

CONTRACT AND PURCHASE ORDER

THIS AGREEMENT between WESTERN DISPLAY FIREWORKS, LTD and the undersigned here and after shall be referred to as WESTERN and the **CITY OF NEWPORT** here and after shall be referred to as the SPONSOR.

WESTERN agrees to supply fireworks and pyrotechnic operators for the sum of: **TWENTY THREE THOUSAND DOLLARS AND NO/100 (\$23,000.00)** on the following designated date(s) and location: **JULY 4, 2013 FROM A BARGE ON YAQUINA BAY, NEWPORT, OREGON.**

TOTAL CONTRACT PRICE FOR PROPOSAL * 13-4238 *** INCLUDES:** Merchandise as described, use of company owned mortars and equipment, delivery, USCG permit, state permit fee, tug and barge, firing by your local licensed pyrotechnician and crew covered under Western's USL&H workers compensation insurance and \$5,000,000 display liability insurance.

- WESTERN TO PROVIDE EQUIPMENT FOR CITY/PYROTECHNICIAN AND CREW TO PRELOAD ENTIRE SHOW PRIOR TO FIRING
- CONTRACT TERMS SUBJECT TO RELEVANT PROVISIONS OF ORS CHAPTER 279B (CONTRACT FOR GOODS) – AS PER ATTACHED EXHIBIT A

WESTERN'S RESPONSIBILITIES: WESTERN agrees that it shall be the responsibility of the pyrotechnic operator in charge, acting on behalf of the party of the first part, to cancel or delay said display if in his/her judgment circumstances beyond the control of either parties poses an extraordinary risk to the health and safety of any persons or property within the vicinity of the display.

SPONSOR'S RESPONSIBILITIES: SPONSOR agrees that in accordance with NFPA 1123 OUTDOOR DISPLAY OF FIREWORKS 2010 Edition (National Fire Protection Association) 4-1.1.1, the SPONSOR shall consult with the authority having jurisdiction to determine the level of fire protection required and provide adequate fire protection for the display. It is further agreed that in accordance with NFPA 1123 4-1.2 that the SPONSOR shall provide 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 after the display.

TERMS: TOTAL CONTRACT PRICE OF TWENTY THREE THOUSAND DOLLARS AND NO/100 (\$23,000.00) IS DUE IN FULL ON OR BEFORE JULY 14, 2013. IF THE DISPLAY IS CANCELLED PRIOR TO DEPARTURE FROM OUR FACILITY AND CANNOT BE FIRED DUE TO CONDITIONS OR REASONS BEYOND THE CONTROL OF WESTERN, THE SPONSOR AGREES TO PAY 50% OF THE TOTAL CONTRACT PRICE (\$11,500.00) FOR COSTS INCURRED. IF THE PHYSICAL SETUP OF THE SHOW IS COMPLETED AND THE SHOW MUST BE CANCELLED DUE TO CONDITIONS OR REASONS BEYOND THE CONTROL OF WESTERN, THE SPONSOR AGREES TO PAY 100% OF THE CONTRACT PRICE (\$23,000.00) FOR COSTS INCURRED. SPONSOR UNDERSTANDS THAT THE ELEMENTS OF THE PROPOSAL ASSOCIATED WITH THIS CONTRACT WERE CALCULATED BASED ON COSTS AND FEES AS OF THE DATE THE PROPOSAL WAS GENERATED. IN THE EVENT THESE ITEMS INCREASE PRIOR TO THE DATE OF THE DISPLAY WESTERN RESERVES THE RIGHT TO ADJUST THE PRODUCT CONTAINED IN THE DISPLAY TO ACCOUNT FOR THE INCREASE. SPONSOR 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 ACCEPTABLE AS FULL PERFORMANCE.

INTEREST at 1 1/2% per month (AN ANNUAL PERCENTAGE RATE OF EIGHTEEN PER CENT PER ANNUM APR 18%) will be charged on all accounts 30 days past due, and buyer agrees to pay the same. Buyer also agrees to reimburse WESTERN DISPLAY FIREWORKS, LTD for its attorney fees incurred in collection if this account is delinquent.

CONTRACT VALID WHEN SIGNED BY SPONSOR REPRESENTATIVE

Jim Voelberg
Sponsor Representative (print)

Jim Voelberg
Sponsor Representative Signature

For: City of Newport

Date 3/15/13

Robert L. Gobet
Western Display Fireworks, Ltd.
Robert L. Gobet, President
Judith A. Gobet, Vice President

Date 3/13/2013 (Organization)

CONTRACT AND PURCHASE ORDER – EXHIBIT A

JULY 4, 2013 – CITY OF NEWPORT

Relevant Provisions of ORS Chapter 279B (Contract for Goods)

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.230 Condition concerning payment for medical care and providing workers' compensation.

- (1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

