



VILLAGE OF KEY BISCAINE

Office of the Village Manager

Village Council
Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

Village Manager
Genaro "Chip" Iglesias

DT: December 6, 2007

TO: Honorable Mayor and Council Members

FR: Genaro "Chip" Iglesias, Village Manager

RE: 4th OF JULY FIREWORKS PROPOSAL

A handwritten signature in black ink, appearing to be "Genaro Iglesias", is written over the "TO" and "FR" lines of the memo.

RECOMMENDATION

It is recommended that the Village Council engage Fireworks by Grucci, Inc. to produce the 4th of July Fireworks display described as in exhibit "A" of the attached 5 year agreement. This agreement has been amended by request of the vendor since it was brought before the Village Council on November 14, 2007.

BACKGROUND

The Village is bringing the previously approved contract before the Village Council because amendments to the contract were requested by the contractor after the agreement was approved by the Village Council on November 14, 2007. On October 25, 2007 the original contract was emailed to Phil Butler of Fireworks By Grucci, Inc. The email stated that the attached contract would be brought before Council on November 14, 2007. On November 15, 2007 Mr. Butler was emailed notifying him that the contract was approved and two originals would be mailed to his office for execution. At this time Mr. Butler stated that his firm would review the document. Staff advised Mr. Butler that the contract was sent to him on October 25 for his review and any issues should have been identified before the contracts approval by Village Council.

The Village Attorney and Fireworks by Grucci, Inc. have since agreed upon an amended contract that is before you today. Exhibit "B" of this item contains a "mark-up" version of the contract outlining the changes that have been made to the original contract.

RESOLUTION NO. 2008-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA; APPROVING AGREEMENT FOR PROFESSIONAL SERVICES FIREWORKS DISPLAY BETWEEN FIREWORKS BY GRUCCI, INC., AND THE VILLAGE OF KEY BISCAYNE CONCERNING FIREWORKS DISPLAYS FOR JULY 4TH CELEBRATIONS OF THE VILLAGE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Key Biscayne desires to continue to utilize the professional services of Fireworks by Grucci, Inc. ("Grucci"), a recognized expert in the provision of fireworks displays, to conduct the Village's fireworks displays for the July 4th celebrations; and

WHEREAS, upon the advice of the Village Attorney, the Village Council finds that the proposed fireworks display services constitute professional services which are exempt from competitive bidding pursuant to Section 2-87(2) of the Village Code; and

WHEREAS, the Village Council finds that, in any event, the Village's desire to maintain the consistent level of expertise and reliability which Grucci has recently demonstrated makes it impractical to apply the competitive bidding procedures of the Village Code, and that pursuant to Section 2-85 of the Village Code, the Village Council is authorized to waive the competitive bidding procedures of the Village Code upon such basis, and does hereby grant and approve said waiver; and

WHEREAS, the Village Council finds that the approval of the Agreement for Professional Services Fireworks Display between Grucci and the Village (the "Agreement") is in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Authorization. That the Agreement is hereby approved and the Village Manager is hereby authorized to execute the attached Agreement between Grucci and the Village for the provision of fireworks display services, in substantially the form attached hereto, once approved by the Village Attorney as to form and legal sufficiency.

Section 3. Implementation. That the Village Manager is authorized to take all action necessary to implement the purposes of this resolution and the Agreement.

Section 4. Effective Date. That this resolution shall be effective immediately upon adoption hereof and shall supersede Resolution No. 2007-54 on the same subject.

PASSED AND ADOPTED this 15th day of January , 2008.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

**VILLAGE OF KEY BISCAYNE
AGREEMENT FOR PROFESSIONAL SERVICES
FIREWORKS DISPLAY**

THIS AGREEMENT, made and entered into this 15th day of January, 2008, by and between the VILLAGE OF KEY BISCAYNE (the "VILLAGE") and FIREWORKS BY GRUCCI, INC., a New York corporation authorized to do business in Florida ("GRUCCI").

RECITALS:

The VILLAGE wants to engage GRUCCI to perform certain professional services consisting of organizing, producing, managing, staging and providing the July 4th Fireworks Display (the "Fireworks Display") for the VILLAGE's 2008 July 4 celebration, and may also elect to continue to engage GRUCCI to perform the Fireworks Display for July 4, 2009, July 4, 2010 and July 4, 2011, as specifically described herein and in the Scope of Services provided in Exhibit "A" to this Agreement (the "Specified Services").

GRUCCI wants to provide the Specified Services.

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

1. SCOPE OF SERVICES

A. GRUCCI agrees to provide the Specified Services upon written request from the Village Manager.

B. GRUCCI shall utilize its special skills, and shall expend all necessary efforts to competently and professionally complete all tasks of the Fireworks Display, so that the Fireworks Display is successfully and safely provided. GRUCCI shall provide all necessary materials, equipment, personnel and services for the Fireworks Display including, but not limited to, all

fireworks technicians, fireworks, music, barge and tug or barge towing and related comprehensive marine services (the "Tug and Barge Services"), and all necessary governmental permits. VILLAGE shall cooperate with GRUCCI concerning GRUCCI's actions to obtain all necessary governmental permits and approvals for the Fireworks Display. Any Village permit fees shall be waived.

2. FEES FOR SERVICES

A. As full compensation for satisfactory performance of the Specified Services, GRUCCI agrees to charge and shall be paid by the Village in accordance with the following fee schedule:

<u>Date of Fireworks Display</u>	<u>Total Fireworks Contract Price</u>
July 4, 2008	\$ 90,000 Annual Fee
July 4, 2009	\$ 93,600 Annual Fee
July 4, 2010	\$ 97,344 Annual Fee
July 4, 2011	\$ 101,238 Annual Fee

Village has selected a Fireworks Display featuring a world class display of 24-26 minutes in duration, of the same caliber as was performed by GRUCCI at the July 4, 2007 Fireworks Display, for each of the Fireworks Displays which are to be provided hereunder.

B. Payment for each of the applicable annual July 4 Fireworks Displays shall be paid by VILLAGE, as follows:

- (i) A fifty (50%) percent deposit of the applicable Annual Fee shall be due and payable on or before February 1;
- (ii) An additional twenty five (25 %) partial payment of the applicable Annual Fee shall be due and payable on April 15;
- (iii) The remaining balance of the applicable Annual Fee shall be due and payable on July 5;
- (iv) A fee of \$200.00, plus one (1%) percent monthly interest will be imposed upon any unpaid balance after July 5.

C. GRUCCI has already included a charge of \$25,000 in each of the Annual Fee amounts set forth above for Tug and Barge Services cost. However, in any event, VILLAGE shall not be liable for any excess Tug and Barge Services cost which is incurred by GRUCCI, except as expressly provided in paragraph 8 (C)(b) below.

3. TERM

The duration of the term of this Agreement shall commence upon the date of execution hereof and shall be for a term which expires on July 6, 2011, unless extended by the parties or earlier terminated pursuant to paragraph 8.

4. RECORDS

All Firework Display program plans that result from GRUCCI providing the Specified Services shall be the property of the VILLAGE for use by the VILLAGE for the applicable Fireworks Display only.

5. INSURANCE

A. GRUCCI shall at all times throughout the term hereof carry: comprehensive general liability and contractual liability insurance; any insurance required by the U.S. Longshoreman's and Harbor Workers Act and the Jones Act; workers' compensation insurance (if applicable); and automotive liability insurance, with minimum policy limits for each coverage in the amount of at least Two Million (\$2,000,000.00) Dollars per occurrence, combined single limit, for property damage and bodily injury, including death, except that the dollar amount of workers' compensation coverage (if applicable) and for any insurance required by the U.S. Longshoreman's and Harbor Workers Act and the Jones Act, shall be as provided by applicable law. The liability insurance may have a deductible of Two Thousand Five Hundred (\$2,500.00)

Dollars per claim, unless prohibited by law. The VILLAGE shall be named as an additional insured on all of the above referenced insurance policies, to the extent permitted by law. Each insurance policy shall state that it is not subject to cancellation or reduction in coverage without written notice to the VILLAGE at least 30 days prior to the effective date of cancellation or reduction of coverage. A Certificate of Insurance reflecting coverage in strict compliance with this paragraph shall be provided by GRUCCI to VILLAGE upon execution of this Agreement, for review and approval by VILLAGE's risk management consultant and shall be kept current by GRUCCI throughout the Agreement term. GRUCCI shall require all of its subcontractors, including Barge and Tow Services providers to likewise maintain the pertinent forms and amounts of insurance specified herein, unless said insurance is directly maintained by GRUCCI for the purposes of covering GRUCCI and its subcontractors' activities and operations hereunder.

B. GRUCCI shall indemnify and hold harmless the VILLAGE, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of GRUCCI and persons employed or utilized by GRUCCI in the performance of the Agreement.

6. **ASSIGNMENT**

This Agreement shall not be assignable by GRUCCI or by the VILLAGE.

7. **PROHIBITION AGAINST CONTINGENT FEES**

GRUCCI warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for GRUCCI, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona

fide employee working solely for GRUCCI any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

8. **TERMINATION**

A. **GRUCCI Event of Default.** Without limitation, failure by GRUCCI to substantially fulfill any of its material obligations in accordance with this Agreement, shall constitute a "GRUCCI Event of Default". If a GRUCCI Event of Default should occur, VILLAGE shall have all of the following rights and remedies which it may exercise singly or in combination:

- (a) The right to declare that this Agreement together with all rights granted to GRUCCI hereunder are terminated, effective upon such date as is designated by VILLAGE; provided, however, that an Event of Default shall be defined to consist of a default that shall occur by the default in performance of any of the covenants and conditions required herein to be kept and performed by GRUCCI and such default continues for a period of fifteen (15) days after receipt of written notice from VILLAGE of said default. Provided that (1) if the nature of the default is such that it cannot be cured in a period of fifteen (15) days from the date of the default and (2) GRUCCI shall commence good faith efforts to cure such default no later than fifteen (15) days after such notice, and (3) such efforts are prosecuted to completion, to VILLAGE'S reasonable satisfaction, then it shall be deemed that no Event of Default shall have occurred under the provisions of this paragraph.
- (b) Any and all rights provided under the laws of Florida.

B. **VILLAGE Event of Default.** Without limitation, the failure by VILLAGE to substantially fulfill any of its material obligations in accordance with this Agreement, shall constitute a "VILLAGE Event of Default". If a VILLAGE Event of Default should occur, GRUCCI

shall have the following rights and remedies which it may exercise singly or in combination:

- (a) The right to declare that this Agreement together with all rights granted to VILLAGE hereunder are terminated, effective upon such date as designated by GRUCCI; provided, however, that an Event of Default shall be defined to consist of a default that shall occur by the default in performance of any of the covenants and conditions required herein to be kept and performed by VILLAGE and such default continues for a period of fifteen (15) days after receipt of written notice from GRUCCI of said default. Provided that (1) if the nature of the default is such that it cannot be cured in a period of fifteen (15) days from the date of the default, and (2) VILLAGE shall commence good faith efforts to cure such default, no later than fifteen (15) days after such notice, and (3) such efforts are diligently prosecuted to completion to GRUCCI's reasonable satisfaction, then it shall be deemed that no Event of Default shall have occurred under the provisions of this paragraph.
- (b) Any and all rights provided under the laws of the State of Florida.

C. Early Termination .(a) Further, this Agreement may be terminated by the VILLAGE, acting through the Village Manager, at the VILLAGE'S sole discretion, at any time, upon written notice which is provided at least one hundred twenty (120) days prior to the upcoming scheduled July 4 Fireworks Display event. In the event that VILLAGE elects to terminate the Agreement at any time after the July 4, 2008 Fireworks Display, but before the July 4, 2010 Fireworks Display event, VILLAGE shall pay GRUCCI a single Five Thousand (\$5,000) Dollar early termination fee. This early termination fee shall not apply in the event that termination is instituted under subparagraphs (A) or (B) above or under subparagraph (C)(b) below of this paragraph 8. Except as provided above in this subparagraph (C), VILLAGE shall have no other or further liability in the

event of VILLAGE'S determination to provide for the discretionary early termination of this Agreement. GRUCCI recognizes that it does not have a similar right to provide for a discretionary early termination of this Agreement. Accordingly, GRUCCI recognizes that other provisions of this Agreement serve as consideration for VILLAGE'S right of discretionary early termination as provided in this subparagraph (C).

(b) Further, in the event that the Tug and Barge Services costs exceed \$25,000 for the applicable upcoming July 4 Fireworks Display, GRUCCI shall have the right to terminate the Agreement upon ninety (90) days advance written notice to VILLAGE, provided that said advance written notice is provided to VILLAGE no later than the April 3rd prior to the applicable July 4 Fireworks Display. However, GRUCCI's right to terminate the Agreement, as described above in this subparagraph (b) shall not apply if VILLAGE advises GRUCCI in writing within thirty (30) days of receipt of GRUCCI'S above described written notice that VILLAGE shall reimburse GRUCCI for the amount of Tug and Barge Services costs which exceed the \$25,000 allocation. In the event of termination by GRUCCI pursuant to this subparagraph (b), GRUCCI shall refund to VILLAGE any portion of the Annual Fee which has been paid by VILLAGE, within ten (10) days of VILLAGE'S request for said refund, except that GRUCCI may deduct from the refund amount any and all reasonable out of pocket expenses incurred by GRUCCI in connection with GRUCCI'S preparation for the applicable July 4 Fireworks Display, with the amount of any such deduction not to exceed a total of Ten Thousand (\$10,000) Dollars

9. NONEXCLUSIVE AGREEMENT

The services to be provided by GRUCCI pursuant to this Agreement shall be nonexclusive and nothing herein shall preclude the VILLAGE from engaging other firms to perform the same or

similar services for its future July 4th firework needs.

10. ENTIRE AGREEMENT

The parties hereby agree that this is the entire agreement between the parties. This Agreement cannot be amended or modified without the express written consent of the parties. The Village Manager shall act for VILLAGE hereunder.

11. WARRANTIES OF GRUCCI

GRUCCI hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services for VILLAGE as an independent contractor of the VILLAGE. GRUCCI shall be responsible for obtaining any and all necessary governmental permits and approvals which are required to conduct the Specified Services.

12. NOTICES

All notices and communications to the VILLAGE or GRUCCI shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail (return receipt requested) or hand delivery. All notices and communications shall be effective upon receipt.

Notices shall be addressed as follows:

Village: Genaro "Chip" Inglesias
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Village Attorney
c/o Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard

Suite 700
Miami, Florida 33134

GRUCCI:

Attention: Felix J. Grucci , Jr. , CFO
Fireworks by GRUCCI, Inc.
One Grucci Lane
Brookhaven, NY 11719

13. MISCELLANEOUS

A. **Crediting.** The VILLAGE agrees to credit GRUCCI in all Firework Display event programs, invitations, press releases, advertising or promotion copy which is within VILLAGE's authority and control.

B. **Reschedule Date.** If the applicable Fireworks Display needs to be rescheduled for inclement weather or any other cause which is beyond the reasonable control of the parties, GRUCCI shall, if requested by the Village Manager, reserve July 5 for such purpose in consideration for a supplemental fee ("Rescheduled Date Fee") in the amount of ten (10%) percent of the applicable Annual Fee specified in paragraph 2(A) above, together with payment for any reasonable and required out-of-pocket production costs. This Rescheduled Date Fee shall be paid by the VILLAGE at the time that the rescheduled Fireworks Display is conducted. If the date of July 5 is not feasible because of weather or other unforeseen conditions, the parties may agree upon an alternate date to be used within the following three (3) months.

C. **Music.** VILLAGE and GRUCCI agree that the music selection to be utilized for the display shall be finalized on or before June 5 of each applicable year in advance of the Fireworks Display. In the event that the parties fail to timely confer and finalize the music selection, GRUCCI shall use a format consisting of well recognized American patriotic music.

D. **Barge and Tow Services.** GRUCCI agrees to retain as subcontractors of GRUCCI, the necessary Barge and Tug Services providers and to provide necessary management

for said Barge and Tug Services, so as to accomplish the Fireworks Display. GRUCCI shall assure that the Barge and Tug Services are in place at the designated marine firing location at least sixty (60) minutes prior to the scheduled Fireworks Display time. The barge shall be anchored or held under tow as per U.S. Coast Guard regulations for the Fireworks Display. Further, a safety boat shall be provided by GRUCCI's independent contractor as part of the Barge and Tow Services for security of the marine safety zone in the vicinity of the barge. Prior to each June 1 during the term, GRUCCI shall provide to the VILLAGE Fire Chief a specific plan of operation concerning the utilization and deployment of the Barge and Tug Services, for review and approval by the Fire Chief. This shall not replace any applicable review by the U.S. Coast Guard or other governmental entities having jurisdiction.

E. **Weather Problems.** VILLAGE recognizes that GRUCCI shall not be responsible for any weather or atmospheric conditions that may interfere with the Fireworks Display performance or which may interfere with the aesthetic quality of the fireworks.

F. **Disruption of Show.** In the event that the Fireworks Display is cancelled by VILLAGE prior to commencing or is terminated by VILLAGE or GRUCCI before completion due to weather conditions or to other unforeseen conditions, which are not within the reasonable control of the parties, which render it impossible or unsafe to complete the Fireworks Display, the VILLAGE shall request a refund from GRUCCI in an amount which represents the fair market value of the unused fireworks. The refund shall be made within sixty (60) days of VILLAGE's request. This subparagraph (F) shall not apply if the Fireworks Display is rescheduled and later completed by agreement of both parties.

14. **GOVERNING LAW; LITIGATION**

This Agreement shall be construed in accordance with the laws of the State of Florida and

any proceeding arising between the parties in any manner pertaining or related to this Agreement shall, to the extent permitted by law, be held in Miami-Dade County, Florida. Each party hereby knowingly, voluntarily and intentionally waives any right they may have to a trial by jury in respect of any litigation based upon the Agreement or arising out of, under or in connection with any other agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. This provision is a material inducement for the parties entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

GRUCCI:

FIREWORKS BY GRUCCI, INC.
One Grucci Lane
Brookhaven, NY 11719

By: _____

Title: _____

Attest: _____
Corporate Secretary
(Affix Seal)

VILLAGE:

VILLAGE OF KEY BISCAYNE
88 West McIntyre Street
Key Biscayne, FL 33149

By: _____
Genaro "Chip" Inglesias
Village Manager

Attest: _____
Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney

EXHIBIT "A"

Scope of Services

GRUCCI shall provide a world class fireworks show (the "Fireworks Display") consisting of a 24-26 minute duration of the same caliber of Fireworks Display as was performed by GRUCCI at the July 4, 2007 Fireworks Display, for each of the applicable annual July 4, Fireworks Displays. The start time for the Fireworks Display shall be 9:00 p.m., unless otherwise agreed to by GRUCCI and VILLAGE. GRUCCI shall, at VILLAGE's request, advance the Fireworks Display commencement time, if adverse weather is expected to commence at or after the scheduled start time.

All fireworks shall be launched from a marine barge which is anchored (or secured by tow) approximately one thousand (1,000') feet off of (i.e.: east of) the Village of Key Biscayne beach front as measured from the mean high water line within the vicinity depicted on the geographic sketch set forth below as Attachment "A". The specific location of the barge shall be marked by a buoy installed or placed in the water by VILLAGE at least three (3) hours prior to the scheduled start of the Fireworks Display or which is otherwise indicated to GRUCCI by Global Positioning System ("GPS") coordinates provided by the Chief of the Fire Rescue Department of the VILLAGE. The barge shall be positioned by GRUCCI so as to optimize the view of the Fireworks Display for persons who are present at or adjacent to the Atlantic Ocean public beaches within the Village of Key Biscayne.

**VILLAGE OF KEY BISCAYNE
AGREEMENT FOR PROFESSIONAL SERVICES
FIREWORKS DISPLAY**

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RECITALS:

The VILLAGE wants to engage GRUCCI to perform certain professional services consisting of organizing, producing, managing, staging and providing the July 4th Fireworks Display (the "Fireworks Display") for the VILLAGE's 2008 July 4 celebration, and may also elect to continue to engage GRUCCI to perform the Fireworks Display for July 4, 2009, July 4, 2010 and July 4, 2011, as specifically described herein and in the Scope of Services provided in Exhibit "A" to this Agreement (the "Specified Services").

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fireworks technicians, fireworks, music, barge and tug or barge towing and related comprehensive marine services (the "Tug and Barge Services"), and all necessary governmental permits. VILLAGE shall cooperate with GRUCCI concerning GRUCCI's actions to obtain all necessary governmental permits and approvals for the Fireworks Display. Any Village permit fees shall be waived.

2. FEES FOR SERVICES

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<u>Date of Fireworks Display</u>	<u>Total Fireworks Contract Price</u>
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B. Payment for each of the applicable annual July 4 Fireworks Displays shall be paid by VILLAGE, as follows:

- (i) A fifty (50%) percent deposit of the applicable Annual Fee shall be due and payable on or before February 1;
- (ii) An additional twenty five (25 %) partial payment of the applicable Annual Fee shall be due and payable on April 15;
- (iii) The remaining balance of the applicable Annual Fee shall be due and payable on July 5;
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C. GRUCCI has already included a charge of \$25,000 in each of the Annual Fee amounts set forth above for Tug and Barge Services cost. However, in any event, VILLAGE shall not be liable for any excess Tug and Barge Services cost which is incurred by GRUCCI, except as expressly provided in paragraph 8 (C)(b) below.

3. **TERM**

The duration of the term of this Agreement shall commence upon the date of execution hereof and shall be for a term which expires on July 6, 2011, unless extended by the parties or earlier terminated pursuant to paragraph 8.

4. **RECORDS**

All Firework Display program plans that result from GRUCCI providing the Specified Services shall be the property of the VILLAGE for use by the VILLAGE for the applicable Fireworks Display only.

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A. GRUCCI shall at all times throughout the term hereof carry: comprehensive general liability and contractual liability insurance; any insurance required by the U.S. Longshoreman's and Harbor Workers Act and the Jones Act; workers' compensation insurance (if applicable); and automotive liability insurance, with minimum policy limits for each coverage in the amount of at least Two Million (\$2,000,000.00) Dollars per occurrence, combined single limit, for property damage and bodily injury, including death, except that the dollar amount of workers' compensation coverage (if applicable) and for any insurance required by the U.S. Longshoreman's and Harbor Workers Act and the Jones Act, shall be as provided by applicable law. The liability insurance may have a deductible of Two Thousand Five Hundred (\$2,500.00) Dollars per claim, unless prohibited

by law. The VILLAGE shall be named as an additional insured on all of the above referenced insurance policies, to the extent permitted by law. Each insurance policy shall state that it is not subject to cancellation or reduction in coverage without written notice to the VILLAGE at least 30 days prior to the effective date of cancellation or reduction of coverage. A Certificate of Insurance reflecting coverage in strict compliance with this paragraph shall be provided by GRUCCI to VILLAGE upon execution of this Agreement, for review and approval by VILLAGE's risk management consultant and shall be kept current by GRUCCI throughout the Agreement term. GRUCCI shall require all of its subcontractors, including Barge and Tow Services providers to likewise maintain the pertinent forms and amounts of insurance specified herein, unless said insurance is directly maintained by GRUCCI for the purposes of covering GRUCCI and its subcontractors' activities and operations hereunder.

B. GRUCCI shall indemnify and hold harmless the VILLAGE, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of GRUCCI and persons employed or utilized by GRUCCI in the performance of the Agreement.

6. **ASSIGNMENT**

This Agreement shall not be assignable by GRUCCI or by the VILLAGE.

7. **PROHIBITION AGAINST CONTINGENT FEES**

GRUCCI warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for GRUCCI, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for GRUCCI any fee, commission, percentage, gift, or any other

consideration, contingent upon or resulting from the award or making of this Agreement.

8. TERMINATION

A. GRUCCI Event of Default. Without limitation, failure by GRUCCI to substantially fulfill any of its material obligations in accordance with this Agreement, shall constitute a "GRUCCI Event of Default". If a GRUCCI Event of Default should occur, VILLAGE shall have all of the following rights and remedies which it may exercise singly or in combination:

- (a) The right to declare that this Agreement together with all rights granted to GRUCCI hereunder are terminated, effective upon such date as is designated by VILLAGE; provided, however, that an Event of Default shall be defined to consist of a default that shall occur by the default in performance of any of the covenants and conditions required herein to be kept and performed by GRUCCI and such default continues for a period of fifteen (15) days after receipt of written notice from VILLAGE of said default. Provided that (1) if the nature of the default is such that it cannot be cured in a period of fifteen (15) days from the date of the default and (2) GRUCCI shall commence good faith efforts to cure such default no later than fifteen (15) days after such notice, and (3) such efforts are prosecuted to completion, to VILLAGE'S reasonable satisfaction, then it shall be deemed that no Event of Default shall have occurred under the provisions of this paragraph.
- (b) Any and all rights provided under the laws of Florida.

B. VILLAGE Event of Default. Without limitation, the failure by VILLAGE to substantially fulfill any of its material obligations in accordance with this Agreement, shall constitute a "VILLAGE Event of Default". If a VILLAGE Event of Default should occur, GRUCCI shall have the following rights and remedies which it may exercise singly or in combination:

(a) The right to declare that this Agreement together with all rights granted to VILLAGE hereunder are terminated, effective upon such date as designated by GRUCCI; provided, however, that an Event of Default shall be defined to consist of a default that shall occur by the default in performance of any of the covenants and conditions required herein to be kept and performed by VILLAGE and such default continues for a period of fifteen (15) days after receipt of written notice from GRUCCI of said default. Provided that (1) if the nature of the default is such that it cannot be cured in a period of fifteen (15) days from the date of the default, and (2) VILLAGE shall commence good faith efforts to cure such default, no later than fifteen (15) days after such notice, and (3) such efforts are diligently prosecuted to completion to GRUCCI's reasonable satisfaction, then it shall be deemed that no Event of Default shall have occurred under the provisions of this paragraph.

(b) Any and all rights provided under the laws of the State of Florida.

C. **Early Termination.** (a) Further, this Agreement may be terminated by the VILLAGE, acting through the Village Manager, at the VILLAGE'S sole discretion, at any time, upon written notice which is provided at least one hundred twenty (120) days prior to the upcoming scheduled July 4 Fireworks Display event. In the event that VILLAGE elects to terminate the Agreement at any time after the July 4, 2008 Fireworks Display, but before the July 4, 2010 Fireworks Display event, VILLAGE shall pay GRUCCI a single Five Thousand (\$5,000) Dollar early termination fee. This early termination fee shall not apply in the event that termination is instituted under subparagraphs (A) or (B) above or under subparagraph (C)(b) below of this paragraph 8. Except as provided above in this subparagraph (C), VILLAGE shall have no other or further liability in the event of VILLAGE'S determination to provide for the discretionary early termination of this

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Agreement. GRUCCI recognizes that it does not have a similar right to provide for a discretionary early termination of this Agreement. Accordingly, GRUCCI recognizes that other provisions of this Agreement serve as consideration for VILLAGE'S right of discretionary early termination as provided in this subparagraph (C).

(b) Further, in the event that the Tug and Barge Services costs exceed \$25,000 for the applicable upcoming July 4 Fireworks Display, GRUCCI shall have the right to terminate the Agreement upon ninety (90) days advance written notice to VILLAGE, provided that said advance written notice is provided to VILLAGE no later than the April 3rd prior to the applicable July 4 Fireworks Display. However, GRUCCI's right to terminate the Agreement, as described above in this subparagraph (b) shall not apply if VILLAGE advises GRUCCI in writing within thirty (30) days of receipt of GRUCCI'S above described written notice, that VILLAGE shall reimburse GRUCCI for the amount of Tug and Barge Services costs which exceed the \$25,000 allocation. In the event of termination by GRUCCI pursuant to this subparagraph (b), GRUCCI shall refund to VILLAGE any portion of the Annual Fee which has been paid by VILLAGE, within ten (10) days of VILLAGE'S request for said refund, except that GRUCCI may deduct from the refund amount any and all reasonable out of pocket expenses incurred by GRUCCI in connection with GRUCCI'S preparation for the applicable July 4 Fireworks Display, with the amount of any such deduction not to exceed a total of Ten Thousand (\$10,000) Dollars.

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9. NONEXCLUSIVE AGREEMENT

The services to be provided by GRUCCI pursuant to this Agreement shall be nonexclusive and nothing herein shall preclude the VILLAGE from engaging other firms to perform the same or similar services for its future July 4th firework needs.

10. ENTIRE AGREEMENT

The parties hereby agree that this is the entire agreement between the parties. This Agreement cannot be amended or modified without the express written consent of the parties. The Village Manager shall act for VILLAGE hereunder.

11. WARRANTIES OF GRUCCI

GRUCCI hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services for VILLAGE as an independent contractor of the VILLAGE. GRUCCI shall be responsible for obtaining any and all necessary governmental permits and approvals which are required to conduct the Specified Services.

12. NOTICES

All notices and communications to the VILLAGE or GRUCCI shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail (return receipt requested) or hand delivery. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

Village: Genaro "Chip" Inglesias
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Village Attorney
c/o Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Miami, Florida 33134

GRUCCI: Attention: Felix J. Grucci, Jr., CFO,
Fireworks by GRUCCI, Inc.
One Grucci Lane
Brookhaven, NY 11719

Formatted: Spanish (Spain-Modern Sort)

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13. MISCELLANEOUS

A. **Crediting.** The VILLAGE agrees to credit GRUCCI in all Firework Display event programs, invitations, press releases, advertising or promotion copy which is within VILLAGE's authority and control.

B. **Reschedule Date.** If the applicable Fireworks Display needs to be rescheduled for inclement weather or any other cause which is beyond the reasonable control of the parties, GRUCCI shall, if requested by the Village Manager, reserve July 5 for such purpose in consideration for a supplemental fee ("Rescheduled Date Fee") in the amount of ten (10%) percent of the applicable Annual Fee specified in paragraph 2(A) above, together with payment for any reasonable and required out-of-pocket production costs. This Rescheduled Date Fee shall be paid by the VILLAGE at the time that the rescheduled Fireworks Display is conducted. If the date of July 5 is not feasible because of weather or other unforeseen conditions, the parties may agree upon an alternate date to be used within the following three (3) months.

C. **Music.** VILLAGE and GRUCCI agree that the music selection to be utilized for the display shall be finalized on or before June 5 of each applicable year in advance of the Fireworks Display. In the event that the parties fail to timely confer and finalize the music selection, GRUCCI shall use a format consisting of well recognized American patriotic music.

D. **Barge and Tow Services.** GRUCCI agrees to retain as subcontractors of GRUCCI, the necessary Barge and Tug Services providers and to provide necessary management for said Barge and Tug Services, so as to accomplish the Fireworks Display. GRUCCI shall assure

that the Barge and Tug Services are in place at the designated marine firing location at least sixty (60) minutes prior to the scheduled Fireworks Display time. The barge shall be anchored or held under tow as per U.S. Coast Guard regulations for the Fireworks Display. Further, a safety boat shall be provided by GRUCCI's independent contractor as part of the Barge and Tow Services for security of the marine safety zone in the vicinity of the barge. Prior to each June 1 during the term, GRUCCI shall provide to the VILLAGE Fire Chief a specific plan of operation concerning the utilization and deployment of the Barge and Tug Services, for review and approval by the Fire Chief. This shall not replace any applicable review by the U.S. Coast Guard or other governmental entities having jurisdiction.

E. **Weather Problems.** VILLAGE recognizes that GRUCCI shall not be responsible for any weather or atmospheric conditions that may interfere with the Fireworks Display performance or which may interfere with the aesthetic quality of the fireworks.

F. **Disruption of Show.** In the event that the Fireworks Display is cancelled by VILLAGE prior to commencing or is terminated by VILLAGE or GRUCCI before completion due to weather conditions or to other unforeseen conditions, which are not within the reasonable control of the parties, which render it impossible or unsafe to complete the Fireworks Display, the VILLAGE shall request a refund from GRUCCI in an amount which represents the fair market value of the unused fireworks. The refund shall be made within sixty (60) days of VILLAGE's request. This subparagraph (F) shall not apply if the Fireworks Display is rescheduled and later completed by agreement of both parties.

14. GOVERNING LAW; LITIGATION

This Agreement shall be construed in accordance with the laws of the State of Florida and any proceeding arising between the parties in any manner pertaining or related to this Agreement

shall, to the extent permitted by law, be held in Miami-Dade County, Florida. Each party hereby knowingly, voluntarily and intentionally waives any right they may have to a trial by jury in respect of any litigation based upon the Agreement or arising out of, under or in connection with any other agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. This provision is a material inducement for the parties entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

GRUCCI:

FIREWORKS BY GRUCCI, INC.
One Grucci Lane
Brookhaven, NY 11719

By: _____

Title: _____

Attest: _____

Corporate Secretary
(Affix Seal)

VILLAGE:

VILLAGE OF KEY BISCAYNE
88 West McIntyre Street
Key Biscayne, FL 33149

By: _____

Genaro "Chip" Inglesias
Village Manager

Attest: _____

Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney

EXHIBIT "A"

Scope of Services

GRUCCI shall provide a world class fireworks show (the "Fireworks Display") consisting of a 24-26 minute duration of the same caliber of Fireworks Display as was performed by GRUCCI at the July 4, 2007 Fireworks Display, for each of the applicable annual July 4, Fireworks Displays. The start time for the Fireworks Display shall be 9:00 p.m., unless otherwise agreed to by GRUCCI and VILLAGE. GRUCCI shall, at VILLAGE's request, advance the Fireworks Display commencement time, if adverse weather is expected to commence at or after the scheduled start time.

All fireworks shall be launched from a marine barge which is anchored (or secured by tow) approximately one thousand (1,000') feet off of (i.e.: east of) the Village of Key Biscayne beach front as measured from the mean high water line within the vicinity depicted on the geographic sketch set forth below as Attachment "A". The specific location of the barge shall be marked by a buoy installed or placed in the water by VILLAGE at least three (3) hours prior to the scheduled start of the Fireworks Display or which is otherwise indicated to GRUCCI by Global Positioning System ("GPS") coordinates provided by the Chief of the Fire Rescue Department of the VILLAGE. The barge shall be positioned by GRUCCI so as to optimize the view of the Fireworks Display for persons who are present at or adjacent to the Atlantic Ocean public beaches within the Village of Key Biscayne.

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