

FIREWORKS DISPLAY CONTRACT

This fireworks display contract is between Lew's Fireworks, Inc., a South Dakota Corporation ("Lew's Fireworks, Inc."), and the Luverne Chamber of Commerce

Lew's Fireworks, Inc. is in the business of selling and displaying fireworks, and the Luverne Chamber of Commerce, hereafter referred to as "Buyer" wants Lew's Fireworks, Inc. to provide a fireworks display for Buyer's benefit. The parties therefore agree as follows:

- 1 **The Display.** Lew's Fireworks, Inc. will provide and exhibit fireworks for a display on December 1st, 2024. The display will begin at approximately 7:00 p.m., will last for approximately 20 minutes, and will substantially comply with the program set forth in Exhibit A.

- 2 **Postponement.** If Lew's Fireworks, Inc., in its sole discretion, determines that display of the fireworks on the date and at the time set forth in paragraph one (the "Original Date") would be impossible or impractical because of inclement weather or safety concerns, the display will be postponed until 12/8/24 beginning at approximately 7:00 p.m. (the "First Postponement Date"). If Lew's Fireworks, Inc., in its sole discretion, determines that display of the fireworks would be impossible or impractical because of inclement weather or safety concerns on the First Postponement Date, the parties will immediately hold a postponement meeting, at which they will attempt to choose a mutually satisfactory Second Postponement Date. If the fireworks display occurs on the Original Date or the First Postponement Date, Lew's Fireworks, Inc. will not be entitled to any payment beyond the Contract Price stated in paragraph seven. In the event that the fireworks display occurs on a mutually satisfactory Second Postponement Date, the Buyer will pay Lew's Fireworks, Inc., in addition to the Contract Price, its Actual Expenses related to preparation for the unsuccessful displays on the Original Date and on the First Postponement Date, up to an amount equal to 40% of the Contract Price. "Actual Expenses" shall include expenses for travel, lodging, labor, meals, rentals, permits, setup and dismantling of the display, and any other expenses related to the unsuccessful attempts to present the display on the Original Date and on the First Postponement Date.

- 3 **Permits.** Lew's Fireworks, Inc. will advise Buyer of all applicable state and federal permits that must be secured in connection with the fireworks display. Buyer will apply for and secure, at its cost, all permits, licenses, and approvals required by all applicable local, state, or federal laws and regulations, as well as any imposed or required by local police or fire departments. Buyer will provide Lew's Fireworks, Inc. evidence of the acquisition and validity of all required permits, licenses, and approvals no later than seven days before the Original Date.

- 4 **Display Site.** Buyer will procure and furnish a place suitable to Lew's Fireworks, Inc. for the fireworks display. The site will be sufficient to accommodate spectator viewing areas, vehicle parking areas, and the Display Site. "Display Site" means the discharge site, the fallout site, and the required separation distance from mortars to the spectator viewing areas in compliance with the most recent edition of the National Fire Protection Association 1123 Code for Fireworks Display.

- 5 **Security.** Buyer will furnish all necessary materials for and will set up restraining lines pursuant to instructions supplied by Lew's Fireworks, Inc. and in compliance with the most recent edition of the National Fire Protection Association 1123 Code for Fireworks Display. Buyer will hire and provide, at its own cost and expense, adequate private or public security personnel to ensure that no vehicles are parked within the Display Site and that no individuals, other than those specifically authorized by Lew's Fireworks, Inc., enter the Display Site. The security personnel will remain on the perimeter of the Display Site and will not enter the Display Site before, during, or immediately following the fireworks display.
- 6 **Removal of Certain Materials and Refilling of Holes.** Following the display, Lew's Fireworks, Inc. will be responsible for removal of all unexploded fireworks, removal of frames, sets, and lumber, and the refilling of holes. Buyer will provide a person to be present during this process who will verify that it has been completed to Buyer's satisfaction.
- 7 **Contract Price.** Buyer will pay Lew's Fireworks, Inc. the sum of \$6,000.00 (the "Contract Price") as consideration for the fireworks display. Payment will be made as follows:
- (a) 0% of the Contract Price upon the signing of this contract;
 - (b) The balance of the Contract Price within ten days after completion of the Fireworks Display.
- Buyer agrees to pay interest at the rate of 1.5% per month on any delinquent balance until the debt is paid in full. In the event that Buyer fails to perform its obligations and responsibilities pursuant to this contract and it becomes necessary for Lew's Fireworks, Inc. to enforce its rights by hiring an attorney, Buyer will be responsible for, in addition to any other sums for which it is found responsible, all attorney fees and costs incurred by Lew's Fireworks, Inc. in collecting said sums.
- 8 **Cancellation.** The parties acknowledge that, if Buyer cancels this contract, Lew's Fireworks, Inc. will suffer damages. They further acknowledge that those damages will be uncertain as to amount and difficult to prove. In the event that Buyer does cancel this contract, therefore, Lew's Fireworks, Inc. will be entitled to recover, not as a penalty, but as liquidated damages, an amount set forth below:
- (a) If cancellation occurs more than 30 days before the Original Date, an amount equal to 25% of the Contract Price;
 - (b) If cancellation occurs no more than 30 days and no less than 4 days before the Original Date, an amount equal to 50% of the Contract Price;
 - (c) If cancellation occurs no more than 3 days before, but before the Original Date, an amount equal to 75% of the Contract Price;
 - (d) On or after the Original Date, an amount equal to 100% of the Contract Price.
- 9 **Not a Partnership.** This agreement shall not be construed so as to create a partnership, joint venture, employment, or agency relationship between the parties.
- 10 **Acts of God.** In the event of fire, accident, strike, act of God, or other causes beyond the reasonable control of either party that prevent performance of either or both parties' obligations under this contract (other than inclement weather or safety concerns as described


in paragraph two) each party hereby releases the other from any and all obligations hereunder, except for liabilities that may have already accrued to such time.

- 11 **Indemnifications and Liability.** Buyer will hold harmless and indemnify Lew's Fireworks, Inc. from any demands, claims, causes of action or liability arising from damage to or destruction of real or personal property or bodily or personal injuries, whether arising from tort, contract, or otherwise, that occur directly or indirectly from the failure of Buyer to comply with its obligations and responsibilities as set forth in this contract, including attorney fees and costs. Buyer shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special, or punitive damages from Lew's Fireworks, Inc., including, without limitation, loss of income or profits. Lew's Fireworks, Inc. will include the Buyer (show sponsor(s) & any landowners as noted on the Certificate of Insurance) as an additional insured.
- 12 **Whole Agreement.** This written contract, including Exhibit A, is the entire agreement between the parties. No statement, promise, or inducement made by either party or agent of either party that is not contained in this written contract will be valid or binding. This contract may not be enlarged, modified, or altered, except in writing signed by both parties.
13. **Severability.** The provisions of this contract are severable and, in the event any of them shall be held invalid or unreasonable by any court, this contract shall be interpreted as if such invalid provisions were not included in it.
14. **Choice of Law; Venue.** This contract and the performance there of shall be governed, interpreted, construed, and regulated by the laws of the State of South Dakota. Any litigation concerning this contract shall be conducted in the courts located in Codington County, SD and the parties agree to the venue and personal jurisdiction of these courts.
15. **Insurance.** Lew's Fireworks, Inc., agrees to provide the Buyer with a certificate of insurance covering any and all liability or obligations which may result from Lew's Fireworks employees, agents, contractors, or subcontractors. Proof of insurance, including coverage and exceptions must be provided to the Buyer prior to the event permit being issued. A commercial general liability policy with a minimum of \$1,500,000 of coverage shall be maintained at all times by Lew's Fireworks, Inc.

BUYER: Luverne Chamber of Commerce

LEW'S FIREWORKS, INC.


(Authorized Signature)


(Authorized Signature)

Title: Executive Director

Title: President

(FOR USE BY LOCAL JURISDICTIONS)

SAMPLE APPLICATION / PERMIT
OUTDOOR PUBLIC FIREWORKS DISPLAY

Applicant instructions:

1. This application is for an **outdoor** public fireworks display only and is **not** valid for an indoor fireworks display.
2. This application must be completed and returned at least 15 days prior to date of display.
3. Fee upon application is \$ _____ and must be made payable to City of Luverne

Name of Applicant (Sponsoring Organization): Luverne Area chamber: CUB

Address of Applicant: 213 E Luverne St. Luverne MN 56156

Name of Applicant's Authorized Agent: ~~Sheriff~~ McKenzi Klein

Address of Agent: 210 W Barch Ave. Luverne MN 56156

Telephone Number of Agent: 507-283-4061 Date of Display: 12/1/24 Time of Display: 7pm

Location of Display: East of Redbird Road / north of RR tracks

Manner and place of storage of fireworks prior to display: in enclosed trailer

Type and number of fireworks to be discharged: \$6000 as determined by shooter

MINNESOTA STATE LAW REQUIRES THAT THIS DISPLAY BE CONDUCTED UNDER THE DIRECT SUPERVISION OF A PYROTECHNIC OPERATOR CERTIFIED BY THE STATE FIRE MARSHAL.

Name of Supervising Operator: Jonathan Hartz Certificate No.: _____

Required attachments. The following attachments must be included with this application:

1. Proof of a bond or certificate of insurance in amount of at least \$ _____
(Suggested Amount: \$1.5 million minimum)
2. A diagram of the ground at which the display will be held. This diagram (drawn to scale or with dimensions included) must show the point at which the fireworks are to be discharged; the location of ground pieces; the location of all buildings, highways, streets, communication lines and other possible overhead obstructions; and the lines behind which the audience will be restrained.
3. Names and ages of all assistants that will be participating in the display.

The discharge of the listed fireworks on the date and at the location shown on this application is hereby approved, subject to the following conditions, if any: _____

I understand and agree to comply with all provisions of this application, MN Statute 624.20 through 624.25, MN State Fire Code, National Fire Protection Association Standard 1123 (2006 edition), applicable federal law(s) and the requirements of the issuing authority, and will ensure that the fireworks are discharged in a manner that will not endanger persons or property or constitute a nuisance.

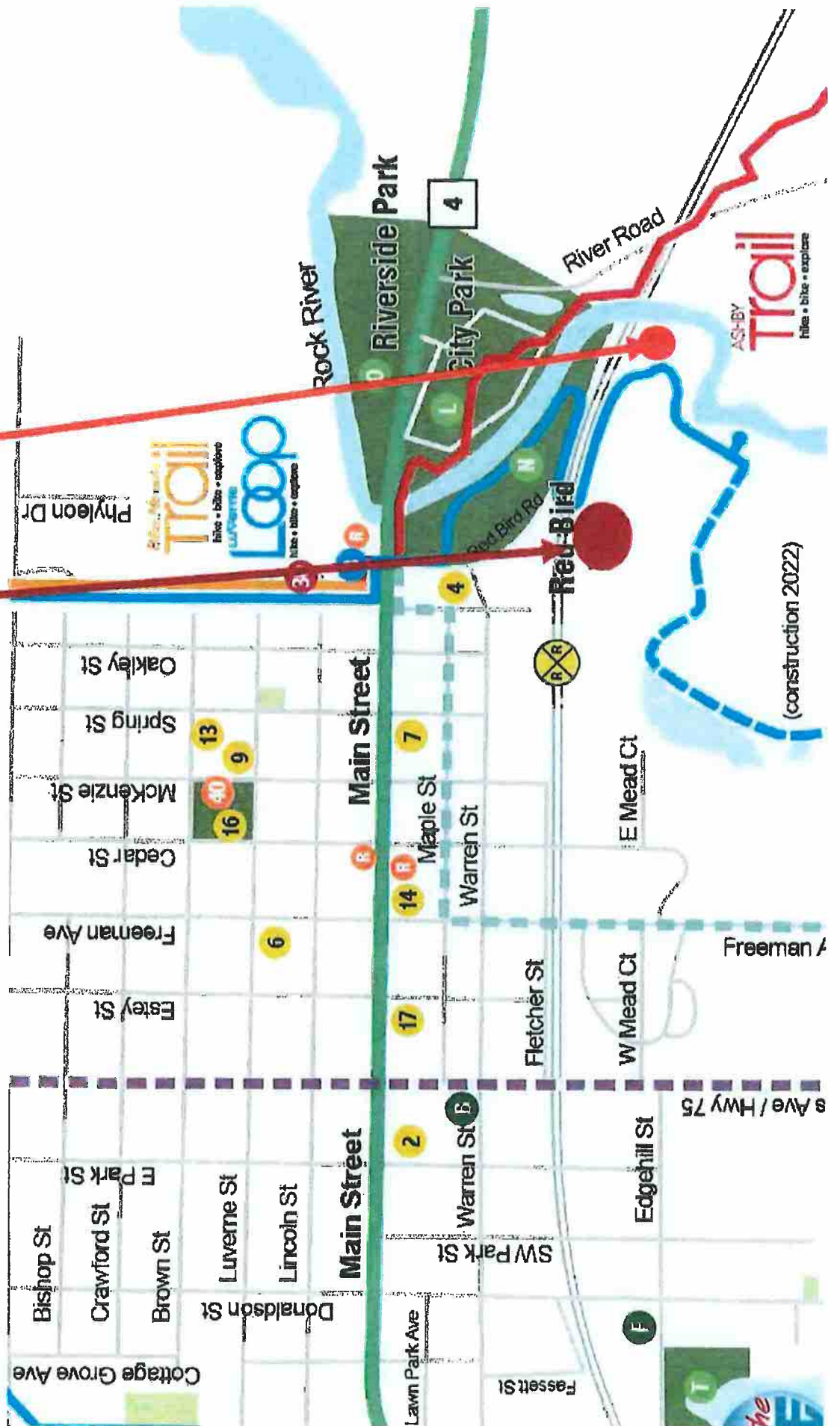
Signature of Applicant (or Agent): McKenzi Klein Date: 11/7/24

Signature of Fire Chief/County Sheriff: Dan M. Reden Date: 11-12/24

Signature of Issuing Authority: _____ Date: _____

LIVERNE WASTEWATER TREATMENT PLANT—400 RED BIRD ROAD

LIGHT THE NIGHT FIREWORKS—200 yards east of the plant and south of the Rock River



LEW'S FIREWORKS, INC. DISPLAY
Watertown, South Dakota

INSURANCE SPECIAL EXCLUSION

If you require Lew's Fireworks, Inc. to extend coverage to you with an insurance certificate, please read and sign the following exclusion form.

This insurance certificate does not cover claims made for Bodily Injury, and/or Property Damage that is sustained within the "display site". This includes shooters, assistants, spectators and volunteers. Please Note: No Workers Compensation Coverage is available for any of the Display Operators and or Shooters.

At no time are spectators allowed within the "display site". The display site will be established as soon as setup begins and will be in effect until the operator gives the all clear following the display.

The following Table of Distances constitutes the "display site".

Size of mortar being used	Spectator distance in feet in
2.5 inch	175 feet
3 inch	210 feet
4 inch	280 feet
5 inch	350 feet
6 inch	420 feet
8 inch	560 feet
10 inch	700 feet

This insurance certificate does not cover claims made for Bodily Injury and/or Property Damage that is sustained as a result of improper or inadequate site clearance following the fireworks display, if such site clearance is sub-contracted to another by the named insured.

All operators, shooters and assistants are required to strictly comply with the above spectator and property distances from the mortars, and all other National Fire Protection Agency 1123 Regulations. Our operators are instructed not to fire the program if the insurance rules are not met.

Any claim for injury or damage must arise out of the display on the date indicated on the certificate.

Coverage only applies to accidents arising out of the use of fireworks purchased from Lew's Fireworks, Inc.

(NOTE: All displays can be fired by yourself or by one of our operators.)

I HAVE READ AND UNDERSTAND THE ABOVE STATEMENTS AND WILL ABIDE BY THESE STIPULATIONS.

Signed: McKj Klein Date: 11-7-24

Sponsor Name: Luverne Area Chamber: CUB

City & State: Luverne MN 56156

LEW'S FIREWORKS, INC. DISPLAY

Watertown, South Dakota

Display Insurance Information Form

If you require Lew's Fireworks, Inc. to extend coverage to your organization, **as an additional insured**, we will need the following information before we can issue a certificate of insurance. Please fill out this form entirely and fax it to our office at (605) 882-1115.

This insurance certificate covers spectators and property outside of the Display Area.

This insurance certificate does not cover claims made for Bodily Injury, and/or Property Damage that is sustained within the "display site". This includes shooters, assistants, spectators and volunteers. Please Note: No Workers Compensation Coverage is available for any of the Display Operators and or Shooters.

Date of Display 12/1/2024 Rain Date 12/2/2024 Time of Display 7:00pm

Physical Location of Display East of Luverne Wastewater Treatment
Plant and north of the RR Tracks + South of River

Name

Address

Sponsor Luverne Area chamber: CUB 213 E Luverne St. Luverne MN 56156

* Property Owner City of Luverne 305 E Luverne St. PO Box 659 Luverne MN 56156

Property Owner List as additional insured

Fax # where we can send you a copy of Certificate (____) _____

or

E-mail address to send certificate. luvernechamber@co.rock.mn.us

Name & Address where we should mail your original Certificate of Insurance

City of Luverne Attn: Jessica Mead
305 E Luverne St. (PO Box 659) Luverne MN 56156

Signature Mick Klein Date 11/7/24

Lew's Fireworks, Inc.
P.O. Box 455, Watertown, SD 57201-0455
Tele: 605-882-1744 • Fax: 605-882-1115

Size/Qty 2.5" _____ 3" _____ 4" _____ 6" _____ 8" _____ 10" _____

[illegible]

Subtotal:	
Sales Tax:	
Shipping:	
Ins. Processing:	
Permit Fee:	
Shoot Fee:	
TOTAL:	

☐ Insurance Form Received (if applicable)