

FIREWORKS DISPLAY SERVICES AGREEMENT

This **Fireworks Display Agreement** ("Agreement") is made and entered into effective as of _____, 2022 ("Effective Date"), by and between J & M Displays, Inc. ("J & M"), an Iowa corporation, having its principal place of business at Yarmouth, Iowa, and Milwaukee County Parks, ("Milwaukee Parks") with its principal place of business at 9480 West Watertown Plank Road, Wauwatosa, Wisconsin.

RECITALS

WHEREAS, Milwaukee Parks seeks to engage J & M to perform the services described within this Agreement based on the terms and conditions set forth in this Agreement; and

WHEREAS, J & M possesses the requisite skills, training and experience to perform the services called for under this Agreement and wishes to perform the services based on the terms and conditions of this Agreement; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution _____ on _____, has authorized the Milwaukee County Parks to enter into this agreement with J&M for and on behalf of Milwaukee County.

NOW, THEREFORE, in consideration of the mutual covenants, promises and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge J & M and Milwaukee Parks agree as follows:

I. SERVICES

A. Description of Services or Scope of Work

1. J & M agrees to furnish all necessary fireworks display material and personnel for an annual fireworks display on July 3rd, 2022 (the "Display") in accordance with the program approved by Milwaukee Parks. J & M agrees to comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks.
2. The Display will be launched from barges located in Lake Michigan just off the shore of Veterans Park, Milwaukee WI. Pyrotechnics will be fired using a state of the art electronic system that will allow for excellent timing when firing complimentary items from different locations. The show will last approximately 40 minutes and will include the synchronized firing of shells to highlight precision timing, simultaneous mass effects, and volleys of complimentary shells to accentuate the artistry of the Display. The show will also include a mid-show "false finale" as well as a long build up towards the main grand finale.

II. TERM AND PAYMENT

B. Term

This Agreement will commence on the Effective Date and remain in full force and effect until J & M fulfills its performance of the Display scheduled to take place on July 3, 2022 ("the Display Date").

C. Payment

- i. Milwaukee Parks will pay J & M an aggregate fee of \$337,500.00 for the Display.
- ii. Milwaukee Parks will pay J & M pursuant to the following payment schedule:
 1. 25% of the balance payable upon execution of this Agreement; and
 2. 75% of the balance payable not more than thirty (30) days after the Display Date.
- iii. Milwaukee Park's obligation to pay J & M pursuant to the payment schedule is conditioned upon J & M sending invoices to Milwaukee Park thirty (30) days in advance of the due date of each payment indicated on the payment schedule and upon J & M performing its other obligations under this Agreement. Invoices must include J & M's federal tax identification number, an invoice number, and language identifying that invoice in relation to the total number of invoices (if any), for example, "Invoice 1 of 2."

D. Invoicing

Milwaukee County does not pre-pay for services; however, due to the nature of this service the Milwaukee County Board of Supervisors has approved a down payment in the amount of twenty-five percent (25%) of the aggregate fee to be paid upon contract execution. Contractor must submit invoices to the County which include the following information:

- i. A reference to this Agreement, including the Effective Date;
- ii. The name and address of the Contractor;
- iii. An invoice number and invoice date;
- iv. Remittance name and address;
- v. Name, title, and phone number of Contractor's contact for notification in the event of a defective or inaccurate invoice;

- vi. Deliverables billed for, referencing the Scope of Work;
- vii. The date due; and
- viii. The amount billed.

Invoices must be submitted to:

Office of Comptroller
Milwaukee County
Courthouse-Room 301
901 N 9th St.
Milwaukee, WI 53233
APinvoices@milwaukeecountywi.gov
With a copy to:

The County reserves the right to use a purchasing card to pay invoices.

E. Invoice Disputes

If Milwaukee Parks disputes any invoiced amount, Milwaukee Parks will provide written notice of such dispute to J & M as to the nature of the disputed charges and the reason for Milwaukee Parks disagreement. J & M shall respond to such written notice by providing documentation in reasonable detail for the disputed charges. The parties shall make all reasonable attempts to resolve the dispute as amicably as possible within thirty (30) day from the date Milwaukee Parks sent the dispute notice to J & M.

F. Weather Delay/Cancellation

Neither party will be liable to the other for failure or delay in performing its obligations under this Agreement where such failure by such party is due, in whole or in part, to war or the effects of war, terrorism, blockade, revolution, insurrection, civil commotion, riot, mobilization, strike, labor trouble, work stoppage, lockout, act of God, plague, or other epidemic, fire, flood, extreme weather, acts of government or the public enemy, any labor, material, or transportation shortage or curtailment, governmental regulation, or to any other similar or dissimilar cause or causes beyond the control, or without the fault or negligence of, the defaulting party. Notwithstanding the foregoing.

Should inclement weather prevent the Display from occurring on the Display Date, Milwaukee Parks will be liable for the incurred costs associated with setting up and disassembling the Display (i.e. labor, permits, and barge rental), if applicable, however, J & M shall refund all fees paid by Milwaukee Parks associated with the material cost of the pyrotechnics. In lieu of a refund, however, the parties may agree in writing to reschedule the Display for an alternate date during the term of this Agreement. If this Agreement is extended for any subsequent and consecutive renewal period pursuant to Section II.A, Milwaukee Parks may apply any such refund amounts against fees owing during such renewal period.

III. TERMINATION

G. Termination for Breach

Each party has the right to terminate this Agreement if the other party breaches or is in default of any obligation under this Agreement and such default is incapable of being cured or which, being capable of cure, is not cured within fifteen (15) days after receipt of written notice of such default.

H. Bankruptcy

Either party may terminate this Agreement if the other party becomes insolvent or becomes subject to any proceeding under any bankruptcy, insolvency, or liquidation law.

I. Changes in Law

Milwaukee Parks may terminate this Agreement at any time upon no less than fifteen (15) days' prior written notice to J & M if there is a change in any applicable law, rule, regulation, or guideline by any government agency or regulatory authority that materially and adversely affects, in the good faith opinion of Milwaukee Park's legal counsel, Milwaukee Park's obligation to perform hereunder. Such termination shall be effective as of the date specified in Milwaukee Parks notice to J & M.

J. Payments as a Result of Termination

If either party terminates this Agreement, Milwaukee Parks may cancel future payments; demand reimbursement for past payments not earned by J & M's performance, and seek other remedies. J & M shall return all past payments made by Milwaukee Parks which J & M has not earned by its performance under this Agreement within thirty (30) days of Milwaukee Park's written demand.

IV. INSURANCE

K. General

J & M shall obtain a policy of commercial general liability insurance (the "Insurance Policy") insuring Milwaukee Parks against loss or

liability arising out of or related to any activities associated or deemed associated with this Agreement. The Insurance Policy must include coverage for personal injury, including bodily injury, and property damage with a combined single liability limit of not less than ten million dollars (\$10,000,000). The minimum \$10,000,000 combined single limit or per occurrence limit can be provided by a commercial general liability policy and an excess liability or umbrella policy. The Insurance Policy must (a) name Milwaukee Parks as loss payee or as an additional insured, (b) be maintained continuously by J & M through the term of this Agreement at J & M's sole expense, (c) be in a form and issued by an insurer reasonably acceptable to Milwaukee Parks, and (d) provide that it will not be canceled or materially changed without thirty (30) days' prior written notice to Milwaukee Parks. J & M shall also maintain an automobile liability policy with minimum limits of \$10,000,000 per accident. Such automobile liability limit may be provided by a combination of a business automobile policy and an excess or umbrella policy, J & M shall also maintain statutory worker's compensation coverage including endorsement WC-Longshore/Harbor Worker's Act and minimum employer's liability limits of \$1,000,000. J & M will provide Milwaukee Parks with a Certificate of Insurance evidencing all Insurance Policies. In the event of a claim by Milwaukee Parks, the applicable deductible shall be paid by J & M.

Subcontractors to be Insured

J & M shall require all of its subcontractors to carry insurance coverage and limits as agreed to and approved in writing by Milwaukee Parks. All subcontractors must also endorse Milwaukee Parks as an additional insured under its commercial general liability and excess liability or umbrella policies and provide Milwaukee Parks with a Certificate of Insurance evidencing all insurance Policies.

V. REPRESENTATIONS AND WARRANTIES

L. General

Each party to this Agreement warrants and represents to the other as follows: (a) it has the full power and authority to enter into this Agreement and to carry out its obligations hereunder; (b) the individual signing this Agreement on its behalf is duly authorized to do so; and (c) the execution and performance of this Agreement by it will not violate its organizational documents or bylaws or any material contract or other instrument to which it is a party or by which it is bound.

M. Goodwill and Public Opinion

J & M understands and acknowledges that the value of this Agreement to the other is based on the goodwill generated in the community and in a positive public opinion of the parties hereto. J & M warrants that its respective officers, directors, employees, agents, and subcontractors will conduct themselves in such a manner that there is no material or adverse change in the community goodwill or positive public opinion concerning the representative party, and further, that its officers, directors, employees, agents, and subcontractors will conduct themselves as good citizens at all times and will not commit crimes, misdemeanors, acts or offenses that may subject themselves to criminal or civil liability or professional disrepute. In the event of breach of this warranty, Milwaukee Parks may exercise any of its rights under this Agreement, including terminating this Agreement and obtaining a refund of any fees.

VI. INDEMNIFICATION

N. General

J & M will defend, indemnify and hold harmless Milwaukee Parks and its employees, officers, directors, agents, and its affiliates (each an "indemnified Party") against all direct claims, losses, damages, and appellate levels that Indemnified Party may sustain or incur as a result of any acts or omission of J & M or any of J & M's directors, officers, employees, agents or subcontractors, including, but not limited to: (1) the negligent acts, omissions, or willful misconduct of J & M, and/or its subcontractors, (2) the breach by J & M of any obligations or warranties under this Agreement, (3) J & M or its subcontractors violation of any applicable law, statute or regulation in connection with its performance under this Agreement, (4) J & M's violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with its performance under this Agreement, (5) any death, bodily injury of any person or damage to real and tangible personal or property caused or incurred by J & M's its subcontractors' performance of their obligations under this Agreement; and (6) any third party claims resulting from the breach of J & M's respective obligations under this Agreement. J & M may, at its option, conduct the defense in any third party action arising under this Section VI and Milwaukee Parks promises to cooperate with such defense, provided J & M reasonably consults with Milwaukee Parks on any settlement. Notwithstanding the foregoing, Milwaukee Parks may, at its own expense, assist in such defense if it so chooses, provided that J & M will control such defense and all negotiations relative to the settlement of any such claim.

VII. MISCELLANEOUS PROVISIONS

O. Governing Law

1. This Agreement will be construed as having been made in, and will be governed in accordance with the laws of, the State of Wisconsin, excluding any applicable conflict of law provisions.
2. Both parties will comply with all laws which are applicable to the Display and their respective performance under this Agreement. Upon Milwaukee Parks' request, J & M will supply Milwaukee Parks with evidence of its compliance with law, and upon reasonable notice, Milwaukee Parks may inspect J & M's records for the purpose of determining such compliance.

P. Entire Agreement; Amendment

This Agreement, including the exhibits hereto, constitutes the entire agreement between Milwaukee Parks and J & M pertaining to its subject matter. This Agreement supersedes all prior and contemporaneous oral or written representations and agreements between the parties. This Agreement may not be modified, amended, or waived except by a written document signed by both parties. Any rights and

remedies stated herein are cumulative and are in addition to any other rights or remedies available to parties.

Q. Independent Contractors

Milwaukee Parks and J & M are independent contractors. Neither party has the authority to act, or attempt to act, or represent itself, directly or by implication, as an agent of the other, or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the other.

R. Assignment

J & M shall not assign its rights nor delegate its duties under this Agreement without Milwaukee Parks' prior written consent.

S. Severability

The provisions of this Agreement will be deemed severable, and if any provision of this Agreement is held illegal, void or invalid under applicable law, such provision may be changed to the extent reasonably necessary to make the provision legal, valid and binding. If any provision of this Agreement is held illegal, void or invalid in its entirety, the remaining provisions of this Agreement will not be affected, but will remain binding in accordance with their terms.

T. Survival of Obligations

Upon termination of this Agreement, the provisions of Sections VI (INDEMNIFICATION), IV (INSURANCE), VII (MISCELLANEOUS PROVISIONS) will survive such termination.

U. Attorneys' Fees

In any action brought to enforce this Agreement or to determine any matter in controversy regarding this Agreement, the prevailing party shall be entitled to recover such sums as the court may adjudge reasonable as attorneys' fees, including attorneys' fees on appeal or petition for review.

V. County Rights of Access and Audit

The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations concerning fraud, waste, and abuse) of the Milwaukee County Code of General Ordinances.

W. Notices

All notices given under this Agreement must be in writing and must refer to this Agreement. Such notices will be effective upon delivery if delivered in person or upon mailing if mailed at a U.S. Post Office, first class mail, postage prepaid, to the address listed below, or at such other addresses as either party provides by written notice to the other party.

Milwaukee County Parks
9480 West Watertown Plank Road
Wauwatosa, WI 53226
Attention: Executive Director
Email Address: Guy.Smith@milwaukeecountywi.gov

J & M Displays, Inc.
18064 170th Avenue
Yarmouth, IA 52660
Attention: Tim Zurmuehlen
Email Address: timz@jandmdisplays.com

X. Interpretation

Section headings are provided for convenience only and are not to be used to construe or interpret this Agreement. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." J & M and Milwaukee Parks may be referred to in this Agreement, individually, as "party" and, collectively, as "parties."

Y. Confidentiality

J & M will maintain the confidentiality of all non-public information about Milwaukee Parks received by J & M, including, without limitation, information regarding Milwaukee Parks, its affiliates, employees, and customers, and J & M will not disclose such information to any third party without Milwaukee Parks's prior written consent. Should J & M be obligated to disclose Milwaukee Parks or its affiliates', employees' or customers' non-public confidential information to a court of competent jurisdiction or other similar requirement of governmental agency, J & M shall promptly notify Milwaukee Parks of such requirement in order for Milwaukee Parks to file a timely

notice of protection or objection. Upon termination of this Agreement, J & M shall return or destroy, at Milwaukee Park's sole election, any confidential information of Milwaukee Parks, its affiliates, employees or customers that J & M receives under this Agreement.

Z. Use of Name and/or Trademarks

J & M will not disclose the existence of this Agreement or the business relationship between Milwaukee Parks and J & M to any third party, without prior written approval from Milwaukee Parks, which approval may be withheld at Milwaukee Parks's sole and complete discretion. This restriction includes using Milwaukee Parks's name or Milwaukee Parks's trademarks. J & M will not use Milwaukee Parks's name or trademarks in conjunction with any other clients of J & M, any client list, advertisements, meeting, news releases or releases to any professional or trade publications without the prior written consent of Milwaukee Parks. In addition, the prior written approval of Milwaukee Park's Media Relations department is necessary for any press release that J & M seeks to release which contains Milwaukee Park's name or trademark.

AA. Equal Opportunity

As and to the extent required by federal law, the parties will to the extent applicable to each party be bound by and comply with the provisions of the following, all of the following being hereby expressly incorporated by reference as though fully set forth herein: (a) Executive Order No. 1 1246, as amended, the Equal Employment Opportunity clause set forth in that Executive Order, and the statutes, rules, regulations and orders issued or adopted pursuant to the foregoing, (b) the Vietnam Era Veterans Readjustment Assistance Act of 1974 and the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended, Executive Order 11701, and the Affirmative Action clause, statutes, rules, regulations and orders issued or adopted pursuant to the foregoing, and (c) the Rehabilitation Act of 1973, as amended, Executive Order 11758, and the Affirmative Action clause, statutes, rules, regulations and orders issued or adopted pursuant to the foregoing.

IN WITNESS WHEREOF, by the signatures of their duly authorized representatives below, J & M and Milwaukee Parks, intending to be legally bound, agree to all of the provisions of this Agreement.

Electronic signatures to follow

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