondent's complete name and address shall also appear on the exterior of the proposal package.

Proposals submitted after the specified time and date will not be considered and will be returned unopened to Respondent. Proposals received by telephone, telegraph, facsimile and/or e-mail will not be accepted.

Proposals will be opened at **3:45 PM local time on November 9, 2012** at Town Hall, 2523 Estero Boulevard, Fort Myers Beach, FL 33931. The Town's short-list and final selection meeting dates will be posted at Town

Hall and/or listed on the Town website at [www.fortmyersbeachfl.gov](http://www.fortmyersbeachfl.gov). The Town may also be contacted (239) 765-0202 ext. 116 for meeting dates.

It is the Respondent's responsibility to insure the proposal is mailed or delivered by the due date. The Town will not be held responsible for proposals delayed by the U.S. Mail or any other courier. The Town shall not be held liable for any expenses incurred by the Respondent in preparing and submitting the proposal and/or attendance at any interviews, contract negotiations or applicable site visits.

**B. RECEIPT OF PROPOSALS:**

The Town will only accept proposals from firms qualified to perform the services identified in the scope of work.

In the event a team of firms is entering into a joint venture to respond to the RFP, one firm shall be named the prime contractor and the proposal shall be submitted in the name of the prime contractor. All correspondence concerning the RFP will be between the Town and prime contractor.

**C. SUBCONTRACTING:**

Should the Respondent intend to subcontract all or any part of the work specified, name(s) and address(es) of subcontractor(s) must be provided in proposal response. The Respondent shall be responsible for subcontractor(s) full compliance with the requirements of the RFP specifications. If awarded the contract, payments will only be made to prime Respondents submitting the proposal. The Town will not be responsible for payments to subcontractors.

**D. QUESTIONS ABOUT THE RFP:**

Any questions or communications concerning conditions and specifications shall be submitted in writing to the Town representative, Derek Bargmann, Contracts Manager, no later than five (5) business days prior to the proposal due date by fax or e-mail. Communications shall be addressed in writing to Contracts Manager, Fax (239) 765-0909; or via e-mail [derek@fortmyersbeachfl.gov](mailto:derek@fortmyersbeachfl.gov) Replies will be issued to all Respondents of record via email as addenda that will become part of the contract documents. **Any attempt to make contact with Town staff or Town elected officials may result in your elimination from further consideration.**

**E. ADDENDA:**

The Respondent shall include acknowledgment of receipt of addenda (if any) in their sealed proposal. The Respondent should include an initialed copy of each addendum in the proposal package

**F. PUBLIC INFORMATION:**

All information and materials submitted will become the property of the Town and shall be subject to the provisions of the public records laws in effect at this time. If awarded the contract, the proposal submission, in its entirety, will be included as part of the contract documents and filed, as public record, with the Clerk of the Town.

**G. CONTRACT:**

Each proposal is received with the understanding that an acceptance in writing by the Town of the offer to furnish any or all of the services and materials described shall constitute a contract between the Respondent and the Town. This contract shall bind the Respondent to furnish and deliver the services and materials quoted, at the prices stated and in accordance with the condition of said accepted proposal. It is agreed that the Respondent will not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same, or any part thereof, without previous consent of the Town and any sureties.

**H. AWARDS:**

As the best interest of the Town may require, the right is reserved to accept or reject any and all proposals or to waive any irregularity in proposals received; and to accept or reject any item or group of items unless qualified by Respondent.

**I. QUALIFICATION PROCEDURES:**

All applicants must be qualified to do business in the State of Florida.

**J. INDEMNITY:**

The successful Respondent agrees, by entering into this contract, to defend, indemnify and hold the Town harmless from any and all causes of action or claims of damages arising out or under this contract, including but not limited to attorney fees and costs incurred by the Town as a result of Respondent's response.

**K. EQUAL OPPORTUNITY STATEMENT:**

The Town of Fort Myers Beach, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, et seq. hereby notifies all firms and individuals that it will require affirmative efforts be made to ensure equal participation in all contracts. No firm or individual shall be discriminated against on the grounds of race, color, gender, national origin, religious affiliation, sexual orientation, age or disability in consideration for qualification or selection.

**L. TAXES:**

All Town business license, personal property, real estate and other applicable tax requirements shall be met by the selected Consultant.

**M. DRUG-FREE WORKPLACE:**

The policy of the Town requires all Consultants maintain a drug free workplace policy. Consequently, any vendor providing goods or services to the Town must comply with all applicable Federal and State Drug Free Workplace Acts.

**N. FEDERAL, STATE, LOCAL LAWS:**

All Consultants will comply with all Federal, State and Local laws, ordinances, rules and regulations relative to conducting business in The Town and performing the prescribed service. Ignorance on the part of the Consultant shall not, in any way, relieve the Consultant from responsibility for compliance with said laws and regulations or any of the provisions of these documents.

**O. INSURANCE:**

All Respondents shall submit proof of insurance as set forth below. Certificates of insurance written by a company or companies acceptable to the Town shall be submitted to the Town no later than ten (10) days after award of the contract. Failure to do so will disqualify the Consultant automatically. The award of a contract is conditioned upon such submittal to the Town's satisfaction. Certificates of insurance shall list the Town as the certificate holder and as an additional insured. Insurance shall be maintained during the entire term of the contract, shall include Contractual Liability and Products and Completed Operations Coverage, and shall be of the following forms and limits:

Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws;

Commercial General Liability Insurance with minimum limits of \$10,000,000 each occurrence combined single limit or \$10,000,000 each occurrence/\$10,000,000 general aggregate;

Business Automobile Liability Insurance with minimum limits of \$1,000,000 each occurrence Combined Single Limit or \$1,000,000 each occurrence/\$1,000,000 general aggregate; and

Professional Liability Insurance with minimum limits of \$1,000,000.00.

The establishment of minimum limits of insurance by Town does not reduce or limit the liability or responsibilities of Respondent.

Renewal shall be sent to the Town at least 60 days prior to any expiration date. Consultant shall ensure that its insurer provides a 60 day notification to the Town in the event of cancellation, renewal, or modification of any required insurance coverage requirements that the Consultant is required to meet. The Consultant shall provide the Town with certificates of insurance meeting the required insurance provisions.

**P. TIME OF CONTRACT:**

The Town anticipates awarding a Service Provider Agreement for a term of one (1) year with an option for two (2) additional terms of one (1) year each, for a possible total of three (3) years. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract term, including the renewal, unless mutually agreed upon by both parties. The resulting Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant.

**Q. TIME FOR CONSIDERATION:**

Submitted Proposals must be in force for **NINETY (90)** days after the Proposal opening. Proposers may not assign or otherwise transfer their Proposals.

## PROPOSAL SPECIFICATIONS

### 1. INTRODUCTION

The Town is seeking qualified firms to provide a choreographed New Year's Eve fireworks display.

### 2. MINIMUM QUALIFICATIONS

1. Personnel: Contractor is responsible for hiring qualified personnel for these services.
2. Licenses and Permits: The Contractor shall obtain and maintain, at its own expense, all applicable licenses and permits that are necessary to perform the services described herein.
3. Materials, Parts, and Equipment: Except as otherwise provided herein, the Contractor shall provide all materials, labor, and equipment necessary to perform the services described in these technical specifications in the specified manner.
4. Vehicles: The Contractor shall furnish all vehicles necessary to perform standard services.
5. Safety: The Contractor shall exercise all legally required and reasonable measures necessary to safeguard property and persons from its operating hereunder. If the Town of Fort Myers Beach determines that the Contractor is not using standard safety practices, the Town may close down site until corrective measures have been taken.

### 3. OVERVIEW

Each year, the Town of Fort Myers Beach presents the annual New Year's Eve Celebration and Town Birthday Party. All activities are free to the public and are presented on Town of Fort Myers Beach premises and the Lee County owned pier. The Town is soliciting proposals from qualified firms to choreograph, program, wire and fire the display. Other annual events may require similar services as indicated in the scope of services; therefore, the Town desires to enter into a Service Provider Agreement with the Contractor to perform such services as they arise.

### 4. SCOPE OF SERVICES

#### 4.1 General:

Proposals are being solicited to choreograph, program, store, wire and fire the display for the New Year's Eve Celebration. The Town desires to enter into a Service Provider Agreement with the Contractor for the New Year's Eve Celebration. During the term of the contract, the Town may negotiate with the provider for additional programs of similar scope. Contractor shall provide all qualified personnel, transportation, storage, locating equipment, and any other required materials to perform the services as required in accordance with the applicable laws.

#### 4.2 The Contractor Shall:

- Obtain all required permits and licenses from Federal, State, and Local governments and meet all insurance requirements.
- Upon award, vendor shall inspect the Town designated site where the fireworks will be displayed to ensure it is an adequate site for the display and that safety requirements are met.
- Provide music, consistent with a New Year's Eve theme, with a balanced mix of all genres of music. Contractor shall provide, in a CD format, two (2) copies of music.
- Provide a detailed list on the type of common and special fireworks being used, and the number of shells, by size and type, including specialty signature shells exclusive to contractor's firm.
- Insure that all shell sizes to be fired meet the site limitations.
- Be responsible for all travel, storage, set up, and firing expenses, placement and removal of all necessary materials and structures to complete the display. All expenses shall be inclusive in the final price.
- Submit a description of services to be provided with cost proposal.
- Present display in a location designated by the Town of Fort Myers Beach:

**Event Location:** Downtown Time Square off Estero Blvd.  
**Fireworks Firing Location:** End of County-Owned Pier  
**Date:** December 31, 2012  
**Time:** Midnight  
**Theme:** New Year's Eve, Top Ten, Country, Rock, R+B, Rock n Roll  
**Length:** 30 minutes

**5. ADDITIONAL INFORMATION**

(none)

**6. FORM OF PROPOSAL**

Respondent is to provide the following information:

**6.1 Technical Knowledge and Competence**

For each proposal submitted respondent shall complete and include the attached Contractors Qualification Questionnaire. Include copies of all applicable licenses and certifications.

**6.2 Service Orientation and Professionalism**

Provide background information about the Respondent organization (e.g., philosophy, ownership, size, facilities, location(s)) with specific reference to how the organization meets the minimum qualifications. Describe the management structure at both the corporate level and at the project level (e.g. number of managers, supervisors, and non-supervisory personnel).

**6.3 References**

Provide at least three (3) references with contact information

**6.4 Price**

Respondent shall provide the Town with a proposal for its services based on per event costs.

Payment will be made by Town within 30 days of receipt of an approved invoice from Provider.

**6.5 Subcontracting**

If Respondent intends to subcontract any part of the work under this contract, indicate which parts and the subcontractors to be used. For each subcontract, detail the subcontractor's capability, skill, and assigned responsibilities. Describe how the subcontractor work assignments and personnel will be managed.

**7. ADDITIONAL INSTRUCTIONS**

**7.1 Conditions of Work**

Each Provider shall inform itself fully of the conditions relating to the project and the employment of labor therein. Failure to do so will not relieve a Provider of the obligation to furnish all materials and labor necessary to carry out the provisions of their agreement.

**7.2 Subcontractors**

The use of subcontractors and the work they are to perform must receive prior written approval of the Town. Provider shall be solely responsible for all work performed and materials provided by subcontractors. Provider shall be responsible for the liability of subcontractors for the types and limits required of the Provider.

**7.3 Criminal Background Investigations**

The Provider shall provide the Town with criminal background check information for each employee and any and all subcontractors hired by the Provider to the provide services outlined herein.

**7.4 Public Information**

Respondents are advised that all information submitted in the proposal shall be considered public information upon award of one or more contracts under this RFP.

**7.5 Public Entities Crime Form**

Respondents shall complete and submit with their proposal the sworn statement required by Section 287.133, Florida Statutes, Public Entity Crimes.

**7.6 Affidavit Certification Immigration Laws**

Respondents shall complete and submit with their proposal the Affidavit Certification Immigration Laws and include certification and any and all subcontractors hired by the Provider.

**7.7. Service Provider Agreement**

The Town of Fort Myers Beach standard Service Provider Agreement is attached to this RFP for reference and shall not be filled out or completed. Respondent shall acknowledge receipt of the Service Provider Agreement as part of its RFP submission, and acknowledge the Service Provider Agreement shall be executed by all parties in its current form.

**7.8. Commercial Warranty**

The Respondent agrees that the products and services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Respondent gives any customer for such.

**7.9. Alternatives/Exceptions**

In offering its best proposal, Respondent may note exceptions to any of the provisions in this RFP. Respondent is to specify the RFP page number and section number and to detail the exception. Respondent should not incorporate by reference its entire, standard contract document. Respondent may present alternative methods to meet the Town's objectives for this contract. However, Respondent is encouraged to first respond to the objectives detailed in the Services Required herein.

**7.10. Presentation**

The Town may elect, but is not obligated, to offer to one or more Respondents the opportunity to present their proposal to the Town. Presentations, if any, will be in a form and manner prescribed by the Town.

**7.11. Negotiations**

Negotiations shall then be conducted with one or more of the Respondents so selected. After negotiations have been conducted with such Respondent(s) so selected, the Town shall select the Respondent(s) which, in its sole judgment and opinion, made the best proposal, and shall award one or more contract(s) to the selected Respondent(s).

**7.12. Town Discretion in Award; Costs of Proposal Preparation; Section Headings**

The Town shall have the ability to decide not to award any contract under this Request for Proposal, or to award only a portion of the work provided under this Request for Proposal, in its sole discretion. All Respondents shall have sole responsibility for any cost(s) they incur related to this Request for Proposal and the Town shall bear no responsibility therefore. The Section headings are meant for the convenience of the Town only.

**8. EVALUATION CRITERIA**

Evaluation of the technical proposals determined to be responsive to the submittal requirements will be conducted by a Selection Advisory Committee in accordance to the procedures incorporated within enclosed "Exhibit L- Proposal Scoring and Evaluation Information".

**Evaluation Criteria:**

	<b>Weight (Percent)</b>
1. Approach to display, number and size of type of shells	35%
2. Experience and number of similar projects	25%
3. Ability to meet schedules or deadlines and responsiveness to the client	20%
4. Cost	15%
5. Clarity of proposal	<u>5%</u>
Total	100%

- A. Upon completion of the evaluation process, a recommendation for award of contact(s) will be issued by the Selection Advisory Committee to the Town Manager for review. Town Council approval will be necessary thereafter. Contract(s) will have been negotiated prior to the Committee's recommendation and may follow the format of the contract enclosed herein.

### PROPOSAL SUBMITTAL CHECKLIST

**THIS CHECKLIST IS MERELY A GUIDE TO ASSIST THE RESPONDENT IN PREPARING A COMPLETE PROPOSAL SUBMITTAL**

**I M P O R T A N T**: Please read carefully and follow each item.

Please check off each of the following items as the necessary action is completed:

- 1. The Proposal has been signed.
- 2. Include a signed copy of each addendum, if any.
- 3. Public Entities Crime Form properly completed, signed and notarized.
- 4. Affidavit Certification Immigration Laws properly completed, signed, and notarized.
- 5. Acknowledge receipt of the Service Provider Agreement as part of the proposal submission, and acknowledge the Service Provider Agreement shall be executed by all parties in its current form.
- 6. List of subcontractors, including the name and address of each subcontractor.
- 7. The mailing envelope has been addressed to:  
Town of Fort Myers Beach  
Town Hall  
2523 Estero Boulevard  
Fort Myers Beach, Florida 33931  
ATTN: Contracts Manager
- 8. The mailing envelope must be sealed and marked "**New Year's Fireworks #RFP-12-16-PR**" with the due date and time noted. All courier delivered proposals must have the RFP title and number on the outside of the courier packet.
- 9. For proper identification, the Respondent's complete name and address must also appear on the exterior of the proposal package.
- 10. Submit one (1) original and five (5) identical copies of the complete proposal, and an electronic copy of the same as PDF on CD/DVD.
- 11. In a separate sealed envelope submit the three-year audited financial statement or SEC 10-K Statement of the parent corporation of the Respondent. Clearly identify the envelope as "Financial Statement" with Respondent's name, address, and RFP number.
- 12. Proposals must be submitted by mail or in person to the address herein no later than **3:30 PM local time on November 9, 2012.**

### **SERVICE PROVIDER AGREEMENT**

This SERVICE PROVIDER AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and \_\_\_\_\_ with an address of \_\_\_\_\_ (hereafter "Provider"), a Florida for-profit corporation, for the Provider to render the following services to the Town: \_\_\_\_\_ as further described in Exhibit "A".

1. Scope of Services. Provider shall perform the services and work as set forth in "Scope of Services" which is attached hereto as Exhibit "A" and made a part of this Agreement. Provider warrants and represents that it is qualified, willing and able to provide and perform all such services in accordance with the terms of this Agreement. The parties shall have the ability to change the Scope of Services by mutual written agreement, except that the Town shall have the unilateral right to delete services hereunder for any reason without compensation to Provider other than for services already performed.
2. Term. The term of this Agreement shall commence on \_\_\_\_\_ and continue for one (1) year from date of award with two (2), one year annual renewable options to be exercised upon mutual agreement and initiated by the Town of Fort Myers Beach, subject to the Town's ability to terminate the Agreement as set forth elsewhere.
3. Payment Obligation. The Town shall pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in Exhibit "B," which is attached hereto and made a part of this Agreement. The Provider's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town shall pay the undisputed amount, if any, within thirty (30) days.
4. Provider's Obligations. The Provider's obligations shall include, but are not limited to, the following:
  - a) Licensure. The Provider shall maintain all licenses and/or certifications required by any governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
  - b) Provision of Services. The Provider shall perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies which regulate or have jurisdiction over the services to be provided and/or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider shall designate one (1) person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and shall make all deductions required of employers by state, federal and local laws.
  - c) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.

- d) Indemnity and Hold Harmless. The Provider shall be liable and agrees to be liable for, and shall indemnify, defend and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees (including but not limited to appellate attorney fees) arising out of the Provider's errors, omissions, willful action(s) and/or negligence. The Provider shall not be liable to, nor be required to indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives.
- e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider shall require all of its employees and subcontractor(s) to comply with the provisions of this paragraph.
- f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
- g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.

5. Commencement and Completion of Work. The Town shall provide written notice to the Provider that it is authorized to commence work. The Provider thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement, in addition to any other remedies the Town may have.

6. Insurance. The Provider shall have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "A". Each Certificate of Insurance shall include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and for Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider shall instruct the issuing company to mail thirty (30) days written notice to the Town of such cancellation.

7. Inclusion of Additional Documents. Any request for bids and/or request for proposal and all exhibits or other attachments thereto as issued by the Town are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: RFP 12-16-PR, and Provider's response thereto.

8. Termination of Agreement. Town may terminate this Agreement without cause upon thirty (30) calendar days' prior written notice to the other, in which case the Town shall compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.

9. Assignment, Transfer and Subcontracts. The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.

10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of two (2) years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement the next succeeding two (2) years.

11. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" shall be deemed to include its employees, agents, and/or authorized representatives.

12. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement shall only be valid when made in writing and signed by both parties. In the event of any conflict between the requirements, provisions, and/or terms of this Agreement and any subsequent written modification hereto, the most recently executed document shall take precedence.

13. Miscellaneous Provisions.

- h) Applicable Law. This Agreement shall be governed by the laws, rules and regulations of the State of Florida. The venue for any litigation arising out of this agreement shall be in Lee County, Florida.
- i) Attorneys Fees: The prevailing party in any litigation arising out of the agreement is entitled to recover reasonable attorney's fees from non-prevailing party.
- j) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- k) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- l) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- m) Notices. All notices hereunder shall be in writing and shall be sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as set forth below.

TOWN

PROVIDER:

BY: Town of Fort Myers Beach

BY: \_\_\_\_\_

\_\_\_\_\_  
Terrance Stewart, Town Manager

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Printed name of person signing

BY: \_\_\_\_\_  
Michelle Mayher, TOWN CLERK

\_\_\_\_\_  
Title (printed)

APPROVED AS TO LEGAL FORM:

BY: \_\_\_\_\_  
Fowler, White, Boggs, TOWN ATTORNEY

**EXHIBIT "A"**

TO THE SERVICE PROVIDER CONTRACT DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2012  
BETWEEN THE TOWN AND \_\_\_\_\_, PROVIDER.

14. SCOPE OF SERVICES:

The Provider shall perform the following services under this Agreement:

- a) Choreograph, program, store, wire and fire the display for the New Year's Eve Celebration. Service Provider Agreement may also services for other annual Town events. Contractor shall provide all qualified personnel, transportation, storage, locating equipment, and any other required materials to perform the services as required in accordance with the applicable laws.

15. Term. The term of this Agreement shall commence on \_\_\_\_\_ and continue for one (1) year from date of award with two (2), one year annual renewable options to be exercised upon mutual agreement and initiated by the Town of Fort Myers Beach, subject to the Town's ability to terminate the Agreement as set forth elsewhere.

16. INSURANCE: The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
- b) Employer's Liability with a minimum limit per accident in accordance with statutory requirements;
- c) Commercial General Liability Insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$10,000,000 for Property Damage Liability, or a minimum combined single limit of \$10,000,000.
- d) Business Automobile Liability Insurance with minimum limits of \$1,000,000 per person and \$1,000,000 per accident for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

**EXHIBIT "B"**

TO THE SERVICE PROVIDER CONTRACT DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2012  
BETWEEN THE TOWN AND \_\_\_\_\_, PROVIDER.

**PAYMENT OBLIGATION**

1. Payment terms are as follows:
  - a. Work to be inspected and approved by the Town prior to issuing payment.
  - b. Invoice to be submitted by Provider to Town after the Town has completed and approved all work and materials.
  - c. Payment will be made by Town within 30 days of receipt of invoice from Provider.
  
2. Provider shall receive reimbursement for out-of-pocket expenses from the Town as follows:  
(none)

**EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT**

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER  
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to \_\_\_\_\_  
(print name of public entity)
- by \_\_\_\_\_  
(print individual's name and title)
- for \_\_\_\_\_  
(print name of entity submitting sworn statement)
- whose business address is \_\_\_\_\_  
\_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_  
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement: \_\_\_\_\_.)

2. I understand that a "public entity crime" as defined in Paragraph 287.233(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

Request for Proposals – #RFP—12—16—PR  
New Year's Eve Fireworks Display for Town of Fort Myers Beach

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Personally known \_\_\_\_\_

OR Produced Identification \_\_\_\_\_

Notary Public – State of \_\_\_\_\_

\_\_\_\_\_  
(Type of Identification)

My Commission expires \_\_\_\_\_

\_\_\_\_\_  
(Printed typed or stamped)

commissioned name of notary public)

(Rev. 3/20/07)

**EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS**

Date: \_\_\_\_\_, 2012

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: \_\_\_\_\_

\_\_\_\_\_  
(Signature) (Title) (Date)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ who has produced  
(Print or Type Name)

\_\_\_\_\_ as identification.  
(Type of Identification and Number)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration

**The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

**Exhibit L**

**Proposal Scoring and Evaluation Information**

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**Scoring Criteria**

Each member shall rate each proposal on each criterion by scoring proposals according to the following standards:

5 = Excellent

4 = Exceeds Acceptable

3 = Acceptable

2 = Marginal

1 = Poor

0 = Unresponsive

**I. Evaluation**

Utilizing only the materials provided by the Contract Manager, and only the criteria outlined within the request for qualification or proposal, each committee member will complete the evaluation form included in the materials. This will entail multiplying the score determined by the member for each criterion by the weights listed on the form and totaling the scores for each respondent. This evaluation shall be completed prior to a committee discussion meeting scheduled by the Contract Manager.

**II. Award Recommendation**

A. The committee will base its award recommendation on the highest score.

**ADDENDUM TO CONTRACT DOCUMENTS**

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**Addendum No.: 1**CONTRACT/PROJECT NAME: New Year's Eve Fireworks (RFP 12-16-PR)DATE OF ISSUE: November 2, 2012

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The following information shall be included in the Contract documents and is hereby made part of the project bidding documents in the form of clarification, addition, deletion or revision to the contract specifications and/or drawings.

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**The following information has been changed:****6.1 Technical Knowledge and Competence**

~~For each proposal submitted respondent shall complete and include the attached Contractors Qualification Questionnaire. Include copies of all applicable licenses and certifications.~~

NOTE: The first sentence has been stricken in Proposal Specification 6.1.

**The following inquiries were received regarding the above referenced RFQ:****Q. Price Point/Display:****A. We are looking for the most exciting 30 minutes fireworks show we can purchase for \$30,000. Size and number of shells matters.**

**The Town is responsible to cordon off the "safety-zone" or "public access barrier" according to established State of Florida Regulations in advance of the fireworks display. This process is enforced by the Beach Fire District. In addition to the State regulations, Lee County and the non-profit organization Turtle Time requires additional safety measures handled by the Town. Potential bidders are encouraged to view the site in advance.**

**Q. Shoot Site:****A. Spectators will be on the beach shoreline and kept from the safety zone by Fire and Law Enforcement staff. The pier and portions of the beach will be closed and off limits to anyone except Fire, Law Enforcement, Town and Pyrotechnics employees. The shoot site is the very end of the pier (the "T") located in the water and any portion of the most westerly end of the pier up to the concession stand. No explosives may take place east of the concession stand (located midway out on the pier).**



The Town is responsible to cordon off the “safety-zone” or “public access barrier” according to established State of Florida Regulations in advance of the fireworks display. This process is enforced by the Beach Fire District. In addition to the State regulations, Lee County and the non-profit organization Turtle Time requires additional safety measures handled by the Town. Potential bidders are encouraged to view the site in advance.

Patrons are permitted in the Beach Pierside Grill Restaurant during the fireworks show. Measurements should be taken from this location out to the end of the pier.

The Town will not be responsible for providing measurements.

Potential bidders are highly encouraged to visit the site in advance.

Please Print \_\_\_\_\_  
Company Name & Phone Number

---

Derek Bargmann  
Contracts Manager  
Town of Fort Myers Beach  
2523 Estero Blvd.  
Fort Myers Beach, FL 33931  
239-765-0202 ext 116



**ADDENDUM TO CONTRACT DOCUMENTS**

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**Addendum No.: 2**

CONTRACT/PROJECT NAME: New Year's Eve Fireworks (RFP 12-16-PR)

DATE OF ISSUE: November 6, 2012

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The following information shall be included in the Contract documents and is hereby made part of the project bidding documents in the form of clarification, addition, deletion or revision to the contract specifications and/or drawings.

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**The following inquiries were received regarding the above referenced RFQ:**

**Q. Perimeter:**

**A. The first addendum specifies that a perimeter is maintained by the Town at the direction of the Fire Marshall in charge from the Fort Myers Beach Fire Department.**

**Again, potential bidders are highly encouraged to visit the site at their convenience in advance of the bid close date.**

**Q. Lasers:**

**A. The Town is interested in a fireworks-only 30 minute presentation; therefore, the inclusion of lasers is not desired by the Town.**

Please Print \_\_\_\_\_

Company Name & Phone Number

---

Derek Bargmann  
Contracts Manager  
Town of Fort Myers Beach  
2523 Estero Blvd.  
Fort Myers Beach, FL 33931  
239-765-0202 ext 116