

**RESOLUTION NO. 41-2007**

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A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING A DELEGATION AGREEMENT WITH THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE ISSUANCE OF BURN PERMITS WITHIN THE CITY.

WHEREAS, Arizona Revised Statutes sections 49-107 and 49-501(E) authorize the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to municipalities the authority to issue open burn permits; and

WHEREAS, the City of Benson and the Benson Fire Department fulfill the requirements imposed by Arizona law to assume the authority to issue open burn permits as delegated by the ADEQ; and

WHEREAS, the ADEQ has delivered to the City a Delegation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, which provides for the delegation of the authority to issue open burn permits to the Benson Fire Department; and

WHEREAS, the Mayor and Council of the City of Benson have determined that approval of said Delegation Agreement is in the best interests of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, that the City hereby approves and adopts the Delegation Agreement Between Arizona Department of Environmental Quality and Benson Fire Department, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and the Mayor is hereby directed to execute said Agreement on behalf of the City of Benson.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 24<sup>th</sup> day of September, 2007.



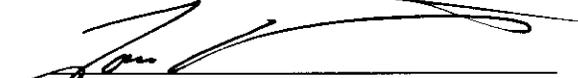
MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, Interim City Attorney

Exhibit "A"  
Delegation Agreement Between Arizona Department of Environmental Quality  
and Benson Fire Department

**Delegation Agreement**

**Between**

**Arizona Department of Environmental Quality**

**And**

**Benson Fire Department**

Whereas, A.R.S. § 49-107 generally authorizes the Director of ADEQ (Director) to delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers, or duties, hereinafter Functions and Duties, which the Director believes can be competently, efficiently, and properly performed by the local agency, and

Whereas A.R.S. § 49-501(E) specifically permits the Director to delegate authority for the issuance of open burn permits to a county, city, town, fire district, or its assigned private fire protection service provider, and

Whereas the Benson Fire Department ("local agency," hereinafter LA) meets the delegation qualification, as set forth in A.R.S. § 49-501(E), and

Whereas, the LA is required by A.R.S. § 49-106 to enforce and observe rules adopted by ADEQ and laws of the State of Arizona pertaining to the preservation of public health and protection of the environment, and

Whereas the Director of ADEQ believes the LA will competently, efficiently, and properly perform the Functions and Duties covered by this Agreement, and the LA deems that it is in its best interests to accept such Functions and Duties,

Therefore, the Director of ADEQ delegates to the LA, and the LA agrees to accept the delegation of authority to abide by the terms of this document and A.A.C. R18-2-602 and perform those Functions and Duties on behalf of ADEQ and in accordance with the terms and conditions contained herein.

- d) The LA shall not adopt any rules, procedures or policies that are in conflict with State law or are less restrictive than the rules of ADEQ.

**TERMS AND CONDITIONS OF AGREEMENT**

**1) TERM OF AGREEMENT:**

The initial term of this Agreement shall be five years from the effective date and may be extended by mutual written agreement of the parties, as permitted by applicable law.

**2) TERMINATION:**

- a) This Agreement may be terminated in whole or in part by either party, upon providing 30 days advance written notice by certified mail to the other party.
- b) The LA shall, prior to the termination of all or part of the Agreement, forward to the Director all files, public documents and pending applications received by the LA for those Functions and Duties being terminated, a summary status report for the same, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by such termination.

**3) FEES AND LEGAL AUTHORITY FOR IMPOSITION:**

The LA may not assess any fee, tax or other assessment in the exercise of its delegated Functions and Duties of this Agreement, pursuant to A.R.S. § 41-1083, unless the LA is otherwise authorized by law.

**4) PERSONNEL QUALIFICATIONS:**

In order to assure ADEQ's delegation is competently, efficiently and properly performed by qualified personnel the LA agrees to authorize only fire service providers performing fire protection services within that county, city, town or fire district to issue open burning permits, pursuant to A.R.S. § 49-501 and A.A.C. R18-2-602.

**5) AMENDMENT:**

This Agreement may be amended at any time upon mutual written agreement of the parties. No amendment of any of the terms of this Agreement shall be effective unless it is in writing and signed by the Director and the LA or their respective representatives, or designees.

**6) CONFLICT RESOLUTION PROCEDURES:**

The parties may resolve a conflict arising from this Agreement through arbitration. If a party seeks to invoke this provision the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

**DELEGATION AGREEMENT # 06-007**

**Local Agency**

**Arizona Department of Environmental Quality**

 9-16-07  
**Authorizing Officer**                      **Date**  
 Mark M. Fenn, Mayor

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**Director**    **Date**

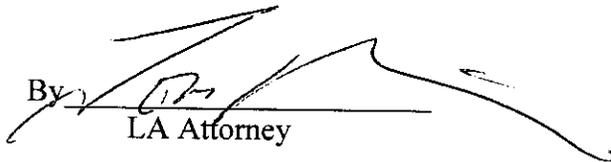
**ATTEST:**

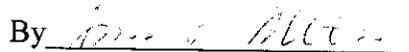
Vicki Skirrow 9-26-07  
**Clerk**    **Date**

Pursuant to A.R.S. • 11-952(D), the foregoing Agreement has been reviewed by the undersigned attorneys for the LA and ADEQ, who have determined that this Agreement is in proper form and is within the powers and authority granted under Arizona law to ADEQ and the LA.

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By   
 LA Attorney

By   
 Assistant Attorney General