

RESOLUTION NO. 1240

RESOLUTION APPROVING A SERVICE AGREEMENT WITH J & M DISPLAYS IN CONNECTION WITH THE 2015 HOOVER'S HOMETOWN DAYS CELEBRATION IN THE AMOUNT OF \$40,000.

WHEREAS, the City's premier event of the year is Hoover's Hometown Days; and

WHEREAS, a highlight of past Hoover's Hometown Days Celebrations has been the fireworks displays; and

WHEREAS, the City Council has adopted the final fiscal year 2014-2015 budget; and

WHEREAS, the final fiscal year 2014-2015 budget for Hoover's Hometown Days includes funding for a fireworks display; and

WHEREAS, J & M Displays has submitted a proposed service agreement to provide said services in the amount of \$40,000.00; and

WHEREAS, it is now necessary to approve said agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa that the aforementioned agreement with J & M Displays is hereby approved. Further, the Mayor is directed to execute the agreement on behalf of the City.

Passed and approved this 20th day of October, 2014.

  
\_\_\_\_\_  
Mark Worrell, Mayor

ATTEST:  
  
\_\_\_\_\_  
Matt Muckler, City Administrator/Clerk

## FIREWORKS DISPLAY AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of October, 20 14, by and between J & M Displays, Inc., an Iowa corporation, having its principal place of business at Yarmouth, Iowa, hereinafter referred to as "Seller", and City of West Branch, IA, hereinafter referred to as "Buyer".

Seller shall furnish to Buyer one (1) fireworks display, as per the \$40,000.00 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 August 8th, 2015 at approximately 9:30 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. 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.

\$ 20,000.00 in full by May 1st, 2015 (70 days prior to the event date).  
The Buyer will receive the 8% prepayment bonus product in this fireworks display.

\$ 20,000.00 in full by August 1st, 2015 (30 days prior to event date).  
The Buyer will receive the 5% prepayment bonus product in this fireworks display.

**3. Weather Delay/Cancellation.** If Buyer postpones or cancels the fireworks display after the Seller has arrived on site and began setting up the display, the Buyer shall pay to the Seller the amount of the shoot fee \$4300.00 as payment in full for the postponement/cancellation fee. If the Buyer postpones or cancels the display prior to Seller arriving on site for set up, there will be no charge for rescheduling.

**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 August 6, 2016 or another date as agreed to by both parties. The determination to cancel the fireworks display because of inclement weather or unsafe weather conditions shall rest within the sole discretion of the Seller. In the event the Buyer does not choose to reschedule another date or cannot agree to a mutually convenient date with the Seller, then the Seller shall be entitled to thirty percent (30%) of the contract price for full settlement of this Agreement.

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

Seller agrees to provide, at its expense, public liability and property damage insurance coverage, including spectator 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 naming the Buyer as an additional insured, and providing that the insurer shall not terminate or materially modify such policy without written notice to the Buyer not less than two (2) weeks in advance of such proposed termination or modification. 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, public liability and property damage insurance coverage with a rating by AM Best of A VIII or higher, including spectator coverage 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 naming the Seller as an additional insured, and providing that the insurer shall not terminate or materially modify such policy without written notice to the Seller not less than two (2) weeks in advance of such proposed termination or modification. 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: \_\_\_\_\_  
J & M Displays, Inc.  
SELLER

BY:  \_\_\_\_\_  
BUYER

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