City of Benson
City Council Communication

Regular Meeting **December 14, 2015**

To: Mayor and Council Agenda Item # 5

From: Brad Hamilton

Subject:

Discussion and possible action regarding Resolution 30-2015 of the Mayor and Council of the City of Benson, Arizona, approving an Intergovernmental Agreement with the Arizona Department of Fire, Building and Life Safety, Office of Manufactured Housing (OMH)

Discussion:

Under former Building Official Luis Garcia, the City of Benson signed an Intergovernmental Agreement with the Arizona Department of Fire, Building and Life Safety, Office of Manufactured Housing (DFBLS OMH) to allow the City of Benson Building Department to issue permits and perform manufactured housing inspections under the authority of DFBLS OMH. Resolution 70-2010 was signed on December 13, 2010 and became effective on January 11, 2011. The term of this agreement was 5 years, thus expiring on January 10, 2016.

DFBLS OMH provided the City of Benson with the attached contract to renew the IGA for another 5 year term. This contract is slightly different than the 2010 contract. Specifically, this contract:

1) requires monthly reporting to DFLBS. *This reporting is already required as an auditing method and has been performed continuously over the past 5 years. DFLBS provides the form.*
2) requires training as coordinated by DFBLS. *The Building Inspector has already been going to training mandated by DFBLS, usually once a year.*
3) requires the City to participate in E-Verify. *The City already participates in E-Verify.*

Staff Recommendation:

Approval of Resolution 30-2015

RESOLUTION 30-2015

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONAN DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY, OFFICE OF MANUFACTURED HOUSING (OMH)

WHEREAS, pursuant to A.R.S. 41-2151 the purpose of OMH is to maintain standards of quality and safety for manufactured homes, factory-built buildings, mobile homes and the installation of the same; and

WHEREAS, A.R.S. 41-2153(B) (5) directs the Deputy Directory of OMH to enter into agreements with local enforcement agencies to enforce the installation standards in their respective jurisdictions consistent with the installation standards of OMH; and

WHEREAS, it is the desire of OMH and the City of Benson to eliminate unnecessary duplication of inspections regarding installation standards within the Agency's jurisdiction.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson as follows:

1. The Intergovernmental Agreement with the Office of Manufactured Housing, attached hereto as Exhibit A, is hereby approved and adopted.

2. The City Manager is hereby authorized to execute the Intergovernmental Agreement on behalf of the City of Benson.

3. City Staff are directed to take such necessary and reasonable actions to put into effect the terms and conditions of the Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 14th day of December, 2015.

_____
TONEY D. KING SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MESCH, CLARK & ROTHSCHILD
By GARY COHEN
City's Attorney

AGREEMENT

BETWEEN

ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY
OFFICE OF MANUFACTURED HOUSING

AND

CITY OF BENSON

TO ENFORCE INSTALLATION STANDARDS

This **AGREEMENT** ("Agreement") is entered into this _____day of _____,_____, by and between the **ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY, OFFICE OF MANUFACTURED HOUSING** ("OMH") and the Town of Queen Creek ("Agency").

WHEREAS, pursuant to A.R.S. § 41-2151 the purpose of OMH is to maintain standards of quality and safety for manufactured homes, factory-built buildings, mobile homes, and the installation of the same.

WHEREAS, A.R.S. § 41-2153(B) (5) directs the Deputy Director of OMH to enter into agreements with local enforcement agencies to enforce the installation standards in their respective jurisdictions consistent with the installation standards of OMH; and

WHEREAS, it is the desire of both parties to eliminate unnecessary duplication of inspections regarding installation standards within the Agency's jurisdiction;

NOW, THEREFORE, in consideration of the premises and mutual promises and undertakings herein contained, and for other good and valuable consideration, the parties agree as follows:

1. Monitoring and Enforcement. For the duration of this Agreement, the Agency will monitor and enforce the installation standards set forth in A.R.S. § 41-2195 and A.A.C. R4-34-102 as they apply to installation standards and accessory structures.

2. Term. The term of this Agreement shall be for five (5) years from the date of this Agreement.

3. Standards of Performance. In exercising the authority delegated hereunder the Agency shall perform to the same standards of performance that the law imposes upon OMH in exercising the authority described in section 1 hereof. In addition, the Agency shall not approve any installation unless the installer affixes a State Insignia of Approval as required by A.A.C. R4-34-802.A and pays to the Agency the fee established by OMH pursuant to the authority by A.A.C. R4-34-501 and as permitted by A.A.C. R4-34-506.

4. Monthly Reporting. The Agency in this Agreement shall submit a Monthly IGA Report to OMH. A copy of each closed mobile home/HUD manufactured home or FBB permit shall be

submitted with the monthly report. The monthly report with copies of permits shall be submitted by mail, fax, or email, on or before the 15th of the following month. OMH will provide the monthly report format which will require the following be collected and documented:

a. ARZ HUD label number(s) or FBB manufacturers insignia number
b. Unit serial number
c. Installation insignia or FBB plan approval number
d. Address of installation
e. Date of approved final installation inspection

5. Fees Charged by the Agency. Permit fees charged by the Agency shall be the same as the Fee Schedule created by OMH pursuant to its authority under A.R.S. § 41-2144 (4) and A.A.C. R4-34-501 and no more than permitted by R4-34-801(E). All fees collected by the Agency shall be kept by the Agency as compensation for the services performed by the Agency under this agreement. The Agency shall not be entitled to any other compensation for services rendered by it under this Agreement.

6. Termination. Either party may terminate this Agreement at any time without cause by giving the other party thirty (30) days written notice prior to the date of termination. Additionally, OMH may terminate this Agreement immediately and without notice, if OMH determines that the installation standards required in the Agreement are not being maintained, or that local fees are not consistent with the inspection fees established by the Board of Manufactured Housing.

7. Qualifications of Personnel. The personnel that perform the functions delegated to the Agency in paragraph 1 hereof shall each have no less than one year of experience as a building code inspector or manufactured housing installation inspector.

8. Inspector Training. All Agency Inspectors performing under this Agreement shall participate in required initial and/or periodic training as set and coordinated by the State.

9. Duties of OMH. Should OMH require inspections of any portion of the installation of mobile, manufactured homes, accessory structures or factory built buildings not required by the Rules referred to herein and not covered under this Agreement, OMH shall be responsible for the inspections and enforcement thereof.

10. Notices. All notices shall be mailed or delivered to the party to receive such notice to the following address.

a. If intended for OMH to:

Department of Fire, Building and Life Safety
Office of Manufactured Housing
1110 West Washington, Suite #100
Phoenix, AZ 85007-2935

Attn: Debra Blake
Title: Interim Director
Phone: (602) 364-1022

b. If intended for Agency, to:

City of Benson
120 W. Sixth Street
Benson, Arizona 85602

Attn: William D Stephens
Title: City Manager
Phone: (520) 586-2245

11. Interpretation and Amendments. This Agreement contains the entire agreement between the parties hereto. This Agreement shall not be amended or modified in any manner, except by an instrument in writing signed by the parties hereto.

12. Headings. Headings are for convenience only and are not to be construed as part of this Agreement.

13. Invalidity of a Term. The parties agree that in the event any term, covenant or conditions herein contained should be held to be invalid or void, the invalidity of any such term, covenant or condition shall in no way affect any other term, covenant or condition of this Agreement.

14. Dispute. In the event of any dispute between the parties under this Agreement, the parties agree that they shall submit the dispute to arbitration pursuant to A.R.S. §§ 12-133(D) and 12-1518.

15. Inspection and Audit. Pursuant to A.R.S. §§ 35-214 and 35-215, all books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona for five (5) years after completion of this Agreement. Such records shall be produced at the Auditor General's Office or such other office as the parties hereto may mutually agree within a reasonable time after request.

16. Conflict of Interest. The parties acknowledge that this Agreement is subject to cancellation by the Governor of Arizona pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.

17. Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order No. 2009-09.

18. Governing Law and Venue. This Agreement shall be governed by and interpreted in Accordance with the laws of the State of Arizona. The exclusive venue for any litigation, arbitration, administrative hearing or the like concerning this Agreement or any matter arising therefrom shall be in Maricopa County, State of Arizona.

19. Unavailability of Funding. Every payment or financial obligation of the parties under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by any party at the end of the period for which funds are available. No liability shall accrue to any party in the event this provision is exercised,

and neither the OMH or Agency shall be obligated or liable for any future payments nor for any damages as a result of termination under this paragraph.

20. E-verify. To the extent applicable under A.R.S. § 41-4401, each party and its respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Each party has the right to inspect the papers of the other party or its subcontractors participating in this Agreement and may result in the termination of the Agreement by a non-breaching party under terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto agree to carry out the terms of this Agreement and have executed this Agreement the day, month and year first written above.

OFFICE OF MANUFACTURED HOUSING

Name: _____
Debra Blake, Deputy Director
Department of Fire, Building and Life Safety
Office of Manufactured Housing

CITY OF BENSON:

Name: _____
William D Stephens, City Manager

ATTEST:_____
Vicki L Vivian, City Clerk

APPROVED this _____ day of _____, _____.

This Intergovernmental Agreement has been reviewed by the undersigned attorney for the Agency who has determined that it is in appropriate form and within the powers and authority granted by law to the Agency designed herein.

BY: _____
Gary J Cohen, City Attorney

This Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this ___ day of _____, ____.

BY: _____
Mary D. Williams,
Assistant Attorney General

AGREEMENT

BETWEEN

ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY
OFFICE OF MANUFACTURED HOUSING

AND

CITY OF BENSON

TO ENFORCE INSTALLATION STANDARDS

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WHEREAS, it is the desire of both parties to eliminate unnecessary duplication of inspections regarding installation standards within the Agency's jurisdiction;

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submitted with the monthly report. The monthly report with copies of permits shall be submitted by mail, fax, or email, on or before the 15th of the following month. OMH will provide the monthly report format which will require the following be collected and documented:

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Office of Manufactured Housing
1110 West Washington, Suite #100
Phoenix, AZ 85007-2935

Attn: Debra Blake
Title: Interim Director
Phone: (602) 364-1022

b. If intended for Agency, to:

City of Benson
120 W. Sixth Street
Benson, Arizona 85602

Attn: William D Stephens
Title: City Manager
Phone: (520) 586-2245

11. Interpretation and Amendments. This Agreement contains the entire agreement between the parties hereto. This Agreement shall not be amended or modified in any manner, except by an instrument in writing signed by the parties hereto.

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IN WITNESS WHEREOF, the parties hereto agree to carry out the terms of this Agreement and have executed this Agreement the day, month and year first written above.

OFFICE OF MANUFACTURED HOUSING

Name: _____
Debra Blake, Deputy Director
Department of Fire, Building and Life Safety
Office of Manufactured Housing

CITY OF BENSON:

Name: _____
William D Stephens, City Manager

ATTEST:_____
Vicki L Vivian, City Clerk

APPROVED this _____ day of _____, _____.

This Intergovernmental Agreement has been reviewed by the undersigned attorney for the Agency who has determined that it is in appropriate form and within the powers and authority granted by law to the Agency designed herein.

BY: _____
Gary J Cohen, City Attorney

This Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this ___ day of _____, ____.

BY: _____
Mary D. Williams,
Assistant Attorney General