

**INTERGOVERNMENTAL AGREEMENT
GLASSFORD HILL OPEN SPACE**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and between the CITY OF PRESCOTT, a municipal corporation of Arizona (“Prescott”), the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (“Prescott Valley”), and YAVAPAI COUNTY, a political subdivision of the State of Arizona (“Yavapai County”). These entities are sometimes referred to herein collectively as “Parties” and individually as “Party.”

This Agreement shall become effective as of the date it has been executed by all Parties and recorded in the Official Records of Yavapai County.

WHEREAS, in 1998 Prescott and Prescott Valley filed with the Arizona State Land Department (ASLD) a joint petition asking the Commissioner to nominate 1893 acres of Trust Land (ARS §37-311(4)) on Glassford Hill as suitable for conservation purposes (open space) per ARS §37-312(C)(3) and AAC R12-5-2501. On June 9, 1998, a public hearing was held with the Governor’s Conservation Advisory Committee to consider that nomination. At the conclusion, the Committee voted to recommend classification for conservation purposes; and

WHEREAS, Prescott and Prescott Valley are authorized by ARS §9-276(A)(1) and §9-240(B)(9) (respectively) and ARS §9-494(A) (jointly) to acquire, hold, and improve real property to establish and maintain public parks (synonymous with public recreation facilities, including public trails, per *Maricopa County v. Maricopa County Municipal Water Conservation District No. 1*, 171 Ariz. 325, 330 (App. 1991)); and

WHEREAS, Yavapai County is authorized by ARS §11-932(A) to work with municipalities to acquire real property for public park purposes, expend funds for improvements thereon, and enter into contracts for operation thereof; and

WHEREAS, the Arizona State Parks Board (ASPB) is authorized by ARS §41-511.05 to (among other things) acquire real property for state park purposes, appropriate grants from the land conservation fund under ARS §41-511.23 to fund acquisition of Trust Lands identified as conservation areas, and enter into necessary agreements for those purposes; and

WHEREAS, the ASLD Commissioner is authorized by ARS §37-132(A)(2)&(3) to make long-range plans for future use of state lands in cooperation with other state agencies, local planning authorities, and political subdivisions (including Trust Lands conveyed as suitable for conservation purposes pursuant to ARS §37-314(A)); and

WHEREAS, ARS §11-952 authorizes these entities to contract for services or jointly exercise any powers common to them, if the agreement otherwise meets requirements set forth in ARS §11- 952;

NOW, THEREFORE, for and in consideration of the foregoing introduction and recitals (incorporated herein by reference), the mutual covenants and promises herein, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Parties hereto agree as follows:

Section 1. DURATION. The duration of this Agreement shall be 10 years from the effective date as set forth above.

Section 2. PURPOSE. The purpose of this Agreement is to purchase identified Trust Land located on and near Glassford Hill within the boundaries of Prescott, Prescott Valley, and Yavapai County, and to fund, design, construct, and operate thereon various passive recreation facilities (including, but not limited to, public trails).

Section 3. PERFORMANCES. The performance commitments of the various Parties are as follows:

3.1 Initial Joint Appraisal. Prescott Valley shall enter into an agreement with Wayne Harding, MAI, to initially appraise Trust Land parcels 800-20-060P, 800-20-060N, 800-20-035P, 800-20-059A, 800-20-034Y, 800-20-062S, 800-20-035W, 800-20-059S, 800-20-047Y, 800-20-047Z, and 800-20-048J (Exhibit "A" attached hereto and expressly made a part hereof). The appraisal shall be based on a recent proposal from Harding to complete the same for all the property together, with values broken out for each listed parcel. The fee is \$18,500.00 with a delivery date of 75 days from written notice to proceed. A 50% retainer shall be paid to start work. Upon completion of the appraisal, Harding shall provide a paper and electronic copy to each of the Parties as well as to ASPB and ASLD. Thereupon, Prescott Valley shall invoice Prescott and Yavapai County \$6,165.00 each (and each shall pay said amount to Prescott Valley within 30 days of receiving the invoice).

3.2 Purchase. On or before December 31 of each calendar year during the term of this Agreement, the designated representatives of Prescott, Prescott Valley, and Yavapai County (per Section 6 herein) shall meet with representatives of ASPB, ASLD, and/or other potential partners to determine which of the described Trust Land parcels might be purchased by Prescott or Prescott Valley within their respective municipal limits (or by Prescott Valley within the unincorporated area) under ARS §37-314(A) during any specified fiscal year. This determination shall be based on amounts planned to be budgeted by Prescott, Prescott Valley, and Yavapai County (respectively) for that purpose prior to or during the specified fiscal year (after having accounted for any funding available from ASPB under ARS §41-511.23, any appropriation by the Arizona Legislature, or any other source). Based on any such determination, Prescott and/or Prescott Valley shall, in good faith, pursue necessary applications for said purchases from ASLD prior to the end of the specified fiscal year. Prescott, Prescott Valley, and Yavapai County agree to equally share appraisal, filing, advertising, administration, archaeological, survey, or similar due diligence costs (including any update to the appraisal described in Subsection 3.1 above) involved with any application

to ASLD by one party for Trust Land parcels that will ultimately be owned by both Prescott and Prescott Valley. Prescott and Prescott Valley agree to cooperate as needed to ensure ultimate ownership of Trust Land parcels as set forth above, including any transfers under ARS §9-407(B).

3.3 Improvement. Public trails initially proposed to be developed on Trust Land parcels are shown in Exhibit A. On or before December 31 of each calendar year during the term of this Agreement, the designated representatives of Prescott, Prescott Valley, and Yavapai County (per Section 6 herein) shall meet to determine which of the trails shown (or any substitute trails proposed by any Party) shall be constructed as part of their budgeting processes for a specified fiscal year. The purpose of said determination shall be to encourage optimum connectivity and use of these particular passive recreation facilities. The determination shall take into account any available funding from Yavapai County, ASPB, or any other source.

Section 4. BUDGETING AND FUNDING. ASPB has identified possible current funding towards an initial purchase of Trust Land parcels by Prescott and Prescott Valley (respectively) under this Agreement. Funding may also be available for subsequent purchases. It is anticipated that the Parties shall also seek in good faith (individually or jointly) during appropriate sessions of the Arizona Legislature a direct appropriation towards planned purchases of Trust Land parcels under this Agreement. In the event the designated representatives agree to purchase Trust Land parcels in any fiscal year under this Agreement (and Prescott and/or Prescott Valley actually budget necessary funds for their respective purchases), Yavapai County hereby agrees to add to what Prescott and Prescott Valley (respectively) budget to purchase Trust Land parcels by budgeting to pay 35% of the total amount Prescott and the County together (or Prescott Valley and the County together) would pay after accounting for other sources (subject to the County's actual annual appropriation).¹ The parties further agree to budget for any shared joint application costs required by ASLD as set forth in Subsection 3.2 above.

Section 5. TERMINATION.

5.1 Automatic Termination. Subject to Section 10 herein, this Agreement shall automatically terminate on the first to occur of (a) 10 years from the effective date as set forth above; (b) purchase of all the Trust Land parcels and construction of all the public trails shown in Exhibit A (or substitute trails as mutually agreed to); or (c) a mutual determination by the Parties that no Trust Land parcels (or additional Trust Land parcels) will be purchased and/or trails constructed under this Agreement.

5.2. Procedures Upon Termination. Termination of this Agreement shall not relieve any Party of any liability that accrued prior to such termination. Otherwise,

¹ The amounts paid by Yavapai County toward the purchase of Trust Land parcels described herein shall constitute consideration for the acquisition by the County, its Board, Officials, employees and residents of the right to access and use the parcels for recreational purposes consistent with restrictions and guidelines established by Prescott and Prescott Valley as owners of the parcels.

subject to Section 10 herein upon termination all the obligations of this Agreement shall end, and any Trust Land parcels not purchased pursuant to the Agreement shall remain in the jurisdiction and control of ASLD and may be disposed of by ASLD as otherwise permitted under applicable Arizona law.

Section 6. DESIGNATED REPRESENTATIVES. To implement this Agreement the Parties shall each designate a representative to act as a liaison between and among the Parties and any representatives of ASPB and ASLD. The initial representative for Prescott shall be the City Manager. The initial representative for Prescott Valley shall be the Town Manager. The initial representative for Yavapai County shall be the Administrator. Representatives shall be available at reasonable times to discuss and review the performance of the Parties to this Agreement, including the designation of Trust Land parcels to be purchased and trails to be constructed. New representatives may be designated by any Party in writing at any time in accordance with Section 10 herein.

Section 7. INDEMNIFICATION. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless each other Party (as "indemnitee") for, 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 negligent act, omission, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

Section 8. NO PARTNERSHIP; NOT EMPLOYEES. Nothing herein is intended to create a partnership or joint venture between or among the Parties, nor does this Agreement create an employment relationship between or among the personnel of any of the Parties.

Section 9. THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against any of the Parties hereto. This Agreement is not intended to benefit any third party.

Section 10. NOTICES. All notices provided in connection with this Agreement shall be in writing and shall be deemed to have been sufficiently delivered or served when presented personally or upon the third (3rd) day after being deposited in the United States mail, postage prepaid, by registered or certified mail, addressed as follows:

Prescott: City Manager
 City of Prescott
 201 N. Montezuma Street, Suite 303
 Prescott, AZ 86303

Prescott Valley: Town Manager

Town of Prescott Valley
7501 E. Skoog Boulevard
Prescott Valley, AZ 86314

Yavapai County: Administrator
Yavapai County
1015 Fair Street
Prescott, AZ 86305

Addresses may be changed on written notice thereof.

Section 11. FURTHER INSTRUMENTS. Each Party hereto shall, promptly upon the request of any other, acknowledge and deliver to the other all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

Section 12. AMENDMENT AND CONSTRUCTION. This Agreement sets forth the entire understanding of the Parties as to the matters set forth herein as of the date of this Agreement and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties hereto. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any Party.

Section 13. SEVERABILITY. If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.

Section 14. CONFLICT OF INTEREST. This Agreement may be canceled pursuant to ARS §38-511 in the event of a conflict of interest as described therein.

Section 15. JOINT PROPERTY. The Parties do not contemplate joint ownership of any property pursuant to this Agreement.

Section 16. NONDISCRIMINATION. The Parties agree to comply with the nondiscrimination in government contract provisions of Executive Order No. 2009-09, and hereby incorporate by reference its terms into this Agreement as if fully set forth herein.

Section 17. RESOLUTIONS. Attached hereto are the authentic copies of each appropriate action by ordinance, resolution, or otherwise of the governing body of each Party authorizing execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their authorized representatives on the dates set forth below.

CITY OF PRESCOTT, a municipal corporation of Arizona, (Prescott)

Philip R. Goode, Mayor

DATE: _____

ATTEST:

Sarah Siep, City Clerk

The foregoing Intergovernmental Agreement has been submitted to me as Prescott City Attorney for review prior to its execution, pursuant to A.R.S. §11-952(D), and I have determined that it is in proper form and is within the powers and authority granted to the City under the laws of Arizona.

Matthew Podracky, Interim City Attorney

TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, (Prescott Valley)

Kell Palguta, Mayor

DATE: _____

ATTEST:

Fatima Fernandez, Town Clerk

The foregoing Intergovernmental Agreement has been submitted to me as Attorney for the Town of Prescott Valley for review prior to its execution, pursuant to A.R.S. §11-952(D), and I have determined that it is in proper form and is within the powers and authority granted to the Town under the laws of the State of Arizona.

Ivan Legler, Town Attorney

YAVAPAI COUNTY, a political
subdivision of the State of Arizona,
(Yavapai County)

Mary Mallory, Chair
Board of Supervisors

DATE: _____

ATTEST:

Kim Kapin, Clerk of the Board

The foregoing Intergovernmental Agreement has been submitted to me as Attorney for Yavapai County for review prior to its execution, pursuant to A.R.S. §11-952(D), and I have determined that it is in proper form and is within the powers and authority granted to the County under the laws of the State of Arizona.

Martin Brennan, Deputy County Attorney

EXHIBIT "A"

Trust Lands Listed for Appraisal
&
Initial Trails for Construction