

COUNCIL DECISION REQUEST

SUBJECT: 2007 Fireworks Contract

MEETING DATE: April 19, 2007

CSP ITEM: Yes No KRA#

ITEM NO.:

TENTATIVE SCHEDULE: July 4th, 2007

SUBMITTED BY: Rick Manchester 

AMOUNT BUDGETED: \$10,000

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: \$10,000

CONT. FUNDING REQUIRED: No

_____ 

EXHIBITS (If Applicable, To Be Attached): Contracts for signatures

RECOMMENDED MOTION

I move to approve the fireworks display contract in the amount of \$10,000 with Fireworks productions of Arizona, Ltd. for the annual fireworks display at the Green Valley Park. Event will be held on July 4th, 2007.

SUMMARY OF THE BASIS FOR RECOMMENDED MOTION:

The annual event is held in GVP and expects over 5000 people attending. The fireworks provide a 30-40 minute display over the lakes.

Fireworks Productions of Arizona is a licensed and certified fireworks operation and has been doing the fireworks for Payson since the construction of GVP. Past experience and their list of references are excellent. They handle most of the state's municipal government holiday displays.

PROS: Excellent opportunity to celebrate Independence Day and bring neighbors together in social setting.

CONS: If cancelled due to fire danger or weather a 10%-50% restocking fee will be charged to the Town. In the past, Fireworks Production waived their restocking fee when the Town rescheduled the fireworks due to fire danger.

PUBLIC INPUT (if any): None

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes): This is a budgeted expenditure from the Bed Tax Fund.

APR 19 2007 

Fireworks Productions of Arizona, Ltd.
17034 S. 54th St.
Chandler, AZ 85226
Office 480-948-0090 ~ Fax 480-423-5430

FIREWORKS DISPLAY CONTRACT

This fireworks display contract is between Fireworks Productions of Arizona, Ltd. an Arizona Corporation ('FPA'), and Town of Payson.

FPA is in the business of selling and displaying fireworks, and Town of Payson wants FPA to provide a fireworks display for Town of Payson's benefit. The parties therefore agree as follows:

1. **The Display.** FPA will provide and exhibit fireworks for a display on 7/4/2007. The display will begin at approximately 8:30pm, will last approximately TBD, and will substantially comply with the program set forth in Exhibit A.
2. **Contract Price.** Town of Payson will pay FPA the sum of \$10,000.00 (the 'Contract Price') as consideration for the fireworks display. Payment will be made as follows:
 - a. 50% of the Contract Price upon the signing of this contract;
 - b. The balance of the Contract Price within twenty days after the completion of the Fireworks Display.

Town of Payson agrees to pay interest at the rate of 2% per month on any delinquent balance until the debt is paid in full. In the event that Town of Payson fails to perform its obligations and responsibilities pursuant to this contract and it becomes necessary for FPA to enforce its rights by hiring an attorney, Town of Payson will be responsible for, in addition to any other sums for which it is found responsible, all attorney fees and costs incurred by FPA in collecting said sums.

3. **Prepayment Incentive.** If Town of Payson prepays contract price in full by May 15, 2007, FPA will provide an additional 5% (\$500.00) in fireworks.
4. **Permits.** FPA will advise Town of Payson of all applicable state and federal permits that must be secured in connection with the fireworks display. FPA will apply for and secure, at Town of Payson cost (included in contract price as stated in paragraph two), 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. FPA will provide Town of Payson evidence of the acquisition and validity of all required permits, licenses, and approvals no later than seven days before the Original Date.
5. **Insurance.** FPA shall secure and maintain, at all times during the term of this contract a policy or policies of insurance known as: (1) Commercial General Liability in the amount of \$10,000,000. (2) Business Automobile Liability in the amount of \$10,000,000. (3) Worker's Compensation (Industrial Insurance) as required by the State of Arizona in the amount of \$10,000,000.
6. **Display Site.** Town of Payson will procure and furnish a place suitable to FPA 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.

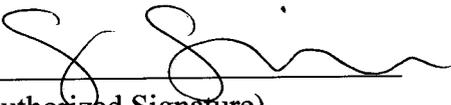
7. **Security.** Town of Payson will furnish all necessary materials for and will set up restraining lines pursuant to instructions supplied by FPA and in compliance with most recent edition of the National Fire Protection Association 1123 Code for Fireworks Display. Town of Payson will hire and provide, 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 FPA, 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.
8. **Cleanup of Display Area.** Following the display, FPA will be responsible for cleanup and policing of the display area including the removal of all unexploded fireworks, removal of frames, sets, and lumber, and the refilling of holes.
9. **Weather or Safety Cancellation.** If FPA or the Authority Having Jurisdiction (AHJ) determines that display of 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 canceled. Town of Payson will pay FPA, its 'Actual Expenses' related to preparation for the unsuccessful displays on the Original Date. '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.
10. **Cancellation.** The parties acknowledge that, if Town of Payson cancels this contract, FPA will suffer damages. They further acknowledge that those damages will be uncertain as to amount and difficult to prove. In the event that Town of Payson does cancel this contract, therefore, FPA 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 10% of the Contract Price;
 - b. If cancellation occurs no more than 30 days and no less than 1 days before the Original Date, an amount equal to 50% of the Contract Price;
 - c. On or after the Original Date, an amount equal to 100% of the Contract Price.
11. **Not a Partnership.** This agreement shall not be construed so as to create a partnership, joint venture, employment, or agency relationship between the parties.
12. **Acts of God.** In the event of fire, accident, strike, act of God, terrorism 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 eight) each party hereby releases the other from any and all obligations hereunder, except for liabilities that may have already accrued to such time.
13. **Indemnifications and Liability.** Town of Payson will hold harmless and indemnify FPA 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 Town

of Payson to comply with its obligations and responsibilities as set forth in this contract, including attorney fees and costs. Town of Payson shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special, or punitive damages from FPA, including, without limitation, loss of income or profits.

14. **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.

Fireworks Productions of Arizona, Ltd.

Town of Payson



(Authorized Signature)

(Authorized Signature)

Title: Pyro Office Manager

Title: _____

Date: 1/31/07

Date: _____

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of Payson to comply with its obligations and responsibilities as set forth in this contract, including attorney fees and costs. Town of Payson shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special, or punitive damages from FPA, including, without limitation, loss of income or profits.

14. **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.

Fireworks Productions of Arizona, Ltd.

Town of Payson



(Authorized Signature)

(Authorized Signature)

Title: Pyro Office Manager
Date: 1/31/07

Title: _____
Date: _____

Fireworks Productions of Arizona, Ltd.

February 5, 2007

Town of Payson
Attn: Holly Aungst
1000 W. Country Club Dr.
Payson, AZ 85541

Dear Holly,

Enclosed are the show program, contract and invoice for your 4th of July celebration. If it meets with your approval, please sign one copy of the contract and return it with the 50% deposit.

Another payment option is our prepay incentive. In paragraph 3 of your contract it states that if the contract price is paid in full by May 15th FPA will add an additional 5% of the show total (\$500.00) in fireworks

We will order your insurance certificate and will make sure that you receive a copy before your show.

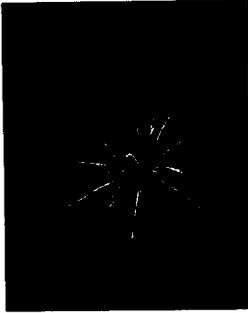
If you have any questions regarding your display, please give us a call. We look forward to providing you with another fantastic show!

Pyrotechnically yours,



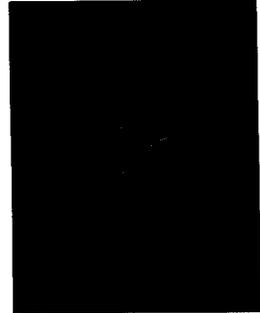
Sarah Simpson
Pyro Office Manager

Encl: Program, Contracts & Invoice



TOWN OF PAYSON

July 4, 2007



Total Aerial Effects 2505

Total Shells 505

Total in Basins 2000

Opening:

Your show begins with an impressive series of powerful booms and flashing white light to excite and thrill the audience.

21 - 3" Titanium Salutes

Aerial Display:

A large assortment of brilliantly-colored shells, including Chrysanthemums, Rings, Various Shapes, Waves, Crowns, Peonies, Strobes, Double Rings, Brocade Crowns, Diadems, and Crossettes in gorgeous Reds, Yellows, Blues, Greens, Silvers, and Golds.

Your Aerial Display will contain a total of 424 aerial shells.

- 1 ½" - 15 FPA Premier Specialty Basins
- 3" - 10 Titanium Salutes
- 3" - 180 Chinese Fancy's & Specials with Designer Cylinder Specials
- 4" - 180 Chinese Fancy's & Specials with Designer Cylinder Specials
- 5" - 54 Chinese Fancy's & Specials with Designer Pattern Specials

GRANDE FINALE:

Your celebration will close in spectacular excitement as multiple styles of brilliantly-colored shells, rocket skyward growing and glowing in breath-taking Blues, Golds, Greens, Silvers, Yellows, Purples and Red.

Your Grande Finale consists of 60 aerial shells:

Your Grande Finale: 35 - 3" shells, 20 - 4" shells and 5 - 5" shells.

Fireworks Productions of Arizona, Ltd.

17034 S. 54th St.
Chandler, AZ 85226

Phone # (480) 948-0090

Invoice

DATE:	Invoice #
2/6/2007	3863

<u>CUSTOMER</u>
<p>Accounts Payable TOWN OF PAYSON 303 N. Beeline Highway Payson, AZ 85541-4306</p>

<u>PURCHASE ORDER #</u>	<u>TERMS</u>	<u>DUE DATE</u>	<u>SHOW DATES(S)</u>	<u>DETAILS</u>
	Date due is	5/15/2007	July 4, 2007	50% DEPOSIT INVOICE
<u>DESCRIPTION</u>		<u>QUANTITY</u>	<u>RATE</u>	<u>AMOUNT</u>
Fireworks Display SALES TAX INCLUDED			5,000.00 0.00%	5,000.00T 0.00
<p>Deposit of 50% of Total Amount is required when signed contract is returned.</p>			Total:	\$5,000.00

Accounts not paid by the due date may be charged a monthly service charge of 2 percent or the maximum allowed by law

Fireworks Productions of Arizona, Ltd.

17034 S. 54th St.
Chandler, AZ 85226

Phone # (480) 948-0090

Invoice

DATE:	Invoice #
2/6/2007	3863

<u>CUSTOMER</u>
<p>Accounts Payable TOWN OF PAYSON 303 N. Beeline Highway Payson, AZ 85541-4306</p>

PURCHASE ORDER #	TERMS	DUE DATE	SHOW DATES(S)	DETAILS
		Date due is	5/15/2007	July 4, 2007
DESCRIPTION		QUANTITY	RATE	AMOUNT
Fireworks Display ***Pay this invoice if you would like to take advantage of our pre-paid incentive and receive an additional 5% in fireworks. SALES TAX INCLUDED			10,000.00	10,000.00T
			0.00%	0.00

<p>Deposit of 50% of Total Amount is required when signed contract is returned.</p>	<p>Total: \$10,000.00</p>
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Accounts not paid by the due date may be charged a monthly service charge of 2 percent or the maximum allowed by law