

BENSON RESOLUTION NO. 32-2008

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BENSON FIRE DEPARTMENT AND THE ARIZONA STATE LAND DEPARTMENT – FORESTRY DIVISION FOR THE PROVISION OF WILDLAND FIREFIGHTING RESOURCES BY WAY OF MUTUAL AID.

WHEREAS, the City of Benson Fire Department believes that it would be in the public interest to enter into an Intergovernmental Agreement with Arizona State Land Department – Forestry Division for the provision of wildland firefighting resources by way of mutual aid; and

WHEREAS, the Arizona State Land Department – Forestry Division has developed an Intergovernmental Agreement (the “Agreement”), which is attached hereto as Exhibit “A” and incorporated herein by this reference; and

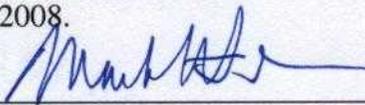
WHEREAS, the City of Benson and the Arizona State Land Department – Forestry Division desire to avail themselves of all provisions of law applicable to the Agreement and desire to jointly exercise their powers as provided for in A.R.S. § 11-951 *et seq.*; and

WHEREAS, the Mayor and Council of the City of Benson 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, that the City hereby approves the Intergovernmental Agreement between the State of Arizona and the City of Benson, attached hereto as Exhibit “A”, and the Mayor is hereby directed to execute said Agreement on behalf of the City of Benson.

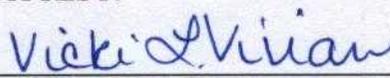
BE IT FURTHER RESOLVED that the staff of the City is hereby directed to take all actions necessary and proper to implement the Intergovernmental Agreement and further its purposes.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 12th day of May, 2008.



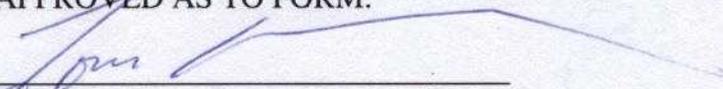
MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, City Attorney

Exhibit "A"
Intergovernmental Agreement



City of Benson

Home of Kartchner Caverns State Park

June 10, 2008

Kirk Rowdabaugh
Office of the State Forester
Arizona State Land Department
1110 West Washington, Suite 100
Phoenix, AZ 85007

Dear Mr. Rowdabaugh:

Please find enclosed the agreement approved by our City Council on May 12, 2008. Once the document has been fully executed, please return a copy to our office. If you could please send it to the attention of the City Clerk, I would appreciate it.

Sincerely,

Vicki L. Vivian

Vicki L. Vivian
City Clerk

AG. Contract No. _____

**ARIZONA STATE LAND DEPARTMENT - FORESTRY DIVISION
COOPERATIVE INTERGOVERNMENTAL AGREEMENT**

This Cooperative Agreement is made by and between _____
hereinafter referred to as the Cooperator, and the State Forester.

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. Section 37-623(F), as amended 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 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 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 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 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; and

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

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

THE STATE FORESTER AGREES:

- 1. To make available organization and training technical assistance and other expertise as available on his staff;**
- 2. To provide State Forester's and wildland firefighting resources inside the Cooperator's boundary when deemed available by the State Forester, and when the Cooperator has exhausted its own resources and has declared need to the State Forester. Payment for the State's resources will be negotiated after each incident based upon the resources furnished and the actual cost of those resources to the State Forester;**
- 3. To make available such firefighting equipment as can be obtained and is suitable for the use of the Cooperator in fire management work;**

4. 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;
5. To pay and reimburse the Cooperator 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;
6. That no reimbursement for loss, damage or destruction of equipment due to ordinary wear and tear will be made;
7. To provide necessary forms as needed by the Cooperator in executing his responsibilities to the State Forester;
8. 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;
9. The Cooperator may purchase wildland firefighting equipment and supplies through the State Forester's procurement system.

THE COOPERATOR AGREES:

1. To accept and use equipment obtained from the State Forester pursuant to this agreement ("Assigned Equipment");
2. 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;
3. To obtain prior approval for any planned alterations of the Assigned Equipment from the State Forester;
4. upon request, the Cooperator will promptly provide the State Forester with a report of the condition of Assigned Equipment;
5. To provide adequate shelter from the weather elements for the Assigned Equipment;
6. That the Assigned Equipment may not be sold, transferred, loaned or otherwise disposed of, or traded, but must be returned to the State Forester;
7. 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;
8. 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;
9. To respond to all wildland fires on State and Private lands within their boundary or service area at the Cooperator's expense;
10. To respond and engage in fire suppression activities 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;

11. To maintain and make available for use at the request of the State Forester manpower and equipment subject to the provisions of Cooperative Fire Rate Agreement (FM 104);
12. To participate to the extent possible in fire prevention activities within their boundary or service area as requested by the State Forester;
13. To accept direction and supervision by the State Forester or his duly authorized representatives while engaged in suppression activities at the State Forester's request;
14. To submit claims for reimbursement to the State Forester within ninety (90) days after release of its manpower and/or equipment in the manner and form prescribed by the State Forester;
15. To maintain wildland fire training qualifications as set forth by the State Forester;

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

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal 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
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its 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”.***

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

- b. Policy shall contain a waiver of subrogation against 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.

2. **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 to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its 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"***.

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation

Statutory

Employers' Liability

Each Accident

\$ 500,000

Disease – Each Employee

\$ 500,000

Disease – Policy Limit

\$1,000,000

- a. Policy shall contain a waiver of subrogation against 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 to contain, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees *and the other governmental entity* shall be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by the Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. 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:** Each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(Arizona State Land Dept., Office of the State Forester, 1110 W. Washington, Ste. 100 , Phoenix, AZ 85007)** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A- VII. 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 a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements 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 **(Arizona State Land Dept., Office of the State Forester, 1110 W. Washington, Ste. 100, Phoenix, AZ 85007)**. 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. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

- 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* in any Intergovernmental Agreement must have prior approval from the State of Arizona Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

17. Each party (as "Indemnitor") agrees to indemnify, defend, 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 bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, *(City of Benson)* shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save 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, 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 *(City of Benson)*'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 the State 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 the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not 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 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;
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, 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 State 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 99-4 - "Prohibition of Discrimination in Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors."
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:

**Office of the State Forester
Arizona State Land Department
1110 West Washington, Suite 100
Phoenix, AZ 85007
602-771-1400
602-771-1421 fax**

Cooperator:

Keith Spangler

(Chief's Name) (print)
Benson Fire Department

(Department Name)
P.O. Box 2223

(Address)
Benson, AZ 85602

(City, State, Zip Code)
520-586-2245

(Phone Number)

This agreement supersedes all previous Memorandums of Understanding and Cooperative Agreements and will become effective upon filing with the Secretary of State and will continue in force from year to year unless terminated by either party by thirty days written notice to the other, provided, however, that all of the provisions herein are complied with.

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

COOPERATOR:

Mark M. Fenn
(Print Name)

City of Benson, 120 W. 6th Street
Address

Benson, AZ 85602
City, State, Zip

520-586-2245
Business Phone


Signature

Vicki & Vivian
Witness

Mayor - City of Benson
Title

Melissa Quinz
Witness

May 13, 2008
Date

STATE FORESTER:

Kirk Rowdabaugh
Print Name

Signature

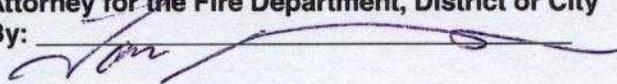
State Forester
Title

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
By: _____
Assistant Attorney General
Attorney for State Forester

Attorney for the Fire Department, District or City
By: 

Date: _____

Date: 5-9-08