City of Benson
City Council Communication

Regular Meeting **October 12, 2015**

To: Mayor and Council Agenda Item # 3

From: Keith Spangler, Fire Chief

Subject:

Discussion and possible action regarding Resolution 28-2015 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing execution of an agreement with Sunsites-Pearce Fire District for temporary use of its Fire Safety Trailer for Fire Prevention Education

Discussion:

October is Fire Prevention Month. During the month of October, the Fire Department teaches Fire Prevention to Benson Primary students grades K-4. This year the Fire Department has the opportunity to use a fire safety trailer to give the students an opportunity to practice what they have learned. The trailer belongs to the Sunsites-Pearce Fire District and they have agreed to let the Benson Fire Department use it during our Fire Prevention Day at the school.

Staff Recommendation:

Approval of Resolution 28-2015

RESOLUTION 28-2015

A RESOLUTION OF THE MAYOR AND COUNCIL, CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING EXECUTION AN AGREEMENT WITH SUNSITES-PEARCE FIRE DISTRICT FOR TEMPORARY USE OF ITS FIRE SAFETY TRAILER FOR FIRE PREVENTION EDUCATION

WHEREAS, the City of Benson has a Fire Department which provides fire prevention and fire protection services; and

WHEREAS, this Fire Department intends to do Fire Prevention Education; and

WHEREAS, Sunsites-Pearce Fire District possesses a fire safety trailer that it is willing and able to provide to the Fire Department for its Fire Prevision Education; and

WHEREAS, an Agreement For Use Of Fire Safety Trailer ("Agreement") is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Agreement and desires to enter into it; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Agreement and find that entering into it is in the best interests of the City and its residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Agreement (attached as Exhibit A) with Sunsites-Pearce Fire District for support of the City's Fire Prevention Education. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 12th day of October, 2015.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MESCH, CLARK AND ROTHSCHILD, P.C.
By Gary J. Cohen
City's Attorney

AGREEMENT FOR USE OF FIRE SAFETY TRAILER

THIS AGREEMENT is entered into by and between the SUNSITES-PEARCE FIRE DISTRICT, a political subdivision of the State of Arizona ("SPFD") and the City of Benson Fire Department, a municipality within the State of Arizona ("BFD").

RECITALS

WHEREAS, SPFD owns a Fire Safety Trailer for Fire Prevention Education training, generally described as a 2015 Surrey Fire Safety House, VIN 1F9SDB328FS217060; and

WHEREAS, the parties wish to cooperate with each other in order to more effectively and economically provide for training services; and

WHEREAS A.R.S. §§11-952 and 48-805, etc., authorizes the parties to jointly exercise any powers common to them and to enter into Agreements for cooperative action; and

WHEREAS, SPFD and BFD desire to enter into an Agreement for the use of the Fire Safety Trailer.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereby agree as follows:

COVENANTS

1. Purpose. The purpose of this Agreement is to permit the BFD to use SPFD's above-referenced mobile Fire Safety Trailer ("Training Trailer"), subject to the terms and conditions of this agreement.

2. Term. This Agreement shall commence on October 13, 2015, and shall terminate on October 15, 2015. Any modification, or extension of the Agreement termination date, shall be by formal written amendment executed by the parties hereto.

3. Use. BFD agrees that the Training Trailer shall be used for the purpose of Fire Prevention Education. BFD has inspected the condition of the Training Trailer and has determined it to be suitable for its purposes. SPFD provides no warranties, express or implied. While in possession of BFD, BFD agrees to keep the Training Trailer clean, and in a good state of repair and condition. BFD agrees to provide a suitable tow vehicle in order to tow the trailer from the SPFD and to return the same. In addition, BFD shall, while in possession of the Training Trailer, be responsible for any damage it causes to the trailer, normal wear and tear excepted.

4. Costs. The parties agree that the Training Trailer will be provided at no cost to BFD other than BFD shall be responsible for providing their own expendable supplies (such as literature and suitable smoke fluid, etc.), security and personnel while using the Training Trailer.

5. Damages. BFD assumes responsibility for all risks of loss or damage to the Fire Safety Trailer and associated equipment while the trailer is in the care, custody, and control of

the BFD as well as in transit, except for normal wear and tear. The BFD further agrees to provide liability and physical damage insurance while transporting or using the Fire Safety Trailer. A copy of the additionally insured coverage must be provided to the SPFD prior to use.

6. Indemnification. To the extent allowed by law, the BFD agrees to hold harmless and indemnify the SPFD against any and all claims, demands, actions, and/or causes of action arising from or growing out of BFD's use of this trailer and equipment, so long as said claims, demans, actions and/or causes of action are due to BFD's negligence.

7. No Third Party Beneficiaries. This Agreement is for the benefit of the parties specifically named herein, and shall not be construed as a third party beneficiary contract.

8. Termination. Any party may terminate its participation in this agreement without reason or cause upon giving thirty days prior written notice to the non-terminating party. In addition, any party may cancel this Agreement pursuant to the terms of A.R.S. §38-511. In the event a department terminates its participation, there shall be no refund of monies spent by that department.

9. Worker's Compensation. All employees of a party to this Agreement, who work under the jurisdiction or control of, or who works within the jurisdictional boundaries of another party pursuant to this particular Agreement, shall be deemed to be an employee of the party who is his or her primary employer, as provided in A.R.S. §23-1022(D), and the primary employer/party of such an employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each party herein shall comply with provisions of A.R.S. §23-1022(E) by posting the public notice required. While in possession of the Training Trailer, BFD shall carry its own Worker's Compensation and liability insurance in an amount acceptable to SPFD.

10. Notices. Any notice by either party to the other shall be considered duly served if delivered in person to the office of the authorized representative listed below, or if deposited in the U.S. mail, properly stamped with required postage, and addressed to the authorized representative listed below. Any party may change its representative or the address thereof giving the other written notice. Unless changed, notices shall be sent to the following:

SPFD: Fire Chief
Sunsites-Pearce Fire District
P.O.Box 507
Pearce, AZ 85625

BFD: Fire Chief
Benson Fire Department
P.O. Box 2223
Benson, AZ 85602

11. Governing Law. This Agreement shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona and shall be deemed made and entered into in Cochise County.

12. Waiver of Jury Trial, Attorneys' Fees and Costs. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of dispute, mediation, arbitration, or litigation arising from this Agreement, each party shall bear its own attorneys' fees and costs and neither party shall be entitled to an award of attorneys fees, either pursuant to this Agreement, pursuant to A.R.S. Section 12-341.01, or pursuant to any other state or federal statute.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

14. Savings Clause. In the event any phrase, clause, sentence, section, or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

15. Non-Discrimination: BFD warrants that it complies with any state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, creed, religion, sex, genetic information, age, national origin, disability, familial status or political affiliation, shall have equal access to employment opportunities, including but not limited to the Americans with Disabilities Act. BFD shall take affirmative action to ensure that it will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Genetic Information Nondiscrimination Act of 2008.

IN WITNESS WHEREOF, the parties enter into this Agreement on the date(s) set forth below.

_____ _____

Josh Steinberg, Fire Chief Date
Sunsites-Pearce Fire District

_____ _____

Toney King Date
City of Benson Mayor