



ORDINANCE NO. 2256-23

AN ORDINANCE RATIFYING AND CONFIRMING A PREVIOUSLY EXECUTED AGREEMENT WITH J & M DISPLAYS, INC. FOR THE THIRD OF JULY, 2023 INDEPENDENCE DAY CELEBRATION 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 Agreement with J & M Displays, Inc. for the Third of July, 2023 Independence Day Celebration Fireworks Display in an amount not to exceed \$18,000. Such Agreement is by and between the Village of Hawthorn Woods and J & M Displays, Inc., a copy of which is attached as Exhibit "A", and, by this reference, made a part hereof.

The foregoing Ordinance was adopted by the Village Board of Hawthorn Woods, Illinois on April 24, 2023:

AYES: Kaiser, Bayer, McCarthy, Lynch, Hunt

NAYS: Ø

ABSENT AND NOT VOTING: David

APPROVED:   
Dominick DiMaggio, Mayor

ATTEST: Donna Lobaito  
Donna Lobaito, Village Clerk

ADOPTED: April 24, 2023

APPROVED: April 24, 2023



# FIREWORKS DISPLAY AGREEMENT

Exhibit "A"

THIS AGREEMENT is made and entered into this 16th day of April, 2023, 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 \$ 18,000.00 program (the "Fireworks Program") submitted to 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, 2023 at approximately 9:15 p.m., weather permitting.

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

### I. FIRING OF DISPLAY

- a. Seller agrees to furnish all necessary fireworks display materials and personnel for a professional fireworks display in accordance with the Fireworks Program approved by the Parties. Seller agrees to comply with all local, state, and federal regulations and guidelines pertaining to the storing and displaying of fireworks. Seller, with Buyer's assistance, shall obtain any necessary permits for the fireworks display.
- b. Buyer Agrees to provide:
  - i. Sufficient area for the display, including a minimum spectator set back as determined by Seller;
  - ii. Protection of the display area by roping off or similar facility;
  - iii. Adequate police or security protection to prevent spectators from entering the display area; and
  - iv. 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;
- c. The cost and acquisition of any site-specific materials or display restrictions (such as sand or the use of a barge) shall be discussed prior to adoption of this Agreement, and the Party responsible for any such acquisition and cost shall be specifically laid out in the Fireworks Program (Exhibit A).
- d. Buyer understands that its failure to provide an appropriate area for the fireworks display, with requirement minimum setbacks and security, may result in a change to Buyer's display (such as a restriction on the type(s) of products which can be utilized) or a cancellation of the display for safety reasons, at Seller's sole discretion. In such event, if Buyer cannot immediately remedy the setback or security concern prior to the Display time noted above, Buyer remains responsible for the entire purchase price of the display regardless of any limitation or cancellation of the display.

### II. 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 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 with the fifteen (15) days from the date of the display. 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.
- \$ 18,000.00 in full by April 25t 2023 (70 days prior to the display date). The Buyer will receive 8% prepayment bonus product in this fireworks display.
- \$ \_\_\_\_\_ in full by \_\_\_\_\_ (30 days prior to the display date). The Buyer will receive 5% prepayment bonus product in this fireworks display.

III. LOYALTY PROGRAM

- a. Seller has in place a bonus system for Buyer's who purchase their fireworks displays exclusively from Seller year-to-year. The full terms of Seller's loyalty program have been provided to Buyer with the Program and are available on J&M's website.
- b. Pursuant to Buyer's status in the loyalty program, Buyer will receive an additional  5%  10%  15% (check one) bonus product for this display.

IV. POSTPONEMENT/CANCELLATION

- a. Rain Date: Should inclement weather prevent the firing of the display on the date intended, 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 Seller, the Authority Having Jurisdiction, and the Seller's lead pyrotechnician.
- b. Except as specifically provided for elsewhere in this Agreement, neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (hereinafter referred to as "Force Majeure"), to the extent beyond the Party's reasonable control: acts of God, accident, riots, public disturbances including but not limited to an active-shooter situation, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy.
- c. Disruption of Services due to Covid-19, supply chain disruptions, and public health. Fireworks displays and related events are prone to cancellation due to the ongoing and unforeseeable nature of the Covid-19 pandemic and related health issues, government intervention (such as stay-at-home orders or restrictions on gatherings), and unavailability of supplies and personnel. As such, Seller will work with all customers to ensure a timely and safe display, but due to circumstances outside Seller's and Buyer's control, certain fireworks displays may have to be cancelled or rescheduled with limited notice. Each Party's obligations to perform hereunder will be excused in the case of a Force Majeure Event, which is defined to include (but is not limited to) supply chain disruptions which prevent Seller from obtaining the necessary materials to perform the Display; medical conditions which result in quarantine or similar limitations, or restrictions on travel or congregation in the metropolitan area where the Display is scheduled to be held; and death, serious illness or incapacity of one or more of the display Shoot Team member(s) which renders it impossible, unsafe, or not reasonably practical for the Shoot Team to perform the display.

A governmental or municipal Buyer, who in its discretion and control, acts or adopts a restriction on public gatherings shall not be relieved of its obligations under the Force Majeure provisions of this Agreement. A Buyer who anticipates any such restriction or potential cancellation shall immediately notify and contact Seller to discuss alternative arrangements.

- d. Unless specified above: Displays postponed to an alternate date will be charged and additional 15% of the total contract price for additional expenses incurred in presenting the display on an alternate date; for Displays canceled and not rescheduled within the same calendar year, Seller shall be entitled to 20% of the contract price for out-of-pocket expenses incurred in preparation for the display.

V. INSURANCE and LIMITATIONS OF LIABILITY

- a. 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 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's 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 for 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.

b. Separate from, and in addition to Seller's insurance of the fireworks, Buyer agrees to provide, at its expense, a general liability policy or "special event" insurance coverage, in an amount sufficient to meet or exceed municipality or industry standards and all applicable requirements of local, state, and federal law. For any injury or property claims that may arise during the course of Buyer's event, not arising out of Seller's acts or the performance of the fireworks, Buyer's insurance shall be primary. Buyer agrees to defend, indemnify, and hold harmless the Seller and its agents and employees from and against all such claims, costs, judgments, damages and expenses, including reasonable attorney's fees that may or shall arise out of any negligent or wrongful act or omission by the Buyer or third-parties occurring during the course of Buyer's event.

-- c. In no event shall Seller's liability to Buyer 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 of insurance coverage as described in this section. Notwithstanding any provisions to the contrary, in no event shall either Party be liable to the other, or to 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.

VI. Each Party has read all of the provisions of this Agreement, they understand all of its provisions, and agree to be bound by them. This written contract, and its Exhibits, contains the entire agreement of the Parties and modifies and supersedes all prior agreements or negotiations, all of which are merged into and incorporated into this Agreement. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this agreement.

VII. 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 set forth by State and Federal law. 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 written above.

SELLER

BUYER

BY:

ROLE:

J&M Displays, Inc.

BY:

ROLE:

ENTITY:

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



# J&M Displays Proposal for: Village of Hawthorn Woods

## Flight 1

### 3 Inch Color Shells

Quantity Name Rising Effect

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28 Crown to glittering

Category Shell Count: 28

### 4 Inch Color Shells

Quantity Name Rising Effect

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20 Crown to glittering

Category Shell Count: 20

Section Shell Count: 48

## Main Event

### Multi-shell Barrage Units

Quantity Name Rising Effect

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- 6 V shape candle bundle 300 shot - Pink
- 6 V shape candle bundle 300 shot - Red
- 2 Red comets to red dahlia with white strobe 49 shot
- 2 Silver Spinners to Red & Blue 49 shot
- 2 Ghost sweep Blue to Red to white strobe mines 100 shot fan
- 2 Red strobe with white strobe mine 100 shot fan cake
- 2 Red peony with silver palm and blue dahlia with silver palm 50 shot peanuts

Category Shell Count: 4396

### 2.5 Inch Color Shells

Quantity Name Rising Effect

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- 1 Assortment G of 15 pairs (30 shells) J&M Brand Shells ELECTRIC FIRE
- 1 Assortment T of 30 different J&M Brand Shells ELECTRIC FIRE

Category Shell Count: 60

### 3 Inch Color Shells

Quantity Name Rising Effect

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- 1 Assortment C of 20 J&M Brand shells ELECTRIC FIRE
- 1 Assortment Q of 20 different J&M Brand Shells ELECTRIC FIRE
- 1 Assortment T of 20 different J&M Brand Shells ELECTRIC FIRE

Category Shell Count: 60

### 4 Inch Color Shells

Quantity Name Rising Effect

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- 1 Assortment A Of 20 different J&M Brand shells ELECTRIC FIRE
- 1 Assortment K Of 20 different J&M Brand shells ELECTRIC FIRE
- 1 Assortment L of 20 different J&M Brand Shells ELECTRIC FIRE
- 1 Assortment T of 20 different J&M Brand Shells ELECTRIC FIRE

Category Shell Count: 80

Section Shell Count: 4596



# J&M Displays Proposal for: Village of Hawthorn Woods

## Finales

### Multi-shell Barrage Units

| Quantity | Name   | Rising Effect |
|----------|--|---------------|
| 6        | V shape candle bundle 300 shot - Assorted colors |               |

Category Shell Count: 1800

### 2.5 Inch Finales

| Quantity | Name                                    | Rising Effect |
|----------|---|---------------|
| 10       | Color and report 10 Shot finale chain   |               |
| 16       | Red white and blue 10 Shot finale chain |               |

Category Shell Count: 260

### 3 Inch Finales

| Quantity | Name  | Rising Effect |
|----------|---|---------------|
| 8        | Color red white and blue peony 10 Shot finale chain |               |

Category Shell Count: 80  
Section Shell Count: 2140

## Miscellaneous

### Ignition Items

| Quantity | Name                                 | Rising Effect |
|----------|--------------------------------------|---------------|
| 228      | Igniter 2 meter leads                |               |
| 160      | Igniter 3 meter leads                |               |
| 1        | Wire 22 gauge copper duplex 500 foot |               |

Category Shell Count: 0  
Section Shell Count: 0

## 8% Free for Early Payment

### Multi-shell Barrage Units

| Quantity | Name   | Rising Effect |
|----------|--|---------------|
| 2        | Golden tail to golden wave time rain 49 shot fan |               |
| 2        | 1" 100 shot Z Shape - Variegated Comets w/Mine   |               |

Category Shell Count: 298  
Section Shell Count: 298

## 15% Free for Loyalty Program

### Multi-shell Barrage Units

| Quantity | Name   | Rising Effect |
|----------|--|---------------|
| 2        | Super crown with blue stars with mines 49 shot |               |
| 2        | Report with 1 color with silver tail 49 shot   |               |
| 2        | Three layer mine 130 shot fan cake             |               |

Category Shell Count: 456  
Section Shell Count: 456



## 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.

Total Price of Show: **\$18,000.00**

Total Shot Count: 7538

Packing Check: 518

Date of Display: 07/03/23

Customer Number: 10879

### 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.