

RESOLUTION 1872

**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 2020 – 2021 budget for Hoover's Hometown Days include funding for entertainment and services for the event; and

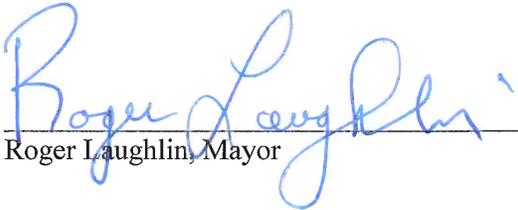
WHEREAS, J&M Displays, a firm that has provided this service to the City in the past, and have submitted a proposed service agreement in the amount of \$25,000 to provide a fireworks display in the Herbert Hoover National Historic Site. J&M Displays, also understands and is responsible for submitting 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 4th day of February, 2020.



Roger Laughlin, Mayor

ATTEST:



Leslie Brick, Deputy City Clerk



FIREWORKS DISPLAY AGREEMENT



THIS AGREEMENT is made and entered into this 4th day of February, 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 City of West Branch, hereinafter referred to as "Buyer".

Seller shall furnish to Buyer one (1) fireworks display, as per the \$ 25,000 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 8, 2020, 2020 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.

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

the sum of \$ 5,000 as a down payment upon execution of this Agreement. The balance of \$ 20,000 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.

\$ _____ in full by _____ (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.

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 Friday, Aug. 7th 2020 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/or demands.

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:

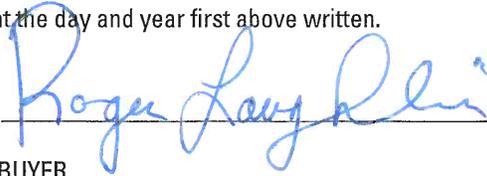
(a) In no event shall Seller be liable to Buyer or any third party for any loss of use, revenue or profit or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether 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 **DISPLAY INFORMATION FORM** with this Agreement so your order is processed accurately.