COUNCIL DECISION REQUEST

SUBJECT: 2015 4th of July Fireworks Contract

MEETING DATE: May 21, 2015

PAYSON GOAL: NEW: EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE: July 4, 2015

SUBMITTED BY: Cameron Davis
Parks, Rec and Tourism Director

AMOUNT BUDGETED: $20,000.00

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED: $20,000 from the Water Department

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED: No

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

POSSIBLE 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 8,000 - 20,000 people to attend. The fireworks provide a 35 minute display over the lakes.

Each year, the funding for this event comes from two sources, $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 Production 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 holiday displays.

PROS: Excellent opportunity to celebrate Independence Day and bring neighbors together in a social gathering. The 4th of July is the largest Town of Payson event and draws thousands of tourists from all over the State. It funnels 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.

MAY 21 2015 I. 1*

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PUBLIC INPUT (if any): None

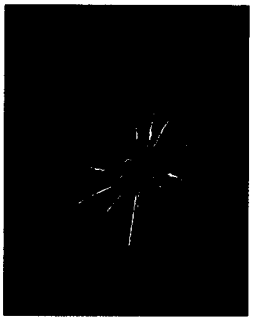
BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):

FUNDING:

Acct: 661-5-5451-00-6009	Budget: 25,000	Available: 25,000	Expense: 20,000	Remaining: 5,000
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

FM BA: Hope Cubb Date: 5-6-15

EXHIBIT A

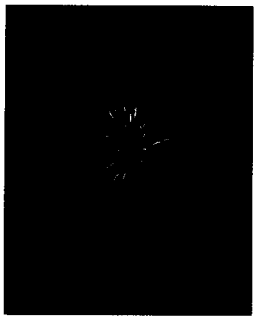


TOWN OF PAYSON

Saturday, July 4, 2015

30 minutes

Total Aerial Effects 6,145



Total Shells 945 **Total in Basins 5,200**

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 **21** –3" 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 **5,200** basin aerial effects.

1 ½" - **34** FPA Premier Specialty Basins

3" - **720** Chinese Fancy's & 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 **183** aerial shells:

Your Grande Finale: **108** – 2 ½" shells, **75** - 3" shells.

Designed for City of Payson by: Fireworks Productions of Arizona

Exhibit B

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 **Saturday, 7/4/2015**. The display will begin at approximately 9:00pm, will last approximately 30 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, 2015;**
   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. **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 the 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 specific to the fireworks display. If a jurisdiction denies a permit, for any reason, FPA will be released from the terms of this contract and the deposit, minus "Actual Expenses" incurred, will be refunded or credited to Town of Payson.
4. **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.
5. **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.

6. **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.
7. **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.
8. **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.
9. **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.
10. **Not a Partnership.** This agreement shall not be construed so as to create a partnership, joint venture, employment, or agency relationship between the parties.
11. **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.
12. **Indemnifications and Liability.** Each party will hold harmless and indemnify the other 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 from the failure of the indemnifying party to comply with its obligations and responsibilities as set forth in this contract,

including attorney fees and costs. Neither party shall, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special or punitive damages from the other party, including, without limitation, loss of income or profits.

13. **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.	Town of Payson
Lori Welty	
_____	_____
(Authorized Signature)	(Authorized Signature)
Title: Vice President	Title: _____
Date: March 26, 2015	Date: _____

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

THIS ADDENDUM to the 2015 Fireworks Display Contract (the "Contract") between Fireworks Productions of Arizona, Ltd. (a registered name) ("FPA"), and the Town of Payson, an Arizona municipal corporation ("Town") (collectively, the "Parties") is made contemporaneously with the Contract this _____ day of _____, 2015.

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 co-sponsoring 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 there from, 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 by laws of the State of Arizona. The venue for any dispute shall be Gila County, Arizona. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any dispute, controversy, claim, or cause of action.

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) (e-verify program).

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

Fireworks Productions of Arizona, Ltd.

By:_____
Lori Welty

Date:_____

Town of Payson

By:_____
Debra Galbraith, Town Manager

Date:_____

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form and has determined that said contract is in proper form and is within the powers and authority granted under the laws of the State of Arizona and the Town of Payson Procurement Policy.

By_____
Hector M. Figueroa, Town Attorney

_____
Date