



January 10, 2020

Spencer Nebel
City of Newport
169 SW Coast Hwy
Newport, OR 97365

Dear Spencer,

Thank you for allowing Western Display Fireworks the opportunity to be a part of your upcoming celebration. We are pleased to present our proposal for the 2020 Newport 4th of July fireworks display.

Please review the enclosed program and call us if you have any questions or if we can be of further assistance at this time. If the show is approved as written, please sign the enclosed Display Agreement and Purchase Order and return to Western by February 14th via fax, e-mail or in the envelope provided. This will allow us to proceed with all other arrangements for your show.

We appreciate your business and look forward to providing another spectacular fireworks display for your event.

Sincerely,

A handwritten signature in black ink that reads "Heather Gobet".

Heather Gobet
President

Portland • Seattle • Boise



Fireworks Display Proposal Summary

City of Newport

Newport 4th of July

July 4, 2020

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**
- **Process and pay for a General Fireworks Display Permit issued by the Oregon State Fire Marshal's office and approved by local police and fire authorities**
- **Prepare and submit the United States Coast Guard Application for Marine Event Permit**
- **Provide transportation for all equipment to and from the barge loading location or display site**
- **Provide transportation by a properly licensed vehicle with a CDL hazmat driver for pyrotechnics to the barge loading location or display site**
- **Cover your local pyrotechnician, assistant and crew under USL&H worker's compensation insurance**
- **Supply all pyrotechnics as listed on the attached detailed proposal**
 - **Complimentary product has been included in your display for signing the 2019-2021 Multi-Year Contract Addendum. These items include (14) spectacular 24-100 count multi-shot boxes.**
- **Provide any necessary mortars and supplies required to pre-load and electrically fire the display**

Portland • Seattle • Boise



WESTERN DISPLAY FIREWORKS LTD

City of Newport
Newport 4th of July
July 4, 2020



Portland • Seattle • Boise

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WESTERN DISPLAY FIREWORKS LTD

SHOW SCRIPT

Newport, City of
169 SW Coast Hwy
Newport, OR 97365

Event Date: 7/4/2020
Proposal #: 20-8573
Show Name: Newport 4th of July

Quantity Description

- 1 SHOW OPENER
- 1 2.5" (36 Shot) FANNED Blue & Gold Strobe w/Blue Tail
- 6 4" Large Golden Whirl w/Report + White Strobe
- 9 4" Twilight Glitter w/ Blue Pistil
- 6 5" Twilight Glitter w/ Blue Pistil
- 1 MAIN SHOW
- 1 FOUR INCH SHELLS
- 1 4" (36) Sunny Assortment Package C 2020 (2 Each)
 - 4" Red Glitter w/ Tail
 - 4" Green to Silver Peony w/ Tail
 - 4" Orange Glitter Tail w/ Tail
 - 4" Lemon Peony w/ Tail
 - 4" Silver Strobe w/ Tail
 - 4" Purple Tail Peony w/ Tail
 - 4" Variegated Color w/ Tail
 - 4" Golden Wave to Blue Chrysanthemum w/ Silver Tail
 - 4" Green Palm Tree w/ Tail
 - 4" Silver to Popping Flower w/ Tail
 - 4" Green to Gold Strobe w/ Tail
 - 4" Purple to Lemon Peony
 - 4" Super Yellow glitter Trail w/ Tail
 - 4" Glitter Silver to Red Chrysanthemum w/ Tail
 - 4" Variegated Color w/ Tail
 - 4" Yellow Glitter
 - 4" Red to Popping Flower
 - 4" Variegated Color w/ Tail
- 1 4" (36) Sunny Assortment Package B 2020 (2 Each)
 - 4" Green to Silver Strobe
 - 4" Purple Peony to Popping Flower w/ Tail
 - 4" Red to Blue Peony w/ Silver Palm Core w/ Tail
 - 4" Red Mag Dahlia w/ silver Tail
 - 4" Purple Dahlia w/ Silver Tail
 - 4" Blue Peony w/ Silver Tail
 - 4" Red & Blue & Spangle w/ Tail
 - 4" Red Glitter w/ Big Silver Palm w/ Tail
 - 4" Red Chrysanthemum w/ Silver Palm w Tail
 - 4" Green & Purple Dahlia w/ Tail
 - 4" Variegated Color w/ Tail
 - 4" Green Crossette w/ Tail
 - 4" Green Glitter w/ Tail
 - 4" Variegated Peony w/ Tail
 - 4" Variegated Color w/ Tail
 - 4" Lemon to Cracking Flower
 - 4" Red & Green Palm w/ Tail
 - 4" Variegated Color w/ Tail

WESTERN DISPLAY FIREWORKS LTD

SHOW SCRIPT

Proposal #: 20-6573

Quantity Description

- 1 4" (36) Sunny Meteor Assortment Package 2020 (2 Each)
- 4" Red & Green Peony w/Silver Tail
 - 4" Red & Twinkling Kamuro Ring w/Green Tail
 - 4" Brocade to Red w/Red Tail
 - 4" White Strobe Flitter & Blue w/Silver Tail
 - 4" Red & Blue Peony to White Strobe w/Silver Tail
 - 4" Green Glitter w/Green Tail
 - 4" Charcoal Crackling Chrysanthemum & Red Pistil w/Red Tail
 - 4" Variegated Color w/Silver Tail
 - 4" Red Glitter w/Silver Palm w/Silver Tail
 - 4" Orange to Popping Flower w/Silver Tail
 - 4" Green Strobe Glitter & Blue w/Glitter Tail
 - 4" Crackling Willow Flower w/Strobe Pistil & Glitter Tail
 - 4" Gold Gamboge to Purple w/Gold Tail
 - 4" Christmas Dahlia (Assorted Dahlia) w/Silver Tail
 - 4" Lemon & Purple Dahlia w/Silver Tail
 - 4" Red Peony w/Silver Palm & Silver Tail
 - 4" Gold Gamboge to Yellow w/Silver Tail
 - 4" Red Green Dahlia Ring w/Red Tail
- 2 4" (36) Crown Assorted Shells-B w/Tail (18 Effects 2 ea)
- 4" Blue Peony w/ Red Pistil w/ Red Tail (2 ea)
 - 4" Color Diadem w/ Blue Tail (2 ea)
 - 4" Dahlia Yellow w/ Green Tail (2 ea)
 - 4" Diadem Chrys. w/ Coconut Tree Core w/ Green Tail (2 ea)
 - 4" Dragon Eggs w/ Green Tail (2 ea)
 - 4" Glittering Silver to Crackling w/ Silver Tail (2 ea)
 - 4" Golden to Crackling Crossette w/ Silver Tail (2 ea)
 - 4" Green Chrys w/ Red Tail (2ea)
 - 4" Half Red & Blue w/ Silver Pistil w/ Red Tail (2 ea)
 - 4" Purple Peony w/ Silver Pistil w/ Red Tail (2 ea)
 - 4" Purple to Golden Crossette w/ Silver Tail (2 ea) 4"
 - 4" Red Swimming Star w/ Green Tail (2 ea)
 - 4" Silver Wave to Green w/ Silver Tail (2 ea)
 - 4" Silver Wave to Purple w/ Silver Tail (2 ea)
 - 4" White Flashing w/ Blue Tail (2 ea)
 - 4" Yellow & Blue Glittering w/ Blue Tail (2 ea)
 - 4" Yellow Swimming Star w/ Green Tail (2 ea)
 - 4" Yellow to Crackling w/ Green Tail (2 ea)

WESTERN DISPLAY FIREWORKS LTD

SHOW SCRIPT

Proposal #: 20-6573

Quantity Description

- 1 4" (36) Crown Assorted Shells-A w/Tail (18 Effects 2 ea)
 - 4" Blue Chrys w/ Red Tail (2 ea)
 - 4" Blue to White Strobe Peony w/ Silver Tail (2 ea)
 - 4" Brocade Crown w/Strobe Pistil w/ Silver Tail (2 ea)
 - 4" Crackling Willow w/ Green Tail (2 ea)
 - 4" Diadem Chrys. to Strobing w/ Green Tail (2 ea)
 - 4" Glittering Color w/ Blue Tail (2 ea)
 - 4" Glittering White w/ Red Pistil w/ Silver Tail (2 ea)
 - 4" Golden Peony w/ Crackling Pistil w/ Red Tail (2 ea)
 - 4" Golden Wave to Green w/ Silver Tail (2 ea)
 - 4" Green Chrys. w/ Crackling Core w/ Blue Tail (2 ea)
 - 4" Green Peony w/ Coconut Tree Pistil w/ Red Tail (2 ea)
 - 4" Purple Chrys. w/ Red Flower Core w/ Blue Tail (2 ea)
 - 4" Purple to Golden Peony w/ Red Tail (2 ea)
 - 4" Red Chrys. w/ Golden Palm Tree Core w/ Blue Tail (2 ea)
 - 4" Silver Wave to Blue w/ Blue Tail (2 ea)
 - 4" Variegated Willow w/ Green Strobe w/ Green Tail (2 ea)
 - 4" White Twinkling Chrys w/ Blue Tail (2 ea)
 - 4" Yellow Peony w/ Purple Pistil w/ Red Tail (2 ea)

1 FIVE INCH SHELLS

- 1 5" (16) Crown Assorted Shells-A w/Tail (18 Effects 1 ea)
 - 5" Blue Chrys. w/ Thousand Flowers w/ Red Tail
 - 5" Blue Chrys. w/ Yellow Pistil w/ Green Tail
 - 5" Dragon Eggs w/ Coconut Tree Pistil w/ Blue Tail
 - 5" Glittering Silver to Red w/ Crackling Pistil w/ Green Tail
 - 5" Golden to Silver Chrys. w/ Blue Pistil w/ Silver Tail
 - 5" Golden Wave to Purple w/ Silver Ring Pistil w/ Red Tail
 - 5" Green Chrys. w/ Silver Crossette Core w/ Silver Tail
 - 5" Green Peony w/ Coconut Tree Pistil w/ Blue Tail
 - 5" Green to White Flashing Chrys w/ Silver Tail
 - 5" Half Purple & Half White Peony w/ Blue Tail
 - 5" Purple Chrys. w/ Red Pistil w/ Green Tail
 - 5" Purple to White Flashing Chrys w/ Blue Tail
 - 5" Red to Blue & Crackling Stars w/ Red Tail
 - 5" Red to Red Strobe Peony w/ Red Tail
 - 5" Red Wave to Small Color Flower w/ Blue Tail
 - 5" Silver Chrys. w/ Red Pistil w/ Green Tail
 - 5" Silver Glittering to Red to Blue Peony w/ Silver Tail
 - 5" Silver Wave to Blue to Red w/ Blue

WESTERN DISPLAY FIREWORKS LTD
SHOW SCRIPT

Proposal #: 20-6573

Quantity Description

- 2 5" Factory Assortment B RT(18 Effects)
- 5" Blue Crown (1 each)
 - 5" Brocade Crown w/ Strobe Pistil (1 each)
 - 5" Brocade Purple (1 each)
 - 5" Brocade Purple to Silver (1 each)
 - 5" Brocade Red (1 each)
 - 5" Crackling Crown (1 each)
 - 5" Crackling spider (1 each)
 - 5" Dahlia Silver to Green (1 each)
 - 5" Dahlia Silver to Yellow (1 each)
 - 5" Diadem Chrysanthemum to Strobing (1 each)
 - 5" Diadem Chrysanthemum w/ Strobing Pistil (1 each)
 - 5" Diadem Chrysanthemum w/ Thousand Flowers (1 each)
 - 5" Golden Willow (1 each)
 - 5" Golden Willow w/ Green Strobe Pistil (1 each)
 - 5" Silver Spider w/ Red Ring (1 each)
 - 5" Time Rain to Willow (1 each)
 - 5" Willow w/ Red Leaves (1 each)
 - 5" Yellow Crown (1 each)
- 1 5" (18) Sunny Assortment Package A 2019 (2 each)
- 5" Purple to Crackling Willow w/Tail
 - 5" Silver to Purple Wave
 - 5" Green Mag Dahlia w/Crackling Flowers w/Silver Tail
 - 5" Glitter Silver to Red Chrysanthemum
 - 5" Red & Green Glitter w/Tail
 - 5" Variegated Color w/Tail
 - 5" Charcoal Chrysanthemum & Blue w/Tail
 - 5" Variegated Color w/Tail
 - 5" Red Coconut
- 1 5" (18) Sunny Assortment Package B 2019 (2 each)
- 5" Variegated Peony w/Silver Palm w/Tail
 - 5" Red to Crackling Willow w/Tail
 - 5" Silver Brocade to Red Strobe w/Tail
 - 5" Red & Green Double Ring
 - 5" Variegated Color w/Tail
 - 5" Blue Octopus w Silver Tail
 - 5" Green & Purple Dahlia w/Tail
 - 5" Variegated Color w/Tail
 - 5" Red Glitter Ring w/Blue Pistil w/Tail
- 1 5" (18) Sunny Assortment Package C 2020 (2 Each)
- 5" Green & Purple Peony w/ Tail
 - 5" Red Gamboge to Red to Green chrysanthemum
 - 5" Crackling Chrysanthemum & Orange w/ Silver Tail
 - 5" White Twinkling Kamuro
 - 5" Red Mag Dahlia w/ Silver Tail
 - 5" Aqua Dahlia
 - 5" Variegated Color w/ Tail
 - 5" Silver Peony w/ Green Pistil
 - 5" Variegated Color w/ Tail

WESTERN DISPLAY FIREWORKS LTD

SHOW SCRIPT

Proposal #: 20-6573

Quantity Description

- 1 ***** MID SHOW #1
- 1 3" (25 Shot) FANNED Silver Glitter to Green Strobe
- 6 4" Silver to Crackling
- 6 4" Green to Silver Strobe
- 3 5" Green to Silver Strobe
- 1 ***** MID SHOW #2
- 1 2.5" (30 Shot) Fanned Fuchsia Magic Peony / Turquoise Peony / Silver Palm Tree w/Silver Tail
- 6 4" Pink Peony
- 6 4" Aqua Peony
- 3 5" Thousand Flowers - Silver Palm
- 1 ***** MID SHOW #3
- 1 3" (24 Shot) Fan Shape Red Shiny Peony/Purple Magic Peony/Green Strobe Willow w/Tourbillion Tail
- 6 4" Tourbillion + Crackling Rain Thousand Flower + Purple Stars
- 6 4" Silver Whirl w/Reports + Green Stars
- 3 5" Diamond Screamer & Red Stars
- 1 ***** MID SHOW #4
- 1 2.5" (30 Shot) Fanned Lemon & Glitter Palm Core / Orange & Green Palm Core / Pink & Glitter Palm Core w/Tail
- 9 4" Lemon Strobe
- 9 4" Orange Strobe
- 6 5" Colorful Dahlia (Pink, Purple, Lemon, Aqua)
- 1 ***** MID SHOW #5
- 1 3" (25 Shot) FANNED Color Magic Peony
- 6 4" Tourbillion w/Report & Multi Color Stars
- 9 4" Multi Color to Crackling Rain Double Ring
- 6 5" Thousand Flowers - Multi-Color Star
- 1 ***** MID SHOW #6
- 1 2.5" (30 Shot) Fanned Silver Palm Tree / Purple Strobe / Green Crackling Flower w/Silver Tail
- 9 4" Silver Palm Tree
- 9 4" Purple to Silver Strobe
- 6 5" Silver Kamuro w/ Green Flower (Long Duration)
- 1 ***** MID SHOW #7
- 2 3" (25 Shot) Variegated Crossette
- 9 4" Variegated Crossette
- 6 4" Diamond Screamer & Silver Crossette
- 6 5" Silver to Variegated Crossette
- 1 ***** MID SHOW #8
- 1 2.5" (30 Shot) Fanned Glitter Coconut w/Glitter Tail
- 9 4" Glitter Coconut
- 9 4" Crackling Crossette
- 6 5" Crackling Crossette
- 1 ***** MID SHOW #9

WESTERN DISPLAY FIREWORKS LTD

SHOW SCRIPT

Proposal #: 20-6573

Quantity Description

- 2 3" (25 Shot) Gold to Popping Flower / Blue to Popping Flower / Green Strobe Filter w/Gold Tail
- 9 4" Gold Strobe to Crackling Flower
- 9 4" Blue Chrysanthemum to Crackling Flower
- 6 5" Green Twinkling Crown w/ Twinkling Crown Tail
- 1 ***** MID SHOW #10
- 1 2" (49 Shot) FANNED Crackling Flower w/Red Strobe
- 9 4" Red Strobe
- 9 4" Red Chrysanthemum to Crackling Flower
- 3 5" Double Silver Spinning w/Red Strobe Pistil (Cylinder)
- 1 GRAND FINALE 1
- 1 2.5" (30 Shot) Fanned Red Shiny Peony / Blue Shiny Peony / Titanium Salute
- 9 4" Silver Kamuro
- 9 4" Red Chrysanthemum
- 6 5" Blue Chrysanthemum
- 1 GRAND FINALE 2
- 3 3" (25 Shot) Blue Magic Peony / Red Shiny Peony / Titanium Salute w/Tail
- 15 4" 3 Color Change Chrysanthemum-Silver to Blue to Red Chrysanthemum
- 3 4" (5) Artillery Titanium w/Silver Tail
- 9 5" Half Red & Half Blue w/ Silver Glitter Pistil
- 1 GRAND FINALE 3
- 5 3" Ti Salute (Finale Chain of 10)
- 3 4" (5) Red & Blue & White Strobe Trail / Artillery Titanium w/Silver Tail
- 3 5" (3) Blue to Silver Diamond w/Red Strobe Pistil w/Silver Tail
- 1 MISC SUPPLIES
- 400 Squibs - J-Tek12 T Shroud 12' lead
- 10 Squibs - J-Tek12 T Shroud 12' lead
- 6 Safety Glasses
- 6 Earplugs
- 6 1" x 60yd Masking Tape - Roll
- 5 Foll - Small
- 2 20 Minute Fusee w/ Handle



DISPLAY AGREEMENT AND PURCHASE ORDER

THIS AGREEMENT ("Agreement") is entered into on this 16th day of May, 2020 by and between Western Display Fireworks, Ltd., an Oregon corporation, whose address is set forth above, ("Western") and City of Newport, whose address is 169 SW Coast Hwy, Newport, OR 97365 ("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, 2020 at the Port of Newport International Terminal, near 1300 Yaquina Bay Rd, Newport, OR 97365, as detailed in Proposal #20-6573, 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 THIRTY THOUSAND DOLLARS AND NO/100 (\$30,000.00) is to be paid as follows: 25% of the total price, \$7,500.00 is due by APRIL 1, 2020; the remaining balance of the price, \$22,500.00, is due in full on or before July 14, 2020. Interest will accrue at 1% 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 noted 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 to provide forklift and operator to assist with installation and removal of equipment
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:** SPONSOR 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 sponsor of the display shall make provisions for fire protection for the display. 8.1.1 The sponsor 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 sponsor. (2) The AHJ and the operator shall approve the provisions for crowd control. 8.1.2.1 Monitors shall be positioned around the display site to prevent spectators or any other unauthorized persons from entering the discharge site. 8.1.2.2 Where required by the AHJ, approved delineators or barriers shall be used to aid in 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 (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 but prior to departure from Western's facility, Sponsor agrees to pay 25% of the total price (\$7,500.00) 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 (\$15,000.00). If the Display is cancelled by the Sponsor after the physical show setup is complete, Sponsor agrees to pay 100% of the total price (\$30,000.00). 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 February 14, 2020.

Sponsor

Western Display Fireworks, Ltd.


By: Spencer R. Nebel
Its: City Manager
Date: 5-15-20


By: Heather J. Gobet
Its: President
Date: 5/16/2020

**AMENDMENT TO
DISPLAY AGREEMENT AND PURCHASE ORDER**

THIS AMENDMENT ("Amendment") is entered into on this 23rd day of July, 2020 by and between Western Display Fireworks, Ltd., an Oregon corporation, whose address is set forth above, ("Western") and City of Newport, whose address is 169 SW Coast Hwy, Newport, OR 97365 ("Sponsor"). Western and Sponsor are sometimes individually referred to as a "Party" and collectively as the "Parties."

WHEREAS the Parties have previously entered into a Display Agreement and Purchase Order;

WHEREAS as a result of the COVID-19 outbreak, events are being postponed, and the Parties which to memorialize the changes to the Display Agreement and Purchase Order;

WHEREAS subject to the Display Agreement and Purchase Order section 19, it may be modified by mutual, written agreement of the Parties.

NOW THEREFORE, 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. **New Date.** The designated date from Section 1., Proposal #20-6573, is cancelled. The new date is July 4, 2021, as detailed in Proposal #21-6668, which is incorporated herein by this reference, (the "Display") in accordance with the program approved by both Parties.
2. **Deposit and Payment Terms.** The Parties agree that all deposits (\$7,500.00) made by Sponsor shall be applied to the event which will take place on July 4, 2021. The remaining balance of the price, \$22,500.00, is due in full on or before July 14, 2021.
3. **No Other Changes.** All other terms of the Display Agreement and Purchase Order remain in force.

The pricing and product offered in the Proposal shall remain firm if this Agreement is mutually executed by both Parties on or before May 22, 2020.

Sponsor

Western Display Fireworks, Ltd.

By: Spencer R. Nebel
Its: City Manager
Date: 07-21-20

By: Heather J. Gobet
Its: President
Date: 7/23/2020

