


**FIRST AMENDMENT TO AGREEMENT BETWEEN JOHNNY ROCKETS FIREWORKS  
DISPLAY, CO. AND WHEATON PARK DISTRICT**

 This First Amendment ("Amendment") is made and entered into this 01 day of FEB., 2022, by and between Johnny Rockets Fireworks Display, Co., an Illinois corporation ("Johnny Rockets") and Wheaton Park District, an Illinois park district and unit of local government ("Park District"), and amends, modifies, and supplements, in certain respects, that certain Agreement between Johnny Rockets and the Park District dated January 4, 2019, ("Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**RECITALS**

WHEREAS, Johnny Rockets and the Park District are parties to an Agreement regarding certain Independence Day Celebration fireworks display services for a three year period covering 2019, 2020, and 2021; and

WHEREAS, the Independence Day Celebration fireworks display was cancelled in 2020 due to the ongoing COVID-19 pandemic; and

WHEREAS, the parties desire to honor the three year commitment set forth in the original Agreement, and, as a result, seek to amend the Agreement to extend the term for calendar year 2022 to replace the year of the Agreement (calendar year 2020) that was cancelled due to the COVID-19 pandemic; and

WHEREAS, the parties have determined that it is in their respective best interests to amend the Agreement on the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree to the following:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein by reference as though fully set forth in this Section 1.
2. Term. Notwithstanding anything to the contrary set forth in the Agreement, the term of the Agreement is extended for an additional year (2022). Any references to the year 2020 shall be replaced with 2022, if and as appropriate.
3. Dates and Times. Specific dates and times for the 2022 Independence Day Celebration fireworks display shall be mutually agreed to by and between the parties.
4. Fees for Services. Fees for the 2022 Independence Day Celebration fireworks display services shall be twenty-three thousand dollars (\$23,000.00).

5. Counterparts. This Amendment may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute but one and the same instrument. In the event any signature is delivered by facsimile or by e-mail delivery of a scanned .pdf file, such signature shall create a valid and binding obligation of the party with the same force and effect as if the facsimile or scanned .pdf signature page were an original thereof.

6. Entire Agreement; Modification. All other terms and conditions contained in the Agreement remain unchanged. The Agreement and this Amendment contain all of the terms and conditions agreed on by the parties with respect to the subject matter hereof, and no other alleged communications or agreements between the parties, written or otherwise, shall vary the terms hereof. Any modification of the Agreement or this Amendment must be in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth below.

JOHNNY ROCKETS FIREWORKS DISPLAY, WHEATON PARK DISTRICT  
CO.

By: Tom Schuly

Its: vp d/p

Attest: Ashlee A. Ad

Its: \_\_\_\_\_

Date: 09 Feb. 2022

By: M. Bernard

Its: Executive Director

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

Date: 2/11/22

## FIREWORKS DISPLAY PERFORMANCE AGREEMENT

This FIREWORKS DISPLAY PERFORMANCE AGREEMENT ("Agreement") is entered this 04 January 2019 by and between Johnny Rockets Fireworks Display Company ("Johnny Rockets") and The Wheaton Park District ("Customer").

In consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Johnny Rocket Services. Johnny Rockets hereby agrees to provide the fireworks display performance of services (the "Display Services") at the time and location and in the manner set forth in the attached Exhibit A or B (Bid Proposal), which is incorporated herein by reference and made a part hereof. In the event of a conflict of any of the terms of this Agreement and the terms of the attached Exhibit A or B (Bid Proposal), the terms of this Agreement shall govern. Subject to the additional terms and conditions set forth elsewhere herein, Johnny Rockets shall perform its duties and obligations hereunder in accordance with the following terms:

(a) Materials and Personnel. Johnny Rockets shall supply, at its sole cost and expense, all fireworks and related launch materials and all personnel required in connection with the performance of its duties hereunder.

(b) Licenses and Permits. Johnny Rockets shall obtain and maintain all necessary licenses, permits and approvals which are required for the performance of its obligations hereunder;

(c) Cooperation with Customer. Johnny Rockets shall provide all necessary personnel and assistance required to reasonably assist Customer with the performance of its obligations set forth herein.

2. Customer's Duties and Responsibilities. Subject to the additional terms and conditions set forth elsewhere herein, Customer shall perform its duties and responsibilities hereunder in accordance with the following terms:

(a) Fireworks Personnel. Customer acknowledges and agrees that Johnny Rockets and its authorized personnel shall be solely responsible for the handling of any and all fireworks materials to be utilized in connection with the Services, and that Customer, its agents, affiliates, employees and personnel are strictly prohibited from handling any such materials.

(b) Designation of Launch Site, Fallout Area, Viewing and Parking Areas. Customer agrees to provide all necessary personnel and assistance and to fully cooperate with Johnny Rockets to designate and determine which areas will serve as: (i) the launch site at which the Display Services will be performed (the "Launch Site"); (ii) the areas surrounding the Launch Site that will be designated as fallout areas (the "Fallout Areas"); and (iii) the appropriate viewing and parking areas (the "Public Areas") at which spectators may be present during the performance of the Display Services, and which Public Areas must at all times be at a safe distance, as determined by Johnny Rockets in consultation with any applicable fire protection agency or governmental representatives, from the Launch Site and Fallout Areas. Johnny Rockets shall not bear any responsibility for any damage to persons or property located in and around the Launch Site, Fallout Areas, or Public Areas arising from or in connection with Johnny Rockets' performance of the Display Services hereunder, unless such damage is the result of the negligence or willful misconduct of Johnny Rockets or its personnel.

(c) No Unauthorized Personnel in Launch Site and Fallout Area. Customer acknowledges and agrees that nobody besides Johnny Rockets and its authorized personnel and other authorized personnel from any fire protection agency or governmental authority shall be present at any time in either the Launch Site or Fallout Area during the performance of the Display Services.

(d) Customer's Responsibility to Provide Security. Customer acknowledges and agrees that it is solely responsible for providing a sufficient number of police and/or other security personnel and all appropriate security fences, barricades or other security apparatus necessary to ensure the appropriate level of protection and security of the Launch Site, Fallout Area and Public Areas as well as proper crowd control during the performance of the Display Services. Johnny Rockets reserves the right to refuse to perform or to cease performing the Display Services if at any it determines, in its sole reasonable discretion that Customer has failed to properly secure the Launch Site, Fallout Area and/or Public Areas, which such failure shall be treated as a breach of this Agreement by the Customer and for which breach Customer shall bear sole liability.

(e) Disruption of Services Due to Environmental Factors. Customer, in consultation with Johnny Rockets, shall determine if it is necessary to interrupt, cancel or postpone the performance of the Display Services as a result of any unacceptable and/or unsafe environmental condition, including, without limitation, wind, rain, drought, lightning or other such condition which might endanger the safety of persons or property. In the event of any such interruption, cancellation or postponement of the Display Services, the terms set forth in Exhibit A or B (Bid Proposal) with respect to any such occurrence shall govern. However, if Exhibit A or B (Bid Proposal) is silent regarding payment in the event of such interruption, cancellation or postponement of the Display Services, Customer shall pay to Johnny Rockets an amount equal to twenty percent (20%) of the total fee due in consideration of the Display Services, provided, however, that if more than half of the fireworks display portion of the Display Services are actually performed at the time of an interruption of the Display Services, then such performance shall be deemed a full performance of the Display Services and Customer shall pay Johnny Rockets the full amount due hereunder.

(f) Fire Protection Agency and Local Government Involvement. Customer shall assist Johnny Rockets in facilitating the cooperation of local fire protection or other appropriate government agencies whose participation and involvement is required in connection with the performance of the Display Services hereunder.

3. Fees for Services. In consideration of the Services to be provided by Johnny Rockets hereunder, Customer shall pay Johnny Rockets compensation at such times and in such amounts as set forth in Exhibit A or B (Bid Proposal).

4. Insurance. Each party shall procure and maintain, at its sole cost and expense, policies of comprehensive liability insurance coverage for itself in such amounts as set forth in Exhibit A or B (Bid Proposal) or, if no amount is specified, in such amounts as are necessary to meet or exceed industry standards and all applicable requirements of local, state and federal law. Each party shall furnish to the other evidence of such insurance coverage upon request. Customer, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Johnny Rockets. Johnny Rockets' liability insurance shall be primary insurance as respects the Customer. Any insurance or self-insurance maintained by the Customer shall be excess of Johnny Rockets' insurance and shall not contribute with it.

5. Relationship of Parties. Customer shall retain Johnny Rockets only for the purposes and to the extent set forth in this Agreement. Johnny Rockets, its personnel and staff shall be retained as independent contractors and shall not be considered under the provisions of this Agreement or otherwise as having employee status. Johnny Rockets shall be responsible for the payment of all taxes and withholdings with respect to payments it receives in connection with this Agreement.

6. Term and Termination. (a) The term of this Agreement shall commence upon the execution hereof and shall continue in full force and effect until such time as both parties hereto have satisfied their respective obligations hereunder.

(b) Notwithstanding the immediately preceding subsection, either party shall have the right to terminate this Agreement in the event the other party commits a material breach of any provision of this Agreement and fails to promptly cure such breach following receipt of notice from the other party that such breach has occurred.

(c) Termination of this Agreement for any reason shall discharge only those obligations that have not accrued as of the effective date of termination. Any right or duty of the parties based on either the performance or breach of this Agreement prior to the effective date of termination shall survive the term of this Agreement.

7. Assignment. This Agreement shall not be assigned by one party without the prior written consent of the other party hereto.

8. Waiver. No waiver by a party of a right or breach under this Agreement shall be effective unless in writing and any such waiver shall not be deemed a waiver of any subsequent right or breach whether of a similar nature or otherwise.

9. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to conflict of law provisions. The parties agree that any action or proceeding to enforce or arising out of this Agreement shall be commenced in the United States District Court, in Chicago, Illinois. The parties consent to such jurisdiction, expressly agree that venue will be proper in such courts and waive any objections based upon Forum Non Conveniens. The choice of forum set forth in this section shall

not be deemed to preclude the enforcement of any action under this Agreement in any other jurisdiction.

10. Notice. Any notice pertaining to the Agreement shall be in writing, addressed to the other party at the address set out below, or such other address as provided by notice and any notice shall be sent by Federal Express or similar overnight mail service or by facsimile to:

If to Johnny Rockets:      Johnny Rockets Fireworks Display Company  
3240 LOVEROCK  
Steger, Illinois 60475  
708-845-2324  
Attention: Tom Schulz

If to Customer:  
The Wheaton Park District  
855 W. Prairie Ave.  
Wheaton, Illinois 60187

11. Severability. If any provision of this Agreement or portion thereof should be declared invalid for any reason, the invalid provision or portion hereof shall be deemed omitted and the remaining terms shall nevertheless be carried into effect,

12. Counterparts. This Agreement may be executed in counterparts, any of which need not contain the signature of more than one party, but which counterparts taken together shall constitute one and the same Agreement.

13. Entire Agreement. This Agreement, including any and all Exhibits attached hereto, constitutes the entire understanding among the parties and supersedes any prior understanding and/or written or oral agreements among them with respect to the subject matter of this Agreement.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

JOHNNY ROCKETS FIREWORKS DISPLAY COMPANY

By: Thomas Schulz - 01/26/2022  
Thomas Schulz / Vice President Johnny Rockets Display Company

[CUSTOMER]

By: [Signature] 2/7/19  
Its: Exm DJ



EXHIBITS

SERVICES: Johnny Rockets Fireworks Display Company hereby agrees to provide the services and materials for The Wheaton Park District. The date of the display will be the 3<sup>rd</sup> day of July of 2019 approximately 9-10 p.m. For the sum of Eighteen Thousand Dollars \$ 18,000.00

Thomas Schulz

Vice President Johnny Rockets Display Co.

Signature

Thomas Schulz 01/26/2022

Customer (Authorized Signature)

Signature

[Signature]

Wheaton Park District (Agent of /Authorized Signature) MULTI - YEAR AGREEMENT: If mutually agreed Johnny Rockets display Company will provide services as listed above with no increase in cost to the Wheaton Park District. Shell counts and service will remain the same. Shell Type will change (i.e. effect or color can change) The quantity of shells in each size range will not change. The savings to the Wheaton park District will be approximately 5 - 10 percent per year. Term of agreement indicated below on this page (Sign next to year, only the years signed are active in this agreement. Line out years not agreed upon by the Wheaton Park District. No price increase or product count change to any of the agreed upon years.

2019

Amount

\$ 18,000

2022

2020

Amount

23,000

2021

Amount

~~18,000~~

6/10/21

Thomas Schulz

Vice President Johnny Rockets Display Co.

Signature

01/26/2022

(Customer) Authorized Signature

Signature

EXHIBIT A TO RIDER

INSURANCE REQUIREMENTS

Johnny Rockets Fireworks Display Company ("Johnny Rockets") shall obtain and maintain insurance of the types in the amount listed below.

A. Commercial General and Umbrella Liability Insurance

Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$3,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this contract/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CD 001 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under insured contract (including the tort liability of another assumed in a business contract).

District, City, and County each 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 District, City, or County.

B. Business Auto and Umbrella Liability Insurance

If applicable, business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$3,000,000 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 or later editions of CA 00 01.

If District has not be included as an insured under the CGL using ISO additional insured endorsement CD 20 26 under the Commercial General and Umbrella Liability Insurance required in this Contract, Johnny Rockets waives all rights against District, City, and County and their officers, offices, employees, volunteers, and agents for recovery of damages arising out of or incident to Johnny Rocket's services.

C. Workers Compensation Insurance

If applicable, 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 in disease.

**D. General Insurance Provisions**

**1. Evidence of Insurance**

At least fifteen (15) days prior to the commencement of the contract or commencement of services whichever first occurs, Johnny Rockets shall furnish 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 thirty (30) days' written notice to District, City, and County prior to the cancellation or material change of any insurance referred to therein. Written notice to District, City, and County shall be by certified mail, return receipted requested.

Failure of District, City, or County to demand such certificate, endorsement or other evidence or full compliance with these insurance requirements or failure of District, City, or County to identify a deficiency from evidence that is provided shall not be construed as a waiver of Johnny Rockets obligation to maintain such insurance.

District, City, and County shall have the right, but not the obligation, of prohibiting Johnny Rockets from beginning work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of this Contract at District's or Chamber's option.

Johnny Rockets shall provide certified copies of all insurance policies required above within ten (10) days of any written require for said copies.

**2. Acceptability of Insurers**

For insurance companies with 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. Cross- Liability Coverage**

If Johnny Rocket's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

**4. Deductibles and Self-Insured Retentions**


Any deductibles or self-insured retentions must be declared to the District, City, and County. At the option of the District, City, or County, Johnny Rockets may be asked to eliminate such deductibles or self-insured retentions as respects the District, City, or County, or their respective officers, officials, employees, volunteers and agents or required to procure a bond

guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

#### 5. Subcontractors

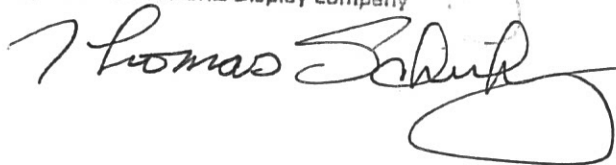
Except as otherwise provided in this section 5, Johnny Rockets shall cause each subcontractor employed by Johnny Rockets to purchase and maintain insurance of the type specified above. When requested by the District, City, or County, Johnny Rockets shall furnish copies of the certificates of insurance evidencing coverage for each subcontractor.

Signature:

  
\_\_\_\_\_  
Johnny Rockets Fireworks Display Company

Date:

~~9/25/18~~



01/26/2022