**RESOLUTION 16-2017**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ("CITY") APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND THE BENSON UNIFIED SCHOOL DISTRICT #9 ("DISTRICT") TO PERMIT RECIPROCAL USE OF THE BUILDINGS AND GROUNDS OF THE CITY AND THE DISTRICT**

WHEREAS, the City believes that would be in the public interest to enter into an Intergovernmental Agreement with the District to permit reciprocal use of the buildings and grounds of the City and the District; and

WHEREAS, the staffs of the City and the District have developed an Intergovernmental Agreement (the "Agreement"), which is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the City and the District desire to avail themselves of all provisions of law applicable to the Agreement and desire to jointly exercise their powers as provided for in A.R.S. § 11-951 *et seq.*; and

WHEREAS, the Mayor and Council of the City have reviewed the terms and conditions of the Agreement and have determined that approval of the Intergovernmental 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, Arizona, that the City hereby approves the Intergovernmental Agreement between the City of Benson and the Benson Unified School District #9, attached hereto as Exhibit "A", and the Mayor is hereby directed to execute said Agreement on behalf of the City of Benson.

BE IT FURTHER RESOLVED that the staff of the City is hereby directed to take all actions necessary and proper to implement the Intergovernmental Agreement and further its purposes.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 26th day of June, 2017.

TONEY D. KING, SR., Mayor

ATTEST:

VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

MESCH CLARK ROTHSCHILD
By GARY J. COHEN
City's Attorney

Exhibit "A"
Intergovernmental Agreement

# INTERGOVERNMENTAL AGREEMENT
# PUBLIC PARKS, RECREATION AND SPORTS FACILITIES

This Intergovernmental Agreement is between the City of Benson, hereinafter referred to as "City" and the Benson School District, hereinafter referred to as "District," subject to the following terms and conditions:

## I. Purpose

The purpose of this Agreement is to permit the parties to use each other's buildings and grounds to provide to the public an organized program of recreation and athletic activities that contribute to the physical, mental and moral welfare of the citizens of the community.

## II. Authorization

Cities and school districts are authorized to carry out all activities included in this Agreement, pursuant to A.R.S. §§ 9-276(A)(1), 9-494, 15-363 and 15-364, and to enter into intergovernmental agreements, pursuant to A.R.S. §§ 15-342.13 and 11-952.

## III. Term

This Agreement will commence after it has been reviewed by counsel and executed by all parties and will end on the 30th day of June, 2018. Thereafter, it may be renewed for a one-year successive term.

## IV. Responsibilities of Districts

The District agrees to:

1. Allow the City to use its facilities (e.g. gymnasiums, weight room, classrooms and athletic fields) for public parks/recreation and supervised activities, provided that the City's use does not interfere with the operation or activities of the District.
2. Notify the City Manager or his designee in a timely manner if a proposed City use of facilities pursuant to this Agreement will interfere with the District's activities or operations or a custodial or maintenance schedule.
3. Continue, at no cost to the City, maintenance and custodial services of facilities, at a level at least equal to that during the year immediately preceding the initiation of this Agreement.
4. Pay any reasonable utility charges attributed to the City's use of District's facilities pursuant to this Agreement. "Reasonable" shall mean that the utility cost to the District during the time in which additional utility costs are incurred shall not to exceed five (5%) of District's utility usage for the same time period during the 2016-2017 school year.
5. Pay any utility charges attributable to the District's use of City facilities in excess of what the City is agreeing to pay under this Agreement.
6. Issue all keys the City deems essential for City use. Notify the City immediately of any alleged misuse of district property by City key holders.
7. Provide to the City Manager a list of City facilities the District wishes to use, together with a proposed use schedule, in sufficient time to allow the City to review the proposed use and notify the District whether a conflict or other unavailability exists, and if so, whether there are alternate facilities available.

V. Responsibilities of City

The City agrees to:

1. Allow the District to use City athletic fields and the City's pool for District educational and recreational programs, so long as District's activities are all appropriately supervised by the District, and provided that the School District's use does not interfere with the operating activities of the City.
2. Notify the District Superintendent or his designee in a timely manner if a proposed District use of City facilities pursuant to this Agreement will interfere with the City's activities or operations or a custodial or maintenance schedule.
3. Use District facilities solely for recreational, educational and athletic activities, including training of the City's first responders; provide adequate adult supervision of any activities, and conduct all activities in a safe, responsible manner.
4. Pay any reasonable utility charges attributed to the District's use of City facilities pursuant to this Agreement. "Reasonable" shall mean that the utility cost to the City during the time in which additional utility costs are incurred shall not to exceed five (5%) of District's utility usage for the same time period during the prior calendar year.
5. Pay any utility charges attributable to the City's use of District facilities in excess of what the City is agreeing to pay under this Agreement.
6. Provide to the District Superintendent a list of the District facilities the City wishes to use for its recreational activities, together with a proposed use schedule, in sufficient time to allow the District to review the proposed use and notify the City whether a conflict or other unavailability exists,.
7. Keep a log of District keys issued. City agrees such keys shall not be copied or distributed beyond those named by the City as being entitled to the keys for City use. City agrees that should individuals who have been issued keys utilize District facilities for personal use or permit others to use the facilities for their personal use, City shall discipline those individuals and require such individuals to return the issued keys. "Personal use" shall be defined as any use other than City approved public parks/recreation activities.
8. Ensure that any use of the District facilities complies with District prohibitions against the possession or use of drugs, alcohol, tobacco products or weapons on school property. Weapons may be carried by law enforcement officers while enforcing state law on district property and others may secure permission from the District to carry or use weapons for specific limited purposes including, but not limited to, firearm safety courses, Junior Reserved Officer Training Corps (JROTC) classes or martial arts demonstrations.

VI. Responsibility / Liability Insurance

Each party agrees both to be responsible for its own operations and the acts and omissions of its officials, employees and agents and to maintain, throughout the Agreement term, sufficient liability insurance to cover its activities pursuant to this Agreement, but in no event less than one million dollars ($1,000,000.00) per occurrence. Each party agrees to name the other party as an additional insured upon its liability policies. Upon request, parties will provide each other and any other party with proof of such liability insurance. Parties may comply with this provision by providing evidence of a "blanket policy" so long as coverage per individual occurrence does not fall below the listed amount.

VII. Administrative Contacts

The contact for each party for administration of this Agreement will be:

| | |
|---|---|
| City of Benson: | City Manager |
| Benson School District: | Superintendent of Schools |

VIII. Financing

Each party will be responsible for financing its own activities and responsibilities pursuant to this Agreement. Should any party establish fees for participation in an activity that it is providing as part of this Agreement, the fee shall be limited to the actual cost of providing the activity. Collection of the fee shall be the responsibility of the party providing the activity and fee proceeds shall be retained by and be exclusive to such party.

IX. Termination

This Agreement may be terminated by the governing board of either party upon thirty (30) days written notice to the other party.

X. Disposal of Property upon Termination

The parties do not anticipate any joint acquisition of property pursuant to this Agreement. Property acquired solely for the purposes of this Agreement shall be retained by the purchasing party upon termination of this Agreement.

XI. Preparation of Agreement – Disclosure

This Agreement was prepared with the assistance of the law firm of Udall Shumway, P.L.C., which acts as legal counsel on a general and continuing basis for the District participating in this Agreement.

XII. Records

All accounts, reports, files and other records relating to this Agreement shall be kept for five (5) years after termination of this Agreement and shall be open to reasonable inspection and audit by the other Party during that period.

XIII. Employee Worker Eligibility

By entering into the contract, each Party warrants compliance with A.R.S. § 41-4401, A.R.S § 23-214(A), the Federal Immigration and Nationality Act (FINA), and all other Federal immigration laws and regulations. Either Party may request verification of compliance from any contractor or subcontractor performing work under this contract. Each Party reserves the right to confirm compliance. Should either Party suspect or find that the other Party or any of its subcontractors are not in compliance, that Party may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary for compliance are the responsibility of each Party.

XIV. Compliance with Nondiscrimination Laws

The Parties, their employees and their volunteers shall not discriminate against any employee, applicant for employment, student, parent, volunteer, community member, or contractor based upon race, color, national origin, sex, age, religion, disability, genetic code, political affiliation, or veteran's status.

XV. Worker's Compensation

An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this IGA, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any worker's compensation benefits which may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

> "All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation."

XVI. Cancellation

The parties reserve the right to cancel this Agreement for conflicts of interest pursuant to A.R.S. §38-511, the applicable provisions of which are incorporated herein by reference.

XVII. Israel

In accordance with A.R.S. § 35-393.01, each party certifies that it is currently not engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel.

XVIII. Rights of Parties Only.

The terms of this Agreement are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall create any rights or duties in favor of any potential third party beneficiary or other person, agency or organization.

XIX. Invalidity of Any Part of IGA

The parties agree that should any part of this IGA be held to be invalid or void, the remainder of the IGA shall remain in full force and effect with those offending portions omitted.

XX. Governing Law

This IGA shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing the intergovernmental agency agreements and mandatory contract provisions of state agencies required by statute or executive order.

XXI. Counterparts.

This IGA may be executed in multiple counterparts, each of which shall constitute an original and together shall constitute the IGA.

XXII. Authority of Parties.

The persons executing this IGA on behalf of the parties hereby represent and guarantee that they have been authorized to do so, on behalf of themselves and the entity they represent. Further representation is made that due diligence has occurred, and that all necessary internal procedures and processes, including compliance with the open meeting law where necessary, have been satisfied in order to legally bind the entity to the terms of this IGA.

XXIII. Entire Agreement

This document constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representation, commitments, writings, agreements and all other communications between parties.

[SIGNATURE PAGE FOLLOWS.]

City of Benson:

Toney D. King, Sr., Mayor, City of Benson

6-26-17
Date

Benson Unified School District:

Micah Mortensen, Superintendent of Schools

5-15-17
Date

Attest:

City Clerk

The undersigned legal representatives, have reviewed the intergovernmental agreement on behalf of the parties and find it to be within the scope of the powers authorized by the respective entities.

City's Attorney

June 26, 2017
Date

District's Attorney

May 3, 2018
Date

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