

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE CITY OF PRESCOTT
AND
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT

FOR THE
INSTALLATION AND MAINTENANCE OF FLOOD WARNING EQUIPMENT
ON CITY OWNED PROPERTY

City of Prescott Contract No. 2014-188

THIS INTERGOVERNMENTAL AGREEMENT, by and between the CITY OF PRESCOTT, a municipal corporation of the State of Arizona, hereinafter referred to as "CITY" and the YAVAPAI COUNTY FLOOD CONTROL DISTRICT, hereinafter referred to as "DISTRICT", their successors and assigns;

WITNESSETH

WHEREAS, the CITY owns certain real property including parks and recreation facilities, utility sites and other properties; and

WHEREAS, the DISTRICT owns and maintains a flood warning system including rain, stream, and weather sensors ("equipment") which produce flood warning and storm data beneficial to the CITY; and

WHEREAS, the DISTRICT wishes authority to enter the aforementioned real property including buildings, dams, towers, utility appurtenances, secure enclosures, parks, recreation areas and other CITY owned properties to install, operate, repair and maintain, flood warning, weather and other data gathering equipment; and

WHEREAS, the DISTRICT and the CITY have authority to enter into Intergovernmental Agreements pursuant to Arizona Revised Statutes ("A.R.S."), §§11-952, 48-3603(9), and 9-240(5), and the Prescott City Charter; and,

WHEREAS, the DISTRICT hereby warrants that it is cognizant of any and all potential liabilities which may result through the entry, maintenance, construction or installation of equipment; and

WHEREAS, it is in the best interests of the CITY and the DISTRICT to enter into this Intergovernmental Agreement ("IGA"),

Relating to:

Resolution 4226-1435

NOW THEREFORE, IT IS AGREED BETWEEN THE CITY AND THE DISTRICT AS FOLLOWS:

I. TERM OF AGREEMENT/REVERSION OF EQUIPMENT

The terms, conditions and provisions of this Agreement shall commence on June 1st, 2014, remain in full force and effect until terminated by either party. In the event that this IGA is terminated, the equipment belonging to the County shall revert to the County, and the County will cease having any access to the CITY's real property for the purposes contained in this IGA.

II. SITES AND EQUIPMENT

An updated list of installed equipment will be maintained by the DISTRICT and included in this IGA as Attachment A. The Attachment will be updated to show addition or removal of equipment; an updated Attachment A will be sent to the CITY via a Letter of Transmittal to be incorporated in this Agreement. An updated list of sites and equipment will be maintained by the DISTRICT and provided to the CITY annually or whenever equipment is added/removed.

III. SITE LONGEVITY

An extended period of record is important for statistical and other trend analysis. It is understood that the CITY will make every effort to allow installed equipment to remain in place in perpetuity. The DISTRICT agrees to accomplish minor relocation or modification of installed equipment, at no cost to the CITY, as may be needed for the CITY, to accomplish repairs, construction or upgrades on their real property. The CITY will engage the DISTRICT during the design phase of any real property improvements in order to ensure the longevity of the equipment both during and after construction.

IV. LANDS TO WHICH THIS AGREEMENT APPLIES

This agreement applies to all real properties owned or leased by the CITY, both inside and outside of the incorporated limits unless expressly prohibited by the property owner, upon which the parties have agreed to the placement and specific locations of the flood warning equipment.

V. RESPONSIBILITIES OF PARTIES

A. The CITY shall:

1. Provide and update emergency contact information, and provide keys to DISTRICT personnel and their authorized agents as needed for the installation or maintenance of the equipment.
2. Take all reasonable steps to secure and protect the DISTRICT equipment from damage from CITY initiated activities and promptly notify the DISTRICT: of any noted damage or required repairs; 30 days in advance of any planned construction or maintenance activity which has a potential to damage DISTRICT equipment; 30 days in advance of any needed relocation of equipment. The DISTRICT shall hold the CITY harmless for any damage to the DISTRICT's

equipment.

3. Issue any CITY required permits to the DISTRICT and perform plan review and inspections at no cost to the DISTRICT.
4. Provide and approve the plans and construction techniques prior to installation of the equipment to ensure CITY operations and infrastructure are not negatively impacted.
5. Understand the data provided by the system is not certified and may be subject to data holidays, inaccuracies or calibration errors. The DISTRICT will make reasonable efforts to keep the system on-line and calibrated to provide high quality data with minimal data loss.
6. Work with DISTRICT and COUNTY Emergency Management personnel and CITY Emergency Responders in developing Flood Response plans and coordinating new gauges and other data needs of the CITY.

B. The DISTRICT shall:

1. Coordinate system maintenance and installation of new equipment with the CITY and provide information, drawings, specifications or plans as needed. CITY review and approval shall precede any installation.
2. Provide system maintenance and upgrades in a timely manner to provide reliable and consistent access to real-time data on state plane coordinates.
3. Be solely responsible for the installation and maintenance of additional flood warning sites or equipment within the CITY which benefit both the CITY's flood warning needs as well as the overall system coverage.
4. Install and maintain special data gathering equipment for the benefit of the CITY as the system can reasonably support. This data gathering equipment may include weather stations, flow measuring or other non-flood warning related equipment. The DISTRICT supports use of the system infrastructure and data transmission capabilities to support data gathering for other CITY needs when such support does not interfere with the flood warning capabilities.

VI. TERMINATION OF AGREEMENT

If either party violates the terms or conditions of this Agreement, the other party shall give written notice of such violation or default. If the responsible entity fails to rectify the situation within 90 days after notice in writing, this Agreement shall be deemed terminated for cause and the other party shall have no further obligation under this agreement.

VII. INDEMNIFICATION

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.

VIII. ARBITRATION

In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to resolution by arbitration as set forth in Arizona Revised Statutes. Both parties shall be responsible for their own attorney's fees, regardless of any statutes, court rules, or common law to the contrary.

IX. OTHER PROVISIONS

- A. All notice or demand 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:

CITY OF PRESCOTT
City Manager
201 South Cortez
Prescott, AZ 86301

DISTRICT
Yavapai County Flood Control District
Director
1120 Commerce Drive
Prescott, AZ 86305

- B. 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.
- C. This agreement represents the entire understanding between the parties and any changes or modifications hereof shall be made in writing with the same formality as this Agreement. This agreement supersedes any previous flood warning equipment agreements between the CITY and DISTRICT.
- D. This Agreement shall be filed with the Yavapai County Recorder pursuant to A.R.S. §11-952.
- E. This contract is subject to the conflict of interest provisions of A.R.S. §38-511.
- F. 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.
- G. 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.

- H. Both Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. Both Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it shall notify the non-compliant Party by certified mail of the determination and of the right to appeal the determination.
- I. Pursuant to A.R.S. §35-214, the Parties shall retain and shall contractually require each subcontractor to retain all data, books and other records (“records”) relating to this Agreement for a period of five years after completing of the Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Parties shall produce the original of any or all such records.

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

YAVAPAI COUNTY
FLOOD CONTROL DISTRICT

CITY OF PRESCOTT

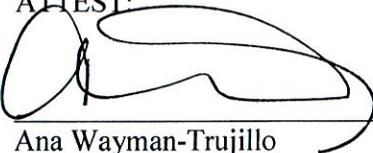


Rowle Simmons, Chairman Date
Board of Directors
Yavapai County Flood Control District

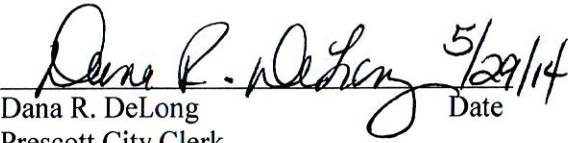


Marlin D. Kuykendall, Mayor Date
City of Prescott

ATTEST:



Ana Wayman-Trujillo Date
Clerk of the Board of Directors



Dana R. DeLong Date
Prescott City Clerk

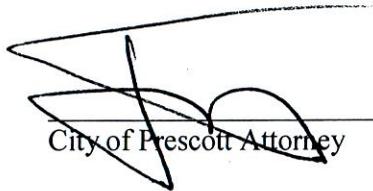
INTERGOVERNMENTAL AGREEMENT DETERMINATION

BETWEEN
THE CITY OF PRESCOTT
AND
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT

FOR THE
INSTALLATION AND MAINTENANCE OF FLOOD WARNING EQUIPMENT
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Pursuant to A.R.S. §11-952, as amended, the foregoing Agreement has been submitted to the undersigned Attorney City of Prescott. 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 Community Charter to the City of Prescott.



5-28-14

Date

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.

Carroll Kennedy
Deputy County Attorney
Flood Control District

6/5/2014

Date



YAVAPAI COUNTY
Flood Control District

PRESCOTT OFFICE

1120 Commerce Dr. Prescott, AZ 86305
Prescott - (928) 771-3197 Fax: (928) 771-3427

COTTONWOOD OFFICE

10 S. 6th Street, Cottonwood, AZ 86326
Cottonwood - (928) 639-8151 Fax: (928) 639-8118

5/1/2014

ATTACHMENT A

<u>Site ID</u>	<u>Site Name</u>	<u>Sensors</u>
300	Upper Goldwater Lake	Precipitation, Water Level
310	Lower Goldwater Lake	Precipitation, Water Level
340	Thumb Butte Tank	Precipitation
355	Prescott Heights	Precipitation
360	Haisley Water Tank	Precipitation, Repeater
385	Watson Lake	Precipitation, Water Level