

**AGENDA
SPECIAL MEETING
FINANCE COMMITTEE
KENOSHA, WISCONSIN
Kenosha Municipal Building - Room 200 – Council Chambers
Monday, June 29, 2015
5:00 PM**

**Chairperson: Daniel Prozanski Jr.
Aldersperson: Rocco J. LaMacchia
Aldersperson: Bob Johnson**

**Vice-Chair: Curt Wilson
Aldersperson: Anthony Kennedy
Aldersperson: Dave Paff**

**Call to Order
Roll Call**

1. Approval of the Fireworks Display Agreement By and Between the City (of Kenosha through its Department of Public Works) and MIAND, Inc. (dba/ Mad Bomber Fireworks Productions). (Also referred to Board of Parks Commission) [Pages 1-10](#)

CITIZENS' COMMENTS/ALDERPERSONS' COMMENTS/OTHER BUSINESS AS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE, PLEASE CALL 653-4020 BEFORE THIS MEETING.
Web site: www.kenosha.org

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

FIREWORKS DISPLAY AGREEMENT

By And Between

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation,
THROUGH ITS DEPARTMENT OF PUBLIC WORKS**

And

**MIAND, INC. DBA Mad Bomber Fireworks Productions
An Indiana Corporation,
3999 Hupp Road
Kingsbury, IN 46345**

THIS AGREEMENT made and entered into by and between **THE CITY OF KENOSHA, WISCONSIN**, with offices located at 625 – 52nd Street, Kenosha, Wisconsin ("**CITY**"), a Wisconsin municipal corporation, and **MIAND, INC., DBA MAD BOMBER FIREWORKS PRODUCTIONS**, an Indiana corporation, with its principal place of business located at 3999 Hupp Road, Kingsbury, IN 46345, ("**MAD BOMBER**").

WITNESSETH:

WHEREAS, MAD BOMBER is engaged in the sale, exhibition and display of fireworks;

WHEREAS, MAD BOMBER has in the past provided and wishes to continue to provide a fireworks display and exhibition ("Exhibition") for a Fourth of July celebration;

WHEREAS, CITY is interested in contracting with **MAD BOMBER** for the purpose of putting on a fireworks Exhibition.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings and undertakings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the undersigned agree as follows:

1. OBLIGATIONS OF MAD BOMBER. MAD BOMBER shall:

a. Provide all freight, cartage, transportation of equipment, material and tools for the Exhibition, together with all necessary qualified, trained and experienced pyrotechnic operators/technicians to set up and conduct the Exhibition. The Exhibition shall include those shells as set forth in Exhibit A attached hereto and incorporated herein. In the event of a shortage or unavailability of any shell identified in Exhibit A, **MAD BOMBER** has the right to substitute a shell or shells of equal or greater value. **MAD BOMBER** shall provide this information to **CITY** upon execution of this Agreement.

b. Establish a "Safety Zone" encompassing the area immediately surrounding the launch site and a corresponding fallout zone to which unauthorized persons will be denied access. Said Safety Zone shall have a minimum spectator set back of five hundred sixty (560') feet at all points from the discharge area. **MAD BOMBER** reserves the right to terminate the Exhibition in the event spectators enter the Safety Zone and **CITY** is unable to secure the Safety Zone within a reasonable period.

c. Provide an Exhibition with a minimum duration of 25 minutes.

d. Remove all its equipment, together with any live or unfired material from the Safety Zone.

e. Inspect the Safety Zone the following morning for the purpose of collecting any material, live or otherwise, in the Safety Zone.

2. OBLIGATIONS OF CITY. CITY shall:

a. Provide adequate security, fire and police protection, parking, traffic and crowd control during the Exhibition and for a reasonable time thereafter.

b. Provide materials and manpower to deny unauthorized persons from accessing the Safety Zone by roping off or other suitable means. **CITY** shall provide adequate security to prevent spectators from entering Safety Zone.

c. Be responsible for all cleanup for the Exhibition except for the Safety Zone. Said cleanup shall include, but is not limited to, removal of debris, trash, and wood; back filling holes; repairs to grass, sod or other surfaces; and removal of all barricades.

d. Be responsible for obtaining all necessary State and local permits required for the Exhibition, as well as any costs related thereto. **MAD BOMBER** shall aid and assist **CITY** in obtaining any necessary permits for the Exhibition.

e. Name **MAD BOMBER** as the primary vendor for the Exhibition in all news/media releases, advertisements, publicity, programs and announcements.

3. DATE OF EXHIBITION. The Exhibition shall be held on the evening of July 4, 2015 ("Display Date"). In the event the Exhibition is postponed due to acts of nature or God, labor disputes, strikes, wars, accidents, or other reasons beyond the parties' knowledge or reasonable control, the Exhibition shall be held on July 5, 2015; or a date mutually agreed upon by both parties. In the event the alternative date is required to be postponed, the parties agree that the Exhibition shall be held at the earliest mutually convenient date for the parties. Should **CITY** choose not to select an alternative date for the Exhibition within six (6) months of the Display Date, **CITY** shall pay a cancellation fee equal to thirty percent (30%) of the contract amount.

4. COMPENSATION. For its services provided herein, **CITY** shall pay **MAD BOMBER** the sum of Forty-one Thousand Three Hundred (\$41,300.00) Dollars. Said sum shall be paid to **MAD BOMBER** no later than ten (10) days after the Exhibition. All checks shall be made payable to MIAND, INC. Should **MAD BOMBER** fail to utilize shells in the Exhibition,

whether by inadvertence or failure to explode, CITY shall be entitled to a credit in an amount equal to the value of the shell. Further, should the Exhibition fail to run the minimum 25 minute duration agreed to herein, CITY shall be entitled to a credit as follows:

- a. 15-20 minutes – 50% of compensation
- b. 0-14 minutes – 100% of compensation

5. INSURANCE. MAD BOMBER shall procure and maintain, during this Agreement, insurance policies as hereinafter specified to insure against all risk and loss for all services provided herein by **MAD BOMBER**. The General Commercial Liability policy shall cover all claims, damages, suits, injuries or expenses incurred as a result of any negligent act or omission of any employee, independent contractor or agent of **MAD BOMBER**, as well as any defect or problem with any Fireworks supplied or displayed by **MAD BOMBER**. The policies must be issued by an insurance company or companies authorized to do business in the State of Wisconsin and licensed by the State of Wisconsin. **MAD BOMBER** shall, upon execution of this Agreement, furnish a Certificate of Insurance indicating compliance with this Section 5, including the naming of CITY as an “additional insured”, and proof of payment of premium to the City Clerk/Treasurer for approval. **MAD BOMBER** shall also provide a copy of the “additional insured” endorsement. The insurance policy or policies shall contain a clause that in the event that any policy issued is canceled for any reason, or any material changes are made therein, the City Clerk/Treasurer will be notified, in writing, by the insurer at least thirty (30) days before any cancellation or change takes effect. A material change shall include, but is not limited to, a change in policy amount, coverage or status of the insurer. **MAD BOMBER** shall provide a copy of the endorsement or pertinent portion of the policy providing for such notice to be given to the CITY.

If for any reason, the insurance coverage required herein lapses and/or **MAD BOMBER** fails to maintain insurance coverage, CITY may declare this Agreement null and void as of the date no valid insurance policy was in effect. Should **MAD BOMBER** fail to furnish, deliver and maintain such insurance coverage, CITY may obtain such insurance coverage and charge **MAD BOMBER** the cost of such insurance coverage plus all appropriate administrative charges and incidental expenses associated with the transaction. The failure of **MAD BOMBER** to take out and/or maintain the required insurance shall not relieve **MAD BOMBER** from any liability under this Agreement. The insurance requirement shall not be construed to conflict with the obligations of **MAD BOMBER** in Section 6 of this Agreement. **MAD BOMBER** shall maintain during the course of this Agreement insurance with minimum limits as follows:

- a. **General Commercial Liability**
 - 1. Bodily Injury:
 - \$5,000,000.00 Each Occurrence
 - \$5,000,000.00 Aggregate
 - 2. Property Damage
 - \$2,000,000.00 Each Occurrence
 - \$2,000,000.00 Aggregate

b. Automobile Liability (owned, non-owned, leased)

1. Bodily Injury:
\$1,000,000.00 Each Occurrence
\$1,000,000.00 Aggregate
2. Property Damage
\$2,000,000.00 Each Occurrence

c. Worker's Compensation: Statutory Limits

6. INDEMNIFICATION. MAD BOMBER shall indemnify and hold harmless CITY, and its officers and employees from and against all suits, claims, losses, damages, liabilities or other obligations, whether in tort, contract or otherwise, resulting from MAD BOMBER'S own negligence or MAD BOMBER'S failure to perform or observe any of the terms, covenants and conditions of this Agreement.

CITY shall indemnify and hold harmless MAD BOMBER, and its officers and employees from and against all suits, claims, losses, damages, liabilities or other obligations, whether in tort, contract or otherwise, resulting from CITY'S own negligence or CITY'S failure to perform or observe any of the terms, covenants and conditions of this Agreement.

7. ASSIGNMENT. This Agreement and all obligations thereunder shall not be assigned by MAD BOMBER without the prior written consent of CITY.

8. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original.

9. ATTORNEY FEES. If either party commences an action, whether in Court or by arbitration, to enforce its rights pursuant to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees as determined by the Court or arbitrators as the case may be.

10. ENTIRE AGREEMENT. This Agreement (including all exhibits or attachments hereto) constitutes the entire agreement between the parties with respect to all matters, activities and obligations contemplated herein, and shall supersede and control any and all other prior or contemporaneous agreements, understandings, representations and statements, whether written or oral, which may have taken place, or been in existence at any time between the parties.

11. HEADINGS. The headings of the sections and subsections of this Agreement are for purposes of convenience only and shall in no way affect the construction of any of the terms or conditions hereof.

12. GOVERNING LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

13. SEVERABILITY. It is mutually agreed that in case any provision of this Agreement is determined by a court of law to be unconstitutional, illegal or unenforceable, that it

is the intention of the parties that all other provisions of this Agreement remain in full force and effect.

14. AMENDMENTS. This Agreement cannot be amended, changed, altered or modified, except in a writing signed by the parties.

15. CONSTRUCTION. This Agreement has been negotiated between the parties, and each party has participated in the drafting of this Agreement; consequently, the doctrine of construing an agreement against the draftsman shall not apply to this Agreement, and neither party has any rights under such doctrine.

16. AUTHORITY. Each of the undersigned hereby represents and warrants that:

- a. Such party has all requisite power and authority to execute this Agreement;
- b. The execution and delivery of this Agreement by the undersigned, and the performance of its terms thereby have been duly authorized and approved by all requisite action required by law; and,
- c. This Agreement constitutes the valid and binding agreement of the undersigned, enforceable against each of them in accordance with the terms of the Agreement.

17. WAIVER. No failure to exercise, or delay in exercising, any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any other right, power or remedy preclude any other further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

18. NOTICES. Any notice required or permitted to be given to either party under this Agreement shall be in writing and either by hand or certified mail, return receipt requested, postage prepaid, to the following addresses of the parties as indicated below. Notice shall be effective as of the date of delivery if by hand, or mailing if by certified mailing.

If to CITY:	Director of Public Works 625 – 52nd Street, Room 305 Kenosha, Wisconsin 53140
with copies to:	City Attorney Municipal Building, Room 201 625 - 52nd Street Kenosha, Wisconsin 53140.
and	Superintendent of Parks 3617 65 th Street Kenosha, Wisconsin 53142

If to **MAD BOMBER:**

Dan P. Miller
Sr. Vice President
MIAND, INC. DBA Mad Bomber
Fireworks Productions
3999 Hupp Road
Kingsbury, Indiana 46345

Signature pages follow

IN WITNESS WHEREOF, the parties hereto have herein executed this Agreement on the dates below given.

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation**

BY: _____
KEITH G. BOSMAN, Mayor,
Date: _____

BY: _____
DEBRA SALAS
City Clerk/Treasurer
Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2015, **KEITH G. BOSMAN, Mayor**, and **DEBRA SALAS, City Clerk/Treasurer** of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

EXHIBIT A

Grand Opening

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
120	3"	ASSORTED COLOR STAR SHELLS	CHINA
60	3"	RED, WHITE, BLUE PEONIES	JAPAN
60	3"	TITANIUM FLASH SALUTES	U.S.A.
36	4"	SILVER COCONUT PALMS	TAIWAN
18	4"	PURPLE STROBE TO GREEN PEONIES	JAPAN
14	5"	GLITTERING SPANGLE PATTERNS	CHINA
14	5"	BROCADE CROWN CHRYSANTHEMUMS	JAPAN
12	6"	CRACKLING DAHLIA PATTERNS	TAIWAN
12	6"	GOLD SHIMMER CHRYSANTHEMUMS	JAPAN
2	8"	RED TO GREEN COLOR PEONYS	CHINA
2	8"	MAJESTIC CROWN CHANDELIERS	U.S.A.

Ground Display: There will be no ground or low aerial displays.

Aerial Show

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
300	3"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
120	3"	ASSORTED COLOR SHELLS	JAPAN
60	3"	MULTIPLE BREAK/SALUTES	U.S.A.
240	4"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
180	4"	ASSORTED COLOR SHELLS	JAPAN
12	4"	MULTIPLE BREAK SPECIALS	U.S.A.
180	5"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
160	5"	ASSORTED COLOR SHELLS	JAPAN
24	5"	MULTIPLE BREAK/SALUTES	U.S.A.
180	6"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
144	6"	ASSORTED COLOR SHELLS	JAPAN
36	8"	ASSORTED COLOR SHELLS	CHINA
28	8"	ASSORTED COLOR SHELLS	JAPAN

Grand Finale

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
960	3"	ASSORTED COLOR STAR SHELLS	CHINA/TAIWAN
600	3"	ASSORTED COLOR STAR SHELLS	JAPAN
360	3"	SPECIAL EFFECTS/SALUTES	U.S.A.
54	4"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
54	4"	ASSORTED COLOR SHELLS	JAPAN
36	4"	SPECIAL EFFECTS/SALUTES	U.S.A.
42	5"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
28	5"	ASSORTED COLOR SHELLS	JAPAN
18	6"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
18	6"	ASSORTED COLOR SHELLS	JAPAN
3	8"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
3	8"	ASSORTED COLOR SHELLS	JAPAN
2	8"	ASSORTED COLOR SHELLS	U.S.A.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/16/2015

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).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 777 108th Ave NE, #200 Bellevue WA 98004	CONTACT NAME: Kristen Look PHONE (A/C, No, Ext): 425-586-1016 FAX (A/C, No): 425-451-3716 E-MAIL ADDRESS: _____ _____														
INSURED MIANINC-01 Mad Bomber Fireworks Productions 3999 E. Hupp Road, Building R-3-1 La Porte, IN 46350	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: James River Insurance Company</td> <td>12203</td> </tr> <tr> <td>INSURER B: Berkshire Hathaway Homestate Insura</td> <td>20044</td> </tr> <tr> <td>INSURER C: Travelers Property Casualty Co of A</td> <td>25674</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: James River Insurance Company	12203	INSURER B: Berkshire Hathaway Homestate Insura	20044	INSURER C: Travelers Property Casualty Co of A	25674	INSURER D:		INSURER E:		INSURER F:	
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COVERAGES CERTIFICATE NUMBER: #15-0029 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.

INBR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Per Show Agg GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			80081032-1	2/4/2015	2/4/2018	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 \$5,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			02TRM01080001	2/4/2015	2/4/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTIONS			00061033-1	2/4/2015	2/4/2016	EACH OCCURRENCE \$9,000,000 AGGREGATE \$9,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in WA) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	6JUB8B938426	6/12/2015	6/12/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

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

Certificate holder is named as additional insured on the General Liability policy per form number FP5201 01-12
OPERATIONS: FIREWORKS DISPLAY
ADDITIONAL INSUREDS: CITY OF KENOSHA, WI

CERTIFICATE HOLDER CITY OF KENOSHA 625 - 52ND STREET KENOSHA, WI 53140 c/o, MARK B. WILLING	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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