COUNCIL DECISION REQUEST

SUBJECT: 2010 4th of July Fireworks Contract

MEETING DATE: May 6, 2010

PAYSON GOAL: NEW: EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE: July 4, 2010

SUBMITTED BY: Cameron Davis
Parks, Recreation and Tourism Director

AMOUNT BUDGETED: $20,000 from the Water Dept.

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: $20,000

CONT. FUNDING REQUIRED: No

EXHIBITS (If Applicable, To Be Attached):
Exhibit A: Fireworks Display Proposal
Exhibit B: Fireworks Display Contract and Addendum

RECOMMENDED MOTION
I move to approve the fireworks display Contract in the amount of $20,000 with FPA in substantially the form attached for the annual fireworks display at Green Valley Park and authorize the Town Manager to sign such Contract and Addendum.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:
The annual event is held in GVP and expects between 5,000 – 8,000 people to attend. The fireworks provide a 35 minute display over the lakes.

Each year, the funding for this event is $10,000 from the Payson Water Department and $10,000 from the Northern Gila County Sanitary District as the original constructors of Green Valley Park.

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 a social setting. Also due to the date that the 4th of July falls on this year (Sunday) it will be a great tourist draw and will funnel revenues in to the Town via Sales and Bed Tax revenue.

CONS: If canceled 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 reschedule the show due to fire danger.

PUBLIC INPUT (if any): None

BOARD/COMMITTEE/COMMISSION ACTION/RECOMMENDATIONS (if any) (give dates and attach minutes):

FUNDING:

Acct: 661-5-5451-00-6009	Budget: 20,000	Available: 20,000	Expense: 20,000	Remaining: 0
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

BA: Hope A Cubli Date: 4-28-10

MAY 06 2010 I.1

ADDENDUM TO
FIREWORKS PRODUCTIONS OF ARIZONA, LTD.
FIREWORKS DISPLAY CONTRACT

THIS ADDENDUM to the 2010 Fireworks Display Contract (the "Contract") between FPA, Ltd., an Arizona Corporation ("FPA"), and the Town of Payson, an Arizona municipal corporation ("Town") (collectively, the "Parties") is made contemporaneously with the Contract this _____ day of _____, 2010.

FTA and the Town agree that the Contract between them shall be amended and modified to include the following terms and provisions:

1. To the fullest extent permitted by law, FPA shall defend, indemnify and hold harmless the Town, its officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the FPA's acts, errors, mistakes, omissions, work or service

   FPA's duty to defend, indemnify and hold harmless the Town, its officers, officials and employees shall arise in connection with any claims, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property, including loss of use therefrom, caused in whole or in part by any act, error, omission, work or service of the FPA, anyone FPA directly or indirectly employs or anyone for whose acts FPA may be liable.

2. The Northern Gila County Sanitary District ("the District") is cosponsoring and providing one half of the funding for the Contract.

   To the fullest extent permitted by law, FPA shall defend, indemnify and hold harmless the District, its officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the FPA's acts, errors, mistakes, omissions, work or service

   FPA's duty to defend, indemnify and hold harmless the District, its officers, officials and employees shall arise in connection with any claims, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property, including loss of use therefrom, caused in whole or in part by any act, error, omission, work or service of the FPA, anyone FPA directly or indirectly employs or anyone for whose acts FPA may be liable.

3. Dispute Resolution. This Contract shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Contract may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such

dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

4. This Agreement is subject to A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest.

5. Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).

   5.1 Contractor and any Subcontractor employed by Contractor warrants their compliance with all Federal immigration laws and regulations that relate to their employees and with Arizona Revised Statutes Section 23-214(A).

   5.2 A breach of the warranty under Section 5.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.

   5.3 The Town retains the legal right to inspect the papers of the Contractor or Subcontractor who works on this Contract to ensure that the Contractor and Subcontractor is complying with Section 5.1.

6. Scrutinized Business Operations. Pursuant to A.R.S. §35-391.06, the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of this Contract will not have a scrutinized business operation in either Sudan or Iran.

7. Except as modified herein, all other terms and conditions of the Contract shall remain in full force and effect.

Fireworks Productions of Arizona, Ltd.	**Town of Payson**
By:_____	_____ Debra Galbraith, Town Manager
Date:_____	**Date:**_____

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this agreement and approved it as to form. When reviewing this agreement for form, the Legal Department considers whether the following situations have been addressed:

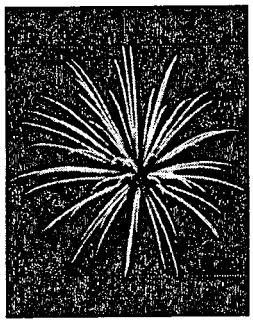
1. Identification of parties;
2. Offer and acceptance;
3. Existence of consideration (we do not review to determine if consideration is adequate);
4. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the agreement or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the agreement.

Dated: _____

By_____
Samuel I. Streichman, Town Attorney

EXHIBIT A

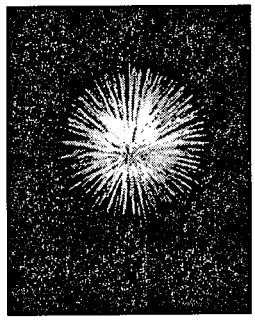


TOWN OF PAYSON

Sunday, July 4, 2010

30 - 35 minutes

Total Aerial Effects 5679



Total Shells 879 **Total in Basins 4800**

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 and **20** – 4" Red and Blue Shells.

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 **720** aerial shells and **4800** basin aerial effects.

1 ½" - **33** FPA Premier Specialty Basins

3" - **288** Chinese Fancy's & Specials

3" - **72** Designer Cylinder Specials

4" - **288** Chinese Fancy's & Specials

4" - **72** Designer Cylinder 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 **118** aerial shells:

Your Grande Finale: **36** – 2 ½" shells, **50** - 3" shells and **32** – 4" shells.

Designed by: Fireworks Productions of Arizona

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

FIREWORKS DISPLAY CONTRACT

This fireworks display contract is between FPA, Ltd. an Arizona corporation DBA Fireworks Productions of Arizona ('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 Sunday, 7/4/2010. The display will begin at approximately 9:00pm, will last approximately 30 – 35 minutes, and will substantially comply with the program set forth in Exhibit A.
2. **Contract Price.** Town of Payson will pay FPA the sum of $20,000.00 (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 no later than May 15, 2010;
   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, 2010, FPA will provide an additional 5% ($1000.00) 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) in the amount of $9,500,000.
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 nine) 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.

FPA, Ltd.

Lori Welty

(Authorized Signature)

Title: Vice President

Date: March 25, 2010

Town of Payson

(Authorized Signature)

Title:

Date: