



ORDINANCE NO. 2011-20

AN ORDINANCE AUTHORIZING THE CHIEF OPERATING OFFICER TO AWARD AN EXECUTE THE 2020-2021-2022 INDEPENDENCE DAY CELEBRATION FIREWORKS DISPLAY TO J & M DISPLAYS, INC., OF YARMOUTH, IOWA

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Chief Operating Officer be, and the same is hereby authorized and directed to award the 2020-2021-2022 Fireworks Display Agreement to J & M Displays Inc. of Yarmouth, Iowa. Said agreement shall be in an amount not to exceed \$14,000 2020 through 2022 and is attached hereto as Exhibit "A", and, by this reference, made a part hereof.

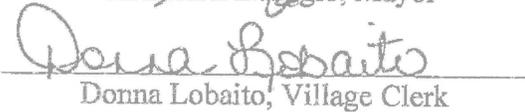
The foregoing Ordinance was adopted by the Village Board of the Village of Hawthorn Woods, Illinois, on March 17, 2020:

AYES: Kaiser, Kasik, Rizzo, Corrigan, DiMaggio David

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED:   
Dominick DiMaggio, Mayor

ATTEST:   
Donna Lobaito, Village Clerk

PASSED: March 17, 2020

APPROVED: March 17, 2020

PUBLISHED: March 17, 2020



# FIREWORKS DISPLAY AGREEMENT

44017 11



THIS AGREEMENT is made and entered into this 12th day of March, 2020, by and between J & M Displays, Inc., an Iowa corporation, having its principal place of business at Yarmouth, Iowa, including its employees, owners, and agents, 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 \$ 14,000.00 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 2020 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 in 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.

**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 1/2%) per month shall be added to the unpaid balance if the account is not paid in full within the 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.
- \$ 14,000.00 in full by April 27th (70 days prior to 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. Postponement/Cancellation. Displays postponed to an alternate date will be charged an additional 15% of the total contract price for additional expenses incurred in presenting the display on an alternate date.**

In the event the display is cancelled and not re-scheduled, J&M Displays, Inc. shall be entitled to 20% of the contract price for out of pocket expenses incurred in preparation for the show.

*\* In the event of a local, state, or national emergency, there will not*

**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.** If Seller is firing the show, 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 out of any negligent or wrongful act or omission by the Seller related to 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 demands.

*be a cancellation fee.*

**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) Persons to assist in the inspection and cleanup of fireworks debris in the fallout zone of the shoot site at first light in 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. The Agreement shall not be construed to have been drafted, authored, or written by any specific Party. Rather, the Agreement shall be construed as co-drafted, co-authored, or co-written by the Parties. Therefore, the Agreement shall not be construed against any Party on the claim or basis the Agreement was drafted, written, or authored by any specific Party.

**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.

**10. Excluded Damages and Limitation of Liability.** Notwithstanding any provision to the contrary in this Agreement:

(a) In no event shall Seller be liable to Buyer or any third party for any loss of use, revenue or profit or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages.

(b) In no event shall Seller's liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the aggregate amount paid or payable to Seller pursuant to this Agreement.

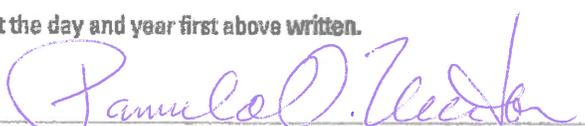
**11. Choice of Law, Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa without regard to conflict-of-law principles, except as otherwise specifically required for the storing and displaying of fireworks as provided in paragraph one above. Notwithstanding, the Parties must bring any legal or equitable action or proceeding arising under or related to this Agreement exclusively in the Iowa District Court in and for Des Moines County, Iowa. The Iowa District Court in and for Des Moines County, Iowa shall have exclusive jurisdiction to decide any disputes arising out of or related to this Agreement. Each Party knowingly and voluntarily consents to and expressly waives any objection or defense to personal jurisdiction, improper or inconvenient venue, or inconvenient forum in the Iowa District Court in and for Des Moines County, Iowa.

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

BY:

  
J & M Displays, Inc.  
SELLER

BY:

  
BUYER

Please include the \_\_\_\_\_ with this Agreement so your order is processed accurately.



# MULTIPLE YEAR AGREEMENT EXTENSION



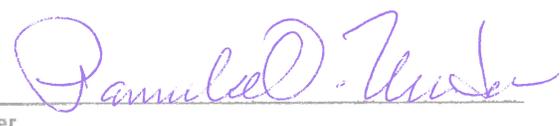
This Agreement can be considered an extension of the previously signed Multiple Year Agreement made by and between J & M Displays, Inc., an Iowa corporation, having its principal place of business in Yarmouth, Iowa, hereinafter referred to as Seller, and the Village Of Hawthorn Woods, hereinafter referred 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 fireworks for display.
2. Buyer hereby agrees to purchase all of their fireworks exclusively from Seller for the next three years (2020, 2021, 2022). 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 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:
  - 2020 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.);
  - 2021 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.);
  - 2022 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 fireworks from Seller for any of the years covered by this Agreement. Rather, Buyer is only obligated to purchase 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 or Seller may 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

3-12-2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Buyer

4/12/20  
\_\_\_\_\_  
Date