RESOLUTION 18-2016

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AN ARIZONA STATE FORESTRY DIVISION COOPERATIVE INTERGOVERNMENTAL AGREEMENT, FOR THE PROTECTION OF ITS FORESTS AND WILDLANDS

WHEREAS, the City of Benson, Arizona is a political subdivision of the State of Arizona; and

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

WHEREAS, the City desires to enter into a mutually beneficial agreement Arizona State Forestry Cooperative – as it is authorized to do by A.R.S. §11-951 *et seq* – to protect its forests and wildlands; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the proposed Agreement between the City of Benson and the Arizona State Forestry Cooperative, 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 "*Arizona State Forestry Division Cooperative Intergovernmental Agreement*" Contract No. FD-16-0018-ASF-A3S.

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

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 13th day of June, 2016.

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

Contract No. FD-16-0018-ASF-A3S

ARIZONA STATE FORESTRY DIVISION
COOPERATIVE INTERGOVERNMENTAL AGREEMENT

This Cooperative Agreement ("Agreement") is made by and between Benson Fire Department hereinafter referred to as the Cooperator, and the State Forester (collectively the "Parties"). This Agreement supersedes all previous Memorandums of Understanding and Cooperative Agreements and will become effective upon the final signature.

WITNESSETH:

WHEREAS the Cooperator wishes to enter into a Cooperative Agreement with the State Forester for the protection of its forests and wildlands as authorized under A.R.S. Sections 37-623(F), 9-220 (8), 9-240(B)(7)(a) and 48-805(B)(16) and; the protection of forest, wild and agricultural lands, and rural structures as provided for within the Cooperative Forestry Assistance Act, 16 U.S.C. Section 2106; and

WHEREAS this is an Intergovernmental Agreement entered into pursuant to A.R.S.§ 11-952; and

WHEREAS it is in the best interest of the State of Arizona to have wildland fires detected and suppressed quickly before they become large and more difficult to control; and

WHEREAS the Cooperator represents that it is a duly constituted fire department, fire district, or political subdivision of the State authorized to provide fire protection within the boundaries of the map attached hereto and by reference made a part hereof (Appendix A); and

WHEREAS the Cooperator may have a limited number of units of firefighting equipment that can be made available to the State Forester for fire suppression work; and

WHEREAS the Cooperator may have the capability to respond and suppress fires under the jurisdiction of the State Forester on a more timely and effective basis than any other assets or resources in the state; and

WHEREAS the Cooperator can more adequately carry out this function if additional equipment and technical assistance is available; and

WHEREAS the State Forester may have a limited number of units of firefighting equipment that can be made available to fire associations, fire districts, and incorporated fire departments involved in fire suppression; and

WHEREAS it has been determined to be advantageous to the State Forester in the proper discharge of his responsibilities to make certain equipment available to the Cooperator;

NOW THEREFORE, the parties to this Agreement do hereby agree as follows:

A. THE STATE FORESTER AGREES:

1. To make available organizational assistance, technical training and other expertise as available on his staff;

2. To provide State Forester's and other wildland fire training resources and funding when deemed available by the State Forester;

3. To provide State resources and resources under State agreement to the Cooperator for wildland fire suppression, pre-suppression, and for unplanned all-risk emergencies within the Cooperator's boundary or service area when requested by the Cooperator and deemed available by the State

Forester. Per A.R.S. 37-623.02.H, the State Forester may require reimbursement for cost incurred for these requested resources. The State Forester will determine as soon as practical after each request, the need for reimbursement. This determination will be based upon one or more of the following factors; the type of request, resources furnished, jurisdiction, land ownership, threat, state or federal emergency declaration status, and the actual costs of those resources to the State.;

4. To pay and reimburse the Cooperator, out of State Forestry allocated funding, for fire suppression activities, equipment and manpower at the rates established per the Cooperative Fire Rate Agreement (FM104) on file with the State Forester; provided, however, that payment shall be made only for such activities on lands outside the Cooperator's established boundaries or service area when requested by the State Forester;

5. That the Cooperator may refuse to furnish manpower and equipment when requested by the State Forester if by so doing it would reduce the Cooperator's resources to a level where he could no longer maintain an adequate level of fire protection on lands within his boundary or service area;

6. To make available such firefighting and training equipment as can be obtained and is suitable for the use of the Cooperator in fire management work and wildland fire training;

7. That title to all accessories, tools, equipment, sirens, etc., which the Cooperator adds or attaches to state equipment provided by the State Forester will remain the property of the Cooperator and the Cooperator shall remove same prior to returning same equipment to the State Forester;

8. To pay and reimburse the Cooperator, out of State Forestry allocated funding, for instructors conducting approved fire training instruction, at the State Forester's request and at the rate for instructors included in the Arizona State Forester's Emergency Pay Plan plus travel expenses, if applicable, at the approved state rates;

9. That no reimbursement for loss, damage or destruction of equipment due to ordinary wear and tear will be made;

10. To provide necessary forms as needed by the Cooperator in executing his responsibilities under this Agreement;

11. To the extent possible, to assist the Cooperator in ordering and obtaining fire training material and equipment through the federal supply system (GSA, NWCG, & NIFC);

12. That the Cooperator may purchase wildland firefighting equipment and supplies through the State Forester's procurement system.

B. THE COOPERATOR AGREES:

1. To respond to and engage in fire suppression actions on all wildland fires on State and Private lands within the Cooperator's boundary or service area as set forth in attached Appendix A at the Cooperator's expense;

2. To respond and engage in wildland fire suppression, pre-suppression, and for unplanned all-risk emergencies upon lands under the jurisdiction of the State Forester located outside the Cooperator's boundary or service area as set forth in attached Appendix A at such time and with equipment and manpower available as requested by the State Forester;

3. To maintain and make available for use at the request of the State Forester manpower and equipment subject to the provisions of the Cooperative Fire Rate Agreement (FM 104);

4. To accept direction and supervision by the State Forester or his duly authorized representatives while engaged in suppression or other activities at the State Forester's request;

5. To submit a State Forester's Arizona Individual Wildland Fire Report (Wild-RPT-1) within 15 days, for each wildland fire that the Cooperator responds to outside their jurisdiction, on which they are the incident commander;

6. To provide the State Forester with a summary report on all known wildland fires inside their jurisdiction on a calendar year basis by February 1st of each year;

7. That if the Cooperator agrees to provide approved wildland firefighting training courses at the State Forester's request, the courses will meet the standards set by the National Wildfire Coordinating Group for the Wildland and Prescribed Fire Qualification System;

8. To provide to the State Forester, for approved training courses, a summary report on courses provided, number of students trained, and number of fire departments represented on a calendar year on a quarterly basis;

9. To participate to the extent possible in fire prevention activities within their boundary or service area as requested by the State Forester;

10. To submit claims for reimbursement to the State Forester within thirty (30) days after release of its manpower and/or equipment in the manner and form prescribed by the State Forester;

11. To submit claims for reimbursement to the State Forester within thirty (30) days after completion of authorized training courses in the manner and form prescribed by the State Forester;

12. To maintain wildland fire training qualifications as set forth by the State Forester;

13. To accept and use equipment obtained from the State Forester pursuant to this agreement ("Assigned Equipment");

14. To maintain the Assigned Equipment in operable condition and state of readiness, and promptly report any loss or damage of such equipment to the State Forester;

15. To obtain prior approval for any planned alterations of the Assigned Equipment from the State Forester;

16. To provide adequate shelter from the weather elements for the Assigned Equipment;

17. Upon request, to promptly provide the State Forester with a report of the condition of Assigned Equipment;

18. That the Assigned Equipment may not be sold, transferred, loaned or otherwise disposed of, or traded, but must be returned to the State Forester unless part of the Firefighter Program (FFP) through the Department of Defense and US Forest Service and the agreement there of;

19. To require any contractors or subcontractors of the Cooperator operating under this Agreement to maintain, the following minimum insurance coverage.

***Insurance Requirements* for Any Contractors Used by a Party to the Intergovernmental Agreement:**

The *insurance requirements* herein are minimum requirements and in no way limit the indemnity covenants contained in this Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or its contractors or subcontractors from liabilities that might arise out of the performance of the work under this Agreement by the Cooperator, its agents, representatives, employees, contractors or subcontractors, and Cooperator and its contractors and subcontractors are free to purchase additional insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE**: Contractor shall provide coverage with limits of liability not less than those stated below. The term "Contractor" throughout this Section 19 refers only to a contactor or subcontractor of the Cooperator, if any. None of the obligations under this Section 19, other than the duty of the Cooperator to provide a Certificate of Insurance under Section 19.A.1 are applicable to the Cooperator.

1. Commercial General Liability – Occurrence Form
   Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability.

   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000
   - Damage to Rented Premises $ 50,000
   - Each Occurrence $1,000,000

   a. The policy shall be endorsed **(Blanket Endorsements are not acceptable)** to include the following additional insured language: **"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

   b. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the Contractor.

2. **Business Automobile Liability**
   Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

   - Combined Single Limit (CSL) $1,000,000

   a. The policy shall be endorsed **(Blanket Endorsements are not acceptable)** to include the following additional insured language: **"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor"**. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

   b. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the Contractor.

   c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability
   - Workers' Compensation Statutory
   - Employers' Liability
     Each Accident $1,000,000
     Disease – Each Employee $1,000,000

Disease – Policy Limit $1,000,000

a. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. **ADDITIONAL INSURANCE REQUIREMENTS**: The policies are to contain, or be endorsed **(Blanket Endorsements are not acceptable)** to contain, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S § 41-621 (E).

2. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of its Contract with the other governmental entity(ies) party to the IGA.

C. **NOTICE OF CANCELLATION**: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to the Department and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS**: Contractors insurance shall be placed with companies licensed in the State of Arizona. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE**: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements **(Blanket Endorsements are not acceptable)** are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS**: Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL**: Any modification or variation from the *insurance requirements* of this Section 19 must have prior approval from the State of Arizona Department of Administration, Risk Management

Division, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

H. **EXCEPTIONS**: In the event the Cooperator, Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance or other Certificate of Insurance to the State Forester's Office as the Agent of the State of Arizona. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

20. INDEMNIFICATION:

Each Party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of injury to any person (including death) or property damage resulting from, or in connection with, the performance of this Agreement, but only to the extent that such injury or damage is caused by the negligent act or omission or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. For the purposes of this Section 20, an agent, employee, or volunteer of the Cooperator who is working under the jurisdiction, direction or supervision of the State Forester is the Cooperator's agent, employee, or volunteer and not the agent, employee or volunteer of the State Forester. The preceding sentence does not limit or affect the application of A.R.S. 23-1022, including the circumstances in which an employee is deemed to be an employee of both Parties for purposes of that statute.

This Section 20 does not reduce the degree of negligence or fault that the injured party or other third party must establish in the underlying Claim to recover for any injury or damage, or affect any defense to such underlying Claim.

In addition, if and only if the Cooperator uses contractors or subcontractors, which decision the Cooperator may make in its sole and absolute discretion, *the Cooperator* shall cause its contractor(s) and subcontractors, if any, to defend, indemnify, and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of *the Cooperator's* contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

IT IS MUTUALLY AGREED:

1. That every obligation of either Party 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 either Party at the end of the period for which funds are available. No liability shall accrue to either Party in the event this provision is exercised, and neither Party shall be obligated or liable for any future payments for any damages as a result of termination under this paragraph.

2. That the Cooperator will be hired and reimbursed, for suppression or other activities, as set forth in the "Cooperative Fire Rate Agreement" (FM104) as agreed to and attached as exhibit "B". This Cooperative Fire Rate will be part of the master Agreement and attached at a later date and prior to hiring.

3. The equipment issued by the State Forester will be painted and identified and marked in a manner that will indicate the cooperation between the Cooperator and the State Forester, unless the equipment was acquired through the Firefighter Program and the title has been passed to the cooperator;

4. If the equipment is not used as provided by this agreement, the State Forester may remove said equipment upon written notification.

5. **Amendments**: This agreement may be modified only by a written amendment signed by both parties. However, if mutually agreed, the parties may enter into specific supplemental, written agreements, subject to appropriate approvals, to accomplish the goals of this agreement and to carry out its terms and conditions.

6. **Dispute Resolution**: In the event of a dispute, the parties agree to arbitrate the dispute to the extent required by A.R.S. Section 12-1518.

7. **Inspection and Audit of Records**: Pursuant to A.R.S. Sections 35-214 and -215, to the extent that they apply, the Cooperator shall retain all books, accounts, reports, files and other records ("Records") relating to this agreement for a period of five years after completion of the contract. All records shall be subject to inspection and audit by the State Forester at all reasonable times. Upon request, the Cooperator shall produce the original of any and all such records at the offices of the State Forester.

8. **Cancellation for Conflict of Interest**: Pursuant to A.R.S. Section 38-511, the either Party to the Agreement may, within three years after its execution, cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to this contract in any capacity, or a consultant to any other party to this contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Governor is received by all other parties to the contract of the cancellation, unless the notice specifies a later time.

9. **Nondiscrimination**: The parties agree to comply with Arizona Governor's Executive Order 2009-09 - "Prohibition of Discrimination in Contracts Non-Discrimination in Employment by Government Cooperators and Subcontractors, Superseding Executive Order 99-4 and Amending Executive Order 75-5."

10. **Third-Party Antitrust Violations**: The Cooperator assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Cooperator toward fulfillment of this Agreement.

11. **Notices**: All notices required by this agreement shall be in writing delivered to the person and addresses specified below or to such other persons or addresses as either party may designate to the other party by written notice.

State Forester:	Cooperator:
Office of the State Forester	Benson Fire Department
Arizona State Forestry Division	P.O. Box 2223
1110 West Washington, Suite 100	Benson, AZ 85602
Phoenix, AZ 85007	(520) 586-9832
602-771-1400	
602-771-1421 fax	

12. **Immigration Compliance**: Cooperator warrants its compliance with all federal immigration laws and regulations that relate to their employees and its compliance with section 23-214, subsection A, and the compliance of any of its contractors or subcontractors. A breach of this warranty shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract. The State

retains the legal right to inspect the papers of any Cooperator, contractor or subcontractor employee who works on the contract to ensure that the Cooperator, contractor or subcontractor is complying with the warranty.

13. **Workers' Compensation:** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this Agreement, is deemed to be an employee of both the Party who is the primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries they are then working, as provided in A.R.S. §23-1022(D). The primary employer of such employee shall be solely liable for payment of workers' compensation benefits for the purpose of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required.

14 **Term:** This Agreement will continue (10) ten years from effective date, unless terminated by either party by (30) thirty days written notice to the other.

15, **Compliance with Laws:** The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

In WITNESS WHEREOF the parties by and through their duly qualified acting officials have hereunto set their hands.

COOPERATOR:

Toney D. King, Sr.
(Print Name)

Signature

Mayor
Title

6-13-16
Date

Witness

Witness

STATE FORESTER:

Jeff Whitney
Print Name

Signature

State Forester
Title

Date

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned who have determined that this Agreement is in appropriate form and is within the powers and authority of the respective parties.

Attorney General	Attorney for the Fire Department, District or City
By: _____ Assist. Attorney General Attorney for State Forester	By: _____
Date: _____	Date: _____

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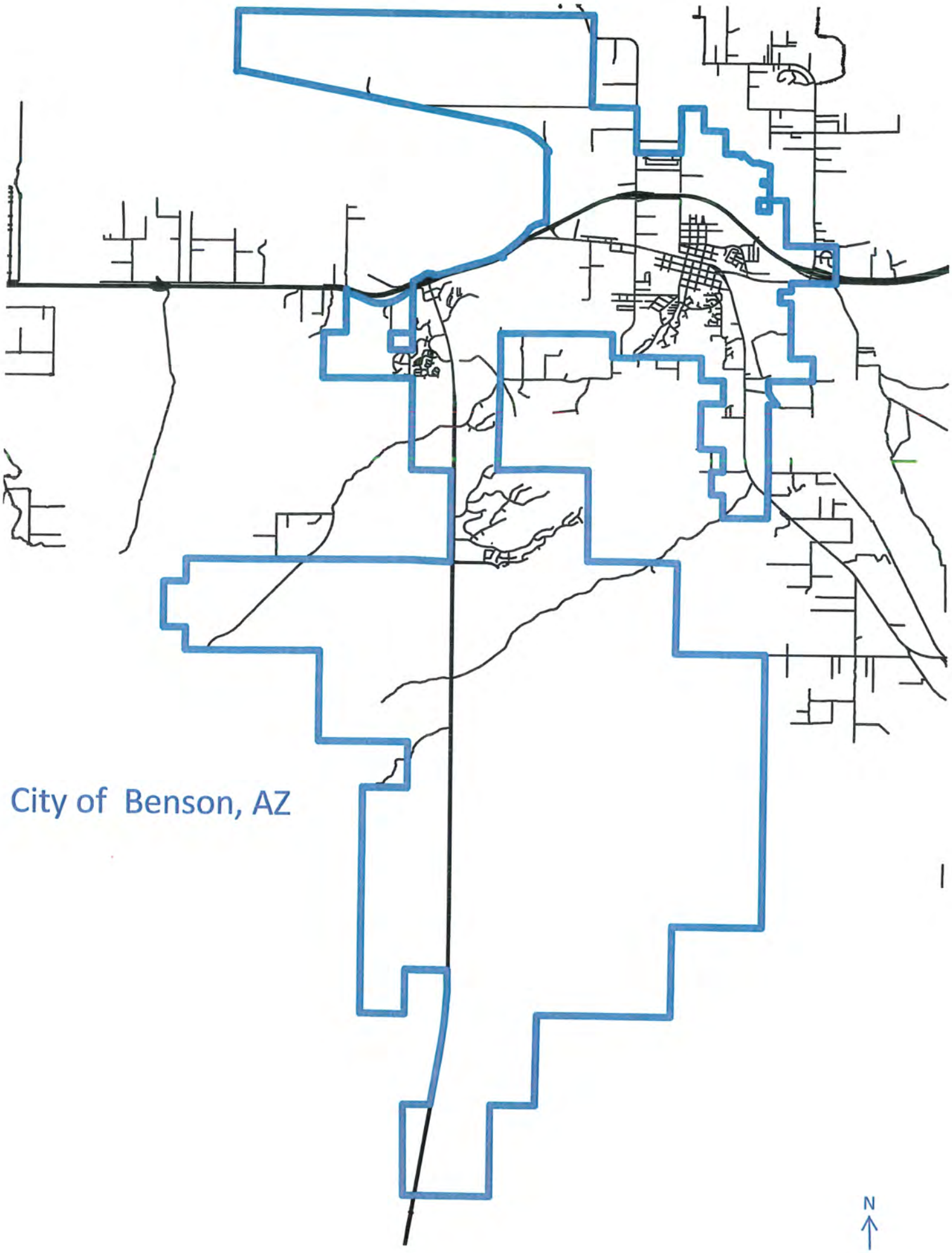
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