

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2018 by and between:

CITY OF SUNRISE, FLORIDA
(hereinafter "CITY")

AND

Xtreme FX LLC
(hereinafter "CONTRACTOR")

IN CONSIDERATION of the mutual covenants and undertakings and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do mutually covenant and agree as follows:

1. SCOPE OF SERVICES

1.1 CONTRACTOR shall furnish to the CITY one (1) twenty (20) minute fireworks display in the City of Sunrise to be given on the evening of July 4, 2018, and subsequent years, if renewed, in accordance with Section 2.1, weather permitting, at a location determined by the CITY. It is understood that should inclement weather prevent the giving of this display on the date mentioned herein, the parties shall agree to a mutually convenient alternate date, within three (3) months of the original display date. The determination to postpone the show because of inclement or unsafe weather conditions shall rest within the sole discretion of the CONTRACTOR.

1.2 CONTRACTOR shall be responsible for acquiring all necessary permits/licenses required.

1.3 CONTRACTOR agrees to furnish all necessary fireworks display materials and personnel for fireworks display in accordance with the program approved by the parties.

1.4 CITY will provide the following items:
Sufficient area for the display, including a minimum spectator set back at all points from the discharge area as approved by the Fire Marshal.

Protection of the display area by fencing, roping off or similar facility and adequate police protection to prevent unauthorized entry.

The blast area will be closed to all personnel except for the fireworks company, emergency personnel (fire/police as required) or others deemed essential by the fireworks company a minimum of 45 minutes prior to the show start and until cleared by the Fire Marshal.

Search of the fallout area at first light following a nighttime display.

1.5 Unless otherwise specified, CONTRACTOR shall not subcontract or otherwise engage subcontractors to perform the required services without prior written consent of CITY.

2. TERM OF AGREEMENT

2.1 This Agreement shall become effective upon execution by both parties and shall continue in effect for one full year from the date of execution, unless otherwise terminated earlier as provided in Section 10. This Agreement may be extended by written mutual Agreement of the parties for one additional one-year period, prior to the anniversary date of this agreement.

2.2 Any terms or conditions of this Agreement that require acts beyond the date of the term of this Agreement, including, but not limited to Section (7), Indemnification, shall survive termination of this Agreement and shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

2.3 The City of Sunrise is a bona fide governmental entity of the State of Florida with the CITY'S fiscal year ending on September 30 of each calendar year. If the CITY does not appropriate sufficient funds to purchase or continue the services required under this Agreement for any of the CITY'S fiscal years subsequent to the one in which the Agreement is executed and entered into, then this Agreement shall be terminated effective upon expiration of the fiscal year in which sufficient funds to continue satisfaction of CITY'S obligation under this Agreement were last appropriated by CITY and CITY shall not, in the sole event be obligated to make any further purchase or payments beyond said fiscal year.

3. COMPENSATION

3.1 CONTRACTOR'S total compensation for services shall be the sum of \$28,000.00.

The CONTRACTOR shall submit an invoice to:

City of Sunrise
Department of Leisure Services
10610 West Oakland Park Boulevard
Sunrise, Florida 33351

3.2 A deposit of Fifty percent (50%) of the total amount shall be made by the CITY within two weeks after the execution of the Agreement and after receipt and approval of the invoice by the Director of Leisure Services. The

balance shall be payable on the date of the show at the completion of the fireworks.

3.3 If the fireworks display is postponed in accordance with section 1.1, CONTRACTOR shall retain the fifty percent (50%) deposit previously paid by the CITY. Additionally, the balance shall be payable on the date of the re-scheduled show.

4. RELATIONSHIP OF THE PARTIES

4.1 It is further agreed and mutually understood that nothing in this Agreement shall be constructed or interpreted to mean a partnership, both parties being hereto responsible for their separate and individual debts and obligations, and neither party shall be responsible for any agreements not stipulated in this Agreement.

The parties hereto do mutually and severally guarantee terms, conditions, and payments of this agreement, these articles to be binding upon parties, themselves, their heirs, executors, administrators, successors and assigns.

4.2 Independent Contractor: CONTRACTOR, its personnel, subcontractors, volunteers and agents shall be and remain independent contractors and not agents or employees of CITY with respect to the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create an employer/employee relationship, a partnership association, joint venture or undertaking between the parties.

4.3 No Benefits: Neither CONTRACTOR nor any of its employees, subcontractors, volunteers and agents shall receive or be entitled to any benefits afforded to CITY employees.

4.4 Taxes and Other Employment Levies: CITY shall not be responsible for reporting or paying to CONTRACTOR employment taxes or other similar levies which may be required by federal or state law.

4.5 Control of Work: CONTRACTOR shall control the manner, means and procedures used in providing the services set out in this Agreement.

4.6 Duty to Use Reasonable Care for Accident Prevention: CONTRACTOR shall exercise reasonable care and precaution at all times for the protection of persons and property at the premises provided under this Agreement.

4.7 For the purpose of this Agreement, LANDOWNER is defined as the owner of real property used, controlled or operated by the CONTRACTOR for any and all firework displays, operations or activities arising from this Agreement.

5. TAXES

5.1 CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required by law.

6. LICENSE FEES AND ROYALTIES

6.1 CONTRACTOR shall pay all license fees and royalties and assume all costs arising out of or from the use of any invention, design, process, product or device which is the subject of patents rights of copyrights held by others and used in the performance of the work which is the subject of this Agreement, except those items specifically provided by the CITY.

7. INDEMNIFICATION

7.1 General Indemnification: CONTRACTOR shall indemnify, defend, save and hold harmless the RELEASED PARTIES, the CITY, its officers, agents and employees, from any and all claims, damages, losses, liabilities and expenses direct, indirect or consequential, arising out of or alleged to have arisen out of or in consequence of the performance of the services by the CONTRACTOR or its subcontractors, agents, officers, servants, independent contractors or employees pursuant to this Agreement, specifically, including but not limited to, any act, omission, default or negligence of the CONTRACTOR in the provision of the services under this Agreement; and/or the violation of applicable federal, state, county or municipal laws, ordinances or regulations by CONTRACTOR.

7.2 Patent and Copyright Indemnification: CONTRACTOR shall indemnify, defend, save and hold harmless the RELEASED PARTIES from all claims, damages, losses, liabilities and expenses arising out of an alleged infringement of copyrights, patent rights, the unauthorized or non-licensed use of any material, property or other work in connection with the performance of the services provided pursuant to this Agreement.

7.3 CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to reasonable attorney's fees and court costs.

7.4 CONTRACTOR shall indemnify and defend all actions in the name of the RELEASED PARTIES or the CITY when applicable, and select legal counsel with CITY'S prior approval to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR under this Indemnification Article. Nothing contained in this Agreement is intended nor shall be construed to waive CITY'S rights and

immunities under the Section 768.28, Florida Statutes, as amended from time to time.

7.5 These indemnifications shall survive the term of this Agreement.

7.6 The following entities listed below are to be considered RELEASED PARTIES:

City of Sunrise

LANDOWNER

Arena Operating Company, Ltd. d/b/a BB&T Center

PHGP, LLC

Florida Panthers Hockey Club, Ltd.

Arena Development Company, Ltd.

Sunrise Sports and Entertainment, LLC

Broward County and Broward County Board of Commissioners

SSE Promotions, LLC

SSE Gaming, LLC

SSE Development, LLC

SSE Publications, LLC

and each of their respective affiliates, officials, officers, directors, partners, members, managers, shareholders, agents, contractors and employees

8. INSURANCE

8.1 CONTRACTOR agrees to maintain, on a primary basis, non-contributory basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as CITY'S review or acceptance of insurance maintained by CONTRACTOR is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by CONTRACTOR.

8.2 Commercial General Liability CONTRACTOR agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence \$10,000,000 General Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Separation of Insureds.

8.3 Commercial Umbrella/Excess Liability CONTRACTOR agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than \$4,000,000 Each Occurrence \$4,000,000 Aggregate. The CONTRACTOR agrees to endorse the CITY and OTHER ADDITIONAL INSURED(S) listed in Section 8.5 below on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the CITY and OTHER ADDITIONAL INSURED(S) are automatically defined as an Additional Protected Persons by virtue of

Additional Insured endorsements to the underlying liability policy. The CONTRACTOR agrees any Self-Insured-Retention or deductible shall not exceed \$25,000.

8.4 Worker's Compensation Insurance & Employers Liability The CONTRACTOR agrees to maintain its own Worker's Compensation & Employers Liability Insurance in accordance with Chapter 440, Florida State Statutes.

8.5 Additional Insured The CONTRACTOR agrees to endorse the CITY, Arena Operating Company, PHGP, LLC, Florida Panthers Hockey Club, Ltd., Arena Development Company, Ltd., Sunrise Sports and Entertainment, LLC, Broward County and Broward County Board of Commissioners, SSE Promotions, LLC, SSE Gaming, LLC, SSE Development, LLC, SSE Publications, LLC and each of their respective officers, directors, agents, and employees" (collectively referred to hereinafter as "OTHER ADDITIONAL INSURED") on the Commercial General Liability with the following, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2026 07 04 or GC 2026 04 13 Additional Insured – Designated Person or Organization endorsement; or alternatively the CG20 10 07 04 or GC 2010 04 13 Additional Insured – Owners, Lessees, or Contractors endorsement, including the additional endorsement of GC2037 04 13 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor's "your work" as defined in the policy and liability arising out of the products-completed operations hazard. **The certificate of insurance issued to the OTHER ADDITIONAL INSURED shall read ("Arena Operating Company, Ltd., PHGP, LLC, Florida Panthers Hockey Club, Ltd., Arena Development Company, Ltd., Sunrise Sports and Entertainment, LLC, Broward County and Broward County Board of Commissioners, SSE Promotions, LLC, SSE Gaming, LLC, SSE Development, LLC, SSE Publications, LLC and each of their respective officers, agents, and employees) at the address in Section 8.7 below. The certificate of insurance the CITY shall read ("City of Sunrise, Florida"), at the address in Section 8.7 below.**

8.6 Waiver of Subrogation CONTRACTOR agrees by entering into this Agreement to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

8.7 Certificate(s) of Insurance CONTRACTOR agrees to provide the CITY and OTHER ADDITIONAL INSURED certificates of insurance evidencing that all coverages, limits and endorsements required herein are

maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available by CONTRACTOR'S insurer. If the CONTRACTOR receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, CONTRACTOR agrees to notify the CITY and the OTHER ADDITIONAL INSUREDs by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holders' address and fax numbers or email addresses are as follows

Original to:

City of Sunrise
Attn: Leisure Services Director
10610 West Oakland Park Blvd.
Sunrise, FL 33351
954-572-2476 (fax)
RMarco@sunrisefl.gov@sunrisefl.gov

Original to:

Arena Operating Company, Ltd.
Attn: Kevin Grove
One Panther Parkway
Sunrise, FL 33323
GroveK@floridapanthers.com

8.8 Right to Revise or Reject CITY reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverage and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

9. WARRANTIES

9.1 CONTRACTOR warrants to CITY that it shall comply with all applicable federal, state, and local laws, regulations and orders in carrying out its obligations under the Agreement.

9.2 CONTRACTOR warrants to CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Agreement.

10. TERMINATION

10.1 Termination for Convenience of CITY This Agreement may be terminated by the CITY without cause upon sixty (60) days written notice to the CONTRACTOR

10.2 This Agreement may be terminated by the CONTRACTOR without cause upon providing sixty (60) days written notice to the CITY.

11. CLEANING UP

11.1 CONTRACTOR shall be provided with activity space while utilizing LANDOWNER'S or CITY'S premises. CONTRACTOR shall keep the premises free from accumulation of waste material or rubbish caused by the provision of the services set out in Article 1. At the completion of the event, CONTRACTOR shall remove all waste materials and rubbish from or about the premises as well as all equipment, and materials and return the space to a condition suitable for use by LANDOWNER or CITY.

12. ADVERTISEMENTS

12.1 Requests for signs or advertisements of any kind shall be directed to the Director of Leisure Services who will work with the Director of the CITY'S Community Development Department in obtaining any necessary approvals for such signs or advertisements. Posters and/or flyers advertising any programs shall be approved in advance, in writing by the Director of Leisure Services or his/her duly authorized representative.

13. ASSIGNMENT

13.1 CONTRACTOR recognizes that the services of the CONTRACTOR are personal in nature and therefore, the CONTRACTOR shall not assign, or transfer its rights, title or interests in the Agreement nor shall CONTRACTOR delegate any of the duties and obligations undertaken by CONTRACTOR without CITY'S prior written approval.

14. PUBLIC RECORDS

14.1 The CONTRACTOR shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that the CONTRACTOR and this Agreement are subject to the requirements in Section 119.0701, Florida Statutes, the CONTRACTOR shall: (a) keep and maintain public records required by the CITY to perform the services provided hereunder; (b) upon request from the CITY'S custodian of public records, provide the CITY with a copy of the requested records or allow public records to be inspected or copied within a reasonable time at a cost that

does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY; and (d) upon completion of the Agreement, transfer, at no cost, to the CITY all public records in the possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY. If the CONTRACTOR fails to comply with the requirements in this Article 14, the CITY may enforce these provisions in accordance with the terms of this Agreement. If the CONTRACTOR fails to provide the public records to the CITY within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, FELICIA M. BRAVO, BY TELEPHONE (954/746-3333), e-mail (CityClerk@sunrisefl.gov), or mail (City of Sunrise, Office of the City Clerk, 10770 West Oakland Park Boulevard, Sunrise, Florida 33351).

15. SAFETY

15.1 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall comply with the standards set forth in the Occupational Safety and Health Act of 1970 (OSHA) and their amendments.

15.2 The CONTRACTOR shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to:

(a) All employees on the work site and all other persons who may be affected thereby.

(b) The work and all materials and equipment.

(c) Other property at the site or adjacent to the site, including trees, shrubs, lawns, walks, pavements, structures and utilities not designated for removal, relocation or replacement in the course of the work.

16. NON-EXCLUSIVITY

16.1 This Agreement is considered a non-exclusive Agreement between the parties. The CITY shall have the right to purchase the same kind of services to be provided by CONTRACTOR from other sources during the term of this Agreement.

17. PUBLIC ENTITY CRIMES

17.1 Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By execution of this Agreement, CONTRACTOR represents that it has not been placed on the convicted vendor list as provided in Section 287.133, Florida Statutes.

18. DISCRIMINATORY VENDOR LIST

18.1 Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. By execution of this Agreement, CONTRACTOR represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes.

19. NON-DISCRIMINATION

19.1 No person, on the grounds of race, color, national origin, religion, age, sex, gender identity, sexual orientation, disability/handicap, or family or income status shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

20. GOVERNING LAW; VENUE

20.1 This Agreement shall be governed by the laws of the State of Florida. Except as set forth in Article 7, should the parties be involved in legal action arising under, or connected to this Agreement, each party will be responsible for their own attorneys' fees and costs. The venue for any litigation will be Broward County, Florida. Both parties hereby waive a jury trial and will proceed to a trial by judge, if necessary.

21. ENTIRE AGREEMENT

21.1 This Agreement contains the entire understanding of the parties relating to the subject matter superseding all prior communications between the parties whether oral or written. This Agreement may not be altered, amended, modified or otherwise changed nor may any of its terms be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

22. CUMULATIVE REMEDIES

22.1 The remedies expressly provided in this Agreement to CITY shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of CITY now or in the future existing at law or in equity.

23. SEVERABILITY

23.1 Should any part, term of provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of this state, the validity of the remaining portions or provisions shall not be affected.

24. PARAGRAPH HEADINGS

24.1 All paragraph headings in this Agreement are included for convenience only and are not to be construed as a part hereof or in any way as limited or expanding the terms set out in this Agreement.

25. NOTICES

25.1 All notices or other communications required by this Agreement shall be in writing and deemed delivered upon mailing by certified mail, return receipt requested or overnight mail, to the following persons and addresses:

CITY: Leisure Services Department
10610 W. Oakland Park Blvd.
Sunrise, Florida 33351

With copy to: City Attorney
City Attorney's Office
City of Sunrise
10770 West Oakland Park Boulevard
Sunrise, FL 33351

CONTRACTOR: Xtreme FX LLC
Ryan Pedraza
20416 Lorette Ave.
Port Charlotte, FL 33954
(800) 695-9739

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: The CITY, signing by and through its duly authorized representative on the ____ day of _____, 2018.

CITY
City of Sunrise

BY: _____
Ann Potter
Procurement Manager

_____ Day of _____, 2018

BY: _____
Rosemarie Marco
Leisure Services Director

_____ Day of _____, 2018

WITNESS:

CONTRACTOR:
Xtreme FX, LLC.

By: _____
