



INDEPENDENCE DAY FIREWORKS DISPLAY AGREEMENT

THIS INDEPENDENCE DAY FIREWORKS DISPLAY AGREEMENT (hereinafter referred to as the "Agreement") is entered into this ____ day of May, 2022, and is by and between Miand, Inc., d/b/a Mad Bomber Fireworks Productions, an Indiana corporation authorized to conduct business in the State of Illinois (hereinafter referred to as the "Contractor"), and the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter referred to as the "Village").

WHEREAS, the Village seeks a duly licensed and qualified contractor to conduct an aerial fireworks display for independence day on July 4, 2022, and the Contractor has submitted a Proposal dated April 18, 2022 to conduct such a display and the Village and the Contractor have determined to enter into this Agreement for the Contractor to provide its services.

NOW THEREFORE, IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, the Contractor and the Village hereby agree as follows:

Section 1. Recital Incorporated. The above recital is incorporated herein as though fully set forth.

Section 2. Time of Display. The Contractor shall provide a twenty-five (25) minute continuous aerial fireworks display (hereinafter referred to as the "Display") at that certain location within the Oak Park River Forest High School Football Field located at 201 North East Avenue, Oak Park, Illinois as designated by the Village (hereinafter referred to as the "Site"). The Display shall begin at approximately 9:15 p.m. on Monday, July 4, 2022 ("Display Date"), and shall continue thereafter for no less than twenty-five (25) minutes with no lags between firing of the individual fireworks devices ("Time of Performance"). The Contractor shall be responsible for the completion of all work within the Time of Performance, notwithstanding any strike or other work stoppage by employees of either the Contractor or of the Village.

Section 3. Contractor Obligations. The Contractor shall be obligated to perform the following:

3.1. The Contractor shall furnish all labor, equipment, supplies, personnel and supervision necessary to provide the Display, as set forth in the proposal attached as hereto and incorporated herein by reference (hereinafter referred to as "Contractor's Proposal"); provided, however, that the Contractor may, at its discretion, substitute fireworks devices of equal or greater value and duration than those devices set forth in the Proposal;

3.2. The Contractor shall, at its sole cost and expense, ensure that all personnel involved in the set-up, operation, removal, and disposal of all fireworks devices involved in the Display be experienced pyrotechnic operations licensed to perform such work under the laws of the State of Illinois;

3.3. The Contractor shall deliver, set up, and execute the Display at the Time of Performance;

3.4. The Contractor shall, upon completion of the Display, cause all equipment associated with the Display to be removed from the Site, and shall remove and properly dispose of all unfired or unexploded material; and

3.5. The Contractor shall conduct the Display in accordance with National Fire Protection Association standards and guidelines for safety.

Section 4. Village Obligations. The Village shall be obligated to perform the following:

4.1. The Village shall furnish an area adequate for the parking of automobiles by spectators of the Display;

4.2. The Village shall, at its sole cost and expense, provide personnel for the purpose of establishing crowd control in the general area of the Site;

4.3. The Village shall, at its sole cost and expense, provide a fire guard during the Contractor's clearing of debris from the site immediately following the conclusion of the Display;

4.4. The Village shall establish a sufficient area for the safe operation of the Display, including, without limitation, establishment of a spectator safety area ("Spectator Safety Area"), which Spectator Safety Area shall include all points within 700 feet of the Site, and which shall be marked with rope or other suitable materials to prevent spectators from entering the Spectator Safety Area. The Village shall also provide adequate police protection to prevent spectators from entering the Spectator Safety Area; and

4.5. The Village shall conduct a search of the fallout area the morning after the Display is conducted to remove all debris resulting from the Display.

Section 5. Intoxicated Employees. The Contractor shall cause any of its employees who are intoxicated or under the influence of a controlled substance to be removed immediately from the Site, and shall prohibit any such employee from performing any work on the Display or at the Site.

Section 6. Termination of Display. The Contractor shall have the right, but not the obligation, to terminate the Display in the event that the unauthorized persons enter the Spectator Safety Area and the Village is unable or unwilling to satisfy its obligations pursuant to Section 4 of this agreement

Section 7. Payment. The Village shall pay the Contractor the sum of \$35,000.00 (hereinafter referred to as the "Fee") for the Display within thirty (30) days after the date of performance of the Display. The Fee includes all applicable federal, state and Village taxes of every kind and nature applicable to the Display. Contractor may charge the Village a service fee equal to 1.5% of the Fee per month if the Village fails to pay the Fee within 60 days after the Contractor conducts the Display.

Section 8. Cancellation; Rescheduling of Display.

8.1. Cancellation by the Contractor. The Contractor shall have, in its sole and absolute discretion, the right to determine that the Display should be cancelled due to inclement or unsafe weather conditions. In the event the Display is cancelled by the Contractor due to inclement or unsafe weather conditions, the Display shall be on July 5, 2022 at 9:15 p.m. (hereinafter referred to as the "Rain Date"). If inclement or unsafe weather conditions prevent the Contractor from performing the Display on either the Display Date or the Rain Date, the Parties shall confer and agree to a manually convenient alternate date (hereinafter referred to as the "Alternate Display Date"), no later than six (6) months after the original Display Date set forth herein to conduct the Display. In the event the Village does not choose to reschedule another date or cannot agree to a mutually convenient date, Village shall pay to Contractor an amount equal to 40% of the Fee as full payment and settlement for the Contractor's costs, damages and expenses.

8.2. Cancellation by the Village. In the event the Display is cancelled by the Village prior to the Display Date, the Village shall pay to the Contractor an amount equal to the Contractor's actual expenses incurred in preparation for the Display, including, but not limited to, material purchases, preparation and design costs, deposits, licenses and employee charges. Contractor will provide documentation of such expenses to the Village upon request for payment. Payment of the Contractor's expenses pursuant to this Section shall be the Contractor's sole remedy for cancellation of the Display by the Village prior to the Display Date.

Section 9. Insurance. Contractor shall at Contractor's expense secure and maintain in effect throughout the duration of this Agreement, insurance of the following kinds and limits set forth in this Section 9. Contractor shall furnish Certificates of Insurance to the Village before starting work or within ten (10) days after the notice of award of the Agreement, whichever date is reached first. All insurance policies, except professional liability insurance, shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of at least A according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless fifteen (15) days prior written notice is

given to the Village. This provision shall also be stated on each Certificate of Insurance: "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail fifteen (15) days' written notice to the certificate holder named to the left." The Contractor shall require any of its subcontractors to secure and maintain insurance as set forth in this Section 6 and indemnify, hold harmless and defend the Village, its officers, officials, employees, agents, and volunteers as set forth in this Agreement.

9.1. Insurance Liability Limits. The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

9.1.1. Commercial General Liability. Coverage to include, Broad Form Property Damage, Contractual and Personal Injury.

Limits:

General Aggregate	\$ 2,000,000.00
Each Occurrence	\$ 1,000,000.00
Personal Injury	\$ 1,000,000.00
Products Completed	\$ 2,000,000.00

Coverage for all claims arising out of the Contractor's operations or premises, anyone directly or indirectly employed by the Contractor.

9.1.2. Workers' Compensation. Workers' compensation insurance shall be in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees who provide Services, and in case work is sublet, Contractor shall require each subcontractor similarly to provide workers' compensation insurance. In case employees engaged in hazardous work under this Agreement are not protected under the Workers' Compensation Act, Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

9.1.3 Comprehensive Automobile Liability. Comprehensive Automobile Liability coverage shall include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage with a combined single limit of \$1,000,000.00.

9.1.4. Umbrella Liability. Umbrella liability coverage under the commercial general liability policy and comprehensive automobile liability policy shall be provided in the amount of \$4,000,000 for each occurrence and \$4,000,000.00 aggregate.

9.1.5. Excess Liability. Excess liability coverage under the commercial general liability policy and comprehensive automobile liability policy shall be provided in the amount of \$5,000,000 for each occurrence/aggregate and total limit of \$10,000,000.00.

9.2. Additional Insureds. The Village and its officers, officials, employees, agents, and volunteers and Oak Park River Forest High School District Number 200 and its officers, officials, employees, agents, and volunteers shall be named as additional insureds on all insurance policies set forth herein except workers' compensation. The Contractor shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village, its officers, officials, employees, agents, and volunteers.

9.3. Obligation to Indemnify. The Contractor understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village and its officers, officials, employees, agents, and volunteers and Oak Park River Forest High School District Number 200 and its officers, officials, employees, agents, and volunteers as herein provided. The Contractor waives and shall have its insurers waive, its rights of subrogation against the Village and the Village's officers, officials, employees, agents and volunteers and Oak Park River Forest High School District Number 200 and its officers, officials, employees, agents, and volunteers.

Section 10. Indemnity. The Contractor shall hold harmless, indemnify and defend the Village and Village's officers, officials, employees, agents and volunteers and Oak Park River Forest High School District Number 200 and its officers, officials, employees, agents, and volunteers (hereinafter referred to as the "Indemnified Parties") from any and all claims that may be asserted at any time against the Indemnified Parties with the Display; provided, however, the foregoing indemnity shall not apply to willful misconduct or gross negligence on the part of the Indemnified Parties.

Section 11. Permits; Fees. The Contractor shall, at its sole cost and expense, obtain all permits, give all necessary notices, pay all license fees, and comply with all applicable local, state, and federal rules, regulations, and ordinances.

Section 12. Vehicles. All vehicles utilized by the Contractor shall be properly identified and licensed as required by the laws of the State of Illinois.

Section 13. Taxes. The Contractor assumes complete and sole liability for the payment of all applicable federal, state and local taxes.

Section 14. Certification. The Contractor certifies hereby that it is not barred from bidding on this contract as a result of violations of either Section 33E-3 or Section 33E-4 of the Illinois Criminal Code.

Section 15. Relationship of the Parties. The Contractor shall act as an independent contractor in providing and performing the Display. Nothing in, nor done pursuant to this Agreement shall be construed to create any relationship of between the Village and any subcontractor of the Contractor.

Section 16. Amendment. No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

Section 17. Assignment. This Agreement may not be assigned by the Village or by the Contractor without prior written consent of the other party.

Section 18. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors and assigns.

Section 19. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered: (i) personally; (ii) by a reputable overnight courier; (iii) by mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid; or (iv) by email. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) five business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received. Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
Email: villagemanager@oak-park.us

Notices and communications to the Contractor shall be addressed to, and delivered at the following address:

Miand, Inc. DBA Mad Bomber Fireworks Productions
3999 E. Hupp Road
Building R-3-1
LaPorte, IN 46350
Attention: Andrew James, President
Email: andrew@madbomberfireworks.com

Section 20. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction, void, or unenforceable, the

remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 21. Time. Time is of the essence in the performance of this Agreement.

Section 22. Governing Law; Venue. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to its conflict of law rules. All judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Cook County, Illinois. Any matter brought pursuant to the jurisdiction of the federal courts shall be brought in the United States District Court of the Northern District of Illinois.

Section 23. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous oral or written agreements and negotiations between the Village and the Contractor with respect to the services contemplated in this Agreement.

Section 24. Waiver. No waiver of any provision of this Agreement shall be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

Section 25. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.

Section 26. Agreement Controls. In case of a conflict between provisions of the Contractor's Proposal and this Agreement, this Agreement shall control to the extent of such conflict.

Section 27. Conflicts of Interest. Contractor represents and certifies that, to the best of its knowledge: (1) no elected or appointed Village official, employee or agent has a personal financial interest in the business of Contractor or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement neither Contractor nor any person employed or associated with Contractor has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Contractor nor any person employed by or associated with Contractor shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

Section 28. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling

or performing any term of this Agreement (except for any obligations to make previously owed payments to the other Party hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic or serious illness); (j) emergency state; (k) shortage of adequate medical supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the Impacted Party.

Section 29. Equal Employment Employer.

29.1. The Consultant is an equal opportunity employer and the requirements of 44 Ill. Adm. Code 750 APPENDIX A and Chapter 13 ("Human Rights") of the Oak Park Village Code are incorporated herein as though fully set forth. The Consultant shall not discriminate against any employee or applicant for employment because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial status, source of income, disability, housing status, military discharge status, or order of protection status or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization. The Consultant shall comply with all requirements of Chapter 13 ("Human Rights") of the Oak Park Village Code.

29.2. In the event of the Consultant's noncompliance with any provision of Chapter 13 ("Human Rights") of the Oak Park Village Code, the Illinois Human Rights Act or any other applicable law, the Consultant may be declared non-responsible and therefore ineligible for future Agreements or subcontracts with the Village, and the Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

29.3. In all solicitations or advertisements for employees placed by it on its behalf, the Consultant shall state that all applicants will be afforded equal opportunity without discrimination because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial status, source of income, disability, housing status, military discharge status, or

order of protection status or physical or mental disabilities that do not impair ability to work.

Section 30. Effective Date. The effective date of this Agreement shall be the last date of its execution by one of the parties as reflected below.

31. Binding Authority. The individuals executing this Agreement on behalf of the Contractor and the Village represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives on the dates set forth below.

VILLAGE OF OAK PARK

**MIAND, INC., D/B/A MAD BOMBER
FIREWORKS PRODUCTIONS**

By: Kevin J. Jackson
Its: Village Manager

By:
Its:

Date: _____, 2022

Date: _____, 2022

ATTEST

ATTEST

By: Christina M. Waters
Its: Village Clerk

By:
Its:

Date: _____, 2022

Date: _____, 2022