



# VILLAGE OF KEY BISCAIYNE

Office of the Village Manager

## MEMORANDUM

*Village Council*

Franklin H. Caplan, *Mayor*

Mayra P. Lindsay, *Vice Mayor* DATE: January 8<sup>th</sup>, 2013

Michael W. Davey

Theodore J. Holloway

Michael E. Kelly

Ed London

James S. Taintor

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

*Village Manager*

John C. Gilbert

RE: Fourth of July Fireworks Agreement Approval

### RECOMMENDATION

It is recommended that the Village Council approve the Resolution amending the April 10<sup>th</sup>, 2012 agreement with Grucci, Inc. to perform the services required to produce the Village's Fourth of July fireworks display attached as Exhibit "A".

### BACKGROUND

On August 28<sup>th</sup>, 2012, the Village Council approved a motion authorizing the Village Manager to issue the Key Biscayne Fireworks Request for Proposals (RFP). The Village formally issued the RFP on September 10<sup>th</sup>, 2012 with the proposals due and opened on November 9<sup>th</sup>, 2012 at 2:00 PM.

On December 4<sup>th</sup>, 2012, the Village Manager presented the Village Council with the results of the RFP process. The Village Council recommended contracting with Grucci, Inc. and directed staff to negotiate either an increase of effects or decrease the cost of the display in accordance with the second proposal received by the Village. Exhibit "A" describes the increased volume of effects offered by Grucci, Inc. as they responded to this request from the Village.

The agreement being amended was drafted in 2012 and was negotiated by the Village Attorney and Danielle J. Butler, the Maritime Lawyer representing Grucci, Inc. The representatives worked to structure an agreement that best insured the Village of Key Biscayne fireworks display would take place at the scheduled time. Grucci agrees to have the barge serving as the fireworks platform relocated out of the Miami River no later than 7:00 p.m. the day prior to the Fireworks Display. However, it is expressly understood by the Village that Grucci shall not be liable for any unforeseen blockages to the barge and tug's navigation, US Coast Guard and/or governmental interference or inclement weather that would prevent the barge from being relocated no later than 7:00 p.m. the day prior to the Fireworks Display. The barge shall be anchored or held under tow, as per U.S. Coast

Guard regulations, for the fireworks display. Furthermore, 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. In addition, Grucci's failure to commence the fireworks display promptly at 9:00 p.m. on the display date shall be an incurable Grucci event of default entitling the Village to liquidated damages in the amount of \$10,529.

The term of this agreement is one year unless extended by both parties at the fees described in the agreement for years 2014, 2015 and 2016. The April 10<sup>th</sup>, 2012 agreement is attached as Exhibit "B".

RESOLUTION NO. 2013 - \_\_\_\_\_

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT WITH GRUCCI, INC FOR THE ORGANIZING, PRODUCING, MANAGING, STAGING AND PROVIDING OF THE VILLAGE'S JULY 4TH FIREWORKS DISPLAY; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (the "Village") and Grucci, Inc. (the "Grucci") entered into that certain Agreement for Professional Services dated April 10, 2012, relating to Grucci's organizing, producing, managing, staging and providing of the 2012 July 4<sup>th</sup> Fireworks Display on behalf of the Village (the "Agreement"); and

**WHEREAS**, the Agreement granted the Village with an option for Grucci to provide the 2013 July 4<sup>th</sup> Fireworks Display; and

**WHEREAS**; subsequent to the July 4<sup>th</sup> 2012 fireworks, the Village solicited new bids for its 2013 fireworks display; and

**WHEREAS**, after review of the bids submitted, the Village Manager decided to reject all bids and recommend that the Village Council enter into a First Amendment to the Agreement with Grucci to provide for the Village's firework display at a revised price; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

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

**Section 1. Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2.** **First Amendment to Agreement Approved.** The Village Council hereby approves the First Amendment to the Agreement, attached hereto as Exhibit "A," with Grucci for the Fireworks Display.

**Section 3.** **Village Manager Authorized.** The Village Manager is hereby authorized to execute the First Amendment to the Agreement, attached hereto as Exhibit "A," with Grucci for the fireworks display, subject to the approval of the Village Attorney as to form and legal sufficiency.

**Section 4.** **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_, 2013.

\_\_\_\_\_  
FRANK CAPLAN, MAYOR

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, CMC  
VILLAGE CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

Village Attorney

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## Exhibit A

**FIRST AMENDMENT TO  
VILLAGE OF KEY BISCAYNE  
AGREEMENT FOR PROFESSIONAL SERVICES  
FIREWORKS DISPLAY**

THIS FIRST AMENDMENT (this "Amendment"), is made and entered into as of this 10 day of April, 2012 (the "Effective Date"), 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:**

WHEREAS, GRUCCI and the VILLAGE entered into that certain Agreement for Professional Services dated as of April 10, 2012, relating to GRUCCI's organizing, producing, managing, staging and providing of the 2012 July 4<sup>th</sup> Fireworks Display on behalf of the VILLAGE (the "Agreement"); and

WHEREAS, the Agreement granted the VILLAGE with an option for GRUCCI to provide the July 4<sup>th</sup> Fireworks Display for each of the Option Years; and

WHEREAS; subsequent to the July 4<sup>th</sup> 2012 fireworks, the VILLAGE solicited new bids for the Option Years; and

WHEREAS, GRUCCI submitted a revised proposal for the fireworks display for the Option Years (the "Revised Proposal"), and as a result of such Revised Proposal, the VILLAGE desires to exercise its option under the Agreement for the 2013 Fireworks Display, adjust the prices for the remaining Option Years and include 2016 as an Option Year.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Amendment, the parties agree as follows:

1. The VILLAGE hereby exercises its option for GRUCCI to provide the July 4, 2013 Fireworks Display.

2. Paragraph 1(A) of the Agreement is hereby amended to state that GRUCCI expressly agrees to provide the Fireworks Display for each of the Option Years in accordance with the terms and conditions of the RFP and the Agreement as modified by the Revised Proposal attached hereto as Exhibit "A".

3. Paragraph 2(A) of the Agreement is hereby amended to state that the Contract Price for the July 4, 2013 Fireworks Display shall be \$105,300.00.

4. The term of the Agreement as set forth in Paragraph 3(A) is hereby extended until July 25, 2013.

5. Paragraph 3(B) of the Agreement is hereby amended to include the year 2016 as an Option Year at the stated Fireworks Display Contract Price set forth below and to adjust the Fireworks Display Contract Price for each of the remaining Option Years as follows:

<u>Date of Fireworks Display</u>	<u>Total Fireworks Display Contract Price</u>
July 4, 2013	\$105,300
July 4, 2014	\$109,500
July 4, 2015	\$113,900
July 4, 2016	\$118,500

6. Except as modified by the terms of the Amendment, all of the terms and conditions of the Agreement and RFP remain in full force and effect.

7. All capitalized terms not specifically defined herein shall have the meaning ascribed to such terms under the Agreement.

8. In the event of any conflict between the terms of this Amendment, the Agreement and the RFP, the terms of this Amendment shall control.

[Signature Page Follows]

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: \_\_\_\_\_  
Donna Grucci Butler  
Title: President

Attest: \_\_\_\_\_  
Corporate Secretary  
(Affix Seal)

VILLAGE:

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

By: \_\_\_\_\_  
John C. Gilbert  
Village Manager

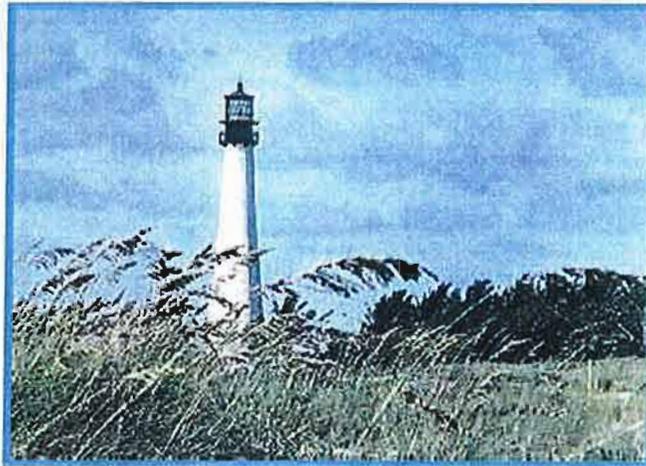
Attest: \_\_\_\_\_  
Village Clerk

Approved as to Form and Legal Sufficiency.

\_\_\_\_\_  
Village Attorney

*State-of-the-Art Fireworks ~ Grucci Style  
to celebrate the*

*Village of Key Biscayne's  
Annual Independence Day Celebrations  
2013 to 2016*



*Proposal Date: December 13, 2012*

*RFP v2*

Presented to:  
**Village of Key Biscayne**  
**Office of the Village Clerk**  
**Attn: Jennifer Duque**  
**88 West McIntyre Street**  
**Key Biscayne, FL 33149**  
**(ph) 305-365-5506**  
**(fax) 305-365-8914**  
**calvarez@keybiscayne.fl.gov**



Presented by:  
**Fireworks by Grucci, Inc.**  
**M. Philip Butler**  
**One Grucci Lane**  
**Brookhaven, NY 11719**  
**Tel: 631-286-0088 ext 11**  
**Fax: 9036**  
**pbutler@grucci.com**  
**www.grucci.com**



The data enclosed in this proposal are confidential and are to be accorded confidential treatment and shall not be disclosed. This information shall not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this proposal. Fireworks by Grucci, Inc., requests that all information be safeguarded from release pursuant to any request under the Freedom of Information Law of this state or any other state or jurisdiction; as it may cause competitive disadvantage to our company. The enclosed concepts and materials are the sole and exclusive property of Fireworks by Grucci, Inc. In the event that you would like to accept all or part of it, Fireworks by Grucci will provide the relevant purchase price and terms to transfer and assign the ownership rights. Prior to that time, any disclosure, use or reproduction of the enclosed materials is strictly prohibited, according to law.

## Section 3 – Fireworks Budget Offer

# The Art of Fireworks

*to celebrate the*  
**Key Biscayne's 2013 – 2016 Independence Day Celebrations**

**World Class Fireworks**

**July 4, 2013**

**Budget of \$105,300.<sup>00</sup>**

Size*	Description	#of Effects
<p><b>Grand Illuminations – the Art of Fireworks.</b> Set up scenes of Grand Illuminations that display their special effects in durations from 30 to 40 seconds from ground level in fire walls of 200' by 200'. These are loved by the women, children and the art lover in us all. A must for every State-of-the-Art program.</p>		
SPX	Special Effects, fountains in Silver and Magnesium White	2,200
20mm	Strobes – Ruby Red, Electric White, Irish Green; Volcano Comet and Roman Candles, Mines of Color	2,330
30mm	Bombettes and Bombardos - Colors of the Fireworks Rainbow; comets, whistles and reports	2,450
45mm	Roman Candles, comets, whistles and reports	1,036
60mm	Large Roman Candles, comets, whistles, reports and curtains-of-fire	400
<p><b>Aerial Shells – the ohs and ahs of fireworks.</b> Aerial shells perform their displays generally in three theatre levels low, mid and high with shell sizes from 2" up to the large 10" shells that display at 1,000'. The night sky at all three levels will be filled with continuous scenes of five bright colors of the fireworks rainbow – Red, White Blue, Green, Yellow - Purple and Gold the designer colors.</p>		
<b>Low Level Shells – Average 200'</b>		
2" - 2½"	Bombardo Boxes – Provide low level saturation firing of color, whistles, Crossetts and noise.	300
2½ - 3"	Accent Color Shells – Used to fill the lower level of the sky theatre scenes with special effects.	195
2½ - 3"	Titanium & Flash Salutes – These provide the noise and heavy bombard of the Grand Finale.	288
<b>Mid Level Shells – Average 500'</b>		
3"	Special Effects and Multi-break shells - These shell sizes are manufactured in the greatest quantities and variety in the entire world. Every shell maker has a different name for similar type effects.	450
4"		390
5"	Twice and tri-color change shells - Effects in this size range allow for many of the designed effects which includes almost an infinite number of twice and triple color change, multi-break and pattern shells.	365
6"	Pattern and designer shells - These shells are generally the main featured size of the average fireworks program. Due to its sky spread, we use this size for our world renowned Gold Split-Comet shell scenes.	285
<b>High Aerial Shells – Average 850'</b>		
8"	Special Effect, multi-pattern and designer shells - The eight inch shell displays, by size comparison, the largest sky spread, It's featured is the great master Artesian Chrysanthemums. Which are available in every special effect and color.	36
10"	Master Artesian chrysanthemum and designer shells - Twelve inch shells are reserved for those select moments in a program where we need to punctuate a special scene or hit a high musical note.	15
<b>Total fireworks to be displayed:</b>		<b>10,754</b>



\* For the number and size of shells listed above to be displayed, the distance to any liability as required by NFPA 1123 Code for Fireworks Displays must be secured and maintained in order to assure insurance coverage.

**EXHIBIT "B"**

**2012 Agreement**

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

THIS AGREEMENT (this "Agreement"), is made and entered into as of this 10<sup>th</sup> day of April, 2012 (the "Effective Date"), 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 desires 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 2012 July 4<sup>th</sup> celebration, as more particularly described herein and in that certain Request for Proposals ("RFP") issued by the VILLAGE, dated November 15, 2011, a copy of which is attached hereto and incorporated herein by this reference as Schedule "1" to this Agreement.

GRUCCI desires to provide the Fireworks Display in accordance with the specifications set forth in Section 3.2 of the RFP (the "Scope of Services") for and on behalf of the VILLAGE.

**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 Fireworks Display in accordance with the terms, specifications and conditions of both the RFP and this Agreement for the July 4, 2012 Fireworks Display which shall include a minimum twenty-eight (28) minute synchronized pyrotechnical and music fireworks performance to be launched from a marine barge in the approximate location

depicted in Attachment "A" to the RFP with the quantity and quality of shells and other types of fireworks as described in the RFP.

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, timely 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 as well as a barge to serve as the Fireworks Display platform and all necessary barge towing and related marine services (the "Tug and Barge Services"). In addition, GRUCCI shall be responsible for obtaining any and all necessary governmental permits and approvals in connection with its providing of the Fireworks Display and providing the Tug and Barge Services. The VILLAGE shall cooperate with GRUCCI, at GRUCCI's expense, in obtaining all necessary governmental permits and approvals for the Fireworks Display. Any VILLAGE permit fees shall be waived. GRUCCI promises and agrees that all set up and staging for the Fireworks Display shall be completed no later than 5:00 p.m. of the day of the Fireworks Display. GRUCCI agrees to have the barge, serving as the fireworks platform, relocated out of the Miami River no later than 7:00 p.m. the day prior to the Fireworks Display. However, it is expressly understood by the VILLAGE that GRUCCI shall not be liable for any unforeseen blockages to the barge and tug's navigation, US Coast Guard and/or governmental interference or inclement weather that would prevent the barge from being relocated no later than 7:00 p.m. the day prior to the Fireworks Display. It is further expressly understood and agreed that GRUCCI shall promptly commence the Fireworks Display at 9:00 P.M. on the day of performance.

2. **FEES FOR SERVICES**

A. As full compensation for satisfactory performance of the Scope of Services, GRUCCI agrees to charge and shall be paid by the VILLAGE the following fee (the "Contract Price"):

<b><u>Date of Fireworks Display</u></b>	<b><u>Total Fireworks Display Contract Price</u></b>
July 4, 2012	\$105,290.00

B. Payment for the July 4, 2012 Fireworks Display shall be paid by the VILLAGE, as follows:

- (i) A fifty (50%) percent deposit of the Contract Price shall be due and payable on or before April 15, 2012; and
- (ii) An additional twenty five (25%) partial payment of the applicable Contact Price shall be due and payable on or before June 1, 2012; and
- (ii) The remaining balance of the Contract Price shall be due and payable on or before July 5, 2012.

C. GRUCCI has included a charge of \$28,500 in the Contract Price for Tug and Barge Service costs. GRUCCI represents that in the event that the total Tug and Barge Service costs to be paid by GRUCCI are less than \$28,500, the VILLAGE shall be entitled to receive a refund of any such savings. However, in no event shall the VILLAGE be liable for any excess Tug and Barge Service costs which are incurred by GRUCCI over and above the aforesaid \$28,500.00.

3. **TERM**

A. The term of this Agreement shall commence upon the Effective Date and shall expire on July 25, 2012, unless extended by the parties or earlier terminated in accordance with the terms of this Agreement.

B. The VILLAGE, by written notice to GRUCCI, given on or before the anniversary of the Effective Date for the years 2013, 2014 and 2015 (each, an "Option Year") may elect to extend

the term of this Agreement and require GRUCCI to perform a Fireworks Display upon the same terms and conditions as set forth herein for each such Option Year, with the applicable dates provided under this Agreement to be adjusted accordingly in order to correspond to the applicable Option Year. The total Fireworks Display Contract Price for each of the Option Years shall be as follows:

<u>Date of Fireworks Display</u>	<u>Total Fireworks Display Contract Price</u>
July 4, 2013	\$109,500.00
July 4, 2014	\$113,880.00
July 4, 2015	\$118,435.00

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 its 4<sup>th</sup> of July celebration. Upon termination of this Agreement or upon request by the VILLAGE during the term of this Agreement, any and all such plans shall be delivered to the VILLAGE by GRUCCI.

5. **INSURANCE**

A. GRUCCI shall carry at all times all insurance coverages in the minimum amounts and types of insurance as specified in Section 2.11 of the RFP including comprehensive general liability and contractual liability insurance; workers' compensation; automotive liability insurance; any insurance required by the U.S. Longshoreman's and Harbor Workers Act; and the Jones Act. 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. All required liability insurance policies may have a deductible of up to 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 the RFP and this paragraph shall be provided by GRUCCI to the 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 term of this Agreement. GRUCCI shall require all of its subcontractors, including Barge and Tow Service providers to maintain the pertinent policies and amounts of insurance specified in the RFP and herein, unless such 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 Fireworks Display. This provision shall survive the expiration or termination of this 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.** Subject to the limitations found within this Agreement, failure by GRUCCI to fulfill any of its 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 terminated, effective upon such date as is designated by the 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 the 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 the VILLAGE'S reasonable satisfaction, then it shall be deemed that no GRUCCI Event of Default shall have occurred under the provisions of this paragraph.
- (b) Subject to Article 8(C) of this Agreement, GRUCCI's failure to commence the Fireworks Display promptly at 9:00 p.m. on the Display Date shall be an incurable GRUCCI Event of Default entitling VILLAGE to liquidated damages in the amount of \$10,529.
- (c) Any and all rights provided under the laws of the State of Florida.

**B. VILLAGE Event of Default.** Subject to the limitations found within this Agreement, the failure by the 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 the 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 the 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) the 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 VILLAGE 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. Force Majeure.** Neither the VILLAGE or GRUCCI shall be in default or liable for any type of damages under this Agreement for any Force Majeure event. A Force Majeure Event is any such unforeseen act or event this is beyond the reasonable control of a party that prevents the VILLAGE or GRUCCI from performing and is not the fault of the VILLAGE or GRUCCI; and in

addition a Force Majeure Event is also defined as war, government intervention, un-navigable waterways, strikes, inclement weather, fire, explosions, civil disturbance, act of God or the public enemy, military action, terrorist act, unforeseeable or unpreventable lack of materials or equipment.

**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 the benefit of the VILLAGE within the VILLAGE's sole and absolute discretion.

**10. ENTIRE AGREEMENT**

The parties hereby agree that the RFP together with this Agreement constitute 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 the 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 Scope of Services for the VILLAGE as an independent contractor of the VILLAGE.

**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: John C. Gilbert  
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.A.  
2525 Ponce De Leon Boulevard  
Suite 700  
Miami, Florida 33134

GRUCCI: Attention: Scott Cooper  
Fireworks by GRUCCI, Inc.  
One Grucci Lane  
Brookhaven, NY 11719

### 13. MISCELLANEOUS

A. **Crediting.** The VILLAGE agrees to credit GRUCCI in the Fireworks 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 either of the parties, GRUCCI shall, if requested by the VILLAGE Manager, reserve July 5, 2012 (and the July 5<sup>th</sup> of each applicable Option Year) for such purpose in consideration for a supplemental fee ("Rescheduled Date Fee") in the amount of fifteen (15%) percent of the Contract Price specified above. The Rescheduled Date Fee shall be paid by the VILLAGE at the time that the rescheduled Fireworks Display is conducted.

C. **Music.** The VILLAGE and GRUCCI agree that the music selection to be utilized for the Fireworks Display shall be finalized on or before May 21, 2012 (and the May 21<sup>st</sup> of each applicable Option Year). 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, all Barge and Tug Service providers and to provide all necessary administration, management and oversight for said Barge and Tug Services, so as to accomplish the Fireworks Display in accordance with the terms of the RFP and this Agreement. GRUCCI agrees to have the barge, serving as the fireworks platform, relocated out of the Miami River no later than 7:00 p.m. the day prior to the Fireworks Display. However, it is expressly understood by the VILLAGE that GRUCCI shall not be liable for any unforeseen blockages to the barge and tug's navigation, US Coast Guard and/or governmental interference or inclement weather that would prevent the barge from being relocated no later than 7:00 p.m. the day prior to the Fireworks Display. 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 June 1, 2012 (and the June 1<sup>st</sup> of each applicable Option Year), 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.** The VILLAGE recognizes that GRUCCI shall not be responsible or in default for any weather or atmospheric conditions that may interfere with the Fireworks Display performance or with the aesthetic quality of the fireworks.

**F. Disruption of Show.** In the event that the Fireworks Display is cancelled by the VILLAGE prior to commencing the applicable Fireworks Display or is terminated by the

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 upon request be entitled to a refund from GRUCCI in an amount which represents the fair market value of the unused fireworks. The refund shall be made within thirty (30) days of the VILLAGE's request. This subparagraph (F) shall not apply if the Fireworks Display is rescheduled by agreement of the parties.

G. **Conflict.** In the event of any conflict between the terms of this Agreement and the RFP, the terms of this Agreement shall control.

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 this Agreement the RFP 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.

[Signature page follows]

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

VILLAGE:

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

By: Donna Grucci Butler  
Donna Grucci Butler  
Title: President

Attest: [Signature]  
Corporate Secretary  
(Affix Seal)

By: [Signature]  
John S. Gilbert  
Village Manager

[Signature]  
Village Clerk



Attest: [Signature]  
Village Attorney

**SCHEDULE "1"**  
**REQUEST FOR PROPOSALS**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/10/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Britton-Gallagher and Associates, Inc. 6240 SOM Center Rd. Cleveland OH 44139	<b>CONTACT NAME:</b> _____ <b>PHONE (A/C, No, Ext):</b> 440-248-4711 <b>E-MAIL ADDRESS:</b> _____	<b>FAX (A/C, No):</b> 440-544-1234
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Fireworks By Grucci, Inc. and/or Pyrotechnique By Grucci, Inc. and/or Philny Effects, Inc. One Grucci Lane Brookhaven NY 11719	<b>INSURER A:</b> New Hampshire Insurance Co.      NAIC # 23841	
	<b>INSURER B:</b> Granite State Insurance Co.      23809	
	<b>INSURER C:</b> NY State Fund - Melville	
	<b>INSURER D:</b> Lexington Ins Co      19437	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** 570418176      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL	SUBR	INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					1818937-04	2/17/2012	2/17/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS					CA62659119	2/17/2012	2/17/2013	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000					013136855	2/17/2012	2/17/2013	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below				Y/N	2873978	11/29/2011	11/29/2012	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$Unlimited E.L. DISEASE - EA EMPLOYEE \$Unlimited E.L. DISEASE - POLICY LIMIT \$Unlimited

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Date: July 4, 2012; Rain Date: July 5, 2012  
Location: Barge off Key Biscayne Beach Front, Key Biscayne, FL  
Additional Insured: The City of Key Biscayne; Key Biscayne Chamber of Commerce; The State of Florida; Dade County; Sonesta Hotel; Ocean Club; City of Miami; Miami Marine Stadium at Virginia Key.

<b>CERTIFICATE HOLDER</b>  Village of Key Biscayne 88 West McIntyre Street Key Biscayne FL 33149	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  

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7 Consecutive Inaugurations  
Ronald W. Reagan, 1981 • 1985  
George H.W. Bush, 1989  
William J. Clinton, 1993 • 1997  
George W. Bush, 2001 • 2005



Statue of Liberty  
Centennial July 4th, 1986



Grand Opening of the Atlantis &  
the Palm Jumeirah  
Dubai, UAE  
November 20, 2008



April 18, 2012

Village of Key Biscayne  
Attention: John C. Gilbert  
Village Manager  
88 West McIntyre Street  
Key Biscayne, FL 33149

RE: Fireworks by Grucci Agreement

Dear Mr. Gilbert,

Attached please find an executed copy of the Fireworks Performance Contract between Village of Key Biscayne and Fireworks by Grucci for the fireworks display scheduled for July 4, 2012.

If you have any questions or require any additional information, please do not hesitate to contact us.

We look forward to a spectacular event!

Sincerely,

Yasmin Piraino  
Administrative Assistant to the  
President – Donna Grucci-Butler  
Fireworks By Grucci, Inc.  
Tel: 631-286-0088 Ext: 27  
ypiraino@grucci.com



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Fireworks by Grucci  
One Grucci Lane  
Brookhaven, New York 11719

website: [www.GRUCCI.com](http://www.GRUCCI.com)  
Email: [pbutler@grucci.com](mailto:pbutler@grucci.com)

631-286-0088  
Fax: 286-9036  
800-227-0088

