

RESOLUTION NO. 2018-08

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH YAVAPAI COUNTY IDENTIFYING CONSTRUCTION RESPONSIBILITIES FOR THE DRY CREEK ROAD OVERLAY PROJECT; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, the City of Sedona ("City") and Yavapai County, a political subdivision of the State ("County"), have prepared an Intergovernmental Agreement identifying each agency's responsibilities for construction of the Dry Creek Road Overlay Project; and

WHEREAS, the City and County are mutually agreeable to entering into an agreement and desire to partner in the repaving of 3.43 miles of Boynton Pass and Dry Creek Roads; 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. §§ 11-951 and 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 Yavapai County to provide project management for the Dry Creek Road Overlay Project, 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 27th day of March, 2018.




Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Robert L. Pickels, Jr., City Attorney

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SEDONA AND YAVAPAI COUNTY FOR CONSTRUCTION OF A PROJECT FOR BOYNTON PASS AND DRY CREEK ROADS

THIS AGREEMENT, entered into this 18 day of April, 2018, by and between the CITY OF SEDONA, a municipal corporation of Arizona (hereafter "City"), and YAVAPAI COUNTY, a political subdivision of the State of Arizona (hereafter the "County"), for construction of the Boynton Pass and Dry Creek Roads Overlay Project, subject to the terms, conditions and recitals set forth as follows:

WHEREAS, A.R.S. §§ 11-951 and 11-952 authorize "public agencies" such as the City and the County to enter into such intergovernmental agreements; and

WHEREAS, the City is authorized by A.R.S. § 9-276 to construct and improve roadways; and

WHEREAS, the County is authorized by A.R.S. § 11-251(4) to construct and improve roadways; and

WHEREAS, the City and the County are collectively referred to as "Parties" in this Agreement; and

WHEREAS, the STATE of ARIZONA ("State") and THE NORTHERN ARIZONA COUNCIL OF GOVERNMENTS ("NACOG") are included herein by reference but are not Parties to this Agreement; and

WHEREAS, Boynton Pass and Dry Creek Roads exist within City and County jurisdictions and serve the interests of each of the parties; and

WHEREAS, the City and County are mutually agreeable to entering into an agreement and desire to partner in the repaving of 3.43 miles of Boynton Pass, Boynton Canyon Road and Dry Creek Road as depicted on attached Exhibits "A" and "B" known as the "Project"; and

WHEREAS, the City and County have developed with Woodson Engineering a set of engineering design plans for the Project specified in this Agreement; and

WHEREAS, the City and County both agree to go forward with construction of the said Project; and

WHEREAS, the parties desire to continue their past cooperation in matters of mutual interest affecting both City and County residents:

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

SECTION 1. The County will:

1. Advertise, bid, award and administer contracts for construction of the repaving of Boynton Pass, Boynton Canyon Road and Dry Creek Road.
2. Coordinate all administrative efforts with NACOG and the Arizona Department of Transportation with regard to the use of the Highway User Revenue Fund Exchange Program for exchanging City of Sedona and Yavapai County Federal Surface Transportation Program (STP) funds.
3. Contribute to the project the County share of Eastern Yavapai NACOG funds for fiscal year 2018 as identified in the NACOG Transportation Improvement Plan (TIP), including any matching funds for the construction costs.
4. Hold weekly construction progress meetings throughout the construction of the project.
5. Contact ADOT for reimbursement of the remaining \$30,000 project management design review fees previously shared by Yavapai County and City of Sedona at \$15,000 each. The remaining balance will be reimbursed to the City at its proportionate share (50%).
6. Assist the City with quantity tracking and determination of actual final quantities for respective bid items within the City and County project limits.
7. Provide inspectors to insure construction quality and efforts are performed to the County's required standards.
8. Hire a qualified materials testing firm to perform acceptance testing for the project and contribute its proportionate share (70%) of the quality control acceptance testing.
9. Invoice the City for its proportionate share (30%) of the quality control acceptance testing.
10. Be responsible for the costs associated with the identified actual final quantities that reside within the project limits including all materials, labor, and equipment. Project costs associated with agreed upon actual final quantities, within the City's maintenance, will be invoiced to the City at the completion of the project.
11. Be responsible for the costs incurred for any quantity overages determined to be above project estimates. Overage costs identified within the City maintenance limits, will be invoiced to the City at the completion of the project.
12. Upon project completion own and maintain the County portion of the project in accordance with County standards.

SECTION 2. The City will:

1. Participate in the procurement process of construction services for the project.
2. Support the County in coordination efforts with NACOG and the Arizona Department of Transportation with regard to the use of the Highway User Revenue Fund Exchange Program.
3. Contribute to the project the City share of Eastern Yavapai NACOG funds for fiscal year 2018 as identified in the NACOG Transportation Improvement Plan (TIP), including any matching funds for the construction costs.
4. Participate in and provide a location for weekly construction meetings, review construction documents, and provide comments for the completion of the construction.
5. Assist the County with quantity tracking and determination of actual final quantities for respective bid items within the City and County project limits.
6. Provide inspectors to insure construction quality and efforts are performed to the City's required standards.
7. Reimburse the County within 45 days of receipt of invoice for the City's portion (30%) of the quality control acceptance testing.
8. Reimburse the County within 45 days of receipt of invoice at the completion of the project for the agreed upon actual final quantities for project construction including all materials, labor, and equipment within the City maintenance limits.
9. Reimburse the County within 45 days of receipt of invoice for the costs incurred for any quantity overages determined to be above project estimates and reside within the City's maintenance limits.
10. Upon project completion, own and maintain the City portion of the project in accordance with City standards.

SECTION 3: COSTS. The federal funds distributed through NACOG will be exchanged for state funding through the State’s HURF exchange program. The exchanged funds will be used for the construction of the Project. The exchanged state funding allocated to this project is:

Construction

Federal Funds (94.9% OA Rate)

County	\$743,314
<u>City</u>	<u>\$371,657</u>
	\$1,114,971

State Funds (90.0% HX Rate)

County	\$706,892
<u>City</u>	<u>\$353,446</u>
	\$1,060,338

Local Additional Funding

County	\$341,070
<u>City</u>	<u>\$34,778</u>
	\$375,848

Total Estimated County Funds	\$1,047,962
Total Estimated City Funds	\$388,224
Total Estimated Project Cost	\$1,436,186

SECTION 4: NOTICES. Notices relating to this Intergovernmental Agreement shall be deemed to have been duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

Sedona: City of Sedona
c/o J. Andy Dickey, P.E.
Public Works Department
102 Roadrunner Drive
Sedona, Arizona 86336

Yavapai County: Yavapai County Public Works
c/o Daniel A. Cherry, P.E., CFM
1100 Commerce Drive
Prescott, Arizona 86305

SECTION 5: CONFLICT OF INTEREST. Pursuant to A.R.S. § 38-511, either party may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the County is, at any time while the Agreement or an extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the County further elects to recoup any fee or commission paid or due to any person significantly involved in initiating,

negotiating, securing, drafting or creating this Agreement on behalf of the County from any other party to the Agreement arising as a result of this Agreement.

IMMIGRATION LAW COMPLIANCE. 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 warranty shall be deemed a material breach of the contract, and the parties shall have the right to terminate this Agreement for such a breach, in addition to any other applicable remedies. The parties retain the legal right to inspect the papers of each contractor, subcontractor or employee of either who performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

SECTION 6: INDEMNIFY AND HOLD HARMLESS. The City of Sedona hereby agrees to indemnify and hold harmless the County, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the City of Sedona’s participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or its agents. The City further releases and discharges the County, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the County, from any and all claims which the City has or may have against the County, its agents or employees, arising out of or in any way connected with The City’s activities as set forth in this Agreement.

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

SECTION 7: NOT A JOINT VENTURE. This agreement is not intended to be and shall not be construed to create a joint venture, partnership or other relationship between the parties, or any one party and the employees of the other party. Neither party shall be responsible for any debt or obligation of the other party.

SECTION 8: WAIVER. No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or

modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

SECTION 9: WAIVER OF JURY TRIAL AND ATTORNEYS' FEES. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney's fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute, or state or federal court rule, or state or federal common law.

SECTION 10: RESULT OF NEGOTIATIONS. This Agreement is the result of negotiations by and between the parties. The Agreement has been reviewed by Yavapai County Attorney and by the Sedona City Attorney. Therefore, any ambiguity in this agreement is not to be construed against either party.

SECTION 11: INSURANCE.

A. The City of Sedona shall carry sufficient insurance to cover the activities outlined in this Agreement, and shall hold the County harmless and indemnify the County from any and all liability which may result from the negligent acts or omissions of the City's employees or agents.

B. The County shall carry sufficient insurance to cover the activities outlined in this Agreement, and shall hold the City harmless and indemnify the City from any and all liability which may result from the negligent acts or omissions of the County's employees or agents.

SECTION 12: DESIGNATED REPRESENTATIVES. Both parties hereto agree that they will designate at all times at least one staff member to be a liaison of that agency in carrying out the provisions of this agreement, for purposes of notice, scheduling, etc. Initially, the designated staff persons are:

For the City: J. Andy Dickey, PE
 City Engineer
 Public Works Department
 102 Roadrunner Drive, Sedona AZ 86336
 Phone: (928) 204-7111


For the County: Daniel A. Cherry, P.E., CFM
 County Engineer
 1100 Commerce Drive
 Prescott, AZ 86305
 (928) 771-3183

SECTION 13: TERM OF AGREEMENT. This Agreement shall remain in full force and effect until December 31, 2018 or such time that the "Project" is complete and approved by the COUNTY. Either party may terminate this Agreement with one year's written notice to the other. Should the NACOG STP construction funds not be available either Party may terminate this Agreement upon issuance of written notice of termination.


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

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

CITY OF SEDONA


Sandra J. Moriarty
Mayor

YAVAPAI COUNTY


Rowle P. Simmons
Chairman of the Board, Yavapai County

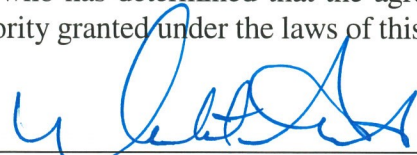
ATTEST:


Susan L. Irvine
City Clerk

ATTEST:

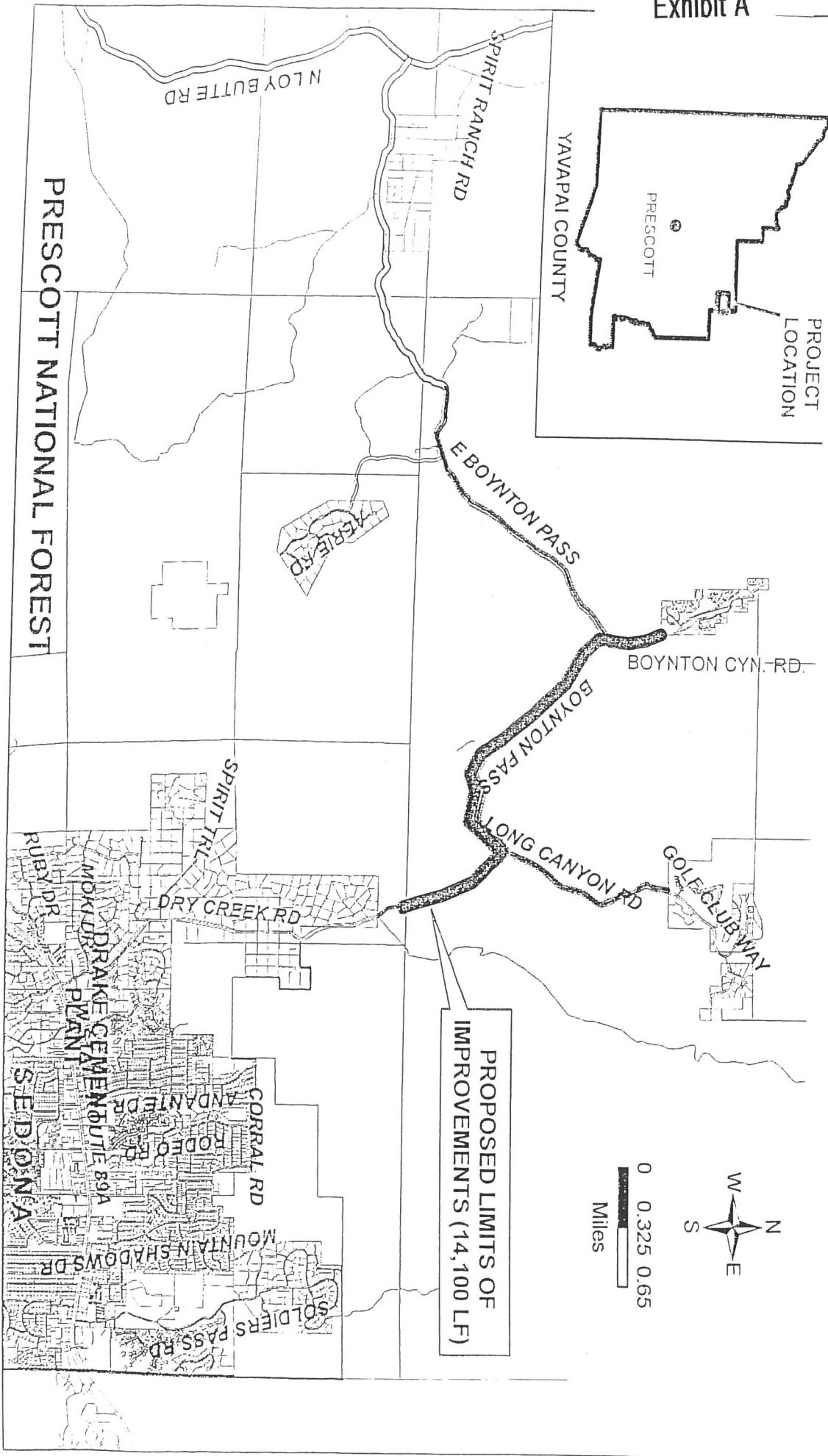
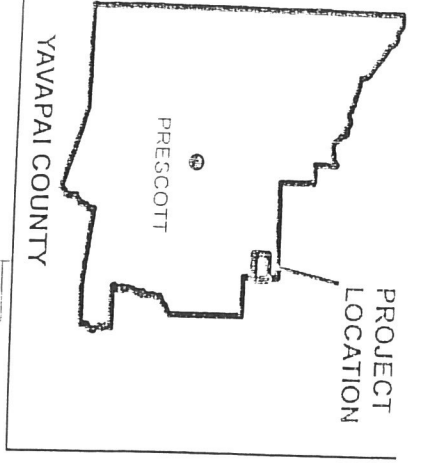

Kim Kapin
Clerk, Yavapai County Board of Supervisors

Pursuant to A.R.S. § 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Sedona, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Sedona.


Robert L. Pickels Jr., City Attorney

Pursuant to A.R.S. § 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for Yavapai County, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to Yavapai County.


Martin Brennan, Deputy County Attorney

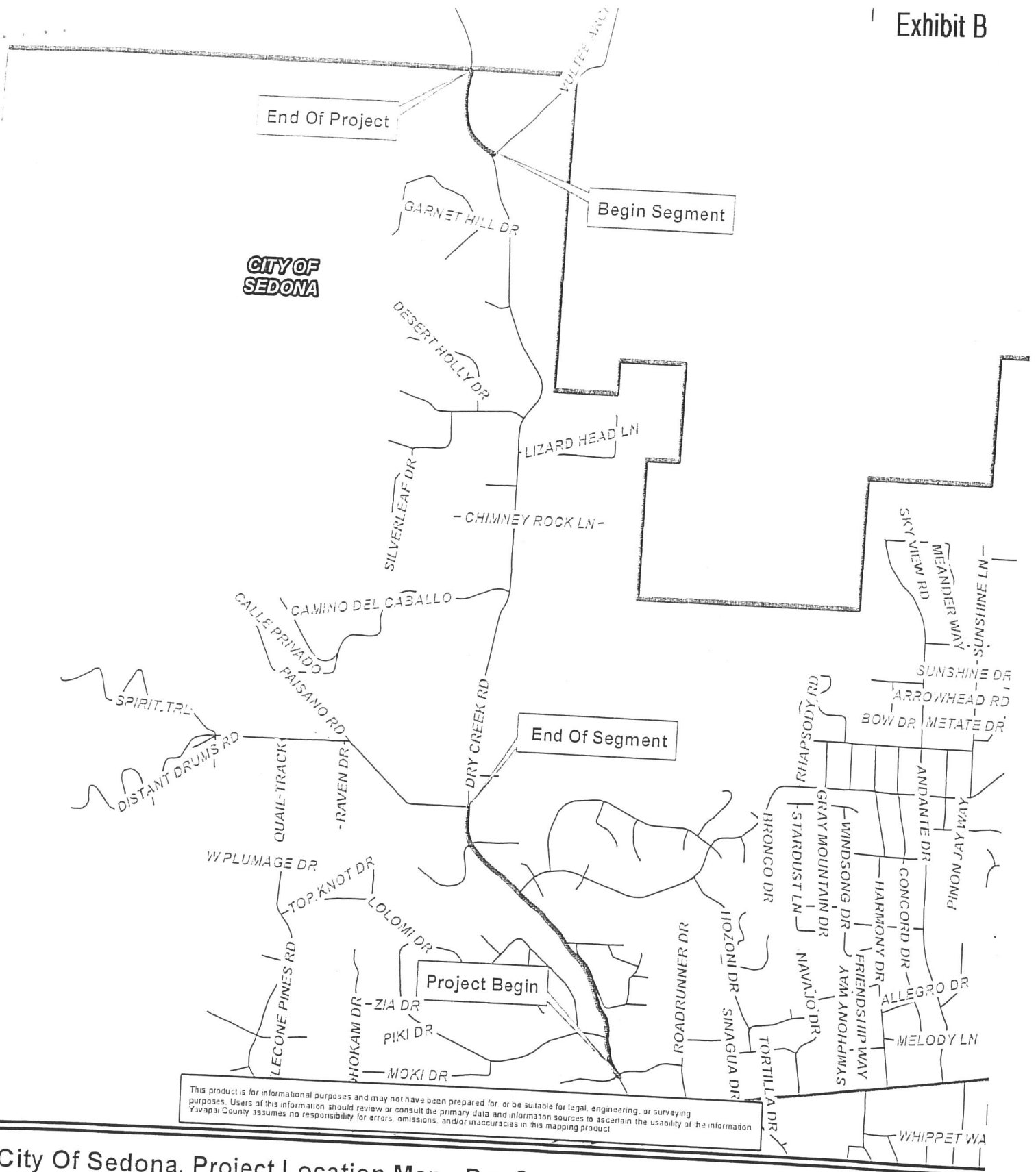


Legend

- Parcels
- Road Centerlines
- Paved Maintained
- Unpaved Maintained
- ARIZONA GAME AND FISH
- ARIZONA STATE PARKS
- BUREAU OF LAND MANAGEMENT
- BUREAU OF RECLAMATION
- COCONINO NATIONAL FOREST
- KAIBAB NATIONAL FOREST
- NATIONAL MONUMENT
- PRESCOTT NATIONAL FOREST
- STATE OF ARIZONA LAND
- TONTO NATIONAL FOREST

NACOG REGIONAL TRANSPORTATION
IMPROVEMENT PROGRAM

DRY CREEK RD., BOYNTON PASS RD.,
& BOYNTON CANYON RD. PAVEMENT
REHABILITATION



City Of Sedona, Project Location Map - Dry Creek Overlay Project

1 inch = 0.25 miles

project includes pavement overlay
 shoulder widening.
 project will be between White Bear Rd
 Color Cove Rd and between Forest
 ce Rd 152 and city limits.

- Legend**
- Road Centerlines
 - ▭ County Boundary
 - ▭ City Boundaries
 - <all other values>
 - ▬ Interstate Highways
 - State Highways
 - Old Highways

