City of Benson
City Council Communication

Regular Meeting **May 12, 2014**

To: Mayor and Council Agenda Item # 2

From: William D. Stephens, City Manager

Subject:

Discussion and possible direction regarding a Fireworks display contract between Fireworks Productions of Arizona, Ltd. and the City of Benson

Discussion:

This item has been placed on the agenda for Council to give direction to Staff regarding entering a contract with Fireworks Productions of Arizona, Ltd. for the amount of $10,000.00 to display fireworks during the 4th of July Celebration. The Contract requires a fifty percent deposit by May 15, 2014.

The anticipated contract will be similar to the contracts the City has entered into with them for the past 9 years.

Staff Recommendation:

Council pleasure

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 City of Benson.

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

1. **The Display.** FPA will provide and exhibit fireworks for a display on Friday, July 4, 2014. The display will begin at approximately 8:30 pm, will last approximately 20 - 25 minutes, and will substantially comply with the program set forth in Exhibit A.
2. **Contract Price.** City of Benson 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 or by no later than May 15, 2014;
   b. The balance of the Contract Price within twenty days after the completion of the Fireworks Display.

   City of Benson 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 City of Benson 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, City of Benson 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.** The City of Benson will apply for and secure, at City of Benson's cost, 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. City of Benson will provide FPA evidence of the acquisition and validity of all required permits, licenses, and approvals no later than seven days before the Original Date.
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.** City of Benson 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.** City of Benson 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. City of Benson 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, 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. City of Benson 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. (*other than paragraph 8, above).** The parties acknowledge that, if City of Benson 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 City of Benson 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 prior to June 16, 2014, an amount equal to 10% of the Contract Price;
    b. If cancellation occurs between June 16, 2014 and July 3, 2014, 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. **Additional Fireworks.** City of Benson has until June 18, 2014 to request additional fireworks. The additional amount will be added to the balance of the Contract Price due twenty days after the completion of the Fireworks Display.
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.** The Parties will hold harmless and indemnify each 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 Parties to comply with their obligations and responsibilities as set forth in this contract, including

attorney fees and costs. The Parties shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special, or punitive damages from each other, 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.
15. **Conflict of Interest.** This contract may be cancelled for conflict of interest, pursuant to A.R.S. 38-511.
16. **Qualifications of Service.** FPA warrants and agrees that it is qualified to perform the services under this contract and will abide by all applicable laws and regulations.
17. **Dispute Resolution.** Venue and jurisdiction for any dispute resolution proceeding shall be in Cochise County, Arizona.

FPA, Ltd.	City of Benson
_____	_____
(Authorized Signature)	(Authorized Signature)
Title: Pyro Production Manager	Title:_____
Date: April 24, 2014	Date:_____