

RESOLUTION NO. 2533

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A SITE CONTRACT WITH OPERATION BASS, INC. (FLW OUTDOORS FISHING TOURNAMENT)**

**WHEREAS**, Operation Bass, Inc., dba FLW Outdoors promotes and markets regional and national fishing tournaments; and

**WHEREAS**, the Town of Payson desires to host a Stren Series event ("Event") taking place September 21-25, 2010 on Roosevelt Lake,

**NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:**

Section 1. That the Site Contract between Operation Bass, Inc., dba FLW Outdoors and the Town of Payson, attached hereto as Exhibit A and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form as set forth in said Exhibit A.

Section 2. That Debra Galbraith, Town Manager of the Town of Payson, be and is hereby authorized to execute such Contract in substantially the form as set forth in Exhibit A.

Section 3. That the Town of Payson be and hereby is authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes of said Contract.

**PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON** this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Samuel I. Streichman, Town Attorney

**Exhibit A**  
**to**  
**Resolution 2533**

**SITE AGREEMENT CONTRACT BETWEEN  
OPERATION BASS, INC., dba FLW OUTDOORS  
AND THE TOWN OF PAYSON**

**RECITALS**

- A. Operation Bass, Inc., dba FLW Outdoors (“FLW Outdoors”) promotes and markets regional and national fishing tournaments;
- B. The Town of Payson (“the Town”) desires to host an FLW Series event (“Event”) taking place September 21-25, 2010 on Roosevelt Lake.
- C. The Event registration and pre-tournament meeting will take place Tuesday, September 21 2010. The first three (3) days (September 22-24, 2010) weigh-in activities will be conducted lakeside, and the final day (September 25, 2010) weigh-in activities will be conducted at a site determined by the tournament director. Site will be within the Town of Payson Town Limits.

NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations herein contained, and pursuant to the terms and provisions in this Contract, FLW Outdoors and the Town agree as follows:

- 1. **Parties.** The parties to this Contract are Operation Bass, Inc., a Kentucky Corporation, dba FLW Outdoors, (“FLW Outdoors”) and the Town of Payson, an Arizona municipal corporation, (“the Town”) (collectively, the “Parties”).

- 2. **Responsibilities and Representations.**

- 2.1 FLW Outdoors’ Responsibilities

- A. FLW Outdoors Television Show:
      - i. FLW Outdoors television program, which currently airs on Versus Country, will feature One (1) one (1) hour program. The television show will air during standard timeslot at 12:30pm ET on Sunday.
      - ii. An edited version of FLW Outdoors Television will also air internationally through Matchroom Sport, and the World Fishing Network.
    - B. FLW Outdoors Magazine: FLW Outdoors will provide the Town with the following:
      - i. One (1) full-page, four color ad in the bass edition of *FLW Outdoors Magazine*; ad shall run during CY 2010. Ad and artwork will be provided by the Town, deadline date and mechanical requirements apply;

- C. Internet: FLWOutdoors.com will provide the following:
  - i. Editorial coverage;
  - ii. Exposure for the Town and Roosevelt Lake.
- D. FLW Live™: FLW Outdoors will provide exposure via live weigh-in coverage of the event on [www.FLWOutdoors.com](http://www.FLWOutdoors.com) to all, including international, FLW Outdoors members. Broadcast limitations apply.
- E. Public Relations: FLW Outdoors will provide the following via public relations:
  - i. Event location mention in the pre-season press kits distributed to daily and targeted weekly newspapers as well as to radio and television stations;
  - ii. Event location mention in pre-and post-Event coverage including, but not limited to press releases sent to national daily and weekly newspapers, press release sent to national broadcast media via PR Newswire (or comparable wire service) and other national newswires including the Associated Press and Reuters;
  - iii. The Town will be recognized as the official host of the Event;
  - vi. Roosevelt Lake will be recognized as the official host fishery of the Event.
- F. Volunteer Support: FLW to provide the following support to Tournament Volunteers:
  - i. Thirty (30) hats to be worn by volunteer committee.

## 2.2 The Town's Responsibilities

- A. Monetary Consideration: The Town agrees to pay, or arrange for a third party to pay, to FLW Outdoors Twenty Thousand Dollars (\$20,000) due in full on or before September 1, 2010.
- B. In-Kind Services: The Town agrees to provide the following services at no charge to FLW Outdoors:
  - i. Hotel Accommodations: The Town will provide or arrange for lodging for six (6) hotel staff rooms for six (6) nights (total thirty-six (36) room-nights) for FLW Outdoors' staff at a hotel in the Town at no cost to FLW Outdoors. Hotel to be mutually agreed to by parties. All incidental costs shall be the responsibility of FLW Outdoors.
  - ii. Registration: At FLW Outdoors request, the Town will provide or arrange for a registration and pre-tournament meeting facility for three hundred fifty (350) persons, available from 1:00 p.m.-9:00 p.m. on Tuesday, September 21, 2010.
  - iii. Permits: The Town will assist FLW Outdoors with acquiring any permits necessary for holding the Event. FLW Outdoors shall be responsible for any costs associated with such permits.

- iv. Escorts: The Town will make arrangements for a two (2) vehicle police or fire department escort from Roosevelt Lake launch site to the weigh-in site on the final day weigh-in Saturday, September 25, 2010.
- v. Lakeside Security: The Town will provide or arrange for lakeside security for the immediate FLW Outdoors Trailer/Equipment area at Roosevelt Lake, from 6 p.m. to 6 a.m. each day of the tournament (September 21 through 11:59pm September 25, 2010)..
- vi. Tournament Liaison: The Town will serve as FLW Outdoors' local liaison during the planning stages and Event dates. The Town will also assist in the coordination of launch sites, media, volunteers and other vital services on behalf of FLW Outdoors.

2.3 By executing this Contract, FLW Outdoors represents that FLW Outdoors has visited the sites referenced herein or otherwise familiarized itself with the local conditions under which the Event is to be completed, and has correlated those observations with the requirements in this Contract.

2.4 FLW Outdoors represents and warrants that: the execution, delivery and performance of this Contract has been duly authorized by the responsible persons or officers for and of FLW Outdoors.

### 3. **Effective Date and Term.**

This Contract shall be effect on the date of the last signature of the Parties and shall terminate on September 26, 2010 at the conclusion of the Event.

### 4. **Confidentiality.**

The Parties agree to hold in confidence all information relating to this Contract and/or FLW Outdoors' business supplied in connection herewith to the extent allowed by A.R.S. §39-121, et. seq., and any other applicable provisions of law.

5. **Insurance.** Without limiting any liabilities or any other obligations of FLW Outdoors, FLW Outdoors shall provide and maintain the following minimum insurance coverages, with forms and insurers acceptable to the Town until all the obligations under this Contract are satisfied:

5.1 Workers Compensation Insurance to cover obligations imposed by Federal and State Statutes having jurisdiction of its employees engaged in the performance of the Services, and Employer's Liability insurance with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000).

5.2 Comprehensive General Liability insurance with a minimum combined single limit of ONE MILLION DOLLARS (\$1,000,000) each occurrence. The policy shall

- include coverage for bodily injury liability, property damage liability, personal injury liability (including coverage for contractual and employee acts), and blanket contractual. The policy shall contain a severability of interests provision.
- 5.3 Comprehensive Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence with respect to FLW Outdoors' vehicles whether owned, hired, or non-owned, assigned to be used in the performance of the services.
- 5.4 The policies required by Sections 5.2 and 5.3 shall be endorsed to include the Town, its officers, attorneys, and employees as additional insured, and shall stipulate that the insurance afforded for Town, its officers and employees shall be primary insurance and that any insurance carried by Town, its officers, attorneys, or employees shall be excess and not contributory insurance.
- 5.5 FLW Outdoors and its insurers providing the required coverages shall waive all rights of subrogation against Town and its directors, officers, attorneys, employees, and agents.
- 5.6 Prior to the Event, FLW Outdoors shall furnish the Town with Certificates of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall provide that not less than thirty days advance notice of cancellation, termination, or alteration shall be sent directly to Town's representative as identified in Paragraph 15.2.
- 5.7 The Town reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

## **6. Indemnity.**

- 6.1 FLW Outdoors shall indemnify, defend, and save harmless the Town and all of its employees, attorneys, agents, representatives and insurers from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description including attorney's fees and/or litigation expenses, which may be brought or made against or incurred by Town and/or its insurers, on account of loss of or damage to any property and for injuries to or death of any person by reason of or arising out of any act or omission by FLW Outdoors, its employees, agents, representatives, or subcontractors, or arising out of any defects in the methods, equipment or tools used, or in the manner of carrying on the Services itself, or arising out of workmen's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of FLW Outdoors or out of claims under similar such laws.
- 6.2 FLW Outdoors shall further indemnify, defend, and save harmless Town and all

of its employees, attorneys, agents, and representatives from any and all claims, demands, suits, actions, proceedings, loss, costs, and damages of every kind and description, including costs of investigation and apprehension of persons involved, attorney's fees and/or litigation expenses, which may be brought or made against or incurred by Town arising out of any dishonest act on the part of FLW Outdoors, its employees, agents, representatives, or subcontractors. However, if Town's employees, agents, representatives, attorneys or subcontractors are involved in any such dishonest acts FLW Outdoors indemnification shall only extend to those acts attributable to the Indemnifying Party and cover to the extent the Indemnifying Party contributed to the loss.

7. **Modification.** No provision of this Contract shall be amended or otherwise modified, in whole or in part, except by an instrument in writing duly executed by the Town and FLW Outdoors.
8. **Termination.** Without limiting or waiving any other remedies, in case of a breach of any provision in this Contract by a Party, and without election, either Party may terminate this Contract, in whole or in part, by written notice to the other Party.
9. **Taxes.** FLW Outdoors shall have full and exclusive liability for and shall pay and hold Town harmless from any and all taxes and fees imposed in connection with all or any part of the Event.
10. **Laws and Regulations.** FLW Outdoors and its employees shall comply with all applicable laws, ordinances, statutes, rules and regulations, of the United States, State of Arizona, and local governments, including but not limited to those relating to wages, hours, discrimination, and safety (including OSHA).
11. **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), if filed in Arizona Superior Court, shall be filed 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, and 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.

12. **Cancellation (A.R.S. §38-511).** This Contract is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of contracts by the municipality for certain conflicts of interest. In case of a cancellation both parties are hereby released from any further obligation under this Contract.

13. **Town Business License.** FLW Outdoors shall provide the Town with a copy of its Town business license. If FLW Outdoors is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Town Code.

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

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

14.2 A breach of the warranty under Section 14.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.

14.3 The Town retains the legal right to inspect the papers directly relating to the compliance of A.R.S. Section 23-214(A) of FLW Outdoors or Subcontractor who works on this Contract to ensure that FLW Outdoors or Subcontractor is complying with Section 14.1.

15. **Other Provisions.**

15.1 **Assignment.** Neither Party shall assign or subcontract the Contract or any part thereof without the written consent of the other Party, and any attempted assignment or subcontracting in violation of this Paragraph shall render this Contract void and of no effect. Either Party may withhold its consent for any or no reason.

15.2 **Notices.** All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, to:

Town:  
Town of Payson  
303 North Beeline Highway  
Payson, Arizona 85541  
Attention: Cameron Davis

FLW Outdoors:  
30 Gamble Lane  
Benton, KY 42025  
Attention: Kathy Fennel

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals, and

communication given by certified mail shall be deemed delivered forty-eight (48) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above. Notices delivered personally shall be deemed delivered upon delivery.

- 15.3 **No Partnership.** It is not intended by this Contract to, and nothing contained herein shall, create any employment relationship, partnership, joint venture, or other arrangement between the Town and FLW Outdoors. FLW Outdoors shall be an independent contractor. No term or provision of this Contract is intended to, or shall be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 15.4 **No Third Party Beneficiaries.** No term or provision of this Contract is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 15.5 **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.
- 15.6 **No Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town of a breach of any of the covenants of this Contract shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Contract.
- 15.7 **Non-Appropriation.** Nothing herein shall be construed as obligating the Town to expend, or as involving the Town in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this work. Town will immediately notify FLW Outdoors of its inability to pay any monies due to non-appropriation. Upon such notification, FLW Outdoors will be released from any further obligation of this Contract and at its sole discretion may move the Event to a different venue.
- 15.8 **Construction of Contract.** This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Contract. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.
- 15.9 **Further Documentation.** Each Party agrees in good faith to execute such further

or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Contract.

- 15.10 **Time of Essence.** Time is of the essence in this Contract and all of its parts.
- 15.11 **Time Periods.** Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Payson time) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 15.12 **Severability.** If any portion of this Contract is found to be invalid, such finding will not affect the validity of the remainder of this Contract and to this end the provisions of this Contract are severable.
- 15.13 **Authority.** The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Contract by and through the individual(s) executing hereinafter.
- 15.14 **Entire Contract.** This Contract contains and sets forth the entire and exclusive agreement and understanding between the Parties hereto pertaining to the subject matter and all prior or contemporaneous oral or written agreements shall have no effect.
- 15.15 **Force Majeure.** Upon any prevention, delay or stoppage due to strikes, walkouts, labor disputes, acts of God, including low water levels preventing the tournament to safely take place, inability to obtain labor, materials or reasonable substitutes therefore, governmental restrictions, controls or regulations, enemy or hostile governmental action, civil commotion, fire or any other causes determined by the Town or FLW Outdoors (in the exercise of fair discretion) to be beyond the reasonable control of the Parties, either Party may cancel this Contract.
- 15.16 **Scrutinized Business Operations.** Pursuant to A.R.S.§35-391, 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.

WHEREFORE, the parties have caused this Contract to be executed by their duly authorized representatives.

**Operation Bass, Inc.**  
a Kentucky Corporation,  
Authorized to conduct  
business in Arizona

By \_\_\_\_\_  
Kathy Fennel, its Senior V.P. and C.O.O.

\_\_\_\_\_  
Dated

**TOWN OF PAYSON,**  
an Arizona municipal corporation

By \_\_\_\_\_  
Debra Galbraith, its Town Manager

\_\_\_\_\_  
Dated

ATTEST:

\_\_\_\_\_  
Silvia Smith, Town Clerk

**APPROVAL AS TO FORM**

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

1. Identification of parties;
2. Offer and acceptance;
3. Existence of contract 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 contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated: \_\_\_\_ day of \_\_\_\_\_, 2010

By \_\_\_\_\_  
Samuel I. Streichman, Town Attorney