

Application Date: 5.2.2024



P.O. Box 369 (Mail)
303 E. Pecan Dr (Physical)
Johnson City, TX 78636
830.868.7111 (Phone)
830.868.7718 (Fax)

FIREWORKS PERMIT APPLICATION

APPLICANT'S NAME: City of Johnson City, Texas DATE: July 4, 2024

APPLICANT'S ADDRESS: 303 E Pecan PHONE #: 830-868-7111 *7

AGE: N/A

LOCATION OF PROPOSED FIREWORK DISPLAY:
4th Fest Parade and Fireworks Display; Location Pending Approval

ADDITIONALLY, THE FOLLOWING MUST ACCOMPANY APPLICATION:

- Names, ages, and addresses of all persons conducting the display.
- Proof of insurance or bond as required by Ordinance.
- A survey or aerial image submitted illustrating the display area and location of all launch and detonation sites, public areas, and safety features.
- Location of stored fireworks for the display.

By signing below, the Applicant hereby acknowledges that he/she is familiar with the Firework Rules promulgated by the State Fire Marshall and Article 5.43-4, Insurance Code of the State of Texas and agrees to adhere strictly to the provisions of said regulations.

SIGNATURE:  License #: NIA

<u>Office Use Only:</u>	
Permit #: _____	Date Received: _____
Date of Approval: _____	Date of Denial: _____
Approved by: _____	Fire Marshal Approved: _____

Connie Harrison

From: Whitney Walston <wwalston@johnsoncitytx.org>
Sent: Friday, May 3, 2024 11:36 AM
To: Connie Harrison
Cc: Stephanie Fisher
Subject: JC 4th Fest Independence Day Fireworks

Hi,

The City is in final preparations for our annual JC 4th Fest Independence Day Fireworks and I would like to officially request the use of the Blanco Co. Annex back (off of Bluebonnet) parking lot to stage and fire the fireworks. The display will be done by a licensed pyrotechnic (Coach Davis) with JCVFD on site. Can you please place this item on your May 14th agenda for Commissioners Court?

Thank you,
Whitney



WHITNEY WALSTON
City Secretary

P. O. Box 569 Tel: (850) 868-7111 x7
305 E. Pecan Drive Fax: (850) 868-7715
Johnson City, TX 78636 Cell: (512) 850-8402

WWW.JOHNSONCITYTX.ORG

PROOF OF GENERAL LIABILITY COVERAGE

FIREWORKS PUBLIC DISPLAY

NAME OF POOL: TML INTERGOVERNMENTAL RISK POOL

This Pool hereby states that it has issued to the member named below a contract of coverage to meet the requirements of Chapter 2154, Texas Occupations Code and the Fireworks Rules. It is understood that the provisions of Chapter 2154 and the Fireworks Rules require a permit or license applicant to submit to the State Fire Marshal evidence of a general liability insurance policy in an amount of not less than \$500,000. The policy shall be conditioned to pay those sums the insured becomes obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of a public fireworks display. Evidence of the liability insurance policy must be in the form of a certificate of insurance issued by an insurer authorized to do business in Texas and countersigned by an insurance agent licensed in Texas. This requirement may be satisfied by a city, county, or other political subdivision presenting proof of its participation in a self-insurance fund or other fund created under Chapter 791, Government Code, covering the liability requirements under Chapter 2154.

CERTIFICATE OF COVERAGE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder.

This certificate does not amend, extend, or alter the coverage listed below.

Name and Address of Political Subdivision:

Johnson City
PO Box 369
Johnson City, Texas 78636-0369

Certificate Holder:

Texas State Fire Marshal's Office
Licensing - Div.
P. O. Box 149221
Austin, Texas 78714-9221

Type of Coverage	Policy Number	Effective Date	Anniversary Date	Limits of Liability
General Liability	8139	10/01/2023	10/01/2024	\$10,000,000 Aggregate

NOTE: Chapter 2154, Texas Occupations Code, provides that an insurer may not cancel a certificate of insurance issued under these requirements unless the insurer gives the State Fire Marshal notice of intent to cancel as required by the board.

AUTHORIZED REPRESENTATIVE:

Name: Texas Municipal League Intergovernmental Risk Pool

Address: PO Box 149194
Austin, Texas 78714-9194

Phone: (512) 491-2300 / (800) 537-6655

Signature: 

Date: 08/03/2023

(Do not use stamp)



May 1, 2024

Johnson City Attn: Whitney Walston
P.O. Box 369
Johnson City, Tx. 78636

Re: UN0336, 1.4G Consumer Fireworks Display on July 4 at 9:15 p.m.

Dear Johnson City Attn: Whitney Walston

THIS LETTER OF AGREEMENT (this "Agreement") sets forth the terms and conditions on which AMERICAN PROMOTIONAL FIREWORKS, INC. – WEST d/b/a TNT Fireworks ("TNT Fireworks") agrees to provide a UN0336, 1.4G consumer fireworks display (the "Show") to either you or your organization (either, the "Customer") at the following location (the "Site"):

Blanco County Motor Vehicle Reg.
101 E. Cypress Street
Johnson City, Tx. 78636

Customer agrees to the terms and conditions set forth in this Agreement. The relationship between Customer and TNT Fireworks regarding the Show is governed by this Agreement and this Agreement shall become effective on the date which Customer signs this Agreement. Customer and TNT Fireworks (collectively, the "Parties") also agree as follows:

1. *Preparing the Site.* Customer agrees to clean and to prepare the Site for the Show, including, but not limited to, removing all trash and other debris from the Site prior to the Show. Customer agrees to provide an area for the performance of the Show that is secure and which cannot be accessed by unauthorized persons (e.g., individuals who are not contractors or employees of TNT Fireworks). Customer shall indemnify and hold TNT Fireworks harmless from all damages, injuries, liabilities and losses of any kind caused by an unauthorized person accessing the area designated for the performance of the Show.

2. *The Show.* The Show will consist of an aerial display of UN0336, 1.4G consumer fireworks. The Show may include other artistic and non-aerial elements involving UN0336, 1.4G consumer fireworks. The Show will have a duration of approximately 15 minutes and will occur on July 4 at about 9:15 p.m. local time. TNT Fireworks will determine the content, colors and effects of the Show within its absolute and sole discretion. TNT Fireworks makes no representations or warranties of any kind to Customer with respect to the Show. The Show is being provided to Customer "AS-IS." TNT Fireworks is not responsible for any event or other occurrence at or near the Site, nor is TNT Fireworks responsible for any event or other occurrence relating to the Show. TNT Fireworks reserves the right within its absolute and sole discretion to not perform the Show if the conditions are not safe or suitable (e.g., inclement weather) for the Show. TNT Fireworks also reserves the right to cancel this Agreement if the Show is prohibited or restricted by an authority having jurisdiction over the Site, including, but not limited to, any delay or failure of an authority having jurisdiction over the Site to grant or otherwise issue any approval, consent, license or permit for the Show.

Johnson City Attn: Whitney Walston

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3. *Payment Terms.* Customer agrees to pay TNT Fireworks an amount equal to Nine Thou. (\$9,000 . USD) for the Show. Customer will pay Fifty Percent (50%) of this amount as a deposit (the "Deposit") upon Customer signing this Agreement. Customer will pay the other Fifty Percent (50%) of this amount no later than 6/30/2024. Customer does not have any right to deduct, set-off or withhold from the amount owed to TNT Fireworks under this Agreement. Customer shall be responsible for reimbursing TNT Fireworks for all its costs and expenses, including, but not limited to, attorneys' fees incurred in connection with enforcing this Agreement against Customer. All outstanding and unpaid amounts owed to TNT Fireworks under this Agreement shall accrue interest at a rate of one-and-one-half percent (1.5%) from the date owed until such time as the amounts are paid in full to TNT Fireworks.

4. *Cancellation.* If TNT Fireworks does not perform the Show for any reason provided for in Paragraph 2 of this Agreement then, Customer and TNT Fireworks will work together to reschedule the Show; *provided, that,* TNT Fireworks shall not be responsible for any costs or expenses relating to the rescheduling of the Show, but TNT Fireworks shall apply the Deposit to the rescheduled show. If Customer cancels this Agreement for any reason with less than ninety (90) days' notice prior to the Show then, Customer forfeits the Deposit to TNT Fireworks, not as a penalty but as liquidated damages, to cover the costs and expenses that TNT Fireworks is expected to incur in preparing for the Show upon Customer signing this Agreement.

5. *Indemnification and Hold Harmless.*

(a) Customer shall defend TNT Fireworks and each of the TNT Parties (as defined later) against, and Customer shall indemnify and hold TNT Fireworks and each of its affiliate, parent and subsidiary entities, together with each of their directors, officers, managers, members, employees and other agents (collectively, the "TNT Parties") from, all causes of action, claims, damages, demands, expenses, (including, but not limited to, attorneys' fees) injuries, judgments, liabilities, losses, penalties and/or settlements arising out of or resulting from, whether alleged or proven: (a) an act or omission of Customer; (b) an act or omission of any attendee, guest or invitee of the Show; (c) an act or omission of any contractor, employee, licensee, tenant or other agent of Customer; (d) a breach of or failure to perform under this Agreement by Customer; or (e) any condition of the Site, including, but not limited to, any dangerous or hazardous condition not disclosed to TNT Fireworks and remedied by Customer prior to the Show.

(b) TNT Fireworks shall defend Customer against, and TNT Fireworks shall indemnify and hold Customer harmless from, all causes of action, claims, damages, demands, expenses (including, but not limited to, attorneys' fees), injuries, judgments, liabilities, losses, penalties and/or settlements arising out of or resulting from, whether alleged or proven: (a) a material breach of this Agreement by TNT Fireworks; or (b) a negligent, reckless or wanton act of any employee of TNT Fireworks in performing under this Agreement. TNT Fireworks shall name Customer as an "additional insured" on its commercial general liability insurance policy that insures against certain bodily injuries and property damages arising in connection with the Show; *provided, that,* Customer's "additional insured" status shall be subject to all terms, conditions and exclusions of the policy procured and maintained by TNT Fireworks. TNT Fireworks shall provide Customer with a certificate of insurance to this effect. Customer shall pay to TNT Fireworks an amount equal to TWO HUNDRED AND FIFTY DOLLARS (\$250.00 USD) as an administrative fee for the certificate of insurance.

Johnson City Attn: Whitney Walston

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(c) This Paragraph 5 shall survive the expiration or termination of this Agreement.

6. *Limitation of Liability.* UNDER NO CIRCUMSTANCES OR LEGAL THEORY SHALL TNT FIREWORKS BE LIABLE TO CUSTOMER FOR DAMAGES OF ANY KIND IN EXCESS OF THE TOTAL AMOUNT PAID OR PAYABLE TO TNT FIREWORKS FOR THE SHOW.

7. *Waiver of Consequential Damages.* UNDER NO CIRCUMSTANCES OR LEGAL THEORY SHALL TNT FIREWORKS BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE OR SHOULD HAVE BEEN FORESEEABLE BY TNT FIREWORKS, AND REGARDLESS OF WHETHER TNT FIREWORKS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE BY CUSTOMER.

8. *General.* This Agreement does not create a joint venture or partnership between Customer and TNT Fireworks. TNT Fireworks is providing the Show to Customer as an independent contractor. This Agreement shall not be assigned by Customer without the prior written consent of TNT Fireworks, consent which may be conditioned or withheld within the absolute and sole discretion of TNT Fireworks. This Agreement contains and represents the entire agreement and understanding between the Parties regarding the subject matter hereof. This Agreement replaces and supersedes all prior agreements and understandings regarding the subject matter hereof, regardless of whether such were in writing or verbal. This Agreement shall not be amended or modified except in a separate writing signed by the Parties. This Agreement may be executed in counterparts, each of which shall constitute an original when executed, and all of which taken together shall constitute one and the same Agreement. This Agreement may be executed by the Parties with electronic signatures which shall have the same force and effect as if such were handwritten signatures. This Agreement shall be interpreted in accordance with and shall be governed by the internal laws of the State of Texas, but without regard for its choice of law or conflict of law principles. Any claim, controversy, dispute, litigation or similar proceeding arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts located in the State of Texas. The Parties irrevocably and unequivocally consent to the personal jurisdiction of the courts located in the State of Texas for any claim, controversy, dispute, litigation or similar proceeding arising out of or relating to this Agreement. The individual signing this Agreement on behalf of Customer represents and warrants to TNT Fireworks that he or she has the authority to enter into this Agreement on behalf of Customer and the power to bind Customer to this Agreement. If Customer is two or more entities or individuals then, all entities or individuals shall be jointly and severally liable to TNT Fireworks as the Customer under this Agreement. This Agreement shall be binding upon the administrators, executors, heirs, personal representatives and successors of Customer and shall inure to the benefit of TNT Fireworks. If any provision(s) of this Agreement are determined or held to be illegal, invalid or unenforceable by a court of competent jurisdiction then, such provision(s) shall be considered severable from this Agreement and all remaining provisions shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

Johnson City Attn: Whitney Walston
P.O. Box 369
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The Parties have caused this Agreement to be executed through their authorized representatives below.

CUSTOMER:

By: _____
Name: Whitney Walston
Title: _____
Date: _____

TNT FIREWORKS:

DocuSigned by:
By: Steve Davis
Name: Steve Davis
Title: Director of Pyrotechnic Displays
Date: 5/1/2024

City of Johnson City, TX
Friday, May 17, 2024

Chapter 5. Fire Prevention and Protection

ARTICLE 5.04. FIREWORKS

§ 5.04.001. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fireworks. Any firecrackers, cannon crackers, skyrockets, torpedoes, Roman candles, squibs, fire balloons, star shells, gerbs, or any other substance in whatever combination by any designated name intended for use in obtaining visible or audible pyrotechnic display, and shall include all articles or substances within the commonly accepted meaning of fireworks, other than sparklers and cap guns, whether specially designated and defined in this section or not.

Person. Any person, firm, corporation or association, and also includes all warehousemen, common and private carriers, bailees, trustees, receivers, executors, and administrators.

(Ordinance 92-008, sec. 1, adopted 9/1/92)

§ 5.04.002. Manufacture, transport, sale, possession or use prohibited.

It shall be unlawful for any person to manufacture, assemble, store, transport, receive, keep, sell, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action, offer or have in one's possession with intent to sell or use any fireworks of any description.

(Ordinance 92-008, sec. 2, adopted 9/1/92)

§ 5.04.003. Exceptions.

This article shall not apply to any marine signal flare or rocket of the type and kind commonly carried by a vessel at sea for its own use and which signal flares or rockets are transported or received or stored for use only as ship's stores, nor shall this article apply to automotive signal flares or rockets for military or police use. This article shall not apply to a public display of fireworks made under the terms and conditions of section 5.04.004.

(Ordinance 92-008, sec. 3, adopted 9/1/92)

§ 5.04.004. Public displays.

- (a) **Permit required.** Any adult person or any firm, co-partnership, corporation, or association planning to make a public display of fireworks shall first make written application for a permit to the fire marshal of the city at least forty-eight (48) hours in advance of the proposed display.

- (b) **Application; fee.** The application for a permit shall contain the information required on the application incorporated in Ordinance 92-008 and shall be submitted along with a nonrefundable fee of \$50.00.
- (c) **Investigation by fire marshal.** It shall be the duty of the fire marshal to make an investigation as to whether such a display as proposed by the applicant shall be of such a character that it may be hazardous to property or dangerous to any person, and he shall in the exercise of reasonable discretion grant or deny the application, subject to such reasonable conditions, if any, as are described below.
- (d) **Denial.** If the application is denied by the fire marshal, he shall notify the applicant of the denial in writing. Such notice shall be effective when sent by U.S. mail to the address listed upon the application or delivered personally to the applicant or the applicant's address listed upon the application.
- (e) **Issuance; term; transfer.** If the application is approved, a permit shall be issued for the public display by the fire marshal. Such permit shall be for a period of time designated on the permit but shall not exceed fourteen (14) days, and the permit shall not be transferable.
- (f) **Conditions.** The following terms and conditions are specified and shall be binding upon the issuance of a permit to display fireworks:
- (1) The display shall be limited to an aerial display.
 - (2) The range of aerial display shall not be more than two hundred (200) feet and [fireworks] shall be discharged vertically from steel tubes.
 - (3) The limit of display shall not be more than 1 hour per performance and there shall not be more than two (2) performances in each twenty-four (24) hours.
 - (4) The material to be used for the public display shall not be stored within the city limits but shall be brought in on the day of the public display and then shall be taken immediately to the place of display for further handling and storage.
 - (5) No public display of fireworks shall be of such a character and so located, discharged or fired as to be hazardous or dangerous to persons or property, and the determination of such shall be within the sound discretion of the fire marshal.
 - (6) The person or persons handling the display of fireworks shall be competent adult persons approved by the fire marshal issuing the permit, and no other persons than those persons approved by the fire marshal shall handle the fireworks of the public display. The names of the operators shall be designated on the permit issued.
 - (7) The applicant for such display permit shall at the time of application furnish proof that he carries workers' compensation insurance for his employees as provided by the laws of the state, and he shall file with the fire marshal a certificate of insurance evidencing the carrying of public liability insurance in an amount no less than one hundred thousand dollars (\$100,000.00) issued by an insurance carrier authorized to transact business in the state for the benefit of the person named therein as assured, and rated "A" by Best, as evidence of ability to respond in damages in at least the amount of one hundred thousand dollars (\$100,000.00), such policies to be approved by the fire marshal, or, in lieu of insurance, the applicant shall file with the fire marshal a bond in the amount of one hundred thousand dollars (\$100,000.00) issued by an authorized surety company to be approved by the fire marshal or his designee for financial soundness, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks or any negligence on the part of the applicant or his agents, servants, employees or subcontractors in the presentation of the public display.

(Ordinance 92-008, sec. 4, adopted 9/1/92)

§ 5.04.005. Seizure of illegal fireworks.

The presence of any fireworks within the jurisdiction in violation of this article is hereby declared to be a common and public nuisance. The fire marshal shall seize, and cause to be safely destroyed pursuant to V.T.C.A., Occupations Code, section 2154.304, any fireworks found within the jurisdiction in violation of this article. The chief of police, any police officer, or any other duly constituted peace officer is empowered to stop transportation of and detain any fireworks found being transported illegally or to close any building where any fireworks are found stored illegally until the fire marshal can be notified in order that such fireworks may be seized and destroyed. When accompanied by a police officer with a duly executed search warrant, the fire marshal may enter any building where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks.

(Ordinance 92-008, sec. 5, adopted 9/1/92)

§ 5.04.006. Violations.

- (a) Any person who shall manufacture, assemble, store, transport, receive, keep, sell, offer for sale, or have in his possession with intent to sell any fireworks, in violation of this article, shall be guilty of a misdemeanor. If the fireworks be separately wrapped or packaged, the doing or omitting to do any act prohibited by this article shall be a separate offense as to each such separately wrapped or separately packaged fireworks. Each day that a violation of this article shall continue with respect to any package of fireworks shall constitute a separate offense.
- (b) Any person who shall use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks in violation of this article shall be guilty of a misdemeanor. Any parent or guardian of any minor child below the age of fourteen (14) years who permits or allows such minor child to use, discharge, ignite, detonate, fire, or otherwise set in action any fireworks shall be fined as above provided.

(Ordinance 92-008, sec. 6, adopted 9/1/92)