

7/11/16

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Kammy**DISPLAY AGREEMENT AND PURCHASE ORDER**

**THIS AGREEMENT** ("Agreement") is entered into on this 15<sup>th</sup> day of May, 2016 by and between Western Display Fireworks, Ltd., an Oregon corporation, whose address is set forth above, ("Western") and City of Walla Walla, whose address is 15 N 3<sup>rd</sup> Ave, Walla Walla, WA 99362 ("Sponsor"). Western and Sponsor are sometimes individually referred to as a "Party" and collectively as the "Parties."

In consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Proposal.** Western agrees to supply, and Sponsor agrees to pay for, a fireworks display on the following designated date(s) and location: July 4, 2016 at Walla Walla Community College Athletic Fields, 500 Tausick Way, Walla Walla WA 99362, as detailed in Proposal #16-5356, which is attached hereto and incorporated herein by this reference, (the "Display") in accordance with the program approved by both Parties.
2. **Price and Payment Terms.** Total price of TEN THOUSAND DOLLARS AND NO/100 (\$10,000.00) is to be paid as follows: 25% of the total price, \$2,500.00 is due by JUNE 1, 2016; the remaining balance of the price, \$7,500.00, is due in full on or before July 14, 2016. Interest will accrue at 1½% per month (an annual percentage rate of 18% per annum) on all unpaid amounts from the date on which the payment was due.
3. **Western Duties.** As part of the total price Western agrees to the following:
  - a. To supply all shells and other pyrotechnics listed on the Proposal;
  - b. Mortars, firing equipment and all other required materials necessary to perform its services hereunder;
  - c. Proper delivery, set-up, firing and presentation by pyrotechnic operator and crew covered under workers compensation insurance;
  - d. To remove all equipment and spent pyrotechnic devices and clean up debris from the immediate Display site. Sponsor acknowledges that additional debris may remain in the fallout zone after Western's responsibilities of Display site cleanup have been completed; and
  - e. To comply with all local and federal guidelines and obtain any necessary permits to perform the Display, unless otherwise notes in Sponsor duties.
4. **Sponsor Duties.**
  - a. Sponsor shall comply with all duties as detailed under the Compliance with Laws/Sponsor Responsibilities portion of this Agreement;
  - b. Sponsor to supply barrier tape to secure fallout area, and is responsible for securing and maintaining fallout area security before, during and after the display;
  - c. Sponsor to ensure sprinklers are turned off during set up prior to the show and during clean up after the show; and
  - d. Sponsor agrees to clean up remaining debris from fallout zone after Western crew has raked the immediate launch site.
5. **Insurance.** Western agrees to provide, at its expense, commercial general liability insurance coverage in an amount not less than \$5,000,000. If requested in writing, Western shall provide Sponsor with a

certificate of insurance within two weeks of the Display. All entities/individuals listed on the certificate of insurance will be deemed as additional insured pursuant to this Agreement.

6. **Indemnification.** Western agrees to indemnify, defend, and hold harmless the Sponsor, its agents and employees, and those entities/individuals listed on the certificate of insurance, from and against all claims, costs, judgments, damages and expenses, including reasonable attorney fees that directly arise from the performance of the fireworks to the extent that such are occasioned by an act or omission of Western, its agents and employees. Sponsor agrees to indemnify, defend, and hold harmless Western, its agents and employees from and against all claims, costs, judgments, damages and expenses, including reasonable attorney fees that arise from the performance of the fireworks to the extent that such are occasioned by any act or omission of Sponsor, its agents and employees. Each Party agrees to give the other Party prompt notice of any claims. Neither Party shall be responsible for consequential damages.
7. **Compliance with Laws.**
  - a. **Sponsor Responsibilities:** In accordance with NFPA 1123 Outdoor Display of Fireworks 2010 Edition (National Fire Protection Association) 4-1.1.1, Sponsor has consulted with the Authority Having Jurisdiction to determine the level of fire protection required to provide adequate fire protection for the Display and Western agrees that such consultation was accomplished and the level of fire protection is adequate for the size of show this Agreement outlines. It is further agreed that in accordance with NFPA 1123 4-1.2, Sponsor shall provide an adequate number of monitors whose sole duty shall be the enforcement of crowd control located around the Display area during the Display and until the discharge site has been inspected by Western's pyrotechnic operator after the Display.
  - b. **Western's Responsibilities:** Western shall secure and maintain any and all licenses, permits or certificates that may be required by any regulatory body having jurisdiction over the materials or performance of the services herein contemplated unless otherwise noted above in Sponsor duties. Western shall exercise full and complete authority over its personnel, shall comply with all workmen's compensation, employer's liability and other federal, state, county and municipal laws, ordinances, rules and regulations required of an employer performing such services, and shall make all reports and remit all withholdings or other deductions from the compensation paid its personnel as may be required by any federal, state, county or municipal law, ordinance, rule or regulation. Western is responsible to insure that all materials and services supplied under this Agreement comply with all laws, rules and regulations of the State and the federal government relating thereto.
8. **Cancellation/Rescheduling by Sponsor.** If the Display is cancelled by the Sponsor after receipt of this signed Agreement but prior to departure from Western's facility, Sponsor agrees to pay 25% of the total price (\$2,500.00) for restocking and costs incurred. If the Display is cancelled by the Sponsor after departure from Western's facility, Sponsor agrees to pay 50% of the total price (\$5,000.00). If the Display is cancelled by the Sponsor after the physical show setup is complete, Sponsor agrees to pay 100% of the total price (\$10,000.00). If the Sponsor elects to reschedule the Display for an alternate mutually agreeable date, Western agrees to facilitate this rescheduling and Sponsor agrees to reimburse Western for new permit and other additional costs associated with this change.

9. **Safety / Weather Forced Cancellation.** Western agrees that it shall be the responsibility of the pyrotechnic operator in charge, acting on Western's behalf or the Authority Having Jurisdiction, to cancel or delay the Display if in the operator's judgment circumstances beyond the control of either Party pose an extraordinary risk to the health and safety of any persons or property within the vicinity of the Display.

If the product has been damaged as an attempt to execute the Display and cannot be safely reused, 100% of the price is due and Western has no further obligation under this Agreement. If the product is intact and reusable, Western agrees to store the product and execute the Display on a mutually agreeable future date. Sponsor agrees to reimburse Western for reasonable costs associated with the rescheduling of the event.

10. **Force Majeure.** Sponsor assumes the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Western which may prevent the Display from being safely performed on the scheduled date, which may cause the cancellation of the event for which Sponsor has purchased the Display, or which may affect or damage such portion of the Display as must be replaced and exposed a necessary time before the Display.
11. **Product Performance.** Sponsor recognizes and acknowledges that due to the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of nonperformance is acceptable as full performance.
12. **Limitation on Damages.** In the event that Sponsor claims that Western has breached this Agreement or was negligent in performing its duties hereunder, Sponsor shall not be entitled to claim or recover monetary damages from Western beyond the amount that Sponsor has paid Western under this Agreement and shall not be entitled to a claim for or recover of consequential damages from Western, including, but not limited to, damages for lost income, business, or profits. Additionally, Western's liability for matters covered by the insurance set forth herein shall be limited to the limits of said insurance.
13. **Time.** Time is of the essence in this agreement. The Parties expressly recognize that in the performance of their respective obligations, each Party is relying on timely performance by the other Party and will schedule operations and incur obligations to third parties in reliance upon timely performances by the other Party and may sustain substantial losses by reason of any failure of timely performance.
14. **Independent Contractor/No Joint Venture.** The Parties agree that Western is an independent contractor, and is not an agent or employee of Sponsor for any purpose. It is further agreed that Western's employees shall be, and remain, the employees of Western and not of Sponsor. Nothing in this Agreement or the actions of Western or Sponsor shall be construed as forming a partnership or joint venture between Sponsor and Western.
15. **Attorney Fees.** In the event that either Party to this Agreement shall enforce any of the provisions hereof by any action at law or in equity, the unsuccessful Party to such litigation agrees to pay to the prevailing Party all costs and expenses, including reasonable attorney fees, incurred therein by the prevailing Party.

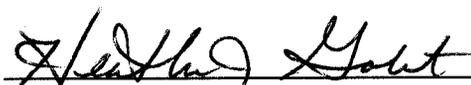
16. **Jurisdiction.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of Oregon applicable to contracts.
17. **Severability.** In the event a court of competent jurisdiction determines that any provision of this Agreement is in violation of any statute, law, rule, regulation, ordinance or public policy, then the provisions of this Agreement that violate such statute, law, rule, regulation, ordinance or public policy shall be stricken or modified to the extent that such provision no longer violates such statute, law, rule, regulation, ordinance or public policy. All provisions of this Agreement that do not violate any statute, law, rule, regulation, ordinance or public policy shall continue in full force and effect for all purposes. Furthermore, any court order striking or modifying any provision of this Agreement shall modify or strike the provision in as limited a manner as possible to give as much effect as possible to the intentions of the Parties to this Agreement.
18. **Survival.** The terms of paragraphs 5, 6, 12, 15, and 16 shall survive the cancellation or termination of this Agreement.
19. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto respecting the matters within its scope and may be modified only in writing signed by both of the Parties hereto.

The pricing and product offered in the Proposal shall remain firm if this Agreement is mutually executed by both Parties on or before May 15, 2016.

Sponsor

Western Display Fireworks, Ltd.

  
for City of Walla Walla  
By: Nabil Shawa  
Its: City Manager  
Date: 5/19/2016

  
By: Heather J. Gobet  
Its: President  
Date: 5/23/16

