

**INTERGOVERNMENTAL AGREEMENT
TOWN OF PRESCOTT VALLEY
AND
YAVAPAI COUNTY
CONSTRUCTION OF PORTION OF POQUITO VALLEY ROAD**

THIS AGREEMENT, entered into this ____ day of _____, 2016, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (hereafter “Town”), and YAVAPAI COUNTY, a political subdivision of the State of Arizona (hereafter the “County”) (each a “Party” and, collectively, the “Parties”);

WITNESSETH:

WHEREAS, on January 27, 1988, an Amended Result of Survey was filed with the Yavapai County Recorder to identify 40 acre residential parcels in the west half of Sections 2, 11, 14, 23, and 26, and certain commercial parcels in the northwest quarter of Section 35, T15N R1W, G&SRB&M, in the unincorporated portion of the County; and

WHEREAS, said Amended Result of Survey indicated that access to the parcels from State Route 89A would be through a 66’ north/south private ingress/egress easement and utility easement located 33’ on each side of the property line between the parcels; and

WHEREAS, a number of the residential parcels began to be split and built on but such development did not come within subdivision regulations and public improvements were not required to what became known as Poquito Valley Road which connected the parcels with SR 89A; and

WHEREAS, on August 9, 1994, the Town annexed the residential parcels in Sections 23 and 26 (and the commercial parcels in Section 35), and subsequently entered into a development agreement and began approving zoning designations and development plans for a residential development to be known as the ViewPoint; and

WHEREAS, the ViewPoint came within subdivision regulations and the developer was required to dedicate and improve what became known as ViewPoint Drive to provide the primary access for residences in each new unit to SR 89A; and

WHEREAS, as new units were approved and developed, ViewPoint Drive extended further north from SR 89A and provided access for County residents located in Poquito Valley where the unimproved Poquito Valley Road continued to connect with it; and

WHEREAS, in time the residents in Poquito Valley came together to form a special district to improve that portion of Poquito Valley Road located outside the Town limits with an all-weather road surface; and

WHEREAS, the length of the unimproved portion of Poquito Valley Road between the improved portion and ViewPoint Drive in Section 23 has steadily diminished over time, but today remains at approximately 2300 feet (see Exhibit “A” attached hereto and expressly made a part hereof); and

WHEREAS, notwithstanding the legal uncertainty of the access easement shown in the Amended Result of Survey, the property owner on which the remaining unimproved portion of Poquito Valley Road is located has permitted vehicular travel thereon. However, Exhibit A shows that such travel has extended well outside of any such easement as drivers have attempted to find unobstructed passage during the various seasons; and

WHEREAS, the Town and the County recognize the need to temporarily improve the remaining unimproved portion of Poquito Valley Road as shown in Exhibit A until such time as the ViewPoint is completely developed and ViewPoint Drive is extended by the developer(s) to the northern Town limits; and

WHEREAS, the Parties wish now to define the improvements, funding contributions, and ultimate maintenance responsibilities for the portion of Poquito Valley Road shown in Exhibit A (the “Project”); and

WHEREAS, ARS §11-251(4) authorizes the County Board of Supervisors to lay out, maintain, control and manage public roads, ferries and bridges within the County; and

WHEREAS, ARS §9-240(B)(3)(d) authorizes the Town Council to open, lay out and improve new streets, avenues and alleys within the Town; and

WHEREAS, ARS §11-952 authorizes the County Board of Supervisors and the Town Council to approve an intergovernmental agreement to jointly exercise powers common to them through joint or cooperative action; and

WHEREAS, the Town and the County are mutually agreeable to entering into this intergovernmental agreement to conduct the Project through construction of the portion of Poquito Valley Road shown in Exhibit A, and defining the subsequent operation and maintenance responsibilities; and

WHEREAS, the Parties further acknowledge the this Project will benefit the health, safety, and welfare of the residents of both the Town and the County;

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, it is hereby agreed as follows:

In the event of the foregoing, the Party elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Party from any other Party to the Agreement arising as a result of this Agreement.

SECTION 5: INDEMNITY AND HOLD HARMLESS. The Town hereby agrees to indemnify and hold harmless the County, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the Town's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or its agents. The Town further releases and discharges the County, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the County, from any and all claims which the Town has or may have against the County, its agents or employees, arising out of or in any way connected with the Town's activities as set forth in this Agreement.

The County hereby agrees to indemnify and hold harmless the Town, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the County's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or its agents. The County further releases and discharges the Town, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the Town, from any and all claims which the County has or may have against the Town, its agents or employees, arising out of or in any way connected with the County's activities as set forth in this Agreement.

SECTION 6: WAIVER. No oral order, objection, claim, or notice by any Party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

SECTION 7: WAIVER OF JURY TRIAL AND ATTORNEYS' FEES. The Parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the Parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither Party shall be entitled to an award of attorney's fees, either pursuant to the Agreement (see ARS §12-341.01(A) and (B)), or pursuant to any other state or federal statute, or state or federal court rule, or state or federal common law.

SECTION 8: RESULT OF NEGOTIATIONS. This Agreement is the result of negotiations by and between the Parties. The Agreement has been reviewed by the Yavapai County Attorney and by the Prescott Valley Town Attorney. Therefore, any ambiguity in this Agreement is not to be construed against either Party.

SECTION 9: INSURANCE.

1. The County is a self-insured participant in the Arizona Counties Insurance Pool (“ACIP”) and through ACIP has sufficient coverage for the activities outlined in this Agreement, including the Indemnity and Hold Harmless provisions in Section 5 above.
2. The Town is a self-insured participant in the Arizona Municipal Risk Retention Program (“AMRRP”) and through AMRRP has sufficient coverage for the activities outlined in this Agreement, including the Indemnity and Hold Harmless provisions in Section 5 above.

SECTION 10: DESIGNATED REPRESENTATIVES. Both Parties hereto agree that they will designate at all times at least one staff member to be a liaison of that Party in carrying out the provisions of this Agreement for purposes of notice, scheduling, etc. Initially, the designated staff persons are:

Town: Norm Davis, P.E.
Public Works Director
Public Works Department
7501 E. Civic Circle
Phone: (928) 759-3000

County: Byron Jaspers, P.E.
Public Works Director, County Engineer
1100 Commerce Drive
Prescott, AZ 86305
(928) 771-3183

SECTION 11: TERM OF AGREEMENT. This Agreement shall remain in full force and effect either (a) until such time as ViewPoint Drive is extended to a point where it completely replaces the newly-constructed portion of Poquito Valley Road shown in Exhibit A, or (b) 3 years (whichever is longer). Nothing in relation to the term of this Agreement shall modify the Town’s ongoing obligation to maintain operating roadways within the Town limits, even after termination of this Agreement. In the event the portion of Poquito Valley Road shown in Exhibit A is not improved as anticipated by this Agreement, the Town shall be under no obligation to maintain the same. Any real or personal property interest held by either Party upon the termination of this Agreement shall remain the property of that Party.

SECTION 12: NON-AVAILABILITY OF FUNDS. Every obligation of the parties under this Agreement (except any ongoing Town obligation to maintain operating roadways within the Town limits), is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. 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 the funds are available. No further liability shall accrue to either party in the event this provision is exercised.

SECTION 13: IMMIGRATION LAW COMPLIANCE. To the extent applicable, the parties warrant that at all times during the term of this Contract they will comply with all state and federal immigration laws applicable to the parties, and their employees, and with the requirements of A.R.S. § 23-214 (A). The parties shall further ensure that each subcontractor who performs work under this contract will likewise comply with all applicable state and federal immigration laws. Failure to comply with this provision shall constitute a material breach of the contract.

The parties reserve the right to inspect relevant records to verify compliance with the foregoing.

SECTION 14: ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to the subject matters hereof, and it may be amended, modified, or waived only by an instrument in writing signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials on the aforementioned date.

TOWN OF PRESCOTT VALLEY

YAVAPAI COUNTY

Harvey Skoog
Mayor

Jack R. Smith
Chairman of the Board, Yavapai County

ATTEST:

ATTEST:

Town Clerk

Clerk, Yavapai County Board of Supervisors

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.

Ivan Legler, Town Attorney

Pursuant to A.R.S. Section 11-952(D), the foregoing Agreement has been reviewed by the undersigned attorney for Yavapai County, 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 County.

Jack Fields, Deputy County Attorney

EXHIBIT "A"
Project Area Map

