

RESOLUTION 1792

RESOLUTION APPROVING A FIREWORKS AGREEMENT WITH J&M DISPLAYS FOR HOOVER HOMETOWN DAYS.

WHEREAS, the City's premier event of the year is Hoover's Hometown Days. A day that the community recognize the talents and contributions of Our Nation's 31st President of the United States, Herbert Hoover; and

WHEREAS, the fiscal year 2019 -- 2020 budget for Hoover's Hometown Days include funding for entertainment and services for the event; and

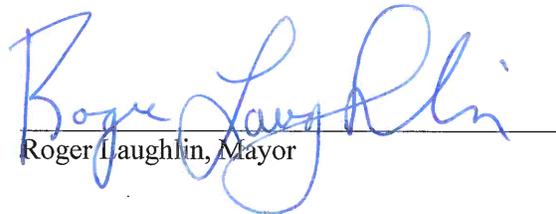
WHEREAS, J&M Displays, a firm that has provided this service to the City in the past, and have submitted a proposed service agreement in the amount of \$25,000 to provide a fireworks display in the Herbert Hoover National Historic Site. J&M Displays, also understands and is responsible for submitting all documentation required to gain a Special Use Permit from the National Park Service; which will be needed to provide a fireworks display in the National Park; and

WHEREAS, it is now necessary to approve said agreement.

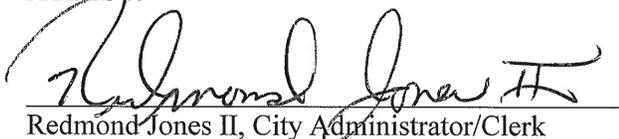
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of West Branch, Iowa, that the aforementioned agreement are hereby approved. Further, the Mayor is directed to execute the agreements on behalf of the City.

* * * * *

Passed and approved this 18th day of March, 2019.


Roger Laughlin, Mayor

ATTEST:


Redmond Jones II, City Administrator/Clerk

FIREWORKS DISPLAY AGREEMENT

THIS AGREEMENT is made and entered into this 18 th day of March, 2019, 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, hereinafter referred to as "Buyer".

Seller shall furnish to Buyer one (1) fireworks display, as per the \$25,000.00 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 3rd, 2019 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.

\$ 5,000 in full by June 1st, 2019 (70 days prior to the event date).
The Buyer will receive the 8% prepayment bonus product in this fireworks display.

\$ 20,000 in full by July 1st, 2019 (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 September 2 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.

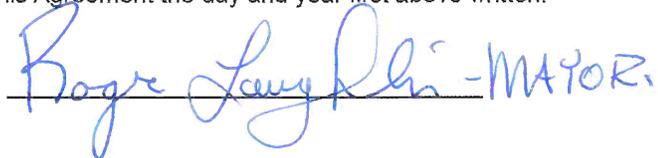
7. No representation of affirmation of fact, including but not limited to statement regarding capacity, suitability for use, or performance of equipment or products shall be, or deemed to be a warranty by the Seller for any purpose, nor give rise to any liability or obligation of the Seller whatsoever, 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: 
J & M Displays, Inc.
SELLER

BY: 
BUYER

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