INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT
AND THE TOWN OF PRESCOTT VALLEY
FOR THE FISCAL YEAR 2014/2015 FINANCIAL CONTRIBUTION
FROM THE DISTRICT TO THE TOWN FOR FLOOD CONTROL
IMPROVEMENTS

THIS INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE TOWN OF PRESCOTT VALLEY, FOR THE FISCAL YEAR 2014/2015 FINANCIAL CONTRIBUTION TO THE TOWN FOR FLOOD CONTROL IMPROVEMENTS (the "Agreement") is entered into, effective this ____ day of _____, 2014, between the Yavapai County Flood Control District, a political subdivision of the State of Arizona (the "DISTRICT"), and the Town of Prescott Valley, Arizona, a municipal corporation of the State of Arizona (the "TOWN"). The District and the Town are sometimes collectively referred to as the "Parties" or individually as the "Party."

RECITALS

WHEREAS:

A. The DISTRICT is a special taxing district legally created in the State of Arizona and organized by Yavapai County to include and govern its jurisdiction.

B. The DISTRICT administers the Federal Emergency Management Agency ("FEMA") Regulations under the National Flood Insurance Program.

C. The Yavapai County Board of Supervisors is the Board of Directors of the DISTRICT.

D. The TOWN lies within the legal boundaries of the DISTRICT.

E. The DISTRICT, the TOWN, and the County are separate and distinct political subdivisions, but each can provide for the benefit of the other(s), for the benefit of public health, safety, and welfare, and other public purposes.

F. The DISTRICT and the TOWN have authority to enter into Intergovernmental Agreements pursuant to Arizona Revised Statutes ("A.R.S.") §§11-952, 48-3603, and 9-240, and TOWN's Code.

G. Among other things, the DISTRICT receives tax proceeds as general funding for the planning, construction, and maintenance of flood control improvements.

H. Under the budgeting process for the DISTRICT, a category of "Contributions" has been established, setting aside monies that may be utilized by the various political subdivisions located within the boundaries of Yavapai County.

I. The DISTRICT has approved and budgeted "Contributions" funds to provide funding assistance for flood mitigation work and is authorized to expend such funds for flood control projects (including storm water control) to political subdivisions for projects so long as the projects are flood or drainage related, cost-effective, a benefit to the County, the DISTRICT, and the political subdivision and are in accordance with FEMA regulations.

J. The TOWN has experienced storm water control and flooding problems for a number of years in various locations and seeks to mitigate such problems to increase safety and protect public and private property and persons within the TOWN.

K. The TOWN seeks to improve its storm water control, make drainage improvements, and/or mitigate flooding problems by constructing the Viewpoint Connector Detailed Drainage Study Project (hereinafter the "Project").

L. The TOWN desires to receive DISTRICT "Contributions" funds for the 2014/2015 fiscal year to be used for its Project.

M. The DISTRICT has budgeted funds to support the Project in an amount not to exceed Two Hundred Thousand Dollars ($200,000) for fiscal year 2014/2015.

AGREEMENTS

NOW THEREFORE, for good and valuable consideration, including consideration of the mutual promises, terms, and conditions hereinafter set forth, including the mutual promises and obligations to be performed by the Parties hereto, IT IS AGREED BETWEEN THE TOWN AND THE DISTRICT AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement is to authorize the DISTRICT to pay and contribute to the TOWN funds in support of the TOWN's Project. Such funding for fiscal year 2014/2015 shall not exceed Two Hundred Thousand Dollars ($200,000).

II. COMMENCEMENT, DURATION, AND TERMINATION

The effective date is as set forth on page one (1) of this Agreement. Performance under this Agreement shall commence following the effective date and shall terminate upon the earliest of:

A. The completion of the Project;
B. The exhaustion of the funds allocated to the TOWN for the Project;
C. The end of the fiscal year 2014/2015; or
D. The mutual agreement of the Parties.

III. RESPONSIBILITIES OF PARTIES

A. The TOWN shall:

1. Be solely responsible for the design, engineering, bidding, right-of-way acquisition, supervision, construction, inspection, administration. and project management of the Project and for contracting directly for all Project work.
2. If plans are used to bid, provide the DISTRICT a copy of the final Project plans.
3. Use the funds for the Project in fiscal year 2014/2015.
4. Use the funds exclusively for costs associated with the Project described above.
5. When requesting funds from the DISTRICT, provide detailed invoices with supporting documentation for the request(s).
6. Request funds from the DISTRICT on or before July 31, 2015 (for work completed in fiscal year 2014/2015).
7. Be responsible for the proper disbursement of the Contributions funding provided by the DISTRICT.
8. Be responsible for maintaining the Project and the resulting improvements.

B. The DISTRICT shall:

1. Make financial contributions to the TOWN for the Project as approved by the Board of Directors.
2. Provide funding as available and appropriate upon proper request(s) by the TOWN.
3. Pay properly invoiced requests monthly or on an alternate schedule as agreed to by the TOWN and DISTRICT.
4. Pay properly invoiced requests for work completed by the TOWN in fiscal year 2014/2015 so long as TOWN's requests are received by the DISTRICT on or before July 31, 2015.

C. The DISTRICT and TOWN mutually agree:

1. That they recognize the funds to be used by Parties pursuant to this Agreement are tax funds. The agreements herein for funding are based upon projected tax funds to be received. In the event the projected income is not received, there is the possibility that some or all of the funds anticipated by this Agreement and set forth herein will not be available. All monetary obligations under this agreement shall be subject to annual budget approval of the respective governing bodies of the parties. A failure of either party's governing body to approve funding for payment of any obligation hereunder shall constitute grounds for termination of this agreement.

2. The Project is the sole responsibility of the TOWN, and not of the DISTRICT or the County. All real property upon with the Project work will occur is owned by, or under the control of, the TOWN and not owned or under the control of the DISTRICT or County.

VII. INDEMNIFICATION

The TOWN agrees to defend, indemnify, and hold harmless the DISTRICT, its Board of Directors, the County, its Board of Supervisors, officers, employees, agents, or other

representatives from any and all claims for damages or otherwise arising under this Agreement and from any negligent acts of the Town, its officers, employees, agents, or other representatives. This Indemnification provision shall survive the termination of this Agreement.

VIII. ARBITRATION

In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to use arbitration only to the extent it is required by A.R.S. § 12-1518 or otherwise required by the Arizona Rules of Civil Procedure. The Parties shall agree to fully exhaust administrative remedies before filing litigation.

IX. OTHER PROVISIONS

A. NOTICE. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by certified mail, return receipt requested, addressed as follows:

TOWN OF PRESCOTT VALLEY	DISTRICT
Town Manager	Yavapai County Flood Control District Director
7501 E. Civic Circle	1120 Commerce Drive
Prescott Valley, AZ 86314	Prescott, AZ 86305

B. ENTIRE AGREEMENT. This Agreement represents the entire understanding between the parties with respect to the subject matters herein, and may be amended, modified, or waived only by written instrument signed by both Parties.

C. CONFLICT OF INTEREST. This contract is subject to the cancellation provisions of A.R.S. §38-511.

D. SEVERABILITY. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.

E. NON-DISCRIMINATION. The Parties shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

F. EMPLOYMENT VERIFICATION. The Parties are required to comply with A.R.S. §41-4401, and hereby warrants that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their

respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the "state and federal immigration laws"). The Parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws. A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the party who breaches may be subject to penalties up to and including termination of the Agreement. The Parties retain the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other party is complying with the warranties regarding compliance with the state and federal immigration laws.

G. LAWS. The Parties shall each be fully responsible for compliance with all statutes ordinances, codes, regulations, rules, court decrees, or other laws (hereinafter "Laws") applicable to it as part of fully performing the Project with regards to their respective roles. This Agreement shall not relieve either Party of any obligation or responsibility imposed upon it by Laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year specified below.

YAVAPAI COUNTY
FLOOD CONTROL DISTRICT

_____

Rowle Simmons, Chairman Date
Board of Directors
Yavapai County Flood Control District

TOWN OF PRESCOTT VALLEY

_____

Harvey Skoog, Mayor Date
Town of Prescott Valley

ATTEST:

_____

Ana Wayman-Trujillo Date
Clerk of the Board of Directors

_____

Date
Prescott Valley Town Clerk

DETERMINATIONS OF COUNSEL

FOR THE
INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT
AND THE TOWN OF PRESCOTT VALLEY

FOR THE FISCAL YEAR 2014/2015 FINANCIAL CONTRIBUTION
FROM THE DISTRICT TO THE TOWN FOR FLOOD CONTROL IMPROVEMENT

Pursuant to A.R.S. §11-952, as amended, the foregoing Agreement has been submitted to the undersigned Attorney, Town of Prescott Valley. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and the Town of Prescott Valley.

_____

Attorney Date
Town of Prescott Valley

Pursuant to A.R.S. §11-952, as amended, the foregoing Agreement has been submitted to the undersigned Attorney for the Yavapai County Flood Control District, Prescott, Arizona. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Yavapai County Flood Control District.

_____

Deputy County Attorney Date
Flood Control District