

RESOLUTION NO. 2900

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A FIREWORKS DISPLAY CONTRACT WITH FPA, LTD., AN ARIZONA CORPORATION DBA FIREWORKS PRODUCTIONS OF ARIZONA, LTD.

WHEREAS, the Town of Payson wishes to provide a fireworks display for the public on July 4, 2016; and

WHEREAS, FPA, Ltd., an Arizona Corporation DBA Fireworks Productions of Arizona (FPA), is agreeable to staging a fireworks display at that time; and

WHEREAS, the Town of Payson and FPA have developed a contract for such purpose,

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

Section 1. That the Fireworks Display Contract attached as Exhibit "1" and made a part hereof and the Addendum thereto, attached as Exhibit "2" and made a part hereof, are each approved in substantially the form as attached.

Section 2. That LaRon Garrett, Town Manager for the Town of Payson, is authorized to execute the Fireworks Display Contract and the Addendum thereto in substantially the form each as attached.

Section 3. That the Town of Payson is hereby authorized to take such other an further action as are necessary or appropriate to carrying out the purposes of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2016, by the following vote:

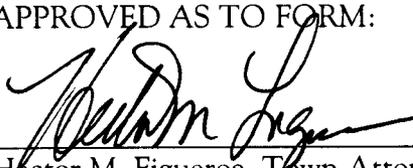
AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Hector M. Figueroa, Town Attorney

MAR 17 2016 G.I

EXHIBIT 1

to Resolution No. 2900

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 **Monday, 7/4/2016**. 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, 2016;**
 - 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 the applicable state and federal permits that must be secured in connection specifically to the fireworks display. FPA will apply for and secure, at Town of Payson's cost (included in contract price as stated in paragraph two), the permits, licenses, and approvals required by local, state, or federal laws and regulations as well as those possibly imposed or required by local police or fire departments specific to the fireworks display. If the jurisdiction requires an additional Special Events permit, the securing of and payment for, will be the responsibility of Town of Payson. If a jurisdiction changes the cost of the permit fee or requires additional fees after the signing of the Display Contract, Town of Payson will bear the responsibility of the additional costs. 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. Those entities/individuals listed on the certificate of insurance shall be deemed an additional insured per this contract.

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 of all boxes and equipment and policing of the display area including the removal of all unexploded fireworks, removal of frames and lumber. Any additional clean-up required by the venue will be the responsibility of Town of Payson.
8. **Weather or Safety Cancellation.** FPA or the Authority Having Jurisdiction (AHJ) may determine that the time or length of the display of fireworks may need adjustment based on wind/weather/safety conditions. 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.



(Authorized Signature)

Title: Vice President

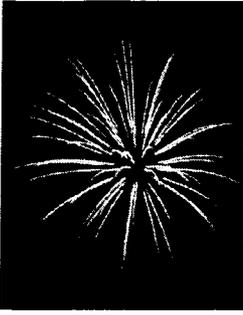
Date: February 10, 2016

Town of Payson

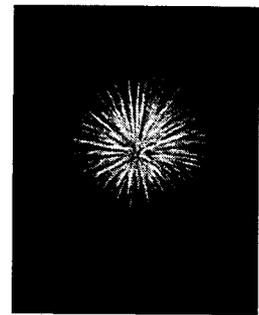
(Authorized Signature)

Title: _____

Date: _____



TOWN OF PAYSON
Monday, July 4, 2016



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.

EXHIBIT 2

to Resolution No. 2900

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

THIS ADDENDUM to the 2016 Fireworks Display Contract (the "Contract") between FPA, Ltd. DBA Fireworks Productions of Arizona ("FPA") and the Town of Payson, an Arizona municipal corporation ("Town") (collectively, the "Parties") is made contemporaneously with the Contract this _____ day of _____, 2016.

FPA 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 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 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/or 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.

**FPA, Ltd.
Dba Fireworks Productions of Arizona**

Town of Payson

By: _____
Lori Welty

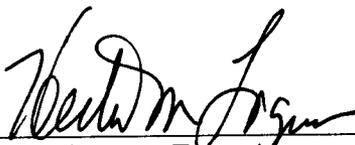
By: _____
LaRon Garrett, Town Manager

Date: _____

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

3/7/16
Date