

RESOLUTION 12-2021

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF BENSON, ARIZONA, AND COCHISE COUNTY, ARIZONA, FOR PLAN REVIEW AND BUILDING INSPECTION SERVICES

WHEREAS, the City of Benson (CITY) is Authorized pursuant to A.R.S. §§ 9-802 and 9-467 to adopt and enforce Building Codes concerning construction occurring with the CITY's corporate boundaries; and

WHEREAS, through its comparable authority and practices conducted pursuant thereto, Cochise County (COUNTY) has developed expertise in reviewing plans for construction improvements and applying applicable building code requirements in those reviews and in inspections related to ongoing improvement projects; and

WHEREAS, to ensure that project owners in the CITY obtain prompt plan and construction reviews (inspections), the CITY has determined that it is in the CITY's best interest to have available the COUNTY's building code expertise and to use the COUNTY's services on an as-needed basis; and

WHEREAS, the CITY and the COUNTY have proposed terms under which each entity is willing to work with the other to effectuate the COUNTY's review of plans and improvement projects occurring within the CITY limits and has reduced those terms to writing in a proposed Agreement between the Parties; and


WHEREAS, the COUNTY and the CITY are authorized and empowered to enter into an Intergovernmental Agreement for this purpose pursuant to A.R.S. §§ 11-951 *et seq.*; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the proposed Plan Review and Building Inspection Services IGA attached hereto as Exhibit A, and the Mayor and Council find that entering into this Agreement is in the best interests of the City and its residents.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the City of Benson that the CITY enter the Plan Review and Building Inspection Services IGA (attached as Exhibit A) with Cochise County. The Mayor is authorized to execute the Agreement on the CITY's behalf;

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the above-discussed 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 May, 2021.




Joe A. Konrad, Mayor

ATTEST:



Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:



DeConcini, McDonald, Yetwin & Lacy, PC
By Paul A. Loucks
City's Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BENSON
AND THE COUNTY OF COCHISE FOR PLAN REVIEW AND BUILDING
INSPECTION SERVICES**

This agreement is made and entered into this ____ day of _____, 2021, by and between the City of Benson, a municipal corporation of the State of Arizona, hereinafter referred to as "City", and the County of Cochise, a political subdivision of the State of Arizona, hereinafter referred to as "County", pursuant to the authority of A.R.S. § 11-952, et seq.

WHEREAS, the County is authorized to adopt building codes with the powers necessary to enable it to administer and enforce building codes within the unincorporated area of the County, pursuant to A.R.S. § 11-861; and

WHEREAS, the County's planning agency has adopted a Building Code and other related codes to regulate all aspects of buildings or structures; and

WHEREAS, the City has similar authorization to adopt Building Code Regulations, within the incorporated areas of the City, pursuant to A.R.S. §§ 9-801 et. seq.; and

WHEREAS, due to the limited staff which the City has available for this work, the City needs assistance for the administration of the building code to include plan review and building inspections within the City of Benson; and

WHEREAS, pursuant to A.R.S. §§ 9-461, 11-863 and 11-952, the County and the City are authorized to enter into agreements such as this for the joint exercise of authority common to the parties and for the performance of services; and

WHEREAS, the County has the resources available to assist each in the performance of building code enforcement and administration under the terms and conditions of the Agreement.

IT IS HEREBY AGREED THAT:

1. **SCOPE OF SERVICES - COUNTY:** The County agrees to provide building code enforcement for the City of Benson to be performed by qualified County personnel. The services to be provided by the County shall be limited to review of building plans and building code inspections for conformance with the City adopted building code regulations.
2. **OBLIGATIONS:**
 - a. The City shall provide the County with a copy of the City of Benson adopted ICC Building Code and local amendments, so that County staff can determine conformance with the duly adopted Benson Building Code, as currently in effect, or as amended from time to time.
 - b. This Agreement shall not obligate or authorize County personnel to take any regulatory action, in either an administrative or judicial forum, to enforce compliance with any such City regulation or code. The City shall retain the full responsibility for all such enforcement actions.
3. **BUILDING PLAN REVIEW AND BUILDING CODE INSPECTION PAYMENT TERMS:** The City agrees to pay monthly for building plan review and inspection services based on the City's current Plan Review Fee for residential and commercial permits, per the City's Permit Fee Schedule. The City will make all such payments within thirty (30) days of the receipt of an itemized bill for authorized services.
4. **TERM:** This Agreement shall become effective following its approval by both parties. It shall remain in effect for a term of one year following approval. Thereafter, this Agreement shall automatically be renewed for successive one-year terms, unless the Agreement is terminated earlier as provided in this Agreement.
5. **TERMINATION:** This Agreement may be terminated, with or without cause, by either party upon written notification of intent to terminate provided not less than sixty (60) days prior to the effective date of such termination. This Agreement shall also be subject to termination pursuant to the provisions of A.R.S. § 38-511, which provides for termination of a contract in the event of certain conflicts of interest.

6. **NOTICE:** Unless otherwise specified herein, any notice or communication required or permitted under this AGREEMENT shall be in writing and sent to the address given below for the party to be notified.

CITY

City of Benson
P.O. Box 2223
Benson, AZ 85602
Attn: City Manager's Office

AGENCY

Cochise County
1415 Melody Lane, Building F
Bisbee, AZ 85603
Attn: Director of Development Services

7. **WORKERS' COMPENSATION:** An employee of the County shall be deemed to be an "employee" of both public agencies while performing pursuant to the Agreement, 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 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 purposes of workers' compensation.

8. **INDEMNIFICATION AND HOLD HARMLESS:** To the fullest extent allowed by law, the City shall defend, hold harmless, and indemnify the County, its officers, agents and employees, from all claims, demands, suits, damages, and loss ("claims") which result from the negligence or intentional torts of the City, its agents, officers and employees, in the performance of this Agreement, but only to the extent that such claims arise from such negligence or intentional torts. To the fullest extent allowed by law, the County shall defend, hold harmless and indemnify the City, its officers, agents and employees, from all demands, suits, damages and loss ("claims") which result from the negligence or intentional torts of the City, its agents, officers and employees, in the performance of this Agreement, but only to the extent that such claims arise from such negligence or intentional torts. The extent of the foregoing liabilities

shall be limited to and determined by the respective fault of the parties, their officers, agents, and employees, in comparison with others (including, but not limited to, the other party) who may have contributed to or in part caused any such claim to arise. If a claim or claims by third parties become subject to this indemnity provision, the parties to this Agreement shall expeditiously meet to discuss a common and mutual defense, including possible proportionate liability and payment of possible litigation expenses and damages. Any such discussion will be deemed confidential and subject to Rule 408, Ariz.R.Evid. The obligations under this Section 10 shall survive termination of this Agreement.

9. **COMPLIANCE WITH IMMIGRATION LAWS:** The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.
10. **NON-DISCRIMINATION:** To the extent applicable, the parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act and State Executive Order 75-5 which mandated all persons, regardless of race, religion, handicap, color, age, sex, political affiliation or national origin shall have equal access to employment opportunities. All parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, with all federal regulations regarding equal employment opportunity, with relevant orders issued by the U.S. Secretary of Labor and with all applicable provisions of the Americans with Disabilities Act, Public Act 101-336, 42 U.S.C. Sections 12101-12213 and all applicable Federal Regulations under the Act, including 28 C.F.R. Parts 35 & 36.
11. **NO THIRD-PARTY RIGHTS:** The provisions 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 of any nature or kind in favor of any third party.

12. **SEVERABILITY:** The provisions of this AGREEMENT are severable to the extent any provision or application held to be invalid shall not affect any other provision or application of the contract, which may remain in effect without the invalid provision, or application.
13. **CERTIFICATION PURSUANT TO A.R.S. § 35-393.01:** In accordance with A.R.S. § 35-393.01, if parties engage in for-profit activity and have 10 or more employees, and if this Agreement has a value of \$100,000 or more, parties certify they are not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842 In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.
14. **INSPECTION AND AUDIT:** The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agree that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.
15. **PUBLIC RECORDS LAW:** Notwithstanding any other provision of the agreement, the parties understand that all of the other parties are public entities and, as such, are each subject to Arizona's public records law, A.R.S. § 39-121 et. seq.
16. **JURISDICTION AND LAW:** This Agreement shall be governed by the laws of the State of Arizona. The parties hereby agree that the venue for the resolution of any dispute under this Agreement shall be and shall remain in Cochise County.
17. **ARBITRATION:** The parties agree that any dispute arising under this Contract involving the sum of \$65,000 or less in money damages only shall be resolved by arbitration pursuant to A.R.S. § 12-1501 et. seq. The decision of the arbitrator shall be final.

APPROVED BY THE BOARD OF SUPERVISORS OF COCHISE COUNTY, ARIZONA,
this _____ day of _____, 2021.

ATTEST:

COCHISE COUNTY BOARD OF SUPERVISORS

Kim Lemons, CPCC
Clerk of the Board

Ann English
Chair

APPROVED BY MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA,
this 10th day of May, 2021.

ATTEST:

CITY OF BENSON



Vicki Vivian
City Manager/City Clerk



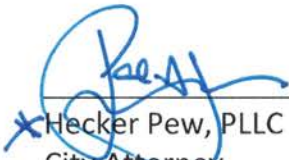
Joe A. Konrad
Mayor

ATTORNEY CERTIFICATION

The attached agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the above-identified parties.

APPROVED AS TO FORM this _____ day of _____, 2021.

By: _____
Paul Correa
Civil Deputy County Attorney

By:  _____
*Hecker Pew, PLLC by Paul A. Loucks
City Attorney