

## AGREEMENT FOR SERVICES

THIS AGREEMENT is made on this 11<sup>th</sup> day of December, 2023, by and between the City of Lacey, a code City of the State of Washington, hereinafter “City” and Western Display Fireworks LTD, an Oregon Corporation, hereinafter “Service Provider,” jointly referred to as “Parties.”

IN CONSIDERATION of the terms and conditions contained herein, the Parties agree as follows:

1. **Work to Be Performed.** Service Provider shall provide all labor, services, and material to satisfactorily complete the Scope of Services, attached as Exhibit A. Display Site Map and detailed fireworks Script are attached as Exhibit B.

A. **Administration.** The City Manager or designee shall administer and be the primary contact for Service Provider. Prior to commencement of work, Service Provider shall contact the City Manager or designee to review the Scope of Services, schedule, and date of completion. Upon notice from the City Manager or designee, Service Provider shall commence work, perform the requested tasks in the Scope of Services, stop work, and promptly cure any failure in performance under this Agreement.

B. **Representations.** City has relied upon the qualifications of Service Provider in entering into this Agreement. By execution of this Agreement, Service Provider represents it possesses the ability, skill, and resources necessary to perform the work and is familiar with all current laws, rules, and regulations which reasonably relate to the Scope of Services. No substitutions of agreed-upon personnel shall be made without the prior written consent of City.

Service Provider represents that the compensation as stated in paragraph 3 is adequate and sufficient for the timely provision of all professional services required to complete the Scope of Services under this Agreement.

Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in City-furnished information.

C. **Standard of Care.** Service Provider shall exercise the degree of skill and diligence normally employed by Service Providers engaged in the same profession, and performing the same or similar services at the time such services are performed.

**Modifications.** City may modify this Agreement and order changes in the work whenever necessary or advisable. Service Provider shall accept modifications when ordered in writing by the City Manager or designee, so long as the additional work is within the scope of Service Provider’s area of practice. Compensation for such modifications or changes shall be as mutually agreed between the Parties. Service Provider shall make such revisions in the work as are necessary to correct errors or omissions appearing therein when required to do so by City without additional

compensation.

2. **Term of Contract.** This Agreement shall be in full force and effect upon execution and shall remain in effect until completion of all contractual requirements have been met as determined by City. Service Provider shall complete its work by July 31, 2024 & July 31, 2025 unless the time for performance is extended in writing by the Parties.

Either Party may terminate this Agreement for material breach after providing the other Party with at least 10 days' prior notice and an opportunity to cure the breach. City may, in addition, terminate this Agreement for any reason by 10 days' written notice to Service Provider. In the event of termination without breach, City shall pay Service Provider for all work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation and Method of Payment.**

- A. The City shall pay Service Provider for the performance of those services designated in Exhibit "A," an amount not to exceed \$27,500 in 2024 and \$30,250 in 2025. If the description of services on Exhibit "A" designates additional services which may be requested by the City, said additional services will be paid for by the City at the rate set forth on Exhibit "A," which sum may exceed the "not to exceed" amount set forth above; however, said services will only be performed and compensated by the City after the City has directed such performance in writing.
- B. Payment by the City for services will be as follows: 25% deposit (\$6,875) paid January 31, 2024. The remaining balance of the price will be paid as follows: 25% (\$6,875) is due on June 1, 2024 (for completed work of fireworks show preparation) and the remaining balance or 50% (\$13,750) is due in full on or before July 13, 2024. Payments for 2025 increase to \$30,250 and the percentages and dates due will follow the same format as 2024. A voucher or invoice is submitted in the form specified by the City, and the same is approved by the appropriate City representative.
- C. If an hourly rate of compensation or other means of measurement is set forth on Exhibit "A," the parties intend that said measurement shall be used up to the "not to exceed" figure set forth above.
- D. The City reserves the right to withhold payment under this Agreement for that portion of the work (if any) which is determined in the reasonable judgment of the City Manager or designee to be noncompliant with the Scope of Services, City standards, City Code, and federal or state standards.

4. **Notice.** Notices other than applications for payment shall be given in writing as follows:

TO THE CITY:

Name: Jeannette Sieler  
Phone: 360-438-2631  
Address: 420 College Street SE, Lacey 98503

TO THE SERVICE PROVIDER:

Name: Heather Gobet  
Phone: 503-656-6628  
Address: PO Box 932, Canby, OR 97013

5. **Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws and regulations. Service Provider warrants that its services shall conform to all federal, state, and local statutes and regulations.

6. **Relationship of the Parties.** It is understood and agreed that Service Provider shall be an independent contractor and not the agent or employee of City, that City is interested in only the results to be achieved, and that the right to control the particular manner, method, and means in which the services are performed is solely within the discretion of Service Provider. Any and all employees who provide services to City under this Agreement shall be deemed employees solely of Service Provider. The Service Provider shall be solely responsible for the conduct and actions of all its employees under this Agreement and any liability that may attach thereto.

7. **Ownership of Documents.** All drawings, plans, specifications, and other related documents prepared by Service Provider under this Agreement are and shall be the property of City, and may be subject to disclosure pursuant to chapter 42.56 RCW or other applicable public record laws. The written, graphic, mapped, photographic, or visual documents prepared by Service Provider under this Agreement shall, unless otherwise provided, be deemed the property of City. City shall be permitted to retain these documents, including reproducible camera-ready originals of reports, reproduction quality mylars of maps, and copies in the form of computer files, for the City's use. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, drawings, images, or other material prepared under this Agreement, provided that Service Provider shall have no liability for the use of Service Provider's work product outside of the scope of its intended purpose.

8. **Records.** The City or State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours all of Service Provider's records with respect to all matters covered in this Agreement. Such representatives shall be permitted to audit, examine, make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, and record of matters covered by this Agreement for a period of three years from the date final payment is made hereunder.

9. **Insurance.** Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Service Provider, its agents, representatives, employees, or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If use of vehicles pursuant to the Agreement is only incidental, and Service Provider will not transport any persons not directly related or affiliated with Service Provider, then Service Provider is only required to have automobile liability insurance to

meet at least minimum Washington state requirements.

2. Commercial general liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury, and advertising injury. City shall be named as an additional insured under Service Provider's commercial general liability insurance policy with respect to the work performed for the City.

3. Workers' compensation coverage as required by the industrial insurance laws of the State of Washington.

**B. Minimum Amounts of Insurance.** Service Provider shall maintain the following insurance limits:

1. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of no less than \$5,000,000 per accident. If Service Provider will not use its vehicles in the performance of this Agreement, automobile liability insurance is only required to meet minimum Washington state requirements.

2. Commercial general liability insurance shall be written with limits no less than \$5,000,000 for each occurrence.

3. Workers' compensation coverage as required by the industrial insurance laws of the State of Washington.

**C. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions for automobile liability and commercial general liability insurance:

1. Service Provider's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by City shall be in excess of Service Provider's insurance and shall not contribute with it.

2. Service Provider shall fax or send electronically in .pdf format a copy of insurer's cancellation notice within two business days of receipt by Service Provider.

3. If Service Provider maintains higher insurance limits than the minimums shown above, City shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by Service Provider, irrespective of whether such limits maintained by Service Provider are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Service Provider.

4. Failure on the part of Service Provider to maintain the insurance as required shall constitute a material breach of the Agreement, upon which the City may, after giving at least five business days' notice to Service Provider to correct the breach, immediately terminate the Agreement, or at its sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to City on demand, or at the sole discretion of the City, offset against funds due Service Provider from the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Evidence of Coverage. As evidence of the insurance coverages required by this Agreement, Service Provider shall furnish acceptable insurance certificates to the City Clerk at the time Service Provider returns the signed Agreement, which shall be Exhibit C. The certificate shall specify all of the parties who are additional insureds, and shall include applicable policy endorsements, and the deduction or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to City. Service Provider shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

10. **Indemnification and Hold Harmless**. Service Provider shall, at its sole expense, defend, indemnify, and hold harmless City and its officers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, attorney's fees, costs of litigation, expenses, injuries, and damages of any nature whatsoever relating to or arising out of the wrongful or negligent acts, errors, or omissions in the services provided by Service Provider, Service Provider's agents, subcontractors, subconsultants, and employees to the fullest extent permitted by law, subject only to the limitations provided below.

Service Provider's duty to defend, indemnify, and hold City harmless shall not apply to liability for damages arising out of such services caused by or resulting from the sole negligence of City or City's agents or employees.

Service Provider's duty to defend, indemnify, and hold City harmless against liability for damages arising out of such services caused by the concurrent negligence of (a) City or City's agents or employees, and (b) Service Provider, Service Provider's agents, subcontractors, subconsultants, and employees shall apply only to the extent of the negligence of Service Provider, Service Provider's agents, subcontractors, subconsultants, and employees.

Service Provider's duty to defend, indemnify, and hold City harmless shall include, as to all claims, demands, losses, and liability to which it applies, City's personnel-related costs, reasonable attorneys' fees, the reasonable value of any services rendered by the office of the City Attorney, outside consultant costs, court costs, fees for collection, and all other claim-related expenses.

Service Provider specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. These indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or

benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefits acts. Provided, that Service Provider's waiver of immunity under this provision extends only to claims against Service Provider by City, and does not include, or extend to, any claims by Service Provider's employees directly against Service Provider.

Service Provider hereby certifies that this indemnification provision was mutually negotiated.

11. **Waiver.** No officer, employee, agent, or other individual acting on behalf of either Party has the power, right, or authority to waive any of the conditions or provisions of this Agreement. A waiver in one instance shall not be held to be a waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement or by law shall be taken and construed as cumulative and in addition to every other remedy provided herein or by law. Failure of either Party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other Party of any provision hereof shall in no way be construed to be a waiver of such provisions nor shall it affect the validity of this Agreement or any part thereof.

12. **Assignment and Delegation.** Neither Party shall assign, transfer, or delegate any or all of the responsibilities of this Agreement or the benefits received hereunder without prior written consent of the other Party.

13. **Subcontracts.** Except as otherwise provided herein, Service Provider shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of City.

14. **Confidentiality.** Service Provider may, from time-to-time, receive information which is deemed by City to be confidential. Service Provider shall not disclose such information without the prior express written consent of City or upon order of a court of competent jurisdiction.

15. **Jurisdiction and Venue.** This Agreement is entered into in Thurston County, Washington. Disputes between City and Service Provider shall be resolved in the Superior Court of the State of Washington in Thurston County. Notwithstanding the foregoing, Service Provider agrees that it may, at City's request, be joined as a party in any arbitration proceeding between City and any third party that includes a claim or claims that arise out of, or that are related to Service Provider's services under this Agreement. Service Provider further agrees that the Arbitrator(s)' decision therein shall be final and binding on Service Provider and that judgment may be entered upon it in any court having jurisdiction thereof.

16. **Cost and Attorney's Fees.** The prevailing party in any litigation or arbitration arising out of this Agreement shall be entitled to its attorney's fees and costs of such litigation (including expert witness fees).

17. **Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the Parties and supersedes any prior oral or written agreements. This Agreement may not be changed, modified, or altered except in writing signed by the Parties hereto.

18. **Anti-kickback.** No officer or employee of City, having the power or duty to perform an

official act or action related to this Agreement shall have or acquire any interest in this Agreement, or have solicited, accepted, or granted a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.

19. **Business Registration.** Service Provider shall register with the City as a business prior to commencement of work under this Agreement if it has not already done so.

20. **Severability.** If any section, sentence, clause, or phrase of this Agreement should be held to be invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of any other section, sentence, clause, or phrase of this Agreement.

1/8/2024

The Parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF LACEY

SERVICE PROVIDER:

DocuSigned by:  
Rick Walk  
By: \_\_\_\_\_  
Rick Walk  
City Manager

DocuSigned by:  
Brent Pavilcek  
By: \_\_\_\_\_  
Brent Pavilcek  
Western Display Fireworks LTD

Approved as to form:

DocuSigned by:  
Dave Schneider  
By: \_\_\_\_\_  
David Schneider  
City Attorney

## Exhibit A

### SCOPE OF SERVICE

The service provider agrees to supply, and the City agrees to pay for, a fireworks display on the following designated dates and location: July 3, 2024 & July 3, 2025, at Rainier Vista Park, 5475 45<sup>th</sup> Ave SE, Lacey, WA 98503.

#### 1. **Service Provider's duties:**

- Supply all shells and other pyrotechnics listed on the proposal (show script)
- Provide the necessary mortars and firing equipment required to pre-load and electrically fire the 20 minute display to a professional musical program.
- Provide proper delivery, set-up, firing and presentation by pyrotechnic operator and crew covered under workers compensation insurance
- Remove all equipment and spend pyrotechnic devices and clean up debris from the immediate Display site. City acknowledges that additional debris may remain in the fallout zone after service provider's responsibilities of Display cleanup have been completed.
- Comply with all local and federal guidelines and obtain any necessary permits to perform the Display, unless otherwise noted in City's duties
- Prepare the Washington State Public Fireworks Display permit application to be approved by the local fire authority
- Include the City of Lacey on our Washington Master Business License
- Provide transportation by a properly licensed vehicle and a CDL hazmat driver for all pyrotechnics to the display site
- Provide transportation for all equipment to and from the display site
- Provide \$5,000,000 commercial auto insurance to cover transportation
- Supply all necessary labor to conduct the display including a state certified pyrotechnician, assistant and crew covered under worker's compensation insurance
- Service Provider 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 in City duties.
- Service Provider shall exercise full and complete authority over its personnel, shall comply with all 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.
- Service Provider 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.

#### 2. **City's Duties:**

- City agrees to perform their requirements in accordance with NFPA 1123 OUTDOOR DISPLAY OF FIREWORKS 2014 Edition (National Fire Protection Association) 8.1



General Requirements.

- The City shall make provisions for fire protection for the display.
  - 8.1.1 The City shall consult with the AHJ and the operator to determine the level of fire protection required.
  - 8.1.2 The following shall apply to crowd control: (1) Monitors whose sole duty is the enforcement of crowd control shall be located around the display site and at other locations as determined by the City. (2) The AHJ and the operator shall approve the provisions for crowd control.
  - 8.1.2.3 Portions of the display site, other than the discharge site(s), shall be permitted to be open to the public prior to the display as long as the provisions of 4.2.2.2 are maintained.
  - 8.1.2.4 Unescorted public access to the discharge site shall not be permitted where pyrotechnic materials are present during the period before the display.
  - 8.1.2.5 The discharge site shall be restricted throughout the display and until the discharge site has been inspected after the display.
3. **Cancellation/Rescheduling by City.** If the Display is canceled by the City after receipt of this signed agreement but prior to departure from Service Provider's facility, City agrees to pay 25% of the total price (\$6,250) for restocking and cost incurred. If the Display is cancelled by the City after departure from Service Provider's facility, City agrees to pay 50% of the total price (\$12,500). If the Display is canceled by the City after physical show setup is complete, City agrees to pay 100% of the total price (\$27,500.00 in 2024 & \$30,250.00 in 2025). Same percentage and date format applies in 2025 as in 2024. If the City elects to reschedule the Display for an alternate mutually agreeable date, Service Provider agrees to facilitate this rescheduling and City agrees to reimburse service provider for new permit and other additional costs associated with this change.
4. **Safety/Weather Forced Cancellation.** Service Provider agrees that it shall be the responsibility of the pyrotechnic operator in charge, acting on service provider'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 Service Provider has no further obligation under this Agreement. If the product is intact and reusable, Service Provider agrees to store the product and execute the Display on a mutually agreeable future date. City agrees to reimburse Service Provider for reasonable costs associated with the rescheduling of the event.
5. **Force Majeure.** City assumes the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Service Provider which may prevent the Display from being safely performed on the scheduled date, which may cause the cancellation of the event for which City 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.

6. **Product Performance.** City 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.
7. **Limitation on Damages.** In the event that City claims that Service Provider has breached this Agreement or was negligent in performing its duties hereunder, City shall not be entitled to claim or recover monetary damages from Service Provider beyond the amount that City has paid Service Provider under this Agreement and shall not be entitled to a claim for or recover of consequential damages from Service Provider, including, but not limited to, damages for lost income, business, or profits. Additionally, Service Provider's liability for matters covered by the insurance set forth herein shall be limited to the limits of said insurance.
8. **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.