

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED, RETURN TO:

City of Prescott  
201 S. Cortez, 86303  
Prescott, AZ 86303

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**INTERGOVERNMENTAL AGREEMENT  
CITY OF PRESCOTT  
TOWN OF PRESCOTT VALLEY  
(GLASSFORD HILL PUBLIC SAFETY COMMUNICATION SITE)**

**Preamble**

This Intergovernmental Agreement (IGA), made and entered into this 9th day of May 2013, by and between the Town of Prescott Valley, a municipal corporation of the State of Arizona (“PRESCOTT VALLEY”), and the City of Prescott, a municipal corporation of the State of Arizona (“PRESCOTT”);

WITNESSETH:

**Recitals**

WHEREAS, PRESCOTT and PRESCOTT VALLEY have historically worked to preserve the 1,893 acres of State Trust Land located on Glassford Hill for conservation (open space) purposes; but

WHEREAS, the September 11, 2001 terrorist attacks in New York and Washington, D.C. demonstrated the need for greater interoperability between public safety agencies throughout the nation; and

WHEREAS, in 2004 the Arizona Legislature responded by adopting ARS §41-1830.42 which required the Arizona Public Safety Communications Advisory Commission to make recommendations to the Department of Public Safety (“DPS”) regarding a state-of-the-art public safety interoperable communications network for Arizona; and

WHEREAS, a new telecommunications facility on Glassford Hill was identified as the logical progression of DPS sites to enhance interoperability and redundancy; and

WHEREAS, PRESCOTT VALLEY submitted an application to Arizona State Land Department (ASLD) for a 125' x 125' facility and a 20' wide access easement along an existing road for underground electrical service, limited to public safety use, and presented Resolution No. 1539 to the Council approving a letter of support for the new facility, which the Council adopted on October 25, 2007; and

WHEREAS, on July 9, 2009, the Council adopted Resolution No. 1655 granted a Use Permit under Town Code 13-21-110 tied directly to a site plan for a public safety telecommunications facility on Glassford Hill and giving the Council control over any further development of the site; and

WHEREAS, after considerable negotiation, ASLD offered Commercial Lease Grant No. 03-112920 and Right-of-Way Grant No. 18-112914 for Council approval, limiting use of the property to public safety related telecommunications facilities, which the Council approved on June 11, 2009 (see Exhibits "A" and "B" respectively); and

WHEREAS, PRESCOTT VALLEY has used Arizona Department of Homeland Security (AZDOHS) grant funds to construct the new telecommunications facility (including the tower, power, and equipment) on the portions of Glassford Hill shown in Exhibits "A" and "B" ("GLASSFORD SITE"), and to make the same available to other jurisdictions based on shared expenses for operation and maintenance; and

WHEREAS, PRESCOTT VALLEY and PRESCOTT have determined to enter into a bilateral IGA for shared telecommunications services from the GLASSFORD SITE; and

WHEREAS, PRESCOTT VALLEY and PRESCOTT are each empowered pursuant to ARS §§9-240, 11-952, and §48-805 to enter into IGAs for purposes of carrying out their mutual responsibilities and to jointly exercise any powers common to them;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

**SECTION 1. PURPOSE.**

The purpose of this IGA is to provide for operation and maintenance of the GLASSFORD SITE, including cost sharing of related expenses.

**SECTION 2. IGA TERM.**

This IGA shall be for a twenty (20) year term, beginning immediately upon signing and recording of the IGA, and shall remain in full force and effect during said term unless terminated by either party as set forth hereinafter.

**SECTION 3. CONSIDERATION.**

1. PRESCOTT VALLEY agrees to make available to PRESCOTT the GLASSFORD SITE for the purposes described herein.

2. The parties acknowledge that the State of Arizona holds the GLASSFORD SITE as State Trust Land, and has agreed to make the GLASSFORD SITE available to PRESCOTT

VALLEY and other jurisdictions or legal entities (public and private) to place telecommunications equipment thereon in accordance with the provisions of this IGA.

3. PRESCOTT VALLEY may enter into separate agreements with other jurisdictions or legal entities (public and private) and to place their telecommunications equipment on the GLASSFORD SITE in return for that jurisdiction or legal entity agreeing to pay to PRESCOTT VALLEY a pro-rata capital contribution in relation to PRESCOTT VALLEY's costs in exceedance of AZDOHS funds, and a pro-rata share of on-going operations and maintenance costs based on SECTION 4 hereinafter.

4. The PRESCOTT Police Chief and the PRESCOTT VALLEY Chief of Police may cooperatively promulgate and revise from time to time operational procedures consistent with internal policy and law needed to implement this IGA, without further approval of their respective governing boards.

#### **SECTION 4. CONDITIONS.**

1. PRESCOTT shall be responsible for the following:

- a) To secure documentation and pay for all costs associated with any required ASLD subleases attendant with Commercial Lease Grant No. 03-112920 and Right-of-Way Grant No. 18-112914.
- b) To provide for installation, maintenance, operations, and insurance, at its own expense, of telecommunications equipment on the GLASSFORD SITE owned and used exclusively by PRESCOTT for its own purposes.
- c) To provide a microwave communication link to the Prescott Regional Communication Center to PRESCOTT VALLEY, at no cost to PRESCOTT VALLEY.
- d) To provide PRESCOTT VALLEY the opportunity to access to PRESCOTT'S Yavapai Hills communication system if requested under terms and conditions as set forth in a subsequent IGA.
- e) To provide mutually-agreed-upon cost sharing as identified in Subsection 4 of this IGA including any security arrangements required within the shelter (e.g. fencing, locks, gates, etc.).
- f) To provide a list of equipment to be installed (e.g. radios, antennae, repeaters, computers, etc.), along with power draw requirements, physical dimensions and specifications, radio frequencies and desired antennae locations. This list shall be updated anytime additional equipment is to be installed, and annually based on a mutual inspection of equipment.

- g) To coordinate installation of equipment with PRESCOTT VALLEY's telecommunications provider (currently Niles Radio), and pay for all related costs. The Town's telecommunications provider shall review and approve all requests for new equipment or changes to installed equipment to ensure that all radios and equipment operate within the ability of the solar power equipment and to minimize operating interference with existing telecommunication equipment.
2. PRESCOTT VALLEY shall be responsible for the following:
- a) To provide for maintenance, operations, and insurance, at its own expense, of telecommunications equipment on the GLASSFORD SITE owned and used exclusively by PRESCOTT VALLEY for its own purposes.
  - b) To provide for maintenance, operations, and insurance required for tower, shelter, power, and other items associated with the GLASSFORD SITE except where otherwise noted.
  - c) To pay costs associated with the physical connection to PRESCOTT's microwave communication link to the Prescott Regional Communication Center.
  - d) To provide mutually-agreed-upon cost sharing as identified in Subsection 4, including any security arrangements required within the shelter.
  - e) To calculate PRESCOTT's facility percentage share based on the equipment list and any updates.
3. Prorated Costs for Exceedance of AZDOHS grant funds if PRESCOTT'S capacity is 7.5 % or below.
- a) PRESCOTT VALLEY expended funds in exceedance of AZDOHS grant funds in order to develop the GLASSFORD SITE.
  - b) PRESCOTT VALLEY expends funds annually for a service maintenance agreement associated with power, tower, shelter, and other miscellaneous features associated with the GLASSFORD SITE.
  - c) It is expected that other jurisdictions entering into IGAs to use the GLASSFORD SITE shall share in prorated costs for maintenance, operations, taxes, fees, etc. in addition to monies expended by PRESCOTT VALLEY in exceedance of AZDOHS funds.
  - d) PRESCOTT's provision of a microwave communication link to the Prescott Regional Communication Center to PRESCOTT VALLEY provides an economic benefit that offsets PRESCOTT's AZDOHS exceedance cost.

- e) Once available capacity is filled, other jurisdictions are responsible for all costs for additional tower, shelter, power and potential miscellaneous expenses.
- f) Prorated costs specifically associated with PRESCOTT VALLEY's exceedance funds related to AZDOHS grant are defined as follows:.

AZDOHS exceedance costs per 1% of combined available capacity of tower, shelter and power are \$3,100.00.

- g) Initial general maintenance costs per 1% of combined available capacity of tower, shelter and power are \$75.00 per year. Future annual maintenance costs shall be based on percentage of actual maintenance cost.

4. Prorated Costs Associated with IGA between PRESCOTT and PRESCOTT VALLEY for 7.5% available capacity of tower, shelter and maintenance

PRESCOTT requires use of 7.5% of combined available capacity of tower, shelter, and power and agrees to pay an annual general maintenance contribution. General maintenance contribution shall be based upon 7.5% of the total charge for normal maintenance and basic minor repairs or minor upgrades to the tower or shelter and shall not include repairs required for structural integrity of the tower or shelter. If the cost to the City of Prescott exceeds \$1,000.00, the City of Prescott retains the right to prior authorization of that expense before agreeing to payment.

If and when PRESCOTT utilizes more than 8% of the available capacity, the AZDOHS exceedance costs will be applicable, based on utilized capacity above 8% as calculated in Section (3)(f).

**SECTION 5. TERMINATION.**

Either party may terminate its participation in this IGA by giving not less than one-year's notice to the other parties. In the event of such voluntary termination, the terminating party shall be entitled (and obliged) to remove any of its equipment used exclusively by and for the benefit of said terminating party, at its cost. Any entities with remaining equipment on the GLASSFORD SITE shall have continued rights to access and use said equipment for their telecommunications purposes.

**SECTION 6. INDEMNIFICATION.**

The parties to this IGA shall indemnify and hold harmless each other and the respective departments, boards, employees, and agents of said parties, for, from and against any and all

claims, liabilities, expenses, or third-party actions resulting from the indemnifying party's negligence incurred in connection with the performance of its responsibilities under this IGA. Nothing herein shall be construed as a waiver by any party of the right to bring an action for contribution against the other or as against any third person or entity.

**SECTION 7. NO THIRD-PARTY BENEFICIARIES.**

This IGA is intended solely for the benefit of PRESCOTT VALLEY and PRESCOTT, and shall not be construed as a third-party beneficiary contract.

**SECTION 8. LEGAL ARIZONA WORKERS ACT COMPLIANCE.**

To the extent any parties are government entities required to comply with ARS §41-4401, said parties hereby warrant that they will, at all times during the term of this IGA, comply with all federal immigration laws applicable to the employment of their respective employees, and with the E-Verify requirements of ARS §23-214 (A) (together the "State and Federal Immigration Laws"). Said parties shall further ensure that each subcontractor who performs any work under this IGA likewise complies with the State and Federal Immigration Laws. Said party agrees and warrants that any other party shall have the right at any time to inspect its books and records and the books and records of any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws. Said party agrees that any act by it or its subcontractors that results in the impediment or denial of access to its books and records or that of its subcontractors shall be a material breach of the IGA by that party. Nothing herein shall make any such party or its subcontractors an agent or employee of the other parties. Nothing herein shall act to establish privity of contract between any one party and the subcontractors of other parties. Any breach by such party or any of its subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this IGA subjecting that party to penalties up to and including suspension or termination of this IGA. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the party who breached this provision shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, subject to the non-breaching parties' approval as soon as possible so as not to delay project completion and at no additional expense to the non-breaching parties. Any additional costs attributable directly or indirectly to remedial action under this section shall be the responsibility of the party who breached this provision. Such party shall advise its subcontractors of the other parties' rights and the subcontractor's obligations under this section by including a provision in its contract with each subcontractor in essentially the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of ARS §23-214 (A). SUBCONTRACTOR further agrees that [the parties to the IGA related to the GLASSFORD SITE] may inspect the SUBCONTRACTOR'S books and records to ensure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR

will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract.”

**SECTION 9 - WORKERS' COMPENSATION COVERAGE**

All other employees of any party to this IGA who work under the jurisdiction or control of, or who work within the jurisdictional boundaries of, any other party to this IGA, shall be deemed to be an employee of the party who is his or her primary employer, as provided in ARS §23-1022(D), and the primary employer/party of such an employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each party herein shall comply with provisions of ARS §23-1022 (E) by posting the public notice required.

**SECTION 10 - NON-DISCRIMINATION**

Any parties to this IGA agree not to discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The parties will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Orders 99-4 and 2000-4.

**SECTION 11- A.R.S. §35-391.06 and 35-393.06**

Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section, the term “scrutinized business operations” shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement

**SECTION 12. TIME IS OF THE ESSENCE.**

Time is of the essence in this IGA. It is expected that any parties thereto shall diligently and deliberately carry out their respective performances hereunder.

**SECTION 13. AMENDMENTS.**

This IGA may be amended at any time by mutual written agreement and approved by the governing entities. No other agreements or understandings shall modify the provisions of this IGA, except that PRESCOTT VALLEY may enter into separate agreements with other jurisdictions or legal entities (public and private) for use of the GLASSFORD SITE for areas outside the subject matter of this IGA.

**SECTION 14. NOTICES.**

Any notice by any party to the other shall be considered duly served if delivered in person to the office of the authorized representative listed below (or added by separate agreement), or if deposited in the U.S. mail, properly stamped with required postage, and addressed to the authorized representative listed below (or added by separate agreement). Any party may change its representative or the address thereof after giving the others written notice as provided herein. Unless changed, notices shall be sent to the following:

PRESCOTT:                      City Manager  
   City of Prescott  
   201 S. Cortez  
   Prescott, AZ 86303

Copy to:                        City Attorney  
   City of Prescott  
   201 S. Cortez  
   Prescott, AZ 86303

PRESCOTT VALLEY:        Town Manager  
   Town of Prescott Valley  
   7501 E. Civic Circle  
   Prescott Valley, AZ 86314

Copy to:                        Town Attorney  
   Town of Prescott Valley  
   7501 E. Civic Circle  
   Prescott Valley, AZ 86314

**SECTION 15. GOVERNING LAW.**

This IGA shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona and shall be deemed made and entered into in Yavapai County.

**SECTION 16. CONFLICT OF INTEREST**

Pursuant to ARS Section 38 511, either party may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of either party 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 the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, either party further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing,

drafting or creating this contract on behalf of either party from any other party to the contract, arising as a result of this contract

**SECTION 17. DISPUTE RESOLUTION.**

Any parties hereto expressly covenant and agree that in the event of a dispute arising under this IGA, the matter shall be put to arbitration under the terms and provisions of the Arizona Arbitration Act. In any event, the parties hereto waive any rights to a trial by jury. The parties hereto further expressly covenant and agree that each party shall be responsible for its own attorney's fees incurred in conjunction with any dispute, arbitration or judicial action.

**SECTION 18. SAVINGS CLAUSE.**

In the event any phrase, clause, sentence, section, article or other portion of this IGA shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this IGA shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

**SECTION 19. ENTIRE AGREEMENT.**

This IGA constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of City of Prescott this 14th day of May, 2013.

\_\_\_\_\_  
Mayor Date

ATTEST:

\_\_\_\_\_  
City Clerk

PASSED, APPROVED AND ADOPTED by the Mayor and Council of Town of Prescott Valley this 9th day of May, 2013.

\_\_\_\_\_  
Mayor Date

ATTEST:

\_\_\_\_\_  
Town Clerk

**APPROVED AS TO FORM:**

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Prescott, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Prescott.

\_\_\_\_\_  
Joe Paladini Date  
City Attorney for Prescott

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Town of Prescott Valley, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the Town of Prescott Valley.

\_\_\_\_\_  
Ivan Legler Date  
Town Attorney for Prescott Valley

**EXHIBIT "A"**

(ASLD Commercial Lease Grant No. 03-112920)

**EXHIBIT “B”**

(ASLD Right-of-Way Grant No. 18-112914)