

City of Mt. Vernon, Iowa

Meeting:	Mt. Vernon City Council Meeting
Place:	Mt. Vernon City Hall Conference Room, 213 First Street NW, Mt. Vernon, Iowa 52314
Date/Time:	October 19, 2016 – 5:30 PM
Web Page:	www.cityofmtvernon-ia.gov
Posted:	October 18, 2016

Mayor:	Jamie Hampton	City Administrator:	Chris Nosbisch
Mayor Pro-Tem:	Marty Christensen	City Attorney:	Robert Hatala
Councilperson:	Paul Tuerler	Assis. Admin/City Clerk:	Sue Ripke
Councilperson:	Scott Rose	Deputy City Clerk:	Marsha Dewell
Councilperson:	Tom Wieseler	Chief of Police:	Doug Shannon
Councilperson:	Eric Roudabush		

A. Call to Order

B. Agenda Additions/Agenda Approval

C. Consent Agenda

Note: These are routine items and will be enacted by one motion without separate discussion unless a Council Member requests separate consideration.

1. Approval of Fireworks Permit – Cornell College

D. Adjournment

Pursuant to §21.4(2) of the Code of Iowa, the City has the right to amend this agenda up until 24 hours before the posted meeting time.

If anyone with a disability would like to attend the meeting, please call City Hall at 895-8742 to arrange for accommodations.

FIREWORKS DISPLAY AGREEMENT

THIS AGREEMENT is made and entered into this 12 day of October, 2016, by and between J & M Displays, Inc., an Iowa corporation, having its principal place of business at Yarmouth, Iowa, hereinafter referred to as "Seller", and Cornell College, hereinafter referred to as "Buyer".

Seller shall furnish to Buyer one (1) fireworks display, as per the \$4000.00 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 October 21st, 2016 at approximately 9:00 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. If Buyer shoots the display, proof of liability insurance is required as stated in paragraph number five (5), proof of auto insurance (if pyrotechnics will be transported), and proof of worker's compensation insurance coverage is required. Buyer agrees to comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks.

2. 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 in full within fifteen (15) days after the date of the fireworks display. 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 within 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.

\$4000.00 in full by August 15th, 2016 (70 days prior to the 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. Weather Delay/Cancellation. If Buyer postpones or cancels the fireworks display after the Seller has arrived on site and began setting up the display, the Buyer shall pay to the Seller the amount of the shoot fee \$310.00 as payment in full for the postponement/cancellation fee. If the Buyer postpones or cancels the display prior to Seller arriving on site for set up, there will be no charge for rescheduling.

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 N/A or another date as agreed to by both parties. The determination to cancel the fireworks display because of inclement weather or unsafe weather conditions shall rest within the sole discretion of the Seller. In the event the Buyer does not choose to reschedule another date or cannot agree to a mutually convenient date with the Seller, then the Seller shall be entitled to thirty percent (30%) of the contract price for full settlement of this Agreement.

5. Insurance. (Check one of the below options):

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 from 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.

_____ Buyer agrees to provide, at its expense, general liability insurance coverage with a rating by AM Best of A VIII or higher, in an amount not less than \$5,000,000, and within two (2) weeks prior to the date of the fireworks display, shall submit to the Seller a certificate of insurance. All entities listed on the certificate of insurance will be deemed an additional insured. Any charge incurred from the insurance provider for additional insurance after insurance application has been sent in, shall be the responsibility of the Buyer. In the event of a claim by Seller, the applicable deductible shall be paid by the Buyer.

The Buyer agrees to hold the Seller harmless and defend Seller from any and all claims brought against the Seller by employees or sponsors of the Buyer for any and all acts of the Buyer relating to the event for which the fireworks is performed.

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) inspection and cleanup of fireworks debris in the fallout zone of the shoot site at first light 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.

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BY: James Oetken
J & M Displays, Inc.
SELLER

BY: Annie Bowman Power
BUYER Assistant Dean of Students
Cornell College

Please include the DISPLAY INFORMATION form with this Agreement so your order is processed accurately.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/18/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Britton Gallagher One Cleveland Center, Floor 30 1375 East 9th Street Cleveland OH 44114	CONTACT NAME: PHONE (A/C, No, Ext): 216-658-7100		FAX (A/C, No): 216-658-7101
	E-MAIL ADDRESS:		
INSURED J & M Displays, Inc. 18064 170th Avenue Yarmouth IA 52660	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Everest Indemnity Insurance Co.		10851
	INSURER B: Everest National Insurance Company		10120
	INSURER C: Maxum Indemnity Company		26743
	INSURER D: Axis Surplus Insurance Company		26620
	INSURER E:		
INSURER F:			

COVERAGES **CERTIFICATE NUMBER:** 1865736703 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC		S18ML00060-161	1/15/2016	1/15/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		S18CA00033-161	1/15/2016	1/15/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$		EXC6028118-01	1/15/2016	1/15/2017	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
D	Excess Liability		EAU791767	1/15/2016	1/15/2017	Each Occurrence \$4,000,000 Aggregate \$4,000,000 Total Excess Limits \$9,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Additional Insured extension of coverage is provided by above referenced General Liability policy where required by written agreement.
FIREWORKS DISPLAY DATE: October 28, 2016
LOCATION OF EVENT: parking lot by baseball field

ADD'L INSURED: The City of Mt. Vernon, Iowa, its employees, volunteers, officers, elected officials, partners, subsidiaries, divisions & affiliates, event sponsors & landowners as their interest may appear in relation to this event; Cornell College (sponsor)

CERTIFICATE HOLDER Cornell College 600 First Street SW Mount Vernon IA 52314	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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