



ORDINANCE NO. 1757-17

AN ORDINANCE RATIFYING AND CONFIRMING THE EXECUTION OF A PREVIOUSLY EXECUTED AGREEMENT—J & M DISPLAYS, INC.—THIRD OF JULY, 2017 FIREWORKS DISPLAY

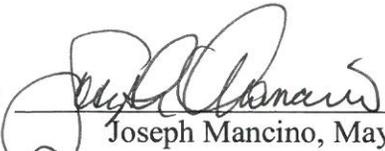
BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that this ordinance is ratification in furtherance of a previously executed Fireworks Display Agreement with J & M Displays, Inc. for the Third of July, 2017 fireworks display. Such Fireworks Display Agreement is by and between the Village of Hawthorn Woods and J & M Displays, Inc., a copy of which is attached hereto as Exhibit "A", and, by this reference made a part hereof.

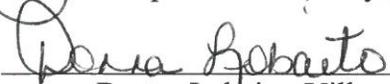
The foregoing Ordinance was adopted by the Village Board of the Village of Hawthorn Woods, Illinois, on April 24, 2017:

AYES: Perzo, Russo, Morgan, Carrigan, DiMaggio, David

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: 
Joseph Mancino, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

PASSED: April 24 2017

APPROVED: April 24, 2017

PUBLISHED: April 25, 2017

FIREWORKS DISPLAY AGREEMENT

THIS AGREEMENT is made and entered into this 14th day of April, 2017, and between J & M Displays, Inc., an Iowa corporation, having its principal place of business at Yarmouth, Iowa hereinafter referred to as "Seller", and Village of Hawthorn Woods, hereinafter referred to as "Buyer".

Seller shall furnish to Buyer one (1) fireworks display, as per the \$ 11,000.00 program submitted and accepted by the Buyer, and which by reference is made a part hereof as Exhibit "A". The display is to take place on the evening of July 3rd, 2017 at approximately 9:15 pm, weather permitting.

IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Firing of Display (check one of the below options):

Seller agrees to furnish all necessary fireworks display material and personnel for a fireworks display accordance with the program approved by the parties. Seller agrees to comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks.

Buyer waives the services of Seller's technician. Buyer is a municipality or has a valid permit from the Bureau of Alcohol, Tobacco, Firearms & Explosives and will be firing the display. If Buyer shoots the display, proof of liability insurance is required as stated in paragraph number five (5), proof of auto insurance (if pyrotechnics will be transported) and proof of worker's compensation insurance coverage is required. Buyer agrees to comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks.

2. Payment. The Buyer shall pay to the Seller (check one of the below options):

the sum of \$ _____ as a down payment upon execution of this Agreement. The balance of \$ _____ shall be due and payable in full within fifteen (15) days after the date of the fireworks display. A service charge of one and one-half percent (1 ½%) per month shall be added to the unpaid balance if the account is not paid in full within fifteen (15) days from the date of the show. If this account remains unpaid and is turned over to a collection agency for non-payment, all fees incurred in collecting the balance will be at the Buyer's expense. All returned checks will be assessed a \$30.00 fee.

\$ 11,000.00 in full by May 15th, 2017 (70 days prior to the event date).
The Buyer will receive the 8% prepayment bonus product in this fireworks display.

\$ _____ in full by _____ (30 days prior to event date)
The Buyer will receive the 5% prepayment bonus product in this fireworks display.

3. Weather Delay/Cancellation. Buyers intending to postpone a display due to inclement weather should contact J&M Displays as soon as possible to keep postponement fees to a minimum.

The following postponement fees are applicable *only* if the display is re-scheduled in the same calendar year.

- Displays postponed prior to being picked up at the magazine for delivery incur no postponement fee unless there are new costs associated with permit changes or display set-up has occurred prior to product delivery.
- Displays postponed after they are in transit to the shoot site will be charged the full delivery fee.
- Displays postponed after set-up by the shoot team will be charged delivery fee and 1.5 times the shoot fee for hand-fired displays and double the shoot fee for E-fired displays.
- Display set-ups that are allowed to remain on site overnight after a postponement to the following day will incur a fee of eight-percent (8%) of the total display budget. This will cover 24-hour security watch of fireworks and additional labor hours of shoot crew.

Displays cancelled and NOT re-scheduled within the same calendar year will be charged thirty-percent (30%) of the total display budget. This fee will cover all labor associated with order processing, packing & shipping, display set-up if applicable and re-stocking fees.

** Displays cancelled due to circumstances beyond customers control, such as burn bans or other bans issued by the AHJ will be considered on a case by case basis.

4. **Rain Date.** Should inclement weather prevent the firing of the display on the date mentioned herein, the parties agree to a mutually convenient rain date of TBD or another date as agreed to by both parties. Once display set-up has begun, the determination to cancel the fireworks display because of inclement weather or unsafe weather conditions shall rest within the sole discretion of the AHJ, Seller, and the lead pyrotechnician.

5. **Insurance. (Check one of the below options):**

Seller agrees to provide, at its expense, general liability insurance coverage, in an amount not less than \$10,000,000, and within two (2) weeks prior to the date of the fireworks display, shall submit to the Buyer, if requested in writing, a certificate of insurance. All entities listed on the certificate of insurance will be deemed an additional insured. In the event of a claim by Buyer, the applicable deductible shall be paid by the Seller.

The Seller agrees to defend, indemnify and hold harmless the Buyer and its agents, and employees from and against all claims, costs, judgments, damages and expenses, including reasonable attorney fees that may or shall arise from the performance of the fireworks by the Buyer. The Buyer agrees to give the Seller prompt notice of any claims or demands and to cooperate with the Seller or its successors in interest or assigns, if any, in the defense of any such claims and/or demands.

Buyer agrees to provide, at its expense, general liability insurance coverage with a rating by AM Best of A VIII or higher, in an amount not less than \$5,000,000, and within two (2) weeks prior to the date of the fireworks display shall submit to the Seller a certificate of insurance. All entities listed on the certificate of insurance will be deemed an additional insured. Any charge incurred from the insurance provider for additional insurance after insurance application has been sent in, shall be the responsibility of the Buyer. In the event of a claim by Seller, the applicable deductible shall be paid by the Buyer.

The Buyer agrees to hold the Seller harmless and defend Seller from any and all claims brought against the Seller by employees or sponsors of the Buyer for any and all acts of the Buyer relating to the event for which the fireworks is performed.

6. **Buyer agrees to provide:**

- (a) sufficient area for the display, including a minimum spectator set back as determined by Seller.
- (b) protection of the display area by roping off or similar facility.
- (c) adequate police protection to prevent spectators from entering display area.
- (d) dry, clean sand, if needed, for firing.
- (e) inspection and cleanup of fireworks debris in the fallout zone of the shoot site at first light the morning following the display for anything that may have been missed at the night search.
- (f) necessary local permits.

7. No representation of affirmation of fact, including but not limited to statement regarding capacity, suitability for use, or performance of equipment or products shall be, or deemed to be a warranty by the Seller for any purpose, nor give rise to any liability or obligation of the Seller whatsoever, except for acts of Seller's negligence as above stated.

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

9. The parties hereto do mutually and severally guarantee terms, conditions, and payments of this Agreement. This document shall be binding upon the parties, themselves, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BY: *James J. Allen*
J & M Displays, Inc.
SELLER

BY: *Samuel O. Hudson*
BUYER *Village of Hawthorn Wood*

Please include the DISPLAY INFORMATION form with this Agreement so your order is processed accurately.



J&M Displays Proposal for: Village of Hawthorn Woods

Opening

Multi-shell Barrage Units

Quantity	Name	Rising Effect	Price	Total
2	Alternating red white and blue tails to red white and blue		\$148.05	\$296.10
1	80S FAN SHAPED CAKE - Blue tail to red and blue dahlia with		\$265.75	\$265.75

Category Shell Count: 280

Section Shell Count: 280

\$561.85

Main Event

Multi-shell Barrage Units

Quantity	Name	Rising Effect	Price	Total
1	Red tail to red and blue with white strobe 25 shot		\$62.15	\$62.15
2	Silver Tail to Variegated Coconut Chrys 25 shot		\$62.15	\$124.30
2	Silver strobe mine to blue and red dahlia 25 shot		\$62.15	\$124.30
4	Candle bundle 300 shot - Lemon		\$64.95	\$259.80
11	Candle bundle 300 shot - Pink		\$64.95	\$714.45
6	V shape candle bundle 300 shot - Whirlwind to chrysanthemum		\$64.95	\$389.70
2	Silver Sizzling 49 shot Z shape		\$148.05	\$296.10
1	100S FAN SHAPED CAKE - Assorted effects and colors Z shap		\$265.75	\$265.75
1	Assorted Fan Cake Z W and S shape 100 shot		\$265.75	\$265.75

Category Shell Count: 6723

\$2,502.30

2.5 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
3	Assortment T of 30 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$234.00	\$702.00

Category Shell Count: 90

\$702.00

2.5 Inch Finales

Quantity	Name	Rising Effect	Price	Total
6	Red peony 10 Shot finale chain		\$85.80	\$514.80
12	Red white and blue 10 Shot finale chain		\$85.80	\$1,029.60
6	White peony 10 Shot finale chain		\$85.80	\$514.80

Category Shell Count: 240

\$2,059.20

3 Inch Salutes

Quantity	Name	Rising Effect	Price	Total
20	Dark salute (no Ti)		\$9.60	\$192.00

Category Shell Count: 20

\$192.00

3 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
2	Assortment F of 20 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$205.00	\$410.00
2	Assortment M of 20 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$205.00	\$410.00

Category Shell Count: 80

\$820.00



J&M Displays Proposal for: Village of Hawthorn Woods

Main Event

4 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
1	Brocade ring		\$19.80	\$19.80
1	Half golden wave to purple half yellow spiderweb		\$19.80	\$19.80
3	Peony assorted		\$19.80	\$59.40
1	Red and blue dahlia with silver glitter		\$19.80	\$19.80
1	Willow to red white and blue		\$19.80	\$19.80
1	Glittering gold to Ruby kamuro w/strobe pistil		\$33.50	\$33.50
1	Pink and green cross ring with crackling pistils	crackling tail	\$33.50	\$33.50
1	Six angle chrysanthemum	Gold tail	\$33.50	\$33.50
1	Assortment K Of 20 different J&M Brand shells ELECTRIC FIRE		\$355.00	\$355.00
1	Assortment T of 20 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$355.00	\$355.00
Category Shell Count: 50				\$949.10
Section Shell Count: 7203				

False Finales

3 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
22	Crown to glittering		\$19.80	\$435.60
Category Shell Count: 22				\$435.60

4 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
14	Crown to glittering		\$19.80	\$277.20
Category Shell Count: 14				\$277.20
Section Shell Count: 36				

Finales

3 Inch Finales

Quantity	Name	Rising Effect	Price	Total
6	Color red white and blue 10 Shot finale chain	mixed tails	\$124.40	\$746.40
Category Shell Count: 60				\$746.40
Section Shell Count: 60				

Miscellaneous

Ignition Items

Quantity	Name	Rising Effect	Price	Total
270	Igniter 2 meter leads		\$1.95	\$526.50
83	Igniter 3 meter leads		\$1.95	\$161.85
2	Wire 22 gauge copper duplex 500 foot		\$29.55	\$59.10
Category Shell Count: 0				\$747.45
Section Shell Count: 0				



J&M Displays Proposal for: Village of Hawthorn Woods

8% Free for Early Payment

Multi-shell Barrage Units

Quantity	Name	Rising Effect	Price	Total
1	Red tail to red and blue with white strobe 25 shot		\$62.15	\$62.15
Category Shell Count: 25				\$62.15

2.5 Inch Finales

Quantity	Name	Rising Effect	Price	Total
7	Salute with palm 10 Shot finale chain		\$85.80	\$600.60
Category Shell Count: 70				\$662.75
Section Shell Count: 95				

15% Free for Multiple Year Agreement

Multi-shell Barrage Units

Quantity	Name	Rising Effect	Price	Total
2	Five changing effect cake 100 shot		\$148.05	\$296.10
2	Assorted effects 100 shot Z shape		\$192.95	\$385.90
2	Gold flash tail to red green blue dahlia chrysanthemum 100 shot		\$265.75	\$531.50
Category Shell Count: 600				\$1,213.50
Section Shell Count: 600				



J&M Displays Proposal for: Village of Hawthorn Woods

This proposal includes an extension of our \$10,000,000.00 spectator liability insurance, and workers compensation on our shoot team.

Subtotal Fireworks: **\$7,965.00**
J&M Production: **\$3,035.00**
Total Price of Show: **\$11,000.00**

Total Shot Count: 8274
Packing Check: 507
Date of Display: 07/03/17
Customer Number: 10879

Summary of Free Items Added to Your Show

See Previous Pages for a Listing of Free Items

Free Items are Based on the \$7,965.00 Fireworks Subtotal

\$662.75	8% Free for Early Payment
\$1,213.50	15% Free for Multiple Year Agreement
\$1,876.25	Total Free

Your Price is \$11,000.00

Please Note the Following Comments:

The data in this proposal is confidential, and is to be accorded confidential treatment and shall not be disclosed other than to the official representative of the organization listed on the cover, and only then when in the evaluation of this proposal. Any reproduction of the contents of this proposal, whether in whole or in part, is expressly forbidden. J&M Displays, 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 J&M Displays, Inc. We reserve the right to make substitutions of equal or greater value. Prices and specifications are subject to change without notice. For choreographed displays the quantity and sizes of product may change based on the music selected; however, the dollar value of the product will remain the same.

MULTIPLE YEAR AGREEMENT EXTENSION

This Agreement can be considered an extension of the previously signed Multiple Year Agreement made by and between J & M Displays, Inc., an Iowa corporation, having its principal place of business in Yarmouth, Iowa, hereinafter referred to as Seller, and the Village of Hawthorn Woods, hereinafter referred to as the Buyer. Whereas, the parties agree as follows:

1. Seller is in the business of providing fireworks displays. More specifically, Seller is in the business of providing 1.3G (Class B) fireworks for display.

2. Buyer hereby agrees to purchase all of their 1.3G (Class B) fireworks exclusively from Seller for the next three years (2017, 2018, 2019). In consideration thereof, Seller hereby agrees to provide bonus product to the Buyer in an amount based on the total dollars of fireworks purchased by Buyer for a given year. The Seller will have the final choice of bonus product but said product is to be fireworks of like quality and condition as the 1.3G (Class B) fireworks purchased by Buyer from Seller for the given year. The bonus for signing this extension to the Buyer's original Multiple Year Agreement is as follows:

- 2017 year: Bonus product equaling a dollar value of **15%** of the total fireworks dollar value purchased by Buyer (total dollar value is fireworks only and excludes cost of insurance, shoot fee, taxes, etc.);
- 2018 year: Bonus product equaling a dollar value of **15%** of the total fireworks dollar value purchased by Buyer (total dollar value is fireworks only and excludes cost of insurance, shoot fee, taxes, etc.);
- 2019 year: Bonus product equaling a dollar value of **15%** of the total fireworks dollar value purchased by Buyer (total dollar value is fireworks only and excludes cost of insurance, shoot fee, taxes, etc.).

3. In addition to the "bonus product" described above, Buyer will also be entitled for each year of this Agreement to receive 8% of bonus product of like quality and condition as the fireworks purchased by the Buyer for the given year if Buyer provides an early order (all paperwork and payment for the fireworks display

provided to Seller at least 70 days prior to display date). In the event that Seller should increase the amount of its bonus product percentage for "early order" for the years of this exclusive Agreement, Seller agrees to match the increased bonus product percentage for Buyer these given years.

4. In no way is Buyer obligated to purchase 1.3G (Class B) fireworks from Seller for any of the years covered by this Agreement. Rather, Buyer is only obligated to purchase 1.3G (Class B) fireworks from Seller should Buyer opt, at Buyer's sole discretion, to have a fireworks display at its events for the years in question.

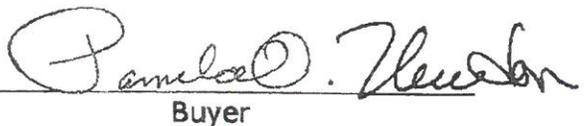
5. Extension: The final year of the Multiple Year Agreement the buyer will have the option to extend the Multiple Year Agreement for an additional three years if both parties mutually agree and a Multiple Year Agreement Extension is completed and signed.

6. Termination: This Agreement will expire three (3) years from its execution. The Buyer may, at its sole discretion, terminate this Agreement within 30 days after their fireworks display date. If Agreement is not terminated within the 30-day deadline, this Agreement will be in full force and effect for the following year.

J & M DISPLAYS, INC.


Seller

4-21-17
Date


Buyer

April 19, 2017
Date

