



AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

Original was a docuSign

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: 2024 Fireworks agreement Date: 3-12-24

Statement of Purpose: For 2024 Fireworks Display

Department Head Signature: *[Signature]*

Remarks, if any: _____

City Attorney Review and Signature: See attached email Date: 3/12/24

Other Signatures as Requested by the City Attorney: _____

Name/Position
Date: _____

Budget Confirmed: Signature Yes No N/A

Certificate of Insurance Attached: Yes No N/A

City Council Approval Needed: Yes No Date: _____

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: _____ Date: _____

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

Spencer Nebel

From: David Allen
Sent: Tuesday, March 12, 2024 8:14 AM
To: Robert Murphy; Spencer Nebel
Cc: Melanie Nelson; Erik Glover
Subject: Re: This is a reminder to sign the document 'Proposal - Newport 4th of July Fireworks 2024'
Attachments: Contract REV - Newport.pdf

Spencer - in follow-up to your question yesterday afternoon, the attached agreement can be signed, as noted below, so long as the COI is updated with insurance policies that are currently in effect. --David

From: David Allen
Sent: Tuesday, February 20, 2024 1:17 PM
To: Robert Murphy
Cc: Spencer Nebel; Melanie Nelson; Erik Glover
Subject: Re: This is a reminder to sign the document 'Proposal - Newport 4th of July Fireworks 2024'

Attached agreement has revised section 6, as noted below. But the COI included at the end of the 2024 proposal/document from below still needs to be updated with insurance policies that are currently in effect. Once the COI is updated, you can use this e-mail to confirm review for the sign-off form. --David

From: Robert Murphy
Sent: Thursday, February 8, 2024 7:05 PM
To: David Allen
Cc: Spencer Nebel
Subject: RE: This is a reminder to sign the document 'Proposal - Newport 4th of July Fireworks 2024'

Thanks David,
I will forward this onto the Fire Works Company to get a corrected copy.

Rob Murphy
Fire Chief
Newport Fire Department
245 NW 10th St.
Newport, OR 97365
541-265-9461
r.murphy@newportoregon.gov

PUBLIC RECORDS LAW DISCLOSURE. This e-mail is a public record of the City of Newport, and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This e-mail is subject to the State Records Retention Schedule for Cities.

-----Original Message-----

From: David Allen <D.Allen@NewportOregon.gov>

Sent: Thursday, February 8, 2024 5:57 PM

To: Spencer Nebel <S.Nebel@NewportOregon.gov>; Robert Murphy <R.Murphy@NewportOregon.gov>

Cc: Melanie Nelson <M.Nelson@NewportOregon.gov>; Erik Glover <E.Glover@NewportOregon.gov>

Subject: Re: This is a reminder to sign the document 'Proposal - Newport 4th of July Fireworks 2024'

The attached 2024 proposal/document is missing language in section 6 (indemnification) of the agreement. See section 6 of attached agreement from 2022 which includes the language missing from section 6 of the 2024 agreement. Also, the COI included at the end of the 2024 proposal/document should be updated with insurance policies that are currently in effect. --David

From: Spencer Nebel

Sent: Wednesday, January 31, 2024 12:46 PM

To: David Allen; Robert Murphy

Subject: FW: This is a reminder to sign the document 'Proposal - Newport 4th of July Fireworks 2024'

Hi David: We have made a deposit for the 2024 fireworks and the Council has appropriated funding but we have not executed the agreement. I don't know if Rob got this to you, but can you take a look at the agreement to see if we are good to go with signing this? - Spencer

From: RightSignature.com <documents@rightsignature.com>

Sent: Wednesday, January 31, 2024 11:57 AM

To: Spencer Nebel <S.Nebel@NewportOregon.gov>

Subject: This is a reminder to sign the document 'Proposal - Newport 4th of July Fireworks 2024'

[WARNING] This message comes from an external organization. Be careful of embedded links.

* * * * *

DISPLAY AGREEMENT AND PURCHASE ORDER

THIS AGREEMENT ("Agreement") is entered into on 03/13/2024 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, 2024 at the Port of Newport International Terminal, near 1300 Yaquina Bay Rd, Newport, OR 97365, as detailed in Proposal #24-7463, 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 FIFTY THOUSAND DOLLARS AND NO/100 (\$50,000.00) is to be paid as follows: 25% of the total price, \$12,500.00 is due by JANUARY 15, 2024; 25% of the total price, \$12,500.00 is due by JUNE 4, 2024; the remaining balance of the price, \$25,000.00, is due in full on or before July 14, 2024. 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 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 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 to provide street sweeper to clean the port property after the display.
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. In accordance with the Oregon Tort Claims Act and Oregon Constitution, 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 directly arise from the performance of the fireworks to the extent that such are occasioned by an 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 2022 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, the local responding fire department (if different from the AHJ) and the operator (the licensed pyrotechnic operator employed by Western) 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, Sponsor agrees to pay 25% of the total price (\$12,500.00) 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 (\$25,000.00). If the Display is cancelled by the Sponsor on the date of the Display, Sponsor agrees to pay 100% of the total price (\$50,000.00). 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 be within 90 days of the original display date. 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.

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 19, 2024.

Sponsor

Spencer R. Nebel

By: Spencer R. Nebel

Its: City Manager

Date: 03/12/2024

Western Display Fireworks, Ltd.

Brent Pavlicek

By: Brent Pavlicek

Its: Co- President

Date: 03/13/2024



SIGNATURE CERTIFICATE



REFERENCE NUMBER
E4957EDE-56D9-465F-B899-EB5A61A68408

TRANSACTION DETAILS	DOCUMENT DETAILS
<p>Reference Number E4957EDE-56D9-465F-B899-EB5A61A68408</p> <p>Transaction Type Signature Request</p> <p>Sent At 02/13/2024 13:43 EST</p> <p>Executed At 03/13/2024 12:15 EDT</p> <p>Identity Method email</p> <p>Distribution Method email</p> <p>Signed Checksum 3a54d91468a9bb13343a3ababe60d8410e6c382fcd2bf6bb73dfc2531d66db99</p> <p>Signer Sequencing Enabled</p> <p>Document Passcode Disabled</p>	<p>Document Name Contract REV- Newport</p> <p>Filename Contract_REV-_Newport.pdf</p> <p>Pages 4 pages</p> <p>Content Type application/pdf</p> <p>File Size 314 KB</p> <p>Original Checksum 5f86c986cdc703864ea09986910c551a8dbc8f131f2b2472ea9b18baa55666ec</p>

SIGNERS

SIGNER	E-SIGNATURE	EVENTS
<p>Name Brent Pavlicek</p> <p>Email brent@westerndisplay.com</p> <p>Signer Sequence 1</p> <p>Components 3</p>	<p>Status signed</p> <p>Multi-factor Digital Fingerprint Checksum a7daeec4171bfe266afdfa9367f920501adb8a7cee3dd3d64e8f7a8907a6ef2a</p> <p>IP Address 204.195.27.9</p> <p>Device Microsoft Edge via Windows</p> <p>Typed Signature <i>Brent Pavlicek</i></p> <p>Signature Reference ID 0F0B154B</p>	<p>Viewed At 03/13/2024 12:13 EDT</p> <p>Identity Authenticated At 03/13/2024 12:15 EDT</p> <p>Signed At 03/13/2024 12:15 EDT</p>
<p>Name Spencer Nebel</p> <p>Email s.nebel@newportoregon.gov</p> <p>Signer Sequence 0</p> <p>Components 4</p>	<p>Status signed</p> <p>Multi-factor Digital Fingerprint Checksum 8ee4e955b08b868c8dc46aa70498af2e3a24ef6bc6b50a5e812014d0d07a5cef</p> <p>IP Address 206.192.234.148</p> <p>Device Microsoft Edge via Windows</p> <p>Typed Signature <i>Spencer E. Nebel</i></p> <p>Signature Reference ID 7AF05420</p>	<p>Viewed At 03/12/2024 14:01 EDT</p> <p>Identity Authenticated At 03/12/2024 14:02 EDT</p> <p>Signed At 03/12/2024 14:02 EDT</p>

AUDITS

TIMESTAMP	AUDIT
02/13/2024 13:43 EST	Kim Dodgion (kim@westerndisplay.com) created document 'Contract_REV-_Newport.pdf' on Chrome via Windows from 204.195.27.9.
02/13/2024 13:43 EST	Spencer Nebel (s.nebel@newportoregon.gov) was emailed a link to sign.
02/27/2024 17:19 EST	Spencer Nebel (s.nebel@newportoregon.gov) was emailed a reminder.
03/07/2024 18:00 EST	Spencer Nebel (s.nebel@newportoregon.gov) was emailed a reminder.
03/11/2024 15:48 EDT	Spencer Nebel (s.nebel@newportoregon.gov) viewed the document on Microsoft Edge via Windows from 206.192.234.148.

TIMESTAMP

03/12/2024 14:01 EDT

03/12/2024 14:02 EDT

03/12/2024 14:02 EDT

03/12/2024 14:02 EDT

03/13/2024 12:12 EDT

03/13/2024 12:13 EDT

03/13/2024 12:13 EDT

03/13/2024 12:15 EDT

03/13/2024 12:15 EDT

AUDIT

Spencer Nebel (s.nebel@newportoregon.gov) viewed the document on Microsoft Edge via Windows from 206.192.234.148.

Spencer Nebel (s.nebel@newportoregon.gov) authenticated via email on Microsoft Edge via Windows from 206.192.234.148.

Spencer Nebel (s.nebel@newportoregon.gov) signed the document on Microsoft Edge via Windows from 206.192.234.148.

Brent Pavlicek (brent@westerndisplay.com) was emailed a link to sign.

Brent Pavlicek (brent@westerndisplay.com) was emailed a reminder.

Brent Pavlicek (brent@westerndisplay.com) viewed the document on Microsoft Edge via Windows from 204.195.27.9.

Brent Pavlicek (brent@westerndisplay.com) viewed the document on Microsoft Edge via Windows from 3.232.43.119.

Brent Pavlicek (brent@westerndisplay.com) authenticated via email on Microsoft Edge via Windows from 204.195.27.9.

Brent Pavlicek (brent@westerndisplay.com) signed the document on Microsoft Edge via Windows from 204.195.27.9.