



MEMORANDUM

TO: Scott Niehaus, Village Manager

FROM: Nicole Aranas, Assistant Village Manager *NA*

DATE: May 18, 2021

SUBJECT: **APPROVAL OF A FIREWORKS DISPLAY AGREEMENT**
LOMBARD PARK DISTRICT – 4TH OF JULY FIREWORKS DISPLAY
REVISED AGENDA UPDATE

Attached please find an amended Fireworks Display Agreement with the Lombard Park District to authorize a fireworks display to take place on July 4, 2021 in Madison Meadow Park. This item has been updated to reflect additional language in Section 20 that provides that in the event of cancellation or rescheduling of the Fireworks display, the Village Manager and the Park District Executive Director shall be authorized to agree upon the date if scheduling does not permit review of a revised contract by the Board of Trustees and Park District Board.

Please let me know if you have any questions or concerns.

2021 LOMBARD FIREWORKS DISPLAY AGREEMENT

This Fireworks Display Agreement (hereinafter referred to as the "Fireworks Agreement") is between the Lombard Park District, an Illinois park district and unit of local government (hereinafter referred to as "Park District") and the Village of Lombard, an Illinois municipal corporation and unit of local government (hereinafter referred to as "Village"). (The Village and the Park District are sometimes referred to herein individually as a "Party" and collectively as the "Parties.") In consideration of the following mutual covenants and agreements, the Park District agrees to allow the Village to construct and operate a fireworks display (hereinafter referred to as the "Fireworks Display") at a site located in Madison Meadow Park, Lombard, Illinois, as designated on Exhibit A, attached to and incorporated as part of this Agreement (hereinafter referred to as the "Fireworks Site").

1. Services. Village shall perform, or cause to be performed, all services generally relating to or affecting the delivery of the Fireworks Display. Village shall discharge, or cause to be discharged, the Fireworks Display in a diligent and safe manner consistent with generally accepted practices in the firework display industry in the United States. The Fireworks Display shall be under the supervision and direction of the Village and not the Park District. The Park District shall have no responsibility for such supervision or direction.
2. Term. Subject to termination as provided in paragraph 15 below, the term of this Fireworks Agreement shall commence on Sunday, July 4, 2021 at 8:00 A.M. and shall end no later than 1:00 A.M. on Monday, July 5, 2021.
3. Construction Drawings. Construction drawings and specifications for placement of a protective fence, mortar holes and ground displays shall be provided to the Park District for its review and approval four (4) weeks prior to the commencement of any construction or changes to Madison Meadow Park. Inspection of the Fireworks Site will be made by the Park District and the Village to ensure compliance of construction drawings and specifications with Village ordinances.
4. Village Duty to Procure Vendor for Fireworks Display. The Village shall be responsible, at its sole cost and expense, for the selection and procurement of a vendor to exhibit the Fireworks Display. The Village is responsible for providing a trained and experienced lead pyrotechnician who is properly licensed in the State of Illinois to supervise the Village's setup, discharge, post firing, and cleanup of the Fireworks Display, and shall provide such additional technicians and assistants as may be necessary for the safe and timely setup, discharge, and post-firing clean up of the Fireworks Display. The Village shall pay all wages, federal and state taxes, occupational license tax, benefits, (including unemployment, disability, social security) of said pyrotechnician, additional technicians and any other individuals hired to perform the Fireworks Display, or the costs associated with the Fireworks Display if the Village hires an independent contractor, as opposed to using Village employees, to handle the Fireworks Display. The Village shall indemnify and hold the Park District harmless against any liability for any such payments.

Village shall procure, at its own expense, and timely provide the Park District with evidence of validly existing appropriate fireworks permit for the Fireworks Display as required by law. Village shall, at its own expense, procure and timely provide the Park District with evidence of

all other federal, state, and local permits and licenses necessary for the transportation, storage and discharge of pyrotechnic materials for the Fireworks Display. Village shall be responsible for and shall comply with all laws, rules, ordinances, or regulations of any and all governmental authorities having jurisdiction over the Fireworks Display, including, but not limited to, the Illinois Fireworks Use Act (425 ILCS 35) and the Pyrotechnic Distribution and Operation Licensing Act, 225 ILCS 227. The Village shall have sole and complete responsibility for safety conditions at the Fireworks Site during setup, discharge, and cleanup of the Fireworks Site.

The National Fire Protection Association (NFPA) has developed a code (NFPA 1123) which establishes performance requirements for the Outdoor Display of Fireworks. The following guidelines from the NFPA 1123 indicate the minimum radius of the Fireworks Site, which will be required.

<u>Shell Size</u>	<u>Radius of Fireworks Display for Outdoor Fireworks</u>
3 in. (76 mm)	140 ft. (43 m)
3 in. (76 mm)	210 ft. (64 m)
4 in. (102 mm)	280 ft. (85 m)
5 in. (127 mm)	350 ft. (107 m)
6 in. (152 mm)	420 ft. (128 m)
7 in. (178 mm)	490 ft. (149 m)
8 in. (203 mm)	560 ft. (170 m)
10 in. (254 mm)	700 ft. (214 m)
12 in. (305 mm)	840 ft. (256 m)
12 in. (305 mm)	Approval of authority having jurisdiction

5. Transportation. Village shall be responsible for the timely transportation of all pyrotechnic materials to the Fireworks Site in full compliance with all applicable federal, state, and local regulations and ordinances regarding the transportation of explosive materials. Village shall make no claims against the Park District for any damage or loss relating to the transportation or storage of pyrotechnic materials.

6. Facility Usage. Madison Meadow Park is a public park available for use by the public and not for the exclusive use of the Village or any other groups. However, first priority is given to the Village on the dates, and during the time period, as stated under Section 2, Term.

7. Maintenance. The Village shall keep the Fireworks Site free from waste or nuisance. The Park District shall provide 50-gallon waste containers to be placed at designated sites as determined by the Park District, which upon being filled will be removed by the Park District.

At the conclusion of the Fireworks Display, the Village shall ensure that the Fireworks Site is thoroughly inspected by and that all undischarged pyrotechnic materials and other fireworks-related debris are safely removed from the Fireworks Site and properly disposed of in accordance with all applicable laws, ordinances and regulations. The Village shall also remove, or cause to be removed, all equipment and related materials from the Fireworks Site. Any hazardous materials shall be disposed of in accordance with law.

Madison Meadow Park must be completely cleaned by the Village by 12:00 noon on Monday, July 5, 2021, or in the event the Fireworks Display is rescheduled, by 12:00 noon on the day immediately following completion of the Fireworks Display.

8. Restoration. Maintenance and replacement of any bushes, turf, trees and landscaping due to damage caused by the Fireworks Display shall be completed by the Park District at the Village's sole cost and expense. The Park District shall invoice the Village for the cost to maintain, repair, replace or restore any portion of the Fireworks Site, Madison Meadow Park, or any other property damaged by the Fireworks Display. The Village shall immediately remit payment to the Park District upon receipt of said invoice.

9. Sales and Use Taxes. The Village agrees to pay any and all sales, use or other taxes which may be legally due and owing to any governmental entity.

10. Signs. The Village has the right to erect signs with the approval of the Park District. Local and state laws, rules, regulations, codes and ordinances must be followed with respect to said signs.

11. Insurance. The Village agrees to provide, and shall require any and all vendors of the Village, including but not limited to the vendor selected by the Village to provide the Fireworks Display to provide, insurance as set forth on **Exhibit B** attached hereto and incorporate herein as a part of this Agreement, and will provide proof of such insurance by Monday, May 31, 2021. Failure to provide said insurance by this date may result in the Park District's immediate termination of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Village and any and all vendors of the Village including, but not limited to the vendor selected by the Village to provide the Fireworks Display, shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the Village's activities and obligations pursuant to this Agreement, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, and (ii) is caused in whole or in part by any negligent or wrongful act or omission of the Village, any vendors, subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. As allowed by law, the Village shall similarly protect, indemnify and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Village's breach of any of its obligations under, or Village's default of, any provision of this Agreement.

13. No Permit Fee. The Village will not be assessed a permit fee by the Park District.

14. Relationship of the Parties. Neither Village nor any of its agents, partners, volunteers, vendors or co-venturers are employees or agents of the Park District for any purposes, nor shall any of such persons be entitled to any of the benefits Park District may provide for its employees.

15. Termination. The Park District shall have the right to terminate this Agreement as follows: (i) immediately upon written notice to the Village in the event the Village or its vendor(s) shall fail to procure, maintain, or provide evidence of the insurance required by this Agreement; or (ii) immediately upon the Village's failure to remedy or obtain remedy by its vendor(s) of any breach of any term or condition of this Agreement (other than paragraph 13 regarding insurance) within five (5) days after written notice of such breach is delivered to the Village. In the event of termination under this paragraph 15 or paragraph 20, the Village shall not be entitled to any fees or damages and the Park District shall have no liability associated with said termination.

16. Use of Park District Equipment and Personnel. All Park District equipment will be operated by Park District employees only. Any use of Park District equipment will be on a rental basis per hour for the equipment and the operator. The hourly rate charged by the Park District will be determined by the piece of equipment and the person operating the equipment.

17. Compliance with Laws. The Village shall comply with, and cause all vendors, contractors and exhibitors of the Fireworks Display to comply with all applicable local, state and federal laws, ordinances, codes, rules and regulations.

All Park District Ordinances, which pertain to the Fireworks Display, will be followed. This includes the use of motor vehicles on Park District property. The parking of motorized vehicles on the grass will be limited to the trucks carrying the fireworks. All other vehicles will be parked in the parking lot or on the street.

18. Village Personnel/Village Vendor. The Village will provide the Park District with a list of names of all persons qualified to set off the fireworks. No one whose name does not appear on the list will be allowed behind the fence in the Fireworks Site. Each person shall have the proper identification displayed on his or her person. Anyone in the area in which the Fireworks Display is to be set off without proper identification shall be subject to arrest.

19. Weather Conditions. The Village of Lombard Fire Chief will reasonably determine if conditions are safe to begin the Fireworks Display. If the Lombard Fire Chief determines that the conditions are not safe, the Park District shall reserve the right solely to reschedule the Fireworks Display with the Village.

20. COVID-19 Cancellation/Rescheduling. In light of the COVID-19 pandemic, the Governor of the State of Illinois has imposed, by Executive Order, attendance restrictions on outdoor events, such as the Fireworks Display contemplated by this Fireworks Agreement (the "Attendance Restrictions"). As such, based on the Attendance Restrictions that are anticipated to be in place as of the date and time for the Fireworks Display, as set forth in paragraph 2 above, and the anticipated attendance at the Fireworks Display, either Party may decide to cancel the Fireworks Display, and

terminate this Fireworks Agreement, by giving the other Party a notice of cancelation in accordance with paragraph 24 below. Any such cancelation may also occur as a result of the mutual consent of the Parties. Prior to canceling the Fireworks Display, the Parties shall work in good faith to reschedule said Fireworks Display, to a date and time at which the Attendance Restrictions will allow for the Fireworks Display to take place, based on the anticipated attendance at the Fireworks Display (The "Rescheduled Fireworks Display"), with this Fireworks Agreement remaining in full force and effect relative to any such Rescheduled Fireworks Display. In light of the limited Summer meeting schedules of the Village and the Park District, the Village Manager of the Village and the Executive Director of the Park District, as referenced in Section 23 below, are hereby authorized to agree upon the date and time for any such Rescheduled Fireworks Display, on behalf of the Village and the Park District, respectively.

21. No Waiver of Tort Immunity. Nothing contained herein shall constitute a waiver by the Park District or the Village of any right, privilege or defense which it has under statutory or common law, including but not limited to the Illinois Governmental and Governmental Employees Tort Immunity Act.

22. No Assignments. It is understood and agreed that the Park District is contracting with Village and relying up its representations set forth herein. Accordingly, Village shall not assign any of its interests under the Agreement to any third party. Notwithstanding the foregoing, the Village shall be entitled to hire a contractor/vendor to coordinate and operate the Fireworks Display on its behalf.

23. Severability and Waiver. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either Party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, condition or right as respect further performance.

24. Notices. All notices, covenants, requests, authorization and approvals permitted or required under this Agreement shall be in writing, signed and personally delivered, or sent by registered or certified mail, return receipt requested, to the appropriate individuals on behalf of each Party.

LOMBARD PARK DISTRICT:

Paul Friedrichs
Executive Director
820 South Finley Road
Lombard, IL 60148

VILLAGE OF LOMBARD:

Scott Niehaus
Village Manager
255 E. Wilson Ave.
Lombard, IL 60148

25. Entire Agreement. This Agreement constitutes the sole and only agreement of the Parties with respect to the Fireworks Display and supersedes any prior understanding or written or oral agreement between the Parties respecting the within subject matter. No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

26. No Waiver. No waiver by the Parties of any default or breach of any term, condition or covenant of this agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant.

27. Headings. Headings and paragraph references contained in this Agreement are for convenience only and are not intended to and do not affect the interpretation of the subject matter contained within those sections.

28. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by duly authorized officers thereof as of the date indicated below.

LOMBARD PARK DISTRICT

VILLAGE OF LOMBARD

By _____
Jim Scalzo
President

By _____
Keith Giagnorio
Village President

Attest:

Attest:

Paul Friedrichs
Secretary

Elizabeth Brezinski
Village Clerk

EXHIBIT B

Insurance and Indemnification. Village and its vendors shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Village shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$5,000,000 each occurrence, and including liability arising out of pyrotechnic/fireworks displays. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from pyrotechnic/fireworks displays, premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Park District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of Village's insurance and shall not contribute with it.

B. Business Auto and Umbrella Liability Insurance

Village shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Village shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Village waives all rights against the Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Village's activities.

D. General Insurance Provisions

1. Evidence of Insurance

Village shall furnish the Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested.

Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Village's obligation to maintain such insurance.

The Park District shall have the right, but not the obligation, of prohibiting Village from entering the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements and is received and approved by the Park District.

Failure to maintain the required insurance may result in termination of this Agreement at the Park District's option.

Village shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

3. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Park District.