



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 12/05/06

SUBJECT: McGruff Truck Program Participation Agreement

DEPARTMENT: POLICE

RECOMMENDED MOTION: To obtain approval and authorization to participate in the McGruff Truck Program.

COMMENTS:

The McGruff Truck Program is designed to foster and increase child safety and protection. This program utilizes utility companies, school districts, municipalities and other entities by displaying the McGruff Truck decals on certain of their vehicles used only by employees who meet approved qualification standards and are trained in the Program. McGruff trucks are a source of help to children in emergency or frightening situations.

The Port Orange Police Department has obtained consent from the Public Works Department, BellSouth and the United States Postal Service to participate in this program. The one-time registration fee of \$450.00 will be paid by the listed participants. The Port Orange Police Department is requesting approval to sign the McGruff Truck Program Participation Agreement. This agreement may be cancelled by either party upon thirty (30) days written notice.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Gerald M. Monahan, Jr.	<i>Gerald M. Monahan</i>	Date 11/13/06
FINANCE DEPARTMENT	Approved as to Budget Requirements	<i>[Signature]</i>	Date 11/14/06
CITY ATTORNEY	Approved as to Form and Legality	<i>[Signature]</i>	Date 11/15/06
CITY MANAGER	Approved Agenda Item For:	<i>[Signature]</i>	Date 12/5/06

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:



National McGruff Truck Program

66 East Cleveland Avenue
Salt Lake City, Utah 84115
Telephone (801) 486-8768
FAX (801) 486-8815

Tibby Milne
Executive Director

McGRUFF TRUCK PROGRAM PARTICIPATION AGREEMENT

THIS McGRUFF TRUCK PROGRAM PARTICIPATION AGREEMENT (this "Agreement") is made and entered into by and between NATIONAL McGRUFF HOUSE NETWORK, a Utah nonprofit corporation with its principal address at 66 East Cleveland Avenue, Salt Lake City, Utah 84115 ("NMHN") and Port Orange Police Department with an address at 1395 Dunlawton Avenue, Port Orange, Florida 32129 ("Licensee").

RECITALS

A. NMHN operates, under license from the National Crime Prevention Council, a nonprofit corporation ("NCPC"), the nation-wide McGruff Truck Program, which is designed to foster and increase child safety and protection (the "Program").

B. Certain utility companies, school districts, municipalities and other entities serving the public may participate in the Program and display McGruff Truck decals ("McGruff Decals") on certain of their vehicles used only by employees who meet approved qualification standards and are trained in the Program (a "McGruff Truck"). McGruff Trucks are a source of help to children in emergency or frightening situations.

C. Licensee has received from NMHN a Program manual and other associated materials (the "Kit"), and has applied to NMHN for and desires to become a participant in the Program and operate certain of its vehicles as McGruff Trucks in Licensee's service territory (the "Territory").

NOW, THEREFORE, in consideration of Licensee's payment of the one-time registration fee of Four Hundred and Fifty Dollars (\$450) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

LICENSE

1. Licensed as Program Participant. NMHN hereby accepts Licensee as a Program participant, and hereby grants to Licensee a nonexclusive license to operate the McGruff Truck Program in its vehicles as McGruff Trucks in the Territory, upon the terms and conditions of this Agreement.

2. Effective Date. This Agreement and the license granted thereunder are effective as of the below written date of execution of this Agreement by NMHN.

3. Termination. This Agreement and the license created under this Agreement may be terminated by either party upon receipt by the other party of thirty (30) days notice. This Agreement shall terminate immediately upon termination, if any, of NCPC's license to NMHN to operate the Program or to sublicense the use or display of the McGruff Intellectual Property (defined in Section 10). Upon termination of this Agreement for any reason, Licensee shall promptly (i) remove from all of its vehicles any and all McGruff Decals and McGruff Intellectual Property, and (ii) at Licensee's expense return to NMHN any and all copies of Kits and associated materials in its possession and control, if so requested by NMHN.

PROGRAM OPERATION

4. Key Personnel Familiarity with Program. Licensee represents that its management personnel and labor representatives, if any, whose positions may affect the success of the Program and Licensee's obligations under this Agreement, understand the terms and conditions of this Agreement and the Program requirements and procedures set out in the Kit.

5. Program Coordinator. Licensee shall designate and advise NMHN of Licensee's Program coordinator who shall be (i) NMHN's contact person with Licensee, (ii) responsible to Licensee for implementation of this Agreement and of practices and procedures required the Program as described in the Kit, and (iii) responsible for filing with NMHN the semi-annual and other required reports.

6. Program Trained and Licensee Approved Personnel for McGruff Trucks. Licensee agrees to permit as drivers, crew or others of its personnel regularly riding in or on a McGruff Truck ("McGruff Truck Personnel") only those of its employees or contract workers who have been properly trained in McGruff Truck operation procedures and who meet Licensee's most stringent standards for its personnel in potentially sensitive contact with the public. Licensee's qualification standards for its McGruff Truck Personnel are specified in Schedule "A", attached hereto. Licensee acknowledges that as many of its vehicles as practicable should qualify and operate as McGruff Trucks.

7. Training of Employees. Licensee agrees to conduct start-up and annual renewal-refresher training for all McGruff Truck Personnel and other employees involved with the Program. Licensee understands and acknowledges that it should also train all employees in basic Program facts, operations, and effectiveness information. Licensee agrees that throughout the year as necessary it will provide appropriate training to employees new to McGruff Truck operations.

8. Radio-Equipped McGruff Trucks. Licensee understands and acknowledges that Licensee's McGruff Truck Personnel must be able to immediately call for help through an independent means of communication (e.g., two-way radio, cellular phone, etc.) when help is needed in an emergency situation involving a child. Licensee agrees to keep and maintain in good repair in each of its McGruff Trucks such independent means of communication.

9. McGruff Decals. Licensee agrees to (i) treat the McGruff Decals as sensitive and valuable assets of NMHN, (ii) ensure that a current and correct log of the decals, backed by periodic direct inspection, is maintained at all times, and (iii) place, replace, and dispose of McGruff Decals as required by the Kit.

10. Loyalty to the Program. Licensee understands and acknowledges that in becoming a Program participant it has an obligation of loyalty to the Program and to the public who benefit from the Program. Accordingly, Licensee agrees to sustain and uphold the credibility and reliability of (i) the Program, and (ii) McGruff the Crime Dog (the character and registered trademark and service mark of NCPC), and the other associated trademarks and service marks of NCPC shown in the Kit which NCPC has licensed to NMHN (the "McGruff Intellectual Property"). Licensee understands and acknowledges that maintaining and enhancing the positive attributes of the McGruff Intellectual Property and in particular the McGruff the crime dog character, especially his trustworthiness, are critical to continued success of the Program and all other McGruff programs operated by NCPC or NMHN.

11. Public Awareness. Licensee agrees to comply with the Program launching and public awareness requirements set out in the Kit. Licensee agrees that while it is a Program participant it will, as practicable, utilize other opportunities it may have to educate adults and children in the Territory on the sole and proper use, as described in the Kit, of McGruff Trucks.

PROTECTION

12. Reporting. Licensee agrees to inform NMHN (using the Semi-Annual Report Form provided in the Kit) of any situation in which any Licensee McGruff Place Personnel has failed to meet the Program's stringent standards in sensitive contact with children; and Licensee further agrees to promptly restrict or remove said personnel from participation in the Program, unless otherwise permitted by NMHN.

13. Insurance. In connection with its participation in the Program, Licensee has been advised to consult with its legal advisors and insurance department or insurance carriers and has taken such steps, if any, as it deems necessary to provide adequate liability insurance coverage.

14. No Third Party Beneficiary Enforcement. The enforcement of the terms of this Agreement is strictly reserved to the parties hereto and nothing in the Agreement shall create or allow any claim or right of action by any other person or third party. Any third person receiving benefits under this Agreement shall be deemed an incidental beneficiary only.

15. Governmental Immunity Not Waived. This Agreement shall not operate or be construed as a waiver of the governmental immunity, if any, of Licensee as to any person or third party.

GENERAL

16. Notices. All reports, demands, notices, and other communications required to be given hereunder, if any, shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by registered or certified U.S. mail, return receipt requested, postage prepaid, and addressed to the respective party at its address set forth at the first of this Agreement, or to such other address or addresses as such party may hereafter designate in writing to the other party as herein provided. If personally delivered, notice under this Agreement shall be deemed to have been given and received and shall be effective when personally delivered. Notices by registered or certified mail shall be deemed effective and complete three days after being duly mailed by U.S. mail.

17. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective parties, and their successors, and assigns.

18. Entire Agreement; Amendment. The recitals set forth at the first of this Agreement are by this reference incorporated herein and made a part of this Agreement. This Agreement, including Schedule "A" which is attached hereto, incorporated herein and by this reference made a part hereof: (i) represents the entire agreement between and among the parties, (ii) supersedes all prior agreements, understandings, correspondence, representations, and warranties, whether express or implied or oral or in writing, relating to this Agreement, and (iii) may only be amended by a writing signed by both parties. NMHN may in its sole discretion modify, restate, alter, or amend any or all of the material in the Kit at any time. All references in this Agreement to the "Kit" are to the then current Kit, and Licensee shall have sixty (60) days after receipt of notice of any modification, restatement, alteration, or amendment of the Kit to be in full compliance with the same.

19. Assignment. This Agreement shall not be assigned (and duties shall not be delegated) by Licensee without the prior written consent of NMHN, which consent may be withheld for any reason or for no reason.

20. Interpretation. Section and other headings used in this Agreement are for convenience only and shall not broaden or limit this Agreement. Unless otherwise provided, all terms shall

have the meaning given them in the ordinary English usage and as customarily used. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof.

21. No Waiver. Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of such party to enforce all of the terms and conditions hereof. No waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

22. Invalidity. The invalidity or unenforceability of any particular provision of this Agreement shall not effect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid provisions were omitted.

23. Governing Law. This Agreement shall be governed by and enforced in accordance with the law of the State of Utah and the United States of America.

24. Execution. The individuals executing this Agreement on behalf of the respective parties represent that they are duly authorized to do so by and on behalf of the party for whom they are signing.

25. Facsimile Signatures. The parties hereto agree that transmission to the other party of this Agreement with its facsimile signatures shall bind the party transmitting this Agreement by facsimile in the same manner as if such party's original signature had been delivered. Without limiting the foregoing, each party who transmits this Agreement with its facsimile signature covenants to deliver the original thereof to the other party as soon as possible thereafter.

READ, UNDERSTOOD, AGREED TO AND ACCEPTED BY THE RESPECTIVE PARTIES AS OF THE DATES WRITTEN BELOW:

Licensee: **PORT ORANGE POLICE DEPARTMENT**

_____ By _____
Date Name (print) _____
Title _____

NMHN: **NATIONAL McGRUFF HOUSE NETWORK**

_____ By _____
Date Tibby Milne, Executive Director

SCHEDULE "A"

Licensee's Qualification Standards

for

Licensee's McGruff Truck Personnel

We have received