

# ENTERTAINMENT FIREWORKS, INC. DISPLAY AGREEMENT

1. This agreement, entered into this **15<sup>th</sup>** day of **January 2016**, and between Entertainment Fireworks, Inc., hereinafter referred to as "EFI", and **Aberdeen Splash Festival**, herein after referred to as PURCHASER.
2. EFI agrees to furnish PURCHASER, in accordance with terms and conditions hereinafter set forth, **1** fireworks display per **PROGRAM A**, proposed, accepted and made part hereof, together with the services of a pyrotechnic operator licensed for the state of the display to be in charge of, and along with sufficient crew to safely discharge the display. Said display is scheduled to be performed on the **4<sup>th</sup>** day of **July 2016**, at **Morrison Riverfront Park**.
3. PURCHASER, at it's own expense, agrees to provide to EFI: A) A suitable DISPLAY SITE in which to stage the fireworks display, including a firing and a fallout zone acceptable to EFI in which the fireworks and fireworks debris may be exhibited, rise and fall safely. B) Adequate policing, guard protection, roping, fencing, and/or other crowd control measures to prevent the access of the public, or it's property not authorized by EFI into the display site. C) The services and cost of standby firemen and/or applicable permit fees as required by state and local statutes, ordinances or regulations. D) Access by EFI, at all times to the DISPLAY SITE to set up the display. If PURCHASER fails to fully comply with all requirements of A, B, C, and/or D set forth above, EFI shall have no obligation to perform and PURCHASER agrees to pay EFI the entire contract price plus any additional expenses incurred because of said failure. If in it's sole discretion, PURCHASER designates an area for members of the public to view the display ("spectator area") and/or area for parking vehicles, ("parking area"), the PURCHASER shall: E) Ensure that the Spectator Area does not infringe on the Display Area; F) Have sole responsibility for insuring that the terrain of the Spectator Area and any structures thereon, including, but not limited to grandstands and bleachers are safe for use by spectators; G) Have sole responsibility for insuring that the Parking Area is safe for use; H) Have sole responsibility to police, monitor, and appropriately control spectator access to the Spectator Area and Parking Area and police, monitor and appropriately control the behavior of persons in these areas. It is expressly agreed that EFI, (including it's operators and crew) shall not inspect, police, monitor or otherwise supervise any area of the site other than the Display Area, except to insure: I) That any Spectator or Parking Area are outside the Display Area; and J) After completion of the Display, that the Display Area is cleared of any live fireworks debris originating from the program.
4. PURCHASER shall pay to EFI **Twelve Thousand Five Hundred Fifty Dollars (\$12,550.00), \$12,400.00 + \$100.00 Permit Fee + \$50.00 fuel surcharge. Any additional permit and/or inspection fees will be added.** A deposit of **\$5,000.00** must be paid by **March 21, 2016**. Full final payment is due within ten (10) calendar days after the date of the display. A finance charge at a periodic rate of 1.5% per month, 18% annual percentage rate, or the maximum rate permitted by law, whichever is less, will be charged on the unpaid balance after 10 days from the date of the display. PURCHASER, by signing this agreement, authorizes EFI to receive and verify financial information concerning PURCHASER from any person or entity.
5. PURCHASER agrees to assume the risk of weather, or causes beyond the control of EFI which may prevent the display from being safely discharged on the scheduled date, which may cause the cancellation of any event for which PURCHASER has purchased the display, or which may or effect or damage such portion of the exhibits as must be placed and exposed a necessary time before the display. It shall be within EFI's sole discretion to determine whether or not the display may be safely discharged on the scheduled date and at the scheduled time. If for any reason beyond EFI's control, including, without limitation, inclement weather, EFI is unable to safely discharge the display on the scheduled date or should any event for which PURCHASER has purchased the display be canceled, the parties shall attempt to negotiate a new display date, which shall be within 60 days of the original display date. PURCHASER further agrees to pay EFI for any reasonable additional expenses made necessary by this postponement. If they are unable to agree on a new display date, EFI shall be entitled to liquidated damages from PURCHASER as if PURCHASER had canceled the display on the date set for the display, as provided in the following paragraph.
6. PURCHASER shall have the option of unilaterally canceling this display prior to the date of the display. If PURCHASER exercises this option, PURCHASER agrees to pay EFI, as liquidated damages, the following percentages of the agreed contract price: 1) 25% if cancellation occurs three (3) or more days before the date scheduled for the display, 2) 50% if cancellation occurs within two (2) days of the actual date set for the display, 3) 75% if the cancellation occurs on the date set for the display but prior to the time physical set-up of the display actually begins, 100% thereafter. If cancellation occurs prior to the date of the display, PURCHASER agrees to pay EFI, in addition to the above percentages, the reasonable value associated with any specific custom work performed by EFI or it's agents including but not limited to music, narration tape, production and/or sponsor logo.

7. In the event the PURCHASER cancels the display, it will be impractical or extremely difficult to fix the actual amount of EFI's damages. The foregoing represents a reasonable estimate of the damages EFI will suffer if PURCHASER cancels the display.
8. EFI reserves the ownership rights and trade names used in or a product of the pyrotechnic display to be performed herein. Any reproduction by sound, video or other duplication or recording process without the express written permission of EFI is prohibited.
9. EFI agrees to furnish insurance coverage in connection with the display only, for the following risks and amounts: bodily injury and property damage, including products liability **THREE MILLION DOLLARS (\$3,000,000)** combined single limits. Such insurance shall include PURCHASER as an additional insured regarding claims made against PURCHASER for bodily injury or property damage arising from the operations of EFI in performing the Display provided for in this Agreement. Such insurance afforded by EFI shall not include claims made against PURCHASER for bodily injury or property damage arising from A) Failure of PURCHASER, including through or by it's employees, agents, or independent contractors, to perform it's obligations under this Agreement, including, without limitation, those contained in paragraph 3 of this Agreement: B) Failure of the PURCHASER to provide discretionary spectator and parking areas referred to in paragraph 3 of this Agreement. PURCHASER shall indemnify and hold EFI harmless from all claims and suits made against EFI for bodily injury or property damage arising from A) and B) of the paragraph.
10. If any legal action is brought to enforce or interpret the terms or provisions of this agreement, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to any other relief to which they may be entitled. This agreement shall be interpreted under the laws of the State of Washington. It is further agreed that if the courts of the State Of Washington shall have exclusive jurisdiction to adjudicate any disputes arising out of this contract or the performance of the display provided for herein. It is further agreed that the Superior Court of Thurston County, Washington, shall be the proper venue for any such action.
11. In the event EFI breaches this agreement, or is otherwise negligent in performing the fireworks display provided herein, PURCHASER shall, under no circumstances be entitled to recover monetary damages from EFI beyond the amount PURCHASER agreed to pay EFI under this agreement. PURCHASER shall not, under any circumstances, be entitled to recover any consequential damages from EFI including, without limitation, for loss of income, business, or profits. Nothing in the paragraph shall be construed as a modification or limit to the insurance afforded in paragraph 9) above.
12. It is agreed, nothing in this Agreement or in EFI's performance of the display provided for herein, shall be construed as forming a partnership or joint venture between PURCHASER and EFI. The parties hereto shall be severally responsible for their own separate debts and obligations and neither party shall be held responsible for any agreements or obligations not expressly provided for herein. All terms of this agreement are in writing and may only be modified by written agreement of both parties hereto. Both parties acknowledge that they have received a copy of said written Agreement and agree to be bound by said terms of written agreement only.
13. Any notice to the parties required under this agreement shall be given by mailing such notice in the U.S. Mail, postage prepaid, first class, addressed as follows: ENTERTAINMENT FIREWORKS, INC., P.O. Box 7160, Olympia, Washington 98507. PURCHASER's address shall be **Aberdeen Splash Festival, 200 East Market Street, Aberdeen WA 98520, Attn: Doug Farmer.**
14. If there is more than one PURCHASER, they shall be jointly and severally responsible to perform PURCHASER's obligations under this agreement. This agreement shall become effective after it is executed and accepted by the PURCHASER and then after it is executed by EFI at EFI's offices in Olympia, Washington. This agreement may be executed in several counter parts, including faxed copies, each one of which shall be deemed an original against the party executing same. This agreement shall be binding upon the parties hereto and upon their heirs, successors, executors, administrators, and assigns. PURCHASER recognizes that because of 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 accepted as full performance.

SIGNED ON THIS DATE \_\_\_\_\_ . Pricing herein is firm through **March 21, 2016.**

**FOR PURCHASER: Aberdeen Splash Festival – Program A;**

**Display Date: 7/4/16**

X \_\_\_\_\_  
 \_\_\_\_\_  
 Print

Title: \_\_\_\_\_

**FOR ENTERTAINMENT FIREWORKS, INC.**

X \_\_\_\_\_

Title: \_\_\_\_\_