



FIREWORKS DISPLAY AGREEMENT

SHIPPED DISPLAY AGREEMENT

THIS AGREEMENT is made and entered into this 10 day of January, 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 City of Moberly, hereinafter referred to as “Buyer”.

Seller shall provide to Buyer the display fireworks for one (1) shipped fireworks display, as per the \$ 25,000 program (the “Fireworks Program”) prepared jointly by Buyer and Seller, and which by reference is made a part hereof as Exhibit A.

BUYER AFFIRMATIONS

I, the undersigned Buyer (individually or on behalf of a municipality or licensee), Affirm the following to be true:

- I am the holder of a valid license or permit issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives; or I am the appropriately authorized representative of a municipality that is purchasing the fireworks (initial one);
- I acknowledge and understand that the use of display fireworks is an inherently dangerous activity, and I assume fully responsible for the use of any and all products purchased from J&M Displays;
- I am purchasing the fireworks for my own (or my municipality’s) use in a single fireworks display, and will ensure that no explosive material is transferred to, or acquired by, any other individual or entity;
- I agree to completely and immediately indemnify and hold harmless J&M Displays from any and all claims made by any party, known or unknown at the time of this Agreement, related to the selling, distribution, transfer, manufacture, manipulation, or modification of any explosive material subsequent to my purchase;
- I am aware of, and appropriately trained in, the safety rules and conduct guidelines promulgated by the NFPA, BATFE, and my State and local regulations. I agree to fully comply with and obey all applicable National, State, and local regulations and NFPA guidelines;
- I understand that I am not an employee or agent of J&M Displays or any related entity. I am a customer purchasing product from J&M Displays and am solely responsible for the safe and lawful use of the product.

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

I. LICENSING and PERMITTING

- Buyer affirms that it is a municipality or has a valid license or permit from the Bureau of Alcohol, Tobacco, Firearms & Explosives and waives the services of Seller related to the setup, performance, and teardown of the fireworks display. Buyer agrees to provide a copy of the appropriate paperwork to Seller at the time of signing this Agreement.
- Buyer is solely responsible for obtaining any necessary State or local permit or license, including providing an appropriately licensed lead pyrotechnician, which may be required to perform the display.

II. FIRING OF DISPLAY

- Buyer is solely responsible for providing an appropriate location for the safe setup and discharge of display fireworks. Seller may, at Buyer’s request, aid in determining whether a proposed display site is appropriate for the items and dimensions selected by Buyer, but Buyer remains solely responsible for the selection and appropriate use of firework materials at its display.
- Buyer is solely responsible for providing the appropriate personnel and for the setup, operation, performance, and teardown of the fireworks display in accordance with all applicable Federal, State, and local laws and regulations and NFPA 1123. Buyer agrees to comply with all local, state, and federal regulations and guidelines pertaining to the storing and displaying of fireworks.
- Unless otherwise provided for in the Fireworks Program, Buyer is solely responsible for providing appropriate equipment to lawfully and safely perform the fireworks display.

- d. Buyer is solely responsible for providing appropriate, lawful, storage of the firework display materials before, during, and after the display. Buyer may, subject to Seller's agreement, make arrangements with Seller for the return of any unfired explosive materials after the display, but Buyer remains responsible for the appropriate storage of those materials until Seller agrees to take possession.

III. 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 shipment. 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.
- \$25000 _____ in full by April 15 (70 days prior to the shipment date). The Buyer will receive 8% prepayment bonus product in this fireworks display.
- \$ _____ in full by _____ (30 days prior to the shipment date). The Buyer will receive 5% prepayment bonus product in this fireworks display.

IV. 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.

V. POSTPONEMENT/RESCHEDULING

- a. Buyer is solely responsible for any decisions regarding postponement or cancellation of the fireworks display. If Buyer believes it is unable to appropriately store the display fireworks due to a postponement, Buyer should notify Seller at the soonest opportunity to determine if alternative storage can be arranged. Seller is under no obligation to provide storage to Buyer in the event of a postponement or cancellation, but agrees to work with Buyer to help ensure appropriate storage.

VI. INSURANCE and LIMITATIONS OF LIABILITY

- a. Buyer agrees to provide, at its expense, general liability insurance coverage in an amount not less than \$1,000,000.00, and within two (2) weeks prior to the date of the fireworks shipment, shall submit to Seller a certificate of insurance identifying Seller as an additional insured.
- b. Buyer agrees to provide, at its expense, any workers compensation insurance required in Buyer's State or locale. At no time will Buyer, or Buyer's employees, owners, volunteers, or personnel be considered employees of Seller.
- c. The Buyer agrees to defend, indemnify, and hold harmless the Seller 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 claim for injury or damage related to the fireworks display performed by the Buyer. The Buyer agrees to give the Seller prompt notice of any claims or demands.
- d. Separate from, and in addition to Buyer's insurance of the fireworks event, Seller agrees to maintain, at its expense, a general liability policy sufficient to meet or exceed municipality or industry standards and all applicable requirements of local, state, and federal law and which shall be applicable to any claims of negligent or wrongful act or omission by the Seller.
- e. Buyer agrees that with respect to any losses covered by, or required to be covered by, insurance under the terms of this Agreement, other than those losses caused by the Seller's gross negligence or intentional acts,

Buyer hereby waives and releases Seller, its officers, directors, employees and agents, from any and all claims and liability or responsibility with respect to such losses. Buyer further agrees that its insurance companies shall have no right of subrogation against Seller on account of this release.

f. 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.

VII. 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.

VIII. 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: _____

BY: _____

ROLE: _____

ROLE: _____

J&M Displays, Inc.

ENTITY: _____