



Project title: 4th of July Fireworks Show Agreement

City Council Agenda Item Cover Sheet

Council Bill #

Consideration: 4th of July Fireworks Show Agreement

Agenda dates requested:

March 9, 2022

Project: Annual Cultural Arts 4th of July Festival and Fireworks Show

Briefing

Proposed action

X Consent

Action

Ordinance

Public hearing

Yes No

Partner/Supplier: Western Display Fireworks

Location: Everett Waterfront, Legion Park

Preceding action: The July 4th

Fund: Cultural Arts Fund 112

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

4th of July Fireworks Show Agreement

Fiscal summary statement:

The 4th of July Fireworks Show Agreement includes costs associated with the mortars, supplies, firing equipment, liability insurance, commercial insurance, permits, barge and tug, labor, and computer choreography. The vendor, Western Display Fireworks, is the same as the city has contracted with recently. Funding was council approved in the 2022 budget for this expense. Staff have secured grant funds in the amount of \$20,000 from local LTAC funds and additional grants and sponsorship opportunities are being pursued.

The total cost to the city for the fireworks show is \$75,000; this cost represents a \$3,000 increase from 2021 due to higher fuel prices affecting the shipping and barge services. The show quality and length will not be affected. If the fireworks show cannot occur on the July 4, 2022, due to the pandemic, the agreement allows for rescheduling until June 4, 2022, to a show date no later than January 2, 2023.

Department(s) involved:

Cultural Arts, Economic Development

Project summary statement:

The 4th of July Festival and Fireworks Show is one of four annual Cultural Arts events produced by the City of Everett through the Office of Economic Development; the other three events are the Wendt & Mayor's Art Awards, Sorticulture, and Wintertide. Residents are prohibited from using fireworks in the City of Everett, so offering a safe and festive opportunity for the community to celebrate our nation's birthday and to enjoy a fireworks show is considered a valuable cultural opportunity.

Contact person:

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Initialed by:

DE

Department head

Administration

Council President

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the Agreement with Western Display Fireworks, LTD for a 4th of July Fireworks Show in the amount of \$75,000.



Fireworks Display Proposal Summary

Proposal # 22-7006

City of Everett

Colors of Everett - Thunder on the Bay

July 4, 2022

Your display proposal includes the following services to be provided by Western Display Fireworks, Ltd:

- Provide display liability insurance with sponsors and property owners listed as additional insured
 - \$5,000,000 (per occurrence) general liability
- Prepare and submit the Washington Public Display Permit to be approved by the local fire authority
- Prepare and submit the United States Coast Guard Application for Marine Event Permit
- Prepare and submit the City of Everett Fire Department Application for Permit/Public Display of Fireworks
- Maintain our City of Everett business license
- Prepare, submit and pay fee for barge loading within the City of Seattle, if necessary.
- Provide transportation for all equipment to and from the barge loading site
- Provide transportation by a properly licensed vehicle with a CDL hazmat driver for pyrotechnics to the barge loading 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 USL&H worker's compensation insurance
- Supply the barge and tug to be used as a launch platform for the display
- Computer choreograph and fire the display to the Sponsor provided musical score
- Provide necessary mortars, supplies and firing equipment required to pre-load and computer fire the display

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DISPLAY AGREEMENT AND PURCHASE ORDER

THIS AGREEMENT ("Agreement") is entered into on this _____ day of _____, 2022 by and between Western Display Fireworks, Ltd., an Oregon corporation, whose address is set forth above, ("Western") and City of Everett, whose address is 2930 Wetmore Ave, Suite 10A, Everett, WA 98201 ("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, 2022 from a barge off Jetty Island, Everett, Washington, Proposal #22-7006, 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 SEVENTY FIVE THOUSAND DOLLARS AND NO/100 (\$75,000.00) is to be paid as follows: 25% of the total price, \$18,750.00 is due by MARCH 1, 2022; 25% of the total price, \$18,750.00 is due by JUNE 4, 2022; the remaining balance of the price, \$37,500.00, is due in full on or before July 14, 2022. 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 pyrotechnics necessary to present an aggressive and entertaining program. The Display will be choreographed to the Sponsor provided musical soundtrack. A detailed firing script will be provided to the Sponsor no later than 30 days prior to the Display;
 - b. To provide mortars, firing equipment and all other required materials necessary to perform its services hereunder;
 - c. To provide 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; and
 - b. Sponsor agrees to provide the musical soundtrack for the Display to Western no later than April 1, 2022.
5. **Insurance.** WESTERN shall maintain at WESTERN's cost during the term of this agreement General Commercial Liability Insurance on an occurrence basis. Such insurance must be in a form acceptable to Sponsor. Such insurance policy must have limits no less than five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) annual aggregate. Such insurance must be issued by companies authorized to do business in the State of Washington, which are rated at least "A" or better and have a numerical rating of no less than seven (7) by A.M. Best Company. WESTERN shall no later than June 15, 2022 deliver to Sponsor a Certificate of Insurance acceptable to the Sponsor evidencing the required insurance. WESTERN shall no later than June 15, 2022 deliver to the Sponsor a true copy

of an endorsement in a form acceptable to the Sponsor (1) naming the "City of Everett, their officers, employees, agents, and volunteers" as Additional Insureds on the Commercial General Liability Insurance policy with respect to the operations performed and services provided under this agreement and (2) providing that such Insurance shall apply as primary insurance on behalf of such Additional Insureds. Receipt by Sponsor of any certificate or endorsement showing less coverage than required is not a waiver of WESTERN's obligations to fulfill these requirements. If WESTERN fails to satisfy the requirements of this Section 9, Sponsor may at any time prior to the fireworks display terminate this agreement effective on delivery of written notice to WESTERN, in which case WESTERN shall refund any funds paid to WESTERN by Sponsor under this agreement and the parties will have no further obligations under this agreement.

6. **Indemnification.** WESTERN shall defend and indemnify the Sponsor, its officers, employees, agents and volunteers from any and all claims, losses or liabilities arising from or relating to this agreement to the extent such claims, losses or liabilities are caused by WESTERN's negligence, intentional misconduct, breach of this agreement or violation of any applicable laws, regulations or ordinances.

7. **Compliance with Laws.**

- a. **Sponsor Responsibilities:** SPONSOR agrees to perform their requirements in accordance with NFPA 1123 OUTDOOR DISPLAY OF FIREWORKS 2022 Edition (National Fire Protection Association) SPONSOR has consulted with the Authority Having Jurisdiction (AHJ) 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 for the Display is adequate. 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 SPONSOR. (2) The AHJ and WESTERN shall approve the provisions for crowd control. Monitors shall be positioned around the display site to prevent spectators or any other unauthorized persons from entering the discharge site. (3) Where required by the AHJ, approved delineators or barriers shall be used to aid in crowd control. (4) Unescorted public access to the discharge site shall not be permitted where pyrotechnic materials are present during the period before the display. (5) The discharge site shall be restricted throughout the display and until the discharge site has been inspected by WESTERN after the display. (See Exhibit A – Display Site Map)

- 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, Sponsor agrees to pay 25% of the total price (\$18,750.00) for restocking and costs incurred. If the Display is cancelled by the Sponsor within 30 days of the scheduled Display date, Sponsor agrees to pay 50% of the total price (\$37,500.00). If the Display is cancelled by the Sponsor on the date of the Display, Sponsor agrees to pay 100% of the total price (\$75,000.00). By providing notice of not

less than 30 days from the original Display date, Sponsor may elect to reschedule the Display to a mutually agreeable date. This date must occur before January 2, 2023. Western agrees to facilitate this rescheduling and Sponsor agrees to reimburse Western for new permits and other additional costs associated with this change. Sponsor understands that permitting requirements, burn bans and other factors beyond Western's control may prohibit rescheduling of a display. If these factors prohibit the rescheduled Display from taking place then the standard cancellation schedule applies.

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. In this situation, the Display will be rescheduled to a mutually agreeable date.

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.

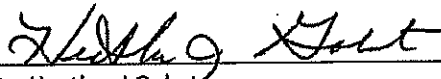
10. **Force Majeure.** Sponsor assumes the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Western which may prevent the Display from being safely performed on the scheduled date, which may cause the cancellation of the 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. In this situation, the Display will be rescheduled to a mutually agreeable date.
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. **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.
13. **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.
14. **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.
15. **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 Washington applicable to contracts.

- 16. **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.
- 17. **Survival.** The terms of paragraphs 5, 6, 14, and 15 shall survive the cancellation or termination of this Agreement.
- 18. **Miscellaneous.** Snohomish County Superior Court is the exclusive venue for any litigation arising out of this Agreement. This Agreement is the entire agreement of the parties relating to the subject matter of this Agreement. No amendment of this Agreement will be effective unless it is in writing and signed by both parties.
- 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.

Sponsor

Western Display Fireworks, Ltd.

 By: _____
 Its: _____
 Date: _____


 By: Heather J Gobet
 Its: President
 Date: 2/28/2022