

AGENDA



4:30 P.M.

CITY COUNCIL MEETING

TUESDAY, NOVEMBER 8, 2022

NOTES:

- Public Forum:
Comments are generally limited to 3 minutes.
- Consent Items:
Items listed under Consent Items have been distributed to Council Members in advance for study and will be enacted by one motion. Any member of the Council, staff or the public may remove an item from the Consent Items for discussion. For additional information on pulling a Consent Item, please contact the City Clerk's Office staff, preferably in advance of the Call to Order. Items removed from the Consent Items may be acted upon before proceeding to the next agenda item.
- Meeting room is wheelchair accessible. American Disabilities Act (ADA) accommodations are available upon request. Please phone 928-282-3113 at least two (2) business days in advance.
- City Council Meeting Agenda Packets are available on the City's website at:

www.SedonaAZ.gov

THE MEETING CAN BE VIEWED
LIVE ON THE CITY'S WEBSITE AT
WWW.SEDONAAZ.GOV OR ON
CABLE CHANNEL 4.

GUIDELINES FOR PUBLIC COMMENT

PURPOSE:

- To allow the public to provide input to the City Council on a particular subject scheduled on the agenda.
- This is not a question/answer session.
- No disruptive behavior or profane language will be allowed.

PROCEDURES:

- Fill out a "Comment Card" and deliver it to the City Clerk.
- When recognized, use the podium/microphone.
- State your:
 1. Name and
 2. City of Residence
- Limit comments to **3 MINUTES.**
- Submit written comments to the City Clerk.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE/MOMENT OF SILENCE/ROLL CALL

2. CITY'S VISION/MOMENT OF ART

3. CONSENT ITEMS - APPROVE

LINK TO DOCUMENT =

- a. Minutes - October 25, 2022 City Council Regular Meeting.
- b. Minutes - October 26, 2022 City Council Special Meeting - Executive Session.
- c. Approval of Proclamation, America Recycles Day, November 17, 2022.
- d. AB 2879 Approval of a Resolution authorizing the execution of an Intergovernmental Agreement (IGA) between the City of Sedona and the Yavapai County Flood Control District (YCFCD) contributing an amount not-to-exceed \$387,000 in YCFCD funds to be used for the Back O' Beyond Crossing drainage improvement project, Arroyo Pinon drainage improvement projects, and general drainage improvement projects as determined by the City.
- e. AB 2875 Approval of a Resolution authorizing a cost-sharing development agreement with Canyon Portal 3, LLC (CP3) to construct a right-hand turn lane from SR 89A right-of-way to Amara Lane, a part of SIM1B – Uptown Northbound improvements, in an amount not-to-exceed \$308,361.89.

4. APPOINTMENTS - None.

5. SUMMARY OF CURRENT EVENTS BY MAYOR/COUNCILORS/CITY MANAGER

6. PUBLIC FORUM (This is the time for the public to comment on matters not listed on the agenda. The City Council may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.)

7. PROCLAMATIONS, RECOGNITIONS & AWARDS

- a. America Recycles Day, November 17, 2022.
- b. Presentation of certificates to Citizen's Academy graduates.

8. REGULAR BUSINESS

- a. AB 2881 **Discussion/possible action** regarding an Ordinance revising the Sedona City Code, Chapter 9.10, adding Section 9.10.020 related to public urination and defecation.
- b. AB 2880 **Discussion/possible action** regarding a Resolution and Ordinance amending the Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits).
- c. **Reports/discussion** regarding Council assignments.
- d. **Discussion** regarding ideas for future meeting/agenda items.

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services
that are consistent with our values, history, culture and unique beauty.

Page 2, City Council Meeting Agenda Continued

9. EXECUTIVE SESSION

If an Executive Session is necessary, it will be held in the Vultee Conference Room at 106 Roadrunner Drive. Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

- a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).
- b. Return to open session. Discussion/possible action on executive session items.

10. ADJOURNMENT

Posted: 11/03/2022

By: DJ

JoAnne Cook, CMC,
City Clerk

Note: Pursuant to A.R.S. § 38-431.02 notice is hereby given to the members of the City Council and to the general public that the Council will hold the above open meeting. Members of the City Council will attend either in person or by telephone, video, or internet communications. The Council may vote to go into executive session on any agenda item, pursuant to A.R.S. § 38-431.03(A)(3) and (4) for discussion and consultation for legal advice with the City Attorney. Because various other commissions, committees and/or boards may speak at Council meetings, notice is also given that four or more members of these other City commissions, boards, or committees may be in attendance.

A copy of the packet with materials relating to the agenda items is typically available for review by the public in the Clerk's office after 1:00 p.m. the Thursday prior to the Council meeting and on the City's website at www.SedonaAZ.gov. The Council Chambers is accessible to people with disabilities, in compliance with the Federal 504 and ADA laws. Those with needs for special typeface print, may request these at the Clerk's Office. All requests should be made **forty-eight hours** prior to the meeting.

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.

Action Minutes
Regular City Council Meeting
City Council Chambers, Sedona City Hall,
102 Roadrunner Drive, Sedona, Arizona
Tuesday, October 25, 2022, 4:30 p.m.

1. Call to Order/Pledge of Allegiance/Moment of Silence/Roll Call

Mayor Moriarty called the meeting to order at 4:30 p.m.

Council Present: Mayor Sandy Moriarty, Vice Mayor Scott Jablow, Councilor Kathy Kinsella, Councilor Tom Lamkin, Councilor Holli Ploog, Councilor Jon Thompson, and Councilor Jessica Williamson.

Staff Present: Deputy City Manager Joanne Keene, Assistant City Manager/Director of Public Works Andy Dickey, City Attorney Kurt Christianson, Police Chief Stephanie Foley, Economic Development Director Molly Spangler, Housing Manager Shannon Boone, Director of Financial Services Cherie White, Transit Administrator Robert Weber, and City Clerk JoAnne Cook.

2. City's Vision

The City's Vision video was played.

3. Consent Items

- a. **Minutes - October 05, 2022 City Council Special Meeting - Executive Session.**
- b. **Minutes - October 11, 2022 City Council Special Meeting - Executive Session.**
- c. **Minutes - October 11, 2022 City Council Regular Meeting.**
- d. **Minutes - October 12, 2022 City Council Special Meeting.**
- e. **Approval of Proclamation, Sedona Kindness Day, November 13, 2022.**
- f. **Approval of Proclamation, Toys for Tots 75th Anniversary, November 10, 2022.**

Motion: Councilor Williamson moved to approve the consent items 3a-3f Seconded by Councilor Thompson. Vote: Motion carried unanimously with seven (7) in favor (Moriarty, Jablow, Kinsella, Lamkin, Ploog, Thompson, and Williamson) and zero (0) opposed.

4. Appointments - None.

5. Summary of Current Events by Mayor/Councilors/City Manager

Vice Mayor Jablow said the Uptown Trick or Treat will take place on Monday, October 31, 2022 from 5:00 - 8:00 p.m., there will be treats and a scavenger hunt, and free shuttle services will be provided free of charge from Posse Grounds; he encouraged all to visit the Parks & Recreation website for information on all events. Councilor Williamson said the Library will be having a Scary Storytelling, by storyteller Clare Obermarck, on Halloween starting at 5:30 p.m. at the firepit. Councilor Williamson encouraged residents to attend the formal opening of the new courtyard at the library on November 13, 2022

from 3:00-3:30 p.m. Councilor Ploog stated the Historical Society's Voices from the Grave Event will take place at the Cedar Glades Cemetery on October 28 & 29, 2022 (visit <https://sedonamuseum.org> for tickets), and the Haunted History Event will take place at the Sedona Heritage Museum on October 30th at 3:00 p.m., by local storyteller Mike Peach, tickets are \$6 and available at the door.

6. Public Forum - None.

7. Proclamations, Recognitions & Awards

a. Sedona Kindness Day, November 13, 2022.

Mayor Moriarty presented the Proclamation to Jawn McKinley and Joy Sinnott. Jawn thanked Council for their support of their mission and programs. She encouraged all to attend the Kindness of Strangers movie at the Mary J. Fisher Theatre on November 13, 2022.

b. Toys for Tots 75th Anniversary, November 10, 2022.

Mayor Moriarty presented the Proclamation to Region 6 Coordinators Len and Karen Barrow. Len and Karen thanked Council for their support. Len and Karen received the 2022 Region 6 Coordinators of the Year Award in Washington D.C. Len stated the Marines believe all children deserve a little Christmas.

8. Regular Business

a. AB 2858 Presentation/discussion/possible direction regarding the City of Sedona's participation with Yavapai County Broadband Final Mile Initiative and Optima (formerly Suddenlink and Altice).

Presentation by Molly Spangler, Yavapai County Director/County Library Corey Christians, MLIS, and Altice Vice President Government Affairs Jim Campbell.

Questions and comments from Council.

Opened to the public at 6:30 p.m.

James Curry, Sedona, spoke regarding the County's contract with Altice and advised the company will be sold in upcoming future and urged Council to consider all other options available for an ISP and B funding, he recommended the City hire an expert to assist. Tom Binnings, Village of Oak Creek, voiced concerns with the development of the broadband and the negative reputation of Altice, he also recommended a consultant/expert be hired, Mary Chicoine, Lake Montezuma, spoke on behalf of VV Rio and encouraged a community centered approach and said the organization is willing to cooperate and work together with other agencies to attain better broadband service.

Brought back to Council at 6:35 p.m.

Break at 6:35 p.m. Reconvened at 6:57 p.m.

b. AB 2847 Discussion/possible action regarding authorization of a proposed fare and fare policy for the city's MicroTransit service and direct staff to seek public comment.

Presentation by Robert Weber.

Questions and comments from Council.

Motion: Councilor Kinsella moved to authorize the proposed fare and fare policy to include option B for the multiple ride pass for the city's MicroTransit service and direct staff to seek public comment. Seconded by Ploog. Vote: Motion carried unanimously with seven (7) in favor (Moriarty, Jablow, Kinsella, Lamkin, Ploog, Thompson, and Williamson) and zero (0) opposed.

- c. AB 2882 Discussion/possible action regarding the approval of a Resolution authorizing the City of Sedona to enter into a purchase agreement to acquire the property at 2250 Shelby Dr. in an amount not-to-exceed \$1,500,000 and authorization of possible budget transfer of contingency and other funds of up to \$1,500,000 and authorization of possible cash transfer of General Fund monies of up to \$690,000.**

Presentation by Shannon Boone and Cherie White.

Motion: Councilor Williamson moved to go into executive session at 7:49 p.m. Discussion and consultation to consider its position and instruct its attorney and designated representatives regarding negotiations for the purchase, sale or lease of real property located at 2250 Shelby Drive. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(7). Seconded by Councilor Kinsella.

Entered into Executive Session at 7:59 p.m. Kurt Christianson gave the admonition.

Questions and comments from Council.

Returned to open session at 8:21 p.m.

Motion: Councilor Williamson moved to approve Resolution 2022-30 authorizing the City of Sedona to purchase the property located at 2250 Shelby Drive, City of Sedona, Arizona, for the sum of \$1,500,000 and authorizing the City Manager to execute the Purchase and Sale Agreement and associated documents required to complete the purchase, subject to approval of the written agreement by the City Attorney's Office, except to approve a six-month occupancy by current owner instead of twelve months. Seconded by Councilor Thompson. Vote: Motion carried with five (5) in favor (Moriarty, Kinsella, Lamkin, Thompson, and Williamson) two (2) opposed (Jablow and Ploog).

Motion: Councilor Williamson moved to approve a budget transfer of \$810,000 from the Affordable Housing Fund contingency account and \$690,000 from the Capital Improvements Fund Uptown parking garage project account. Seconded by Councilor Thompson. Vote: Motion carried with five (5) in favor (Moriarty, Kinsella, Lamkin, Thompson, and Williamson) two (2) opposed (Jablow and Ploog).

Motion: Councilor Williamson moved to approve a cash transfer of up to \$690,000 from the General Fund to the Affordable Housing Fund. Seconded by Councilor Thompson. Vote: Motion carried with five (5) in favor (Moriarty, Kinsella, Lamkin, Thompson, and Williamson) two (2) opposed (Jablow and Ploog).

Vice Mayor stated he voted against the purchase because he did not agree with the condition to allow the seller to occupy the property for six months.

- d. Reports/discussion regarding Council assignments – None.
- e. Discussion regarding ideas for future meeting/agenda items – None.

9. Executive Session

Entered into Executive Session at 7:59 p.m.

Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

Kurt Christianson gave the admonition.

- a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).
- b. Discussion and consultation to consider its position and instruct its attorney and designated representatives regarding negotiations for the purchase, sale or lease of real property located at 2250 Shelby Drive. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(7).
- c. Return to open session. Discussion/possible action on executive session items.

Returned to open session at 8:21 p.m. See executive session and open meeting action details after item 8c.

10. Adjournment

Mayor Moriarty adjourned the meeting at 8:25 p.m. without objection.

I certify that the above are the true and correct actions of the Regular City Council Meeting held on October 25, 2022.

JoAnne Cook, CMC, City Clerk

Date

**Action Minutes
Special City Council Meeting
Vultee Conference Room, Sedona City Hall,
106 Roadrunner Drive, Sedona, Arizona
Wednesday, October 26, 2022, 4:00 p.m.**

1. Call to Order

Mayor Moriarty called the meeting to order at 4:00 p.m.

2. Roll Call

Council Present: Mayor Sandy Moriarty, Vice Mayor Scott Jablow, Councilor Kathy Kinsella, Councilor, Councilor Tom Lamkin, Councilor Holli Ploog, Councilor Jon Thompson, Councilor Jessica Williamson. Councilor Ploog attended via Zoom.

Staff Present item: City Manager Karen Osburn, Deputy City Manager Joanne Keene, City Attorney Kurt Christianson, and City Clerk JoAnne Cook.

3. Special Business

Motion: Councilor Thompson moved to enter into Executive Session at 4:01 p.m. Seconded by Councilor Williamson. Motion carried unanimously with seven (7) in favor (Moriarty, Jablow, Kinsella, Lamkin, Ploog, Thompson, and Williamson) and zero (0) opposed.

Kurt Christianson gave the admonition.

- a. **Discussion and consideration of discipline, removal, or resignation of Commissioner Kurt Gehlbach of the Historic Preservation Commission. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(1).**

Reconvened in open session at 5:29 p.m.

- b. **Return to open session. Discussion/possible action regarding executive items.**

Motion: Councilor Williamson read, Based on the documents and information currently available:

1. **Historic Preservation Commission members serve at the pleasure of City Council.**
2. **The Council by a majority vote may remove any member of the Commission with or without cause.**
3. **Commission members shall adhere to the rules, policies, and procedures as outlined in the City of Sedona Commission Handbook and the Code of Conduct.**
4. **Commissioner Gehlbach was registered to attend the annual Historic Preservation Conference sponsored by the State Historic Preservation Office on October 18th through October 21st in Yuma, Arizona.**

5. A Travel & Training Request Form was completed, and Commissioner Gehlbach was approved for, and reservations were made for, a city-paid hotel room at the Conference on the nights of October 18th, 19th, and 20th.
6. Commissioner Gehlbach was also authorized to use a city vehicle for city business, including driving to and from the Conference, from noon on October 18th until October 21st.
7. The city received a communication with concerns about Commissioner Gehlbach's behavior at the Conference.
8. Commissioner Gehlbach violated the Code of Conduct and the approved Travel & Training Request Form by:
 - a. Extending his stay at the hotel in Yuma for an additional night and charging that night to the city's credit card without preauthorization.
 - b. Using the city vehicle for non-city business, including leaving the conference while it was in session, and for not returning the city vehicle on the agreed day.
9. Commissioner Gehlbach was notified of this public meeting, the Executive Session scheduled for 4:00 p.m. on October 26, 2022, and his attendance was requested, but City Council received his resignation by email on 1:01 p.m. and he did not attend the meeting.

That the foregoing actions constitute sufficient cause for removal from membership on the Historic Preservation Commission and I do therefore MOVE to accept Commissioner Gehlbach's resignation effective immediately. Seconded by Councilor Lamkin. Motion carried unanimously with seven (7) in favor (Moriarty, Jablow, Kinsella, Lamkin, Ploog, Thompson, and Williamson) and zero (0) opposed.

4. Adjournment

Mayor Moriarty adjourned the meeting at 5:33 p.m.

I certify that the above are the true and correct actions of the Special City Council Meeting held on October 26, 2022.

JoAnne Cook, City Clerk

Date



City of Sedona Proclamation Request Form

Full Name of Contact Person	Jon Thompson
Contact Phone Number	928-821-5142
Contact Mailing Address	jthompson@sedonaaz.gov
Contact Email Address	doug.copp7@gmail.com
Group, Organization, Activity or Event Being Recognized (Please make sure you provide complete and current information about the group or event)	AMERICA RECYCLES DAY Sedona Recycles, Inc. is recognizing this official national day by offering guided tours of their facility. The city's communications team is partnering with SRI by providing promotional assistance.
Website Address (if applicable)	sedonarecycles.org, americarecyclesday.org
Name of the sponsor(s) of the Proclamation (2 Council members or the City Manager)	Mayor Sandy Moriarty Councilor Jon Thompson
What is the proclaimed day, days, week or month? (e.g. 10/11/12, October 11-17, 2012, October 2012)	Thursday, November 17, 2022
Would you like to attend a Council meeting for formal presentation of the Proclamation or would you like to pick it up?	☒ Presentation at Meeting ☐ Pick up Proclamation
If you would like the Proclamation presented at a Council meeting, please provide the full name and contact information (phone number and email address) of the party who will accept it on behalf of the group.	Doug Copp, Chair, Board of Directors Sedona Recycles, Inc. 928-451-4055 doug.copp7@gmail.com Kathleen Ventura, Executive Director Sedona Recycles, Inc. 928-301-1534. kathleen.ventura@gmail.com

Provide information about the organization/event including a mission statement, founding date, location and achievements.

See attached proclamation.

Please explain why this Proclamation and any events accompanying it are important to the Community and are consistent with the City's vision statement and Community Plan goals. What is the clear reason for the Proclamation and why are you requesting this honor? What activities/events are planned around this Proclamation and how do you plan to promote this to the community?

See attached proclamation.

Please include a draft of the proposed Proclamation with this request, preferably a Word file in electronic format.

**Office of the Mayor
City of Sedona, Arizona**



**Resolution
Recognizing America Recycles Day
November 8, 2022**

WHEREAS, the National Recycling Coalition established November 15, 1997, as the first “America Recycles Day”; and

WHEREAS, 15 million people across all 50 states now annually recognize and celebrate America Recycles Day by organizing and participating in recycling events, learning about the positive effects of recycling, and making recycling pledges; and

WHEREAS, in proclaiming America Recycles Day 2021, President Biden stated, “On America Recycles Day, we celebrate efforts across the country to manage our resources responsibly and creatively, and we recommit ourselves to building a brighter and more sustainable future for all people”; and

WHEREAS, recycling provides significant economic as well as environmental benefits, with over 681,000 jobs in America related to recycling and with every 10,000 tons of recycled material producing \$760,000 in wages for people across the country; and

WHEREAS, an Environment Policy of the Sedona Community Plan is to “Support recycling and other waste stream reduction efforts”; and

WHEREAS, Sedona Recycles, Inc., was founded in 1989 by Sedona residents Kate Blevins, Rayna Griffin, and Sandy Moriarty and has served our community continuously since then by providing one of the highest volume and recovery rates in all of Arizona; and

WHEREAS, Sedona Recycles, Inc. has planned a full day of recycling education and free tours of their facility in recognition of American Recycles Day 2022;

NOW, THEREFORE, I, SANDY MORIARTY, MAYOR OF THE CITY OF SEDONA, ARIZONA, ON BEHALF OF THE SEDONA CITY COUNCIL, proclaim that November 15, 2022, be observed as America Recycles Day in Sedona and call upon all residents to consider taking a tour of Sedona Recycles, Inc., to increase their recycling knowledge at websites such as sedonarecycles.org and americarecyclesday.org, and to commit to reduce, reuse, and recycle for the benefit of the Earth and to build “a brighter and more sustainable future for all people.”

Issued this 8th day of November, 2022.

Sandra J. Moriarty, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk



CITY COUNCIL AGENDA BILL

AB 2879
November 8, 2022
Consent Items

Agenda Item: 3d

Proposed Action & Subject: Approval of a Resolution authorizing the execution of an Intergovernmental Agreement (IGA) between the City of Sedona and the Yavapai County Flood Control District (YCFCD) contributing an amount not-to-exceed \$387,000 in YCFCD funds to be used for the Back O' Beyond Crossing drainage improvement project, Arroyo Pinon drainage improvement projects, and general drainage improvement projects as determined by the City.

Department Public Works

Time to Present N/A
Total Time for Item

Other Council Meetings July 27, 2021 (Previous IGA) June 22, 2021 (SW Master Plan Update - Phase 3 Contract)
October 27, 2020 (Previous IGA)

Exhibits:
A. Proposed IGA
B. Proposed Resolution authorizing the new IGA
C. Maps of the project areas

City Attorney Approval	Reviewed 11/01/22 KWC	Expenditure Required \$ 387,000 (YCFCD portion – full construction contract costs TBD)
City Manager's Recommendation	Approve an IGA between the City of Sedona and the Yavapai County Flood Control District contributing an amount not to exceed \$387,000 in YCFCD funds to be used for the drainage improvements as described.	Amount Budgeted \$ 750,000 Account No. 22-5320-89-68B6 (Description) (SD-03 Improvements to Back 'O Beyond) Finance Approval ☒

SUMMARY STATEMENT

A portion of tax money collected by the Yavapai County Flood Control District (YCFCD) and allocated for flood control is contributed to the City for flood control related projects. The City successfully leverages County flood control funds to complete flood control improvement

projects. During FY 2022-2023, the YCFCD funds will be used for the Back O' Beyond Crossing drainage improvement project, Arroyo Pinon drainage improvement project and general drainage improvements as determined by the City.

Background: Since the mid 1990's, the YCFCD has provided the City funds for flood control studies and projects located in the Yavapai County portion of the City on an annual basis, as requested.

Consideration:

- The amount of funding contributed by the YCFCD is based on specific drainage projects requested for funding by the City. YCFCD distributes funding at the discretion of its governing body, the County Board of Supervisors. Over the past few years, the YCFCD has collected an average of approximately \$480,000 per year in secondary property tax from the Yavapai County portion of Sedona. The YCFCD keeps a portion of the taxes collected for floodplain management activities, overhead, general county-wide studies, District projects, etc.
- For the City to accept the funds and agree to the terms and conditions for their use, an Intergovernmental Agreement (IGA) is needed.
- The IGA details each party's responsibilities related to the use of the funding, including the amount of the funding, fiscal year restrictions for its use, and the necessity for projects to be located within Yavapai County for flood mitigation meeting FEMA regulations.
- The Resolution and IGA for City Council consideration provides the mechanism for the City to be reimbursed in an amount not to exceed \$387,000 by the YCFCD for design of the Back O' Beyond Crossing drainage improvement project, Arroyo Pinon drainage improvement project and general drainage improvements as determined by the City.

FY 2022-2023 Projects:

- We will be completing the design of the drainage improvements for the low water crossing of Back O' Beyond Road in the location shown on the Site Map in Exhibit C. This project will improve public road ingress and egress for many private residential parcels and the Cathedral Rock Trailhead parking area. During large monsoon storms, this area is routinely isolated. From a public safety standpoint, trailhead parking area ingress and egress is important.
- Arroyo Pinon drainage improvements at the intersection of Hillside Court will help to mitigate flows running down the cul-de-sac and through lots and direct a portion of flows into the ditch and existing easements that exist. (see Exhibit C.)



Back O'Beyond Crossing during the October 3rd, 2022 rainfall event

The Yavapai County Board of Directors is scheduled to approve this IGA at their November 16th, 2022 meeting. The YCFCD has requested that the IGA be approved by Sedona City Council and that three signed copies of the IGA be forwarded to them before their meeting.

Climate Action Plan/Sustainability Consistent: ☒ Yes - ☐ No - ☐ Not Applicable

Projects that mitigate flood risk are in alignment with program goals and vastly increase the resiliency of the community.

Board/Commission Recommendation: ☐ Applicable - ☒ Not Applicable

Alternative(s): If the funds are not received, it will be necessary to use additional General Fund monies for these projects.

MOTION

I move to: approve Resolution No. 2022-__ authorizing the execution of an Intergovernmental Agreement between the City of Sedona and the Yavapai County Flood Control District contributing an amount not-to-exceed \$387,000 in YCFCD funds to be used by the City to fund flood control projects.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA
FOR THE FISCAL YEAR 2022-2023 FINANCIAL CONTRIBUTION
FROM THE DISTRICT TO THE CITY FOR FLOOD CONTROL
IMPROVEMENTS

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA FOR THE FISCAL YEAR 2022-2023 FINANCIAL CONTRIBUTION TO THE CITY FOR FLOOD CONTROL IMPROVEMENTS (the “Agreement”) is entered into, effective this 2nd day of November 2022, between the Yavapai County Flood Control District, a political subdivision of the State of Arizona (the “DISTRICT”), and the City of Sedona, Arizona, a municipal corporation of the State of Arizona (the “CITY”). The District and the City are sometimes collectively referred to as the “Parties” or individually as a “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 CITY lies within the legal boundaries of the DISTRICT.
- E. The DISTRICT, the CITY, and Yavapai County (“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 CITY have authority to enter into Intergovernmental Agreements pursuant to Arizona Revised Statutes (“A.R.S.”) §§11-952, 48-3603, and 9-499.01, and CITY’s Charter and 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” (hereinafter “Funds”) 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 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 CITY 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 CITY.
- K. The CITY seeks to improve its storm water control, make drainage improvements, and/or mitigate flooding problems by constructing any or all of the following drainage improvements within the Incorporated City limits (hereinafter collectively referred to as the "Project"):
 - Back O'Beyond Drainage Project
 - Arroyo Pinon and Hillside Drainage Improvements
 - General Drainage Improvements as Determined by the City
- L. The CITY desires to receive DISTRICT Funds for the 2022-2023 fiscal year to be used for its Project.
- M. The DISTRICT has budgeted Funds to support the Project in an amount not to exceed Three Hundred Eighty-Seven Thousand Dollars and Zero Cents (\$387,000.00) for fiscal year 2022-2023 which begins on July 1, 2022.

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 CITY AND THE DISTRICT AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement is to authorize the DISTRICT to pay and contribute to the CITY Funds in support of the CITY's Project. Such funding for fiscal year 2022-2023 shall not exceed Three Hundred Eighty-Seven Thousand Dollars and Zero Cents (\$387,000.00).

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 as determined by the CITY;
- B. The exhaustion of the Funds allocated to the CITY for the Project;
- C. June 30, 2023 (however, the CITY shall have until July 31, 2023, to request Funds and the DISTRICT shall provide Funds as described in this Agreement); or
- D. The mutual agreement of the Parties.

If this Agreement terminates for any reason, any unused portion of the Funds shall not be available to the CITY without further agreement of the Parties.

III. RESPONSIBILITIES OF PARTIES

A. The CITY 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 2022-2023.
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, 2023 (for work completed in fiscal year 2022-2023).
7. Be responsible for the proper disbursement of the Funds provided by the DISTRICT.
8. Be responsible for maintaining the Project and the resulting improvements.

B. The DISTRICT shall:

1. Make Funds available to the CITY for the Project as approved by the Board of Directors.
2. Provide funding as available and appropriate upon proper request(s) by the CITY.
3. Pay properly invoiced requests monthly or on an alternate schedule as agreed to by the CITY and DISTRICT.
4. Pay properly invoiced requests for work completed by the CITY in fiscal year 2022-2023 so long as CITY's requests are received by the DISTRICT on or before July 31, 2023.

C. The DISTRICT and CITY 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 CITY, and not of the DISTRICT or the County. All real property upon which the Project work will occur is within the CITY limits and not owned or under the control of the DISTRICT or County.

VII. INDEMNIFICATION

To the fullest extent permitted by law, the CITY agrees to defend, indemnify, and hold harmless the DISTRICT, its Board of Directors, officers, employees, agents, or other representatives, 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 City, its officers, employees, agents, or other representatives. This Indemnification provision shall survive the termination of this Agreement.

VIII. 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:

CITY OF SEDONA
City Manager
102 Roadrunner Drive
Sedona, AZ 86336

DISTRICT
Yavapai County Flood Control District Director
1120 Commerce Drive
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. Both parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to their employment of their employees, and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the "State and Federal Immigration Laws"). A breach of the foregoing

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.

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DETERMINATIONS OF COUNSEL
FOR THE
INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE YAVAPAI COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF SEDONA.

FOR THE FISCAL YEAR 2022-2023 FINANCIAL CONTRIBUTION
FROM THE DISTRICT TO THE CITY FOR FLOOD CONTROL IMPROVEMENTS

Pursuant to A.R.S. §11-952, the foregoing Agreement has been submitted to the undersigned Attorney for the City of Sedona. 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 City of Sedona.

Kurt W. Christianson, City Attorney	Date
City of Sedona	

Pursuant to A.R.S. §11-952, the foregoing Agreement has been submitted to the undersigned Attorney for the Yavapai County Flood Control District, 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	

RESOLUTION NO. 2022 - ____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH YAVAPAI COUNTY FLOOD CONTROL DISTRICT TO PROVIDE FUNDS TO THE CITY IN AN AMOUNT NOT TO EXCEED THREE HUNDRED EIGHTY-SEVEN THOUSAND DOLLARS (\$387,000) TO BE USED BY THE CITY TO FUND FLOOD CONTROL PROJECTS AND PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, the City of Sedona ("City") and the Yavapai County Flood Control District ("District") have reached an intergovernmental agreement concerning the distribution of a portion of taxes received by the District to the City for flood control projects, including storm water control; and

WHEREAS, the District is authorized to expend funds for flood control projects pursuant to A.R.S. § 48-3603(C)(7) and reimburse municipalities for such work, and has approved and budgeted such funds for the City in an amount not-to-exceed \$387,000 for fiscal year 2022-2023, to be used by the City to fund the following flood control projects: the Back O' Beyond Crossing drainage project, Arroyo Pinon drainage improvements, and general drainage improvement projects as determined by the City, all within the Yavapai County portion of the City; and

WHEREAS the City is authorized by A.R.S. § 9-240(B)(5) to perform this work, and the District and City may enter into an appropriate intergovernmental agreement under A.R.S. § 48-3603(C)(9); and

WHEREAS, the City has reviewed the terms of the intergovernmental agreement and determined that it is in the proper form required by A.R.S. § 11-952;

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, THAT:

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with the Yavapai County Flood Control District to provide funds in an amount not to exceed three hundred eighty-seven thousand dollars (\$387,000) for the fiscal year 2022-2023, to be used for the following flood control projects: the Back O' Beyond Crossing drainage project, Arroyo Pinon drainage improvements, and general drainage improvement projects as determined by the City, and the Mayor is authorized to execute said Agreement on behalf of the City.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 8th day of November, 2022.

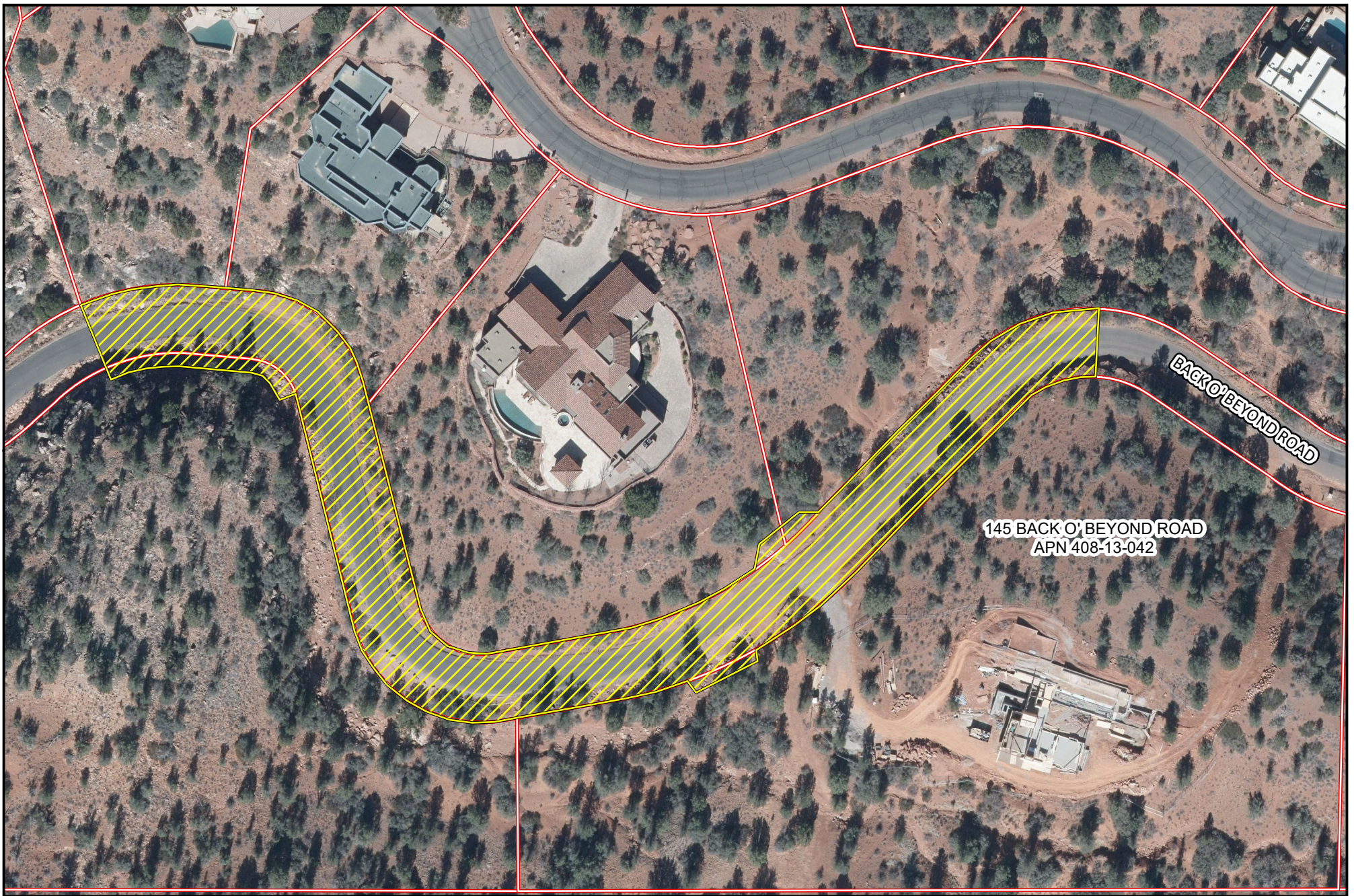
Sandra J. Moriarty, Mayor

ATTEST:

APPROVED AS TO FORM:

JoAnne Cook, CMC, City Clerk

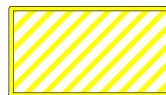
Kurt W. Christianson, City Attorney



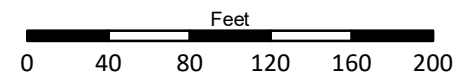
**PROJECT LOCATION MAP:
BACK O' BEYOND ROAD
DRAINAGE IMPROVEMENTS**



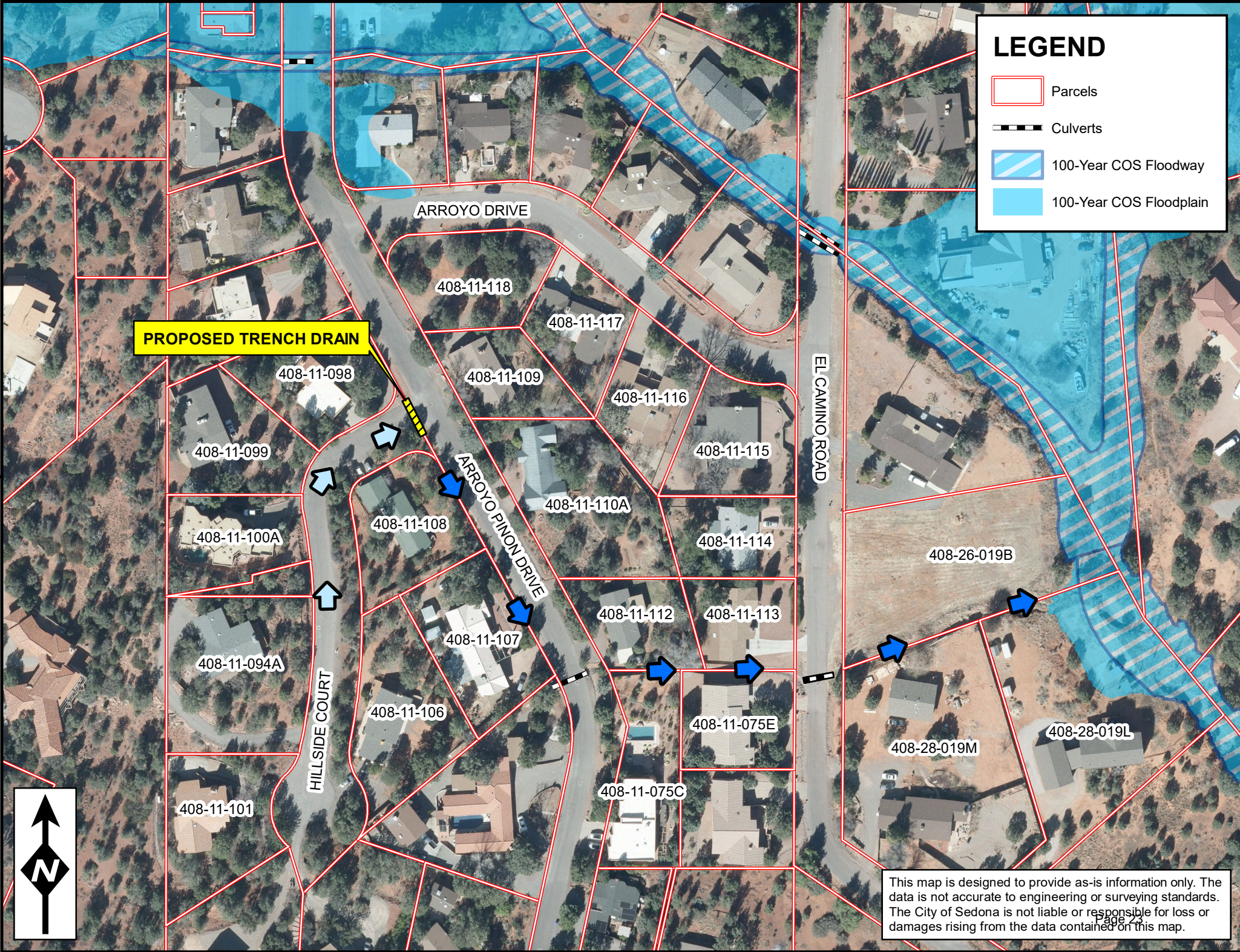
Parcels



Work Area



This map is designed to provide as-is information only. The data is not accurate to engineering or surveying standards. The City of Sedona is not liable or responsible for losses or damages rising from the data contained on this map.





**CITY COUNCIL
AGENDA BILL**

**AB 2875
November 8, 2022
Consent Items**

Agenda Item: 3e

Proposed Action & Subject: Approval of a Resolution authorizing a cost-sharing development agreement with Canyon Portal 3, LLC (CP3) to construct a right-hand turn lane from SR 89A right-of-way to Amara Lane, a part of SIM1B – Uptown Northbound improvements, in an amount not-to-exceed \$308,361.89.

Department Public Works

Time to Present N/A

Total Time for Item

Other Council Meetings N/A

Exhibits
A. Development Agreement
B. Site Plan
C. Resolution

City Attorney Approval	Reviewed 11/01/22 KWC	Expenditure Required
		\$ 308,361.89
City Manager's Recommendation	Authorize a cost-sharing development agreement with Canyon Portal 3, LLC (CP3) to construct a right-hand turn lane from SR 89A right-of-way to Amara Lane, a part of SIM1B – Uptown Northbound improvements, in an amount not-to-exceed \$308,361.89.	Amount Budgeted
		\$ 400,000
		Account No. (Description) 48-5320-89-68B7 22-5320-89-68B7 SIM-1B Uptown Northbound Improvements (construction)
		Finance Approval ☒

SUMMARY STATEMENT

Staff is requesting City Council approval of the Resolution authorizing a Development Agreement with CP3 to construct a right-hand turn lane from SR 89A right-of-way to Amara Lane in order to enhance northbound traffic flow and promote pedestrian safety improvements in Uptown. The agreement is for the city to cover the as-bid construction cost, a maximum of \$308,361.89. The scope of work for this project includes removing existing pavement, curb, sidewalk, signs, and some landscaping to be installed with a five (5) vehicle capacity right-turn lane onto Amara Lane. Traffic studies have shown the right-turn lane will improve SR 89A

northbound backups by providing turn-lane vehicle queue capacity. This will also improve walkability, connectivity, and pedestrian safety in the area, which are community benefits.

Originally, CP3 planned to construct improvements as part of this project beyond the turn lane, which would enhance the frontage aesthetic, pedestrian walkability, connectivity, and safety for their development. To expedite both efforts, the idea was to mobilize and coordinate only one contractor, tie the public and private improvements together seamlessly and gain the economies of scale of combining the roadway and pedestrian improvement efforts into one project. To do this, the city and CP3 would enter into this development agreement to consolidate the work into one project/contract. After working through costs and timing considerations, CP3 has decided to put their improvements on hold. However, in order to keep the turn lane improvements moving forward, to be completed prior to Spring 2023, the development agreement is moving forward and CP3 will continue to oversee the work. This allows the city to capture the expedited effort for bidding and design, as well as other efficiencies gained from private efforts.

Background:

Northbound traffic in Uptown remains a single lane that easily becomes congested, in part, due to a high volume of pedestrian traffic. Historically, vehicles turning into Amara Lane have a conflict with pedestrians crossing Amara Lane, along SR 89A frontage. This conflict results in vehicles backing up into northbound SR 89A through traffic. This backup has been observed extending a significant distance to the south. The proposed improvements will alleviate the impact of this conflict by creating a space for vehicle queueing in the new right turn lane.



Figure 1- GIS Image of existing condition

Arizona Revised Statutes Section 9-500.05 authorizes the City to enter into a development agreement with a landowner to facilitate development of the property by providing for, among other things, the conditions, terms, restrictions, and requirements and financing for public infrastructure.

The project responds to traffic congestion concerns for both residents and visitors to the Uptown area. At times some visitors chose to walk into the roadway to get around stopped turning vehicles that were waiting for gaps between pedestrians.

Existing:

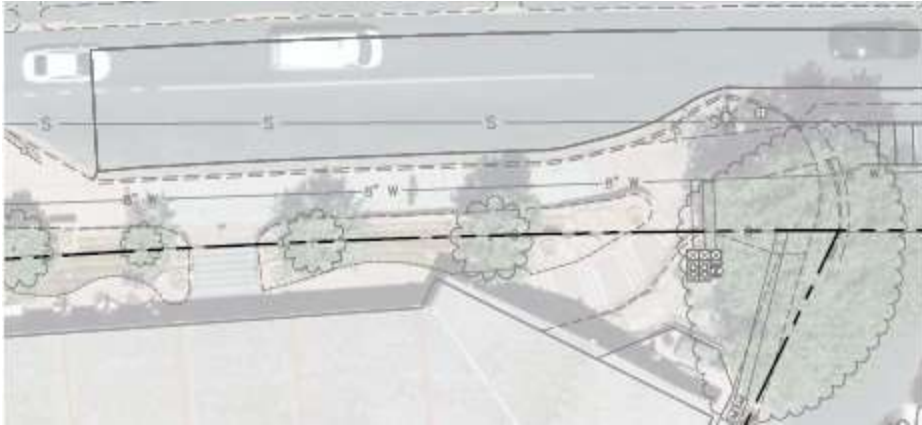


Figure 2- Plan View of loading turn out



Figure 3- Looking East towards Canyon Breeze

Design:

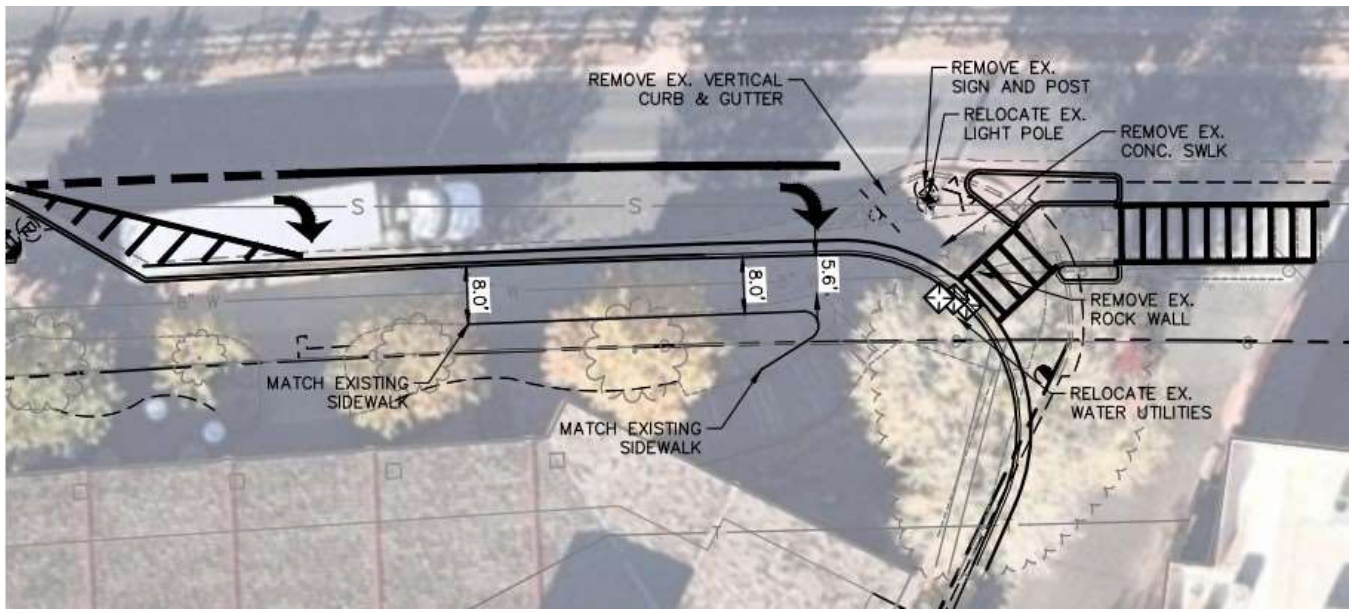


Figure 4- Proposed Right-Turn Lane showing pork chop with cross walk

Schedule:

Terms of the Development Agreement have been negotiated over the past months and the final version is included as Exhibit A. If approved, right of way permits will be obtained by the contractor with the intent of starting in November 2022. Construction and reimbursement are scheduled to be complete prior to March 2023.

Procurement Method:

The property owner requested bids. The selected bid is from Tiffany Construction Company, who has years of experience working in Sedona as well with the City.

Budget:

This project is anticipated this fiscal year and is within the amount budgeted. Originally, CP3 expected to complete private site improvements, including new ADA accessibility ramp, stairs, walkway, and landscape improvements. However, the original bid estimate was beyond the budget allowance, and CP3 chose to remove that portion of the project. Both parties agree to the final scope and cost estimate for the right turn lane, and agree they are reasonable, appropriate, and no errors were found.

Climate Action Plan/Sustainability Consistent: ☒ Yes - ☐ No - ☐ Not Applicable

In the Climate Action Plan, transportation related desired actions include pedestrian infrastructure, and reduced congestion. Identified strategies include developing and maintaining a safe, convenient, and effective system for walking with increased connectivity and other active forms of transportation. This project addresses those desired actions and strategies. Improved walkability reduces reliance on vehicular travel. The turn lane elements of this project help improve interaction between pedestrian and vehicular traffic, improving safety and reducing congestion.

Board/Commission Recommendation: ☐ Applicable - ☒ Not Applicable

Alternative(s): Not approving this project will result in not taking another step in addressing the need to reduce traffic congestion while creating a more walkable community as discussed in many plans and citizen surveys. Not pursuing this project would result in continuing to have northbound traffic backups with pedestrians continuing to walk into SR89 A. Not approving this project will result in the City not taking advantage of an opportunity to leverage private dollars to build public infrastructure.

MOTION

I move to: approve the Resolution 2022-__ authorizing a Development Agreement for the construction of right-turn lane improvements in Uptown between the City of Sedona and CP3, LLC for the amount not-to-exceed \$308,361.89 subject to approval of the written contract by the City Attorney's Office.

WHEN RECORDED RETURN TO:

City Clerk
City of Sedona
102 Roadrunner Drive
Sedona, AZ 85336

Public Infrastructure Cost-Sharing Development Agreement

This Public Infrastructure Cost-Sharing Agreement (“Agreement”) is entered into as of this __ day of November 2022, by and between the City of Sedona, an Arizona municipal corporation (“City”), and CANYON PORTAL 3, LLC, a Delaware limited liability company authorized to do business in Arizona (hereinafter “CP3”). City and CP3 may be referred to individually as “Party” and collectively as the “Parties”.

RECITALS

- A. CP3 is the owner of a commercial center located within the State Route 89A Character District known as “Uptown Sedona” in Sedona, Coconino County, Arizona. Uptown Sedona currently provides amenities to the City including but not limited to public parking, bus parking, public restrooms, public seating, landscaping and maintenance abutting State Route 89A (hereinafter referred to as the “CP3 Property”). For the purposes of this agreement, CP3 and the City are responsible for the respective financial contributions stated herein.
- B. Uptown Sedona is characterized as a “predominately pedestrian area” pursuant to Chapter 6.10 Sedona Land Development Code. As such, the Parties seek to memorialize their agreements and understandings regarding certain rights and obligations to promote the continued health, safety and welfare of this “predominately pedestrian area,” including but not limited to the construction of a right-hand turn lane on both City Property and CP3 Property.
- C. Previously, the Parties entered into a Right of Way Lease dated December 10, 2020 (the “Lease”) granting CP3 the right and obligation to construct, install and maintain certain improvements on City Property including public display areas, walkways, landscaping, public seating, an outdoor restaurant patio with seating and public bike parking (hereinafter “the Lease Improvements”) as described in that Lease.
- D. The City desires to improve walkability and traffic flows in Uptown Sedona. One strategy identified in the City’s Transportation Master Plan to improve vehicle movement through Uptown Sedona and pedestrian facilities includes the construction of new sidewalks and the extension of existing sidewalks. Pedestrians in Uptown often encounter sidewalks which terminate or do not extend fully to their destination, even within the commercial district. Adding new sidewalk connections and improving substandard sidewalk surfaces will significantly improve safety and walkability for pedestrians and discourage parking on shoulders.
- E. The City has further determined that construction of a right-hand turn lane across part of the CP3 Property and the State Route 89A right-of-way (“SR 89A”) will enhance traffic flow and promote pedestrian safety. As such, the City and CP3 have agreed that construction of a right-

hand turn lane on the south side of SR 89A on City right-of-way and CP3 Property and extension of the existing sidewalk separated by landscaping will lead to improved walkability in Uptown Sedona and reduce vehicular traffic congestion on SR 89A.

- F. Arizona Revised Statutes §9-500.05 authorizes the City to enter development agreements with private landowners and to facilitate development of the real property by providing for, among other things, the conditions, terms, restrictions, and requirements for such construction and the financing of public infrastructure improvements.
- G. It is in the best interest and welfare of the general public and both Parties that the above-described improvements be constructed to improve vehicular ingress and egress to and from Amara Lane and pedestrian connectivity and safety in Sedona Uptown. To that end, the Parties wish to financially participate in the cost of construction of the “Canyon Breeze Streetscape Improvement Project,” as part of the City’s Transportation Master Plan strategy SIM1B – Uptown Northbound Improvements and consistent with the City’s Community Plan in effect as of the date of this Agreement.
- H. CP3 desires to work with the City as a sponsor of the public Project, and the City is willing to participate in the Project as the public sponsor as further described in this Agreement.
- I. The Project is detailed in the construction plans titled “the Canyon Breeze Streetscape Improvement Project” (the “Project”). The Project is further described and depicted in Exhibit “B”.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises and the covenants and agreements set forth below, the Parties agree as follows:

AGREEMENT

- A. Accuracy of the Recitals. The Parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.
- B. Term. Once executed by the Parties, the term of this Agreement shall be deemed to commence as of the date that this Agreement is fully executed and shall continue for two (2) years thereafter.
- C. Financial Contributions for the Project. Conditioned upon (1) full execution of this Agreement by both Parties, (2) City receipt of a perpetual easement for the construction and maintenance of a right-hand turn lane on CP3 Property from CP3 that is approved by the City, and (3) receipt of written confirmation that CP3 has entered into a construction contract to complete the Project with a contractor (the “Contractor”) in accordance with all public bidding and construction requirements of A.R.S. Title 34, the Parties shall each share the contract costs of the Project as follows:

The City of Sedona will contribute up to a maximum of \$308,361.89 (the “Contribution”) of the as-bid construction cost and CP3 will be responsible for the remaining construction costs. The City and CP3 shall pay their respective shares of the Project construction costs as follows: the Contractor shall submit monthly installment payment requests for the actual work completed by

the Contractor (submitted as is customary and ordinary in the construction industry as draw and progress payment requests) to both the City and CP3, such request being divided and adjusted for each of the respective Parties' as-bid pro-rated construction cost amounts. Payments to be made directly to the Contractor without retention or hold-back subject to any retention required by A.R.S. Title 34. In addition, CP3 will be responsible for: (1) execution of the Right-of-Way Permit, and (2) paying all remaining Project costs not included original plans or bid submission. Any amounts above the Accepted Bid Amount or added to the contract at any time (including during construction), which are not requested in writing by the City, will become the sole responsibility of CP3. The award of the construction contract is contingent upon CP3 executing this Agreement. The City, in its sole discretion, reserves the right to reject any and all construction bids submitted in the public's interest, including bids exceeding the engineer's estimated cost of construction.

1. Construction of the Project does not convey to CP3 any easement, interest in land or property rights in City property, except as may otherwise be provided in the Lease, or in any separate lease or agreement with the City, now existing or later established. This Section C.1. shall survive the termination of this Agreement.

D. Duty to Obtain Permits; Applicable Laws; Construction; Dedication; Inspection; Acceptance; Maintenance.

1. CP3 shall obtain any and all necessary permits, licenses and approvals from all applicable entities (collectively, "Approvals"), and require that Contractor and all other third parties obtain all necessary, or required Approvals, in order to construct, operate, repair, or that are otherwise required for the Project. The City shall obtain, and shall maintain, all necessary approvals, permits, consents, and authorizations from all governmental authorities and other persons or entities necessary for the City ownership, maintenance, operation, repair, and replacement of the augmented public infrastructure improvements.
2. CP3 shall design, plan, bid, and construct the Project in accordance with the plans depicted on Exhibit "B", and will to the extent necessary dedicate any such new or different the roadway improvements to the City.
3. Upon substantial completion, i.e., completion of all major components of the Project, CP3 shall promptly dedicate and convey to the City the roadway improvements, free and clear of all liens and encumbrances. The City Engineer or his/her designee shall inspect the completed Project to determine whether it has been constructed substantially in accordance with the applicable standards and the approved plans. Upon completion of the inspection and review the City shall either: (a) approve the construction of the Project; or (b) provide a punch list of specific items that are not in accordance with applicable standards and/or the approved plans. So long as the Project is constructed in accordance with the applicable standards and approved plans, all punch lists items have been timely completed, the Project is free and clear of all liens, the City shall accept the roadway improvement dedication. CP3 shall bear all risk of, and shall indemnify the City and its officials, employees and City Council members, against any claim arising prior to the City's acceptance of the Project improvements from any injury or property damage to any person, party or utility.
4. CP3 agrees to abide, and shall ensure that Contractor and all Contractor personnel and officials, abide by, all applicable federal, state and local laws, codes, statutes, rules,

regulations and ordinances, including, but not limited to, the United States Foreign Corrupt Practices Act and all other anti-corruption and anti-bribery laws and regulations, the Immigration Reform and Control Act of 1986 and A.R.S. §23-214(A), the Americans with Disabilities Act, the Drug Free Workplace Act of 1989, and if applicable, A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, as amended, "Residence Requirements for Employees." ("Applicable Laws") and shall require and ensure that all employees, contractors, vendors and service providers that are retained by Contractor or any other party for the Project shall abide by all Applicable Laws.

5. CP3 agrees to abide, and shall ensure that Contractor is not currently engaged in and for the duration of the Agreement will not engage in a boycott of Israel, as that term is defined in A.R.S. §35-393 and will not use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the People's Republic of China (PRC) or any contractors, subcontractors or suppliers that use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the PRC as provided by A.R.S. §35-394.
 6. CP3 agrees to abide, and shall ensure that Contractor, its agents, employees, and subcontractors shall not discriminate in any employment policy or practice. "Discrimination" means to exclude individuals from an opportunity or participation in any activity or to accord different or unequal treatment in the context of a similar situation to similarly situated individuals because of race, color, gender, gender identity, sexual orientation, religion, national origin or ancestry, marital status, familial status, age, disability, or Veteran status. (Ordinance 2015-10) (2015).
- E. Access/Right of Way. To the extent not already provided for in the Lease, the City of Sedona will grant the Contractor temporary access onto City right-of-way for purposes of completing the Project conditioned upon and subject to the execution of a separate right-of-way permit with such terms and conditions required by the City of Sedona ("Right-of-Way Permit") and the City of Sedona shall have the right to terminate this Agreement without penalty if the Contractor fails or refuses to execute the Right-of-Way Permit.
- F. Warranty Period; Maintenance. CP3 will require the Contractor to warranty all components of the Project for a 2-year period after completion of the Project. After the 2-year warranty period has expired, CP3 will be responsible for maintaining and repairing all improvements on its property constructed as part of the Right-of-way Permit and the City will only be responsible for maintenance of improvements accepted by the City on City property.
- G. Performance. CP3 shall require that (1) Contractor diligently and in good faith pursue completion of all work associated with the Project and perform all such work in a good, professional and workmanlike manner and in accordance with all industry standards, contractual requirements and Applicable Laws and (2) Contractor shall at all times enforce strict discipline and good order among, require the highest levels of professionalism and courtesy by, and be responsible for any and all injury or damage to any person and property caused by, Contractor's employees and other persons carrying out any work related to the Project.
- H. City Representations and Warranties. The City represents, warrants, and covenants to CP3 that all the City's representations, findings, warranties, and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement.

1. That the City is a duly organized, validly existing municipal corporation in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement, and the City's performance hereunder have been duly authorized by all requisite action of the City, and no other approval or consent is required for this Agreement to be binding upon the City. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind the City. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation, or official policy to which the City is a Party or by which the City is bound.
- I. CP3 Representations and Warranties. CP3 represents, warrants, and covenants to the City that each of its respective representations, warranties, and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement.
1. CP3 is duly organized and a validly existing corporation licensed to do business in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement, and CP3's performance hereunder have been duly authorized by all requisite action, and no other approval or consent is required for this Agreement to be binding upon CP3. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind CP3. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation, or official policy to which CP3 is a Party or by which CP3 is bound.
- J. Default; Venue; Dispute Resolution.
1. Jurisdiction; Venue; Dispute Resolution. This Agreement shall be governed by and enforced using the law of the State of Arizona. The parties agree that any judicial action brought to enforce the terms or conditions of this Agreement shall be brought in a court of competent jurisdiction in Coconino County, Arizona. If a dispute arises out of or related to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising out of this Agreement or the subject matter thereof and consent to a trial to the court.
 2. Default and Cure Period. The failure by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "Cure Period"), after written notice thereof from any other Party, shall constitute a default. In the event such default is not cured within the Cure Period, any non-defaulting Party shall have the right to seek all its rights and remedies, including injunctive relief or mandamus, in a court of competent jurisdiction. In all such cases of breach, the breaching Party shall diligently undertake all reasonable efforts to cure the breach prior to the expiration of the Cure Period.
- K. Notices and Filings. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by: (1) certified or registered mail, postage prepaid, return receipt requested; (2) personal delivery or (3) recognized overnight delivery

service. Such notices and communications shall be addressed as follows, or to such other addresses as any Party hereto may from time to time designate in writing and deliver in a like manner:

City	Canyon Portal 3, LLC
Karen Osburn City Manager City of Sedona 102 Roadrunner Drive Sedona, AZ 86336 Phone No: 928-204-7127	Al Spector 270 North 89A, Suite 11 Sedona, AZ 96336 With copies also sent by email to: al@alspector.net

Notice shall be deemed to have been given upon receipt or refusal. The telephone numbers listed above are for purposes of providing the same to overnight delivery services and are not to be otherwise used for notice purposes.

- L. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or CP3 of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.
- M. Termination. Prior to issuing a notice to proceed to the Contractor for the improvements, this Agreement may be terminated without cause by either Party upon written notice to the non-termination Party. After execution of the construction agreement and issuance of a notice to proceed to the Contractor for the improvements, this Agreement may only be terminated upon mutual consent of the Parties or by either Party for any material breach of this Agreement in accordance with the termination provisions provided herein. Every payment obligation of the CITY under this Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the CITY at the end of the period for which funds are available. No liability shall accrue to the CITY in the event this provision is exercised, and CITY shall not be obligated or liable for any future payments or for any damages resulting from termination under this provision.
- N. Indemnification.
1. CP3 agrees to indemnify and hold harmless the City, its elected officials, appointees, employees, affiliates, agents, assigns and successors from any liability for claims, suits, losses, damages to persons or property, including investigation and expert witness and attorney's fees, arising as a result of CP3's breach of this Agreement or for any injury or death resulting from CP3's negligence or willful misconduct.
 2. City agrees to indemnify and hold harmless CP3, their respective parents, subsidiaries and affiliates and each of their respective owners, managers, officers, directors,

employees, members, and successors from any liability for claims, suits, losses, damages to persons or property, including investigation and expert witness and attorney's fees, arising as a result of City's breach of this Agreement or for any injury or death resulting from City's negligence or willful misconduct.

3. This Section N. shall survive the expiration or termination of this Agreement for any reason whatsoever.
- O. Insurance. Upon CP3's execution of this Agreement, CP3 shall furnish, and require that the Contractor furnish, the City with the certificates of insurance and endorsements that meet the requirements described in Exhibit "A" ("Insurance Requirements"). CP3 and each Contractor understands and agrees that all insurance procured by Contractor is primary and non-contributory over any insurance held by the City and is intended to respond to any indemnification event. The City shall have the sole and unconditional right to terminate this Agreement with written notice to CP3 if CP3 fails or refuses to satisfy the Insurance Requirements.
- P. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts, and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document. Facsimile and scanned signatures shall be deemed to be original signatures for purposes of executing this Agreement and amendments hereto and for purposes of issuing all instructions authorized or permitted hereunder.
- Q. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- R. Exhibits. The exhibits attached hereto, and incorporated by this reference, shall have the same force and effect as if fully set forth in the body hereof.
- S. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Without limiting the generality of the foregoing, each of the Parties shall cooperate in good faith regarding the prompt processing of any requests and applications for plan and specification, plat or permit approvals or revisions, and other necessary approvals relating to the development of the property in construction of the infrastructure improvements.
- T. Time of the Essence. Time is of the essence of this Agreement.
- U. Assignment. This Agreement may not be assigned without the express written consent of the non-assigning Parties. Consent shall not be unreasonably withheld.
- V. No Partnership and Third Parties. It is not intended by this Agreement, and nothing contained in this Agreement shall, create any partnership, joint venture, or other similar arrangement

between CP3 on one hand, and the City, on the other. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

- W. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.
- X. Amendment. No change or additions are to be made to this Agreement except by written amendment executed by the Parties hereto.
- Y. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this Agreement is subject to the cancellation provisions of Arizona Revised Statutes §38-511.
- Z. Recordation. No later than ten (10) days after this Agreement has been executed by the Parties, it shall be recorded in its entirety by the City in the Official Records of Coconino County, Arizona as required by A.R.S. § 9-500.05.
- AA. Reformation. Should any term, provision, covenant, or condition of this Agreement be held to be void or invalid, the Parties shall reform this Agreement to conform as closely as possible to the original intent thereof.
- BB. Excused Delay in Performance. In addition to specific provisions of this Agreement, for a period of time equal to the period of the force majeure delay, untimely performance by a Party hereto shall not be deemed to be a default where delays or inability to perform are due to war, insurrection, strikes, slowdowns, lockouts, riots, floods, earthquake, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority (including, but not by way of limitation, referendums), litigation, severe weather, acts or the failure to act of any utility, public, or governmental agent or entity, and/or other causes beyond the reasonable control of said Party. In the event that a Party hereto is unable to perform due to an event constituting force majeure as provided for above, then the time for performance by said Party shall be extended as necessary for a period of time up to the period of the force majeure delay.
- CC. Severability. Every provision of this Agreement is, and will be construed to be, a separate and independent covenant. If any provision of this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this Agreement will be valid and will be enforced to the extent permitted by the law, and the Parties will negotiate in good faith for such amendments of this Agreement that may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

DD. Rights of Successors. This Agreement shall bind and inure to the benefit of the Parties hereto, their respective heirs, representatives, lessees, successors, and assigns. The singular number includes the plural, and the masculine gender includes the feminine and neuter.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

CITY OF SEDONA, an Arizona municipal corporation

By _____
Sandy Moriarty, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney

CANYON PORTAL 3, LLC, a Delaware limited liability company

By _____
Al Spector
Its Manager

STATE OF _____)
) ss
County of _____)

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 20____
by _____, _____ of CANYON PORTAL 3, LLC, a
Delaware limited liability company, on behalf of the corporation.

Notary Public

(Seal)

Exhibit "A"
Insurance Requirements

CP3, Contractor and all subcontractors, service providers and material suppliers retained for the Project (collectively, "Service Providers") must submit verification of insurance by providing a certificate of insurance on a standard ACORD 25-S form issued by a carrier with an S&P or Best rating not less than A-VII, unless otherwise approved in writing by the City.

The Certificate must include:

1. Additional insured endorsement for general liability naming **the City**. Coverage is primary and non-contributory. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.
2. Certificate Holders must read:
The City of Sedona
102 Roadrunner Dr.
Sedona, AZ 86336
3. Contractors' certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents.
4. All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days of notice prior to cancellation, non-renewal, termination or material change to the policies.
5. Workers Compensation and Commercial General Liability Policies shall include waiver of subrogation rights against the City, its agents, officers, and employees for any claims arising out of the Contractors work or service.

For CP3, Contractor and any subcontractors, the following minimum and unimpaired limits of insurance (unless higher limits required by law or statute) are required. In addition to procuring and maintaining this insurance throughout the duration of the Agreement, CP3 and Contractor agree to continue to procure and maintain products and completed operations liability insurance coverage following completion of the Project for a period of one year.

Workers' Compensation and Employer's Liability

Part One - Workers' Compensation: Statutory Limit

Part Two - Employer's Liability: Annual Limits:

Bodily Injury by Accident, each Accident: \$ 500,000

Bodily Injury by Disease, each Employee \$ 500,000

Bodily Injury by Disease, Policy Limit: \$ 500,000

Commercial General Liability

General Aggregate \$1,000,000

Personal/Advertising Injury \$1,000,000

Each Occurrence Limit \$1,000,000

Products/Completed Operations \$1,000,000

Coverage is required to be on an Occurrence form and shall apply to bodily injury and property damage for operations including independent contractors, products and completed operations.

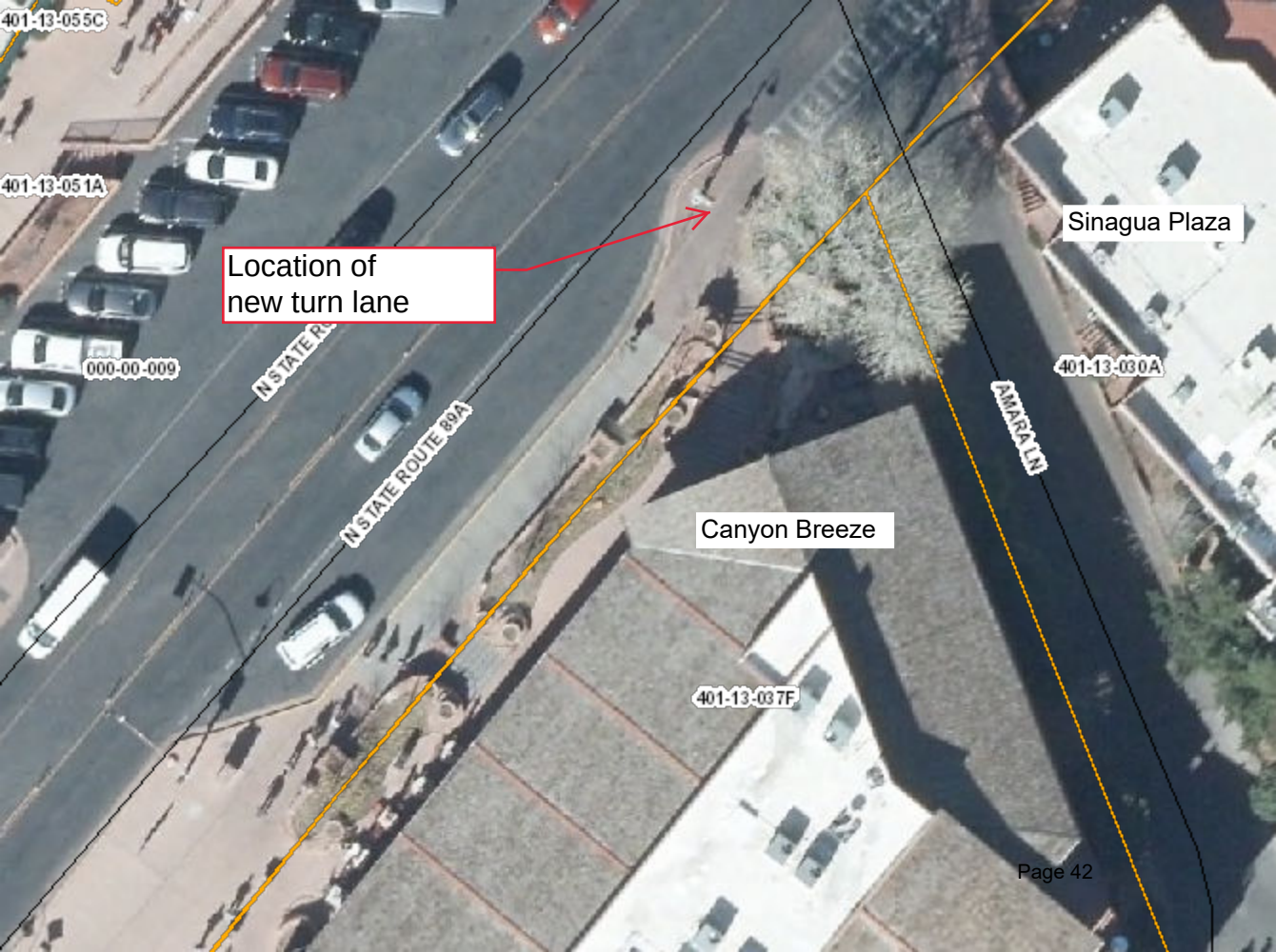
Automobile Liability

Commercial Business Auto Policy covering all owned, hired and non-owned automobiles, trucks and trailers with coverage limits not less than **\$1,000,000 Combined Single Limit** each accident for Bodily Injury and Property Damage. Coverage will apply both on and away from the Project site. All subcontractors shall be required to maintain limits of not less than **\$1,000,000 Combined Single Limit**.

Property Insurance

CP3, Contractor and any subcontractors are solely responsible for their own insurance for owned and leased equipment and materials, whether such equipment is located at the Project site or "in transit". Contractor and any subcontractors are solely responsible for any loss or damage to their personal property including, without limitation, property or materials created or provided under the Agreement until installed at the Project site, service provider tools and equipment, and scaffolding and temporary structures, whether owned, used, leased, or rented by Contractor or any subcontractors.

Exhibit "B"
The Project



401-13-055C

401-13-051A

000-00-009

Location of
new turn lane

Sinagua Plaza

401-13-030A

Canyon Breeze

401-13-037F

RESOLUTION NO. 2022-__

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH CANYON PORTAL
3, LLC ("CP3") FOR A NEW SIDEWALK PROJECT IN UPTOWN SEDONA.**

WHEREAS, the City of Sedona ("City") intends to enter into a cost-sharing development agreement ("Development Agreement") with Canyon Portal 3, LLC ("CP3") for the construction of right turn lane improvements at Amara Lane and SR 89A, as set forth in the terms of the Development Agreement.

BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, as follows:

The City of Sedona, through its Mayor and Council, hereby finds that the Development Agreement with Canyon Portal 3, LLC for the construction of right turn lane improvements at Amara Lane and SR 89A is consistent with the Community Plan pursuant to A.R.S. §9- 500.05, and approves the Development Agreement, authorizing the signature by the Mayor and recording by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 8th day of November, 2022.

Sandra J. Moriarty, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney



CITY COUNCIL AGENDA BILL

AB 2881
November 8, 2022
Regular Business

Agenda Item: 8a

Proposed Action & Subject: Discussion/possible action regarding an Ordinance revising the Sedona City Code, Chapter 9.10, adding Section 9.10.020 related to public urination and defecation.

Department	City Attorney
Time to Present	5 minutes
Total Time for Item	15 minutes
Other Council Meetings	N/A
Exhibits	A. Ordinance

City Attorney Approval	Reviewed 11/01/22 KWC	Expenditure Required
		\$ 0
City Manager's Recommendation	Approve an ordinance amending City Code Chapter 9.10 by adding Section 9.10.020 related to public urination and defecation.	Amount Budgeted
		\$ 0
		Account No. N/A (Description)
		Finance ☒ Approval

SUMMARY STATEMENT

Background:

The City of Sedona provides public restrooms at various locations in the City. Private restrooms open to the public are also available at numerous locations throughout the City. Restrooms are also available at many trailheads and the Sedona Shuttle trailhead park and ride locations.

Despite the availability of restrooms, incidents of public urination continue including in or near sensitive watercourses like Oak Creek. A person was recently contacted by Sedona Police Department for urinating in the City Hall parking lot despite the availability of nearby restrooms. Most other Arizona cities have prohibitions against urinating or defecating in public.

This proposed ordinance would make it a violation of City code to urinate or defecate in a public place and impose a mandatory minimum fine of \$150.

Climate Action Plan/Sustainability Consistent: ☐ Yes - ☐ No - ☒ Not Applicable

Board/Commission Recommendation: ☐ Applicable - ☒ Not Applicable

Alternative(s):

1. Do not approve the adoption of City Code Section 9.10.020
2. Suggest different language for the adoption of City Code Section 9.10.020

(After First Reading)

I move to: approve Ordinance 2022-__, amending City Code Chapter 9.10 by adding Section 9.10.020 related to public urination and defecation.

ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY OF SEDONA, ARIZONA, AMENDING CITY CODE CHAPTER 9.10 (OFFENSES AGAINST PUBLIC PEACE) BY ADOPTING SECTION 9.10.020; PROVIDING FOR A SAVINGS CLAUSE, PENALTIES, AND FOR REPEAL OF CONFLICTING ORDINANCES.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, as follows:

Section 1. Amendment of Sedona City Code Chapter 9.10 (Offenses Against Public Peace)

That the Code of the City of Sedona, Arizona, is hereby amended by adding Section 9.10.020 (Public urination or defecation prohibited), to read as follows:

9.10.020 Public urination or defecation prohibited.

A. It shall be unlawful for any person to urinate or defecate in a place exposed to public view or upon the floor or interior of any bus or other public conveyance.

B. A violation of this section is a class one misdemeanor and shall be punished by a mandatory minimum fine of one hundred fifty dollars (\$150.00).

C. In addition to the penalties proscribed in subsection B above, the court may require that a person convicted of this section pay restitution for any clean-up costs incurred by the City.

Section 2. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance.

Section 3. Repeal

All other code provisions, ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict as of the effective date hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 8th day of November, 2022.

Sandra J. Moriarty, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney



**CITY COUNCIL
AGENDA BILL**

**AB 2880
November 8, 2022
Regular Business**

Agenda Item: 8b

Proposed Action & Subject: Discussion/possible action regarding a Resolution and Ordinance amending the Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits).

Department City Attorney's Office

Time to Present 5 minutes

Total Time for Item 30 minutes

Other Council Meetings N/A

Exhibits

- A. Resolution
- B. Exhibit A to Resolution – Public Record
- C. Ordinance
- D. SB 1275

City Attorney Approval	Reviewed 11/01/22 KWC	Expenditure Required
		\$ 0
City Manager's Recommendation	Approve a Resolution and Ordinance amending the Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits).	Amount Budgeted
		\$ 0
		Account No. N/A (Description)
		Finance ☒ Approval

SUMMARY STATEMENT

Background:

There is a high potential for wildfire incidents in or near the City of Sedona throughout most of the year. The threat increases dramatically during the late spring and early summer months, and often peaks in June just before the 4th of July holiday, when the highest sales and use of consumer fireworks is expected.

The City's current fireworks ordinance has not been updated since 2010. These amendments to the fireworks ordinance are proposed to bring the ordinance into compliance with state law changes since 2010.

In 2015, the Arizona Legislature has adopted House Bill 2008 which pre-empted local firework ordinances and required that local jurisdictions allow for both the sale and use of permissible consumer fireworks during certain times of the year. State law was subsequently amended in 2019 and now again in 2022 with the passage of SB 1275.

While the City can no longer ban all fireworks use, using fireworks, including permissible consumer fireworks will still be prohibited within 1 mile of the national forest and on any public property including streets and roads. The entirety of the City of Sedona municipal limits is within 1 mile of the national forest.

Community Plan Consistent: ☐ Yes - ☐ No - ☒ Not Applicable

Climate Action Plan/Sustainability Consistent: ☐ Yes - ☐ No - ☒ Not Applicable

Board/Commission Recommendation: ☐ Applicable - ☒ Not Applicable

Alternative(s):

1. Do not approve the amendments to City Code Chapter 8.50
2. Suggest different language for the amendments to City Code Chapter 8.50

MOTION

I move to: approve Resolution No. 2022-__, establishing as a public record the proposed amendment to Sedona City Code Chapter 8.50 entitled “*2022 Amendments to Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits).*”

(After First Reading)

I move to: adopt Ordinance No. 2022-__ an ordinance of the Mayor and Council of the City of Sedona, Arizona adopting amendments to the Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits).

RESOLUTION NO. 2022-__

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, ESTABLISHING AS A PUBLIC RECORD CHANGES TO SEDONA CITY
CODE CHAPTER 8.50 (PROHIBITION ON USE OF FIREWORKS IN CITY LIMITS).**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA that the changes to Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits) as set forth in Exhibit A *“2022 Amendments To Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits)”* and attached hereto, constitutes a public record to be adopted by reference in Ordinance No. 2022-__ pursuant to A.R.S. § 9-802.

One paper copy and one electronic copy of this public record shall be filed in the office of the City Clerk and kept available for public use and inspection.

APPROVED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 8th day of November, 2022.

Sandra J. Moriarty, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney

EXHIBIT A

"2022 Proposed Amendments to Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits)"

Chapter 8.50

PROHIBITION ON USE OF FIREWORKS IN CITY LIMITS

Sections:

- 8.50.010** **Definitions.**
- 8.50.020** **Prohibition on the use of fireworks in city limits; Exceptions.**
- 8.50.030** **Sale of fireworks.**
- 8.50.040** **Enforcement and liability.**

8.50.010 Definitions.

For purposes of this chapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning:

"Display fireworks" are those fireworks defined by A.R.S. Section 36-1601.

"Expenses of an emergency response" means the reasonable costs directly incurred by public agencies including but not limited to the Sedona Fire District, police and public works departments or other first responders including but not limited to private ambulance companies that make an appropriate emergency response to an incident.

"Federally deregulated novelty items" are those known as snappers, snap caps, party poppers, glow worms snakes, toy smoke devices, sparklers, and similar items that are not otherwise classified by A.R.S. Section 36-1601.3 as "fireworks."

"Fireworks" are those devices defined by A.R.S. Section 36-1601.41 ~~that include both consumer fireworks and display fireworks, which are articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation.~~

"Novelty items" are federally deregulated items known as snappers, snap caps, party poppers, glow worms snakes, toy smoke devices, sparklers, and similar items that are not classified as fireworks by A.R.S. Section 36-1601.4.

"Permissible consumer fireworks" are those items defined by A.R.S. Section 36-1601.57 that ~~now~~ include ground and handheld sparkling devices; cylindrical fountains; cone fountains; illuminating torches; wheels; ground spinners; flutter sparklers; toy smoke devices; ~~and~~ wire sparklers or dipped sticks; ~~multiple tube fireworks devices and pyrotechnic articles.~~

"Permissible consumer fireworks" does not include anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, including, for example, firework items defined by American pyrotechnics standard 87-1 and commonly known as firecrackers, bottle rockets, skyrockets, missile-type rockets, helicopters, aerial spinners, torpedoes, roman candles, mine devices, shell devices and aerial shell kits or reloadable tubes and jumping jacks.

"Person" includes an individual, partnership, firm or corporation.

"Reasonable costs" are the costs of providing police, firefighting, clean-up, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

"Supervised public display" means a monitored performance of display fireworks open to the public and authorized by permit by the Sedona Fire District fire marshal or ~~his~~ designee.

8.50.020 Prohibition on the use of fireworks in city limits; Exceptions.

A. The use of it is unlawful to sell, offer or expose for sale, use, explode, or possess any fireworks including permissible consumer fireworks within the municipal limits of the City of Sedona, other than permissible consumer fireworks is prohibited except permissible consumer fireworks may be used on private property with the consent of the owner from June 24 through

July 6 and December 24 through January 3 of each year subject to the additional limitations set forth in this section.

B. The use of permissible consumer fireworks is prohibited between the hours of 11:00 p.m. and 8:00 a.m., from June 24 through July 6 and December 24 through January 3 of each year is prohibited between the hours of 11:00 p.m. and 8:00 a.m., except permissible consumer fireworks may be used between the hours of 11:00 p.m. on December 31 through 1:00 a.m. on January 1 and between the hours of 11:00 p.m. on July 4 through 1:00 a.m. on July 5, which may be possessed pursuant to state law, and used only as provided by this chapter.

C. The use of fireworks including permissible consumer fireworks within the municipal limits of the City of Sedona is prohibited by anyone under sixteen (16) years of age.

D. The use of fireworks including permissible consumer fireworks on public or City property, including sidewalks, streets, trails and parks, is prohibited at all times.

B. Permissible consumer fireworks may not be used in city limits.

E. The use of fireworks including permissible consumer fireworks within the municipal limits of the City of Sedona is prohibited on days a stage one or higher fire restriction has been implemented by a federal or state agency.

F. The use of fireworks including permissible consumer fireworks is prohibited within a one-mile radius of the border of the Coconino National Forest or the Red Rock-Secret Mountain Wilderness Area.

G. Nothing in this section shall be construed to prohibit the use of novelty items or the carrying out of a supervised public display or possession of display fireworks authorized by Sedona Fire District permit.

C. Persons may possess permissible consumer fireworks within city limits as set forth in A.R.S. Section 36-1605.

D. The sale of permissible consumer fireworks by a retail establishment is permitted if the establishment complies with rules adopted by A.R.S. Section 36-1609.

~~E. Supervised public displays of fireworks will be conducted only by the procedures set forth in A.R.S. Section 36-1603 and associated regulations.~~

~~F. The prohibition on the possession, sale, or use of fireworks will not include those federally deregulated novelty items as may be listed by law.~~

8.50.030 Sale of fireworks.

A. No person shall sell or permit or authorize the sale of fireworks including permissible consumer fireworks to a person who is under 16 years of age, or in violation of state law.

B. No person shall sell or permit or authorize the sale of fireworks including permissible consumer fireworks in conflict with state law.

C. No person shall sell, possess, authorize or manufacture consumer or display fireworks unless authorized by state law or a Sedona Fire District permit.

D. The sale of fireworks within the municipal limits of the City of Sedona is prohibited except permissible consumer fireworks may be sold on days from May 20 through July 6 and from December 10 through January 3 of each year subject to the limitations set forth in this Section.

E. The sale of permissible consumer fireworks within the municipal limits of the City of Sedona is prohibited on days a stage one or higher fire restriction has been implemented by a ~~federal~~ or state agency.

~~FB.~~ Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display at each cash register and at areas where fireworks are displayed for sale, signs meeting the requirements of and including the language prescribed by A.R.S. Section 36-1606. ~~signs in at least three-fourths-inch block letters stating the following:~~

~~G. The Sedona Fire District or designee shall develop regulations concerning the size and color of the required signs and develop a model sign. The required regulations and model sign shall be posted on the City's website and filed with the City Clerk's office.~~

~~NOTICE: IT IS ILLEGAL TO SELL CONSUMER FIREWORKS TO PERSONS UNDER THE AGE OF 16. IT IS ALSO ILLEGAL TO USE CONSUMER FIREWORKS ANYWHERE WITHIN THE SEDONA CITY LIMITS. SUCH ILLEGAL USE OF FIREWORKS IS A CLASS ONE MISDEMEANOR WITH A MAXIMUM FINE OF \$2,500 AND/OR SIX MONTHS IN JAIL. (Chapter 8.50 of the Sedona City Code).~~

~~These signs shall be placed at each area where fireworks are displayed for sale.~~

8.50.040 Enforcement and liability.

A. Any person violating any provision of this chapter shall be guilty of a class 1 misdemeanor, and may be fined an amount up to \$2,500, or imprisoned for a period up to six months, or both, pursuant to A.R.S. Sections [13-603](#), [13-707](#), and [13-802](#), and ~~any violation of this chapter shall also constitute a civil offense as set forth in Sedona City Code Section 1.15.010.D.~~

B. The ~~city code enforcement officer, fire marshal,~~ city police officer, or city attorney may issue ~~civil or~~ criminal complaints to enforce this chapter.

C. A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground is liable for the expenses of any emergency response that is required by such use, discharge or ignition. ~~The fact that a person is convicted or found responsible for a violation(s) of this chapter is prima facie evidence of liability under this section.~~ The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. ~~“Expenses of an emergency response” means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident. “Reasonable costs” includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.~~

ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY OF SEDONA, ARIZONA, ADOPTING AN AMENDMENT TO THE CITY CODE CHAPTER 8.50 (PROHIBITION ON USE OF FIREWORKS IN CITY LIMITS); PROVIDING FOR PENALTIES, A SAVINGS CLAUSE, AND FOR REPEAL OF CONFLICTING ORDINANCES.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, as follows:

Section 1. Amendment of Chapter 8.50

Chapter 5.10 (Prohibition on Use of Fireworks in City Limits) of the City Code of the City of Sedona is hereby amended by incorporating by reference those changes set forth in that public record entitled “*2022 Amendments to Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits)*” and established as a public record by Resolution No. 2022-__ as though said provisions are fully set forth herein.

Section 2. Penalties

Any person violating any provision of this ordinance shall be guilty of a class 1 misdemeanor, and may be fined an amount up to \$2,500, or imprisoned for a period up to six months, or both, and any violation of this ordinance shall also constitute a civil offense as set forth in Sedona City Code Section 1.15.010.D.

Section 3. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance.

Section 4. Repeal

All other code provisions, ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict as of the effective date hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 8th day of November, 2022.

Sandra J. Moriarty, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney

Senate Engrossed

fireworks; use; overnight hours; prohibition

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 18

SENATE BILL 1275

AN ACT

AMENDING SECTION 36-1606, ARIZONA REVISED STATUTES; RELATING TO FIREWORKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-1606, Arizona Revised Statutes, is amended to
3 read:

4 36-1606. Consumer fireworks regulation; state preemption;
5 further regulation of fireworks by local
6 jurisdiction

7 A. The sale and use of permissible consumer fireworks are of
8 statewide concern. The regulation of permissible consumer fireworks
9 pursuant to this article and their sale or use is not subject to further
10 regulation by a governing body, except as follows:

11 1. In a county with a population of more than five hundred thousand
12 persons, a city or town within its corporate limits or the county within
13 the unincorporated areas of the county may do all of the following:

14 (a) Regulate, consistent with the standards set forth in NFPA 1124,
15 the sale of permissible consumer fireworks within its corporate limits.

16 (b) Prohibit the sale of permissible consumer fireworks on days
17 other than April 25 through May 6, May 20 through July 6 and December 10
18 through January 3 of each year.

19 (c) Prohibit the use of permissible consumer fireworks on days
20 other than May 4 through May 6, June 24 through July 6 and December 24
21 through January 3 of each year.

22 (d) Prohibit on all days the use of permissible consumer fireworks
23 within a one-mile radius of the border of preservation lands owned by a
24 city or town that has purchased more than fifteen thousand acres of land
25 for preservation purposes.

26 (e) Prohibit on all days during a stage one or higher fire
27 restriction the use of permissible consumer fireworks within a one-mile
28 radius of the border of any municipal or county mountain preserve, desert
29 park, regional park, designated conservation area, national forest or
30 wilderness area.

31 (f) PROHIBIT ON ALL DAYS THE USE OF PERMISSIBLE CONSUMER FIREWORKS
32 BETWEEN THE HOURS OF 11:00 P.M. AND 8:00 A.M., EXCEPT:

33 (i) BETWEEN THE HOURS OF 11:00 P.M. ON DECEMBER 31 OF EACH YEAR
34 THROUGH 1:00 A.M. ON JANUARY 1 OF EACH YEAR.

35 (ii) BETWEEN THE HOURS OF 11:00 P.M. ON JULY 4 OF EACH YEAR THROUGH
36 1:00 A.M. ON JULY 5 OF EACH YEAR.

37 2. In a county with a population of less than five hundred thousand
38 persons, a city or town within its corporate limits or the county within
39 the unincorporated areas of the county may do all of the following:

40 (a) Regulate, consistent with the standards set forth in NFPA 1124,
41 the sale of permissible consumer fireworks.

42 (b) Prohibit the sale of permissible consumer fireworks on days
43 other than May 20 through July 6 and December 10 through January 3 of each
44 year. The sale of permissible consumer fireworks may be prohibited on
45 days between May 20 through July 6 and December 10 through January 3 of

1 each year if a federal or state agency implements a stage one or higher
2 fire restriction. Any prohibition during those dates is limited to only
3 the dates when the stage one or higher fire restriction is in place.

4 (c) Prohibit the use of permissible consumer fireworks on days
5 other than June 24 through July 6 and December 24 through January 3 of
6 each year. The use of permissible consumer fireworks may be prohibited
7 during June 24 through July 6 and December 24 through January 3 of each
8 year if a federal or state agency implements a stage one or higher fire
9 restriction. Any prohibition during those dates is limited to only the
10 dates when the stage one or higher fire restriction is in place.

11 (d) Prohibit on all days the use of permissible consumer fireworks
12 within a one-mile radius of the border of preservation lands owned by a
13 city or town that has purchased more than fifteen thousand acres of land
14 for preservation purposes.

15 (e) Prohibit on all days the use of permissible consumer fireworks
16 within a one-mile radius of the border of any municipal or county mountain
17 preserve, desert park, regional park, designated conservation area,
18 national forest or wilderness area.

19 (f) PROHIBIT ON ALL DAYS THE USE OF PERMISSIBLE CONSUMER FIREWORKS
20 BETWEEN THE HOURS OF 11:00 P.M. AND 8:00 A.M., EXCEPT:

21 (i) BETWEEN THE HOURS OF 11:00 P.M. ON DECEMBER 31 OF EACH YEAR
22 THROUGH 1:00 A.M. ON JANUARY 1 OF EACH YEAR.

23 (ii) BETWEEN THE HOURS OF 11:00 P.M. ON JULY 4 OF EACH YEAR THROUGH
24 1:00 A.M. ON JULY 5 OF EACH YEAR.

25 B. A governing body that chooses to regulate, consistent with the
26 requirements set forth in NFPA 1124 and subsection A of this section, the
27 sale or use of permissible consumer fireworks may not require any
28 additional signage requirements for the sale or use of permissible
29 consumer fireworks other than those signage requirements stipulated in
30 NFPA 1124, except that additional signage that is eight and one-half
31 inches by eleven inches in size, that is on cardstock paper in landscape
32 orientation and that contains the following language on a contrasting
33 background may be posted by the retail sales display of permissible
34 consumer fireworks:

35 State of Arizona
36 Consumer Fireworks Regulations
37 Arizona Revised Statutes section 36-1601, et al.

38 The use of permissible consumer fireworks
39 as defined under state law is allowed:

40 May 4 - May 6, June 24 - July 6 and December 24 - January 3

41 The sale of permissible consumer fireworks
42 as defined under state law is allowed:

43 April 25 - May 6, May 20 - July 6 and December 10 - January 3

44 All other fireworks are prohibited, except
45 as authorized by local fire department permit.

1 The sale and use of novelties known as snappers (pop-its),
2 party poppers, glow worms, snakes, toy smoke devices and
3 sparklers are permitted at all times.

4 Permissible consumer fireworks may not be sold to
5 persons under sixteen years of age.

6 Check with your local fire department for additional
7 regulations and dates before using.

8 C. This article does not prohibit the imposition by ordinance of
9 further regulations and prohibitions by a governing body on the sale, use
10 and possession of fireworks other than permissible consumer fireworks. A
11 governing body may not allow or authorize the sale, use or possession of
12 any fireworks in violation of this article.

APPROVED BY THE GOVERNOR MARCH 18, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 18, 2022.