

# AGENDA



# 4:30 P.M.

## CITY COUNCIL MEETING

## TUESDAY, OCTOBER 26, 2021

### 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](http://www.SedonaAZ.gov)

### 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.

#### PROCEDURES:

- It is strongly encouraged that public input on agenda items be submitted by sending an email to the City Clerk at [sirvine@sedonaz.gov](mailto:sirvine@sedonaz.gov) in advance of the 4:30 p.m. Call To Order.
- 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.

DUE TO CONTINUED PRECAUTIONS RELATED TO COVID-19, SEATING FOR THE PUBLIC WITHIN THE COUNCIL CHAMBERS IS LIMITED. THOSE WISHING TO COMMENT ON SCHEDULED AGENDA ITEMS MAY BE ASKED TO WAIT OUTDOORS OR IN AN ALTERNATE LOCATION IF THERE IS NOT ADEQUATE SEATING IN COUNCIL CHAMBERS. **COMMENTS IN ADVANCE OF THE 4:30 P.M. CALL TO ORDER ARE STRONGLY ENCOURAGED BY SENDING AN EMAIL TO [SIRVINE@SEDONAAZ.GOV](mailto:sirvine@sedonaz.gov) AND WILL BE MADE PART OF THE OFFICIAL MEETING RECORD.** THE MEETING CAN BE VIEWED LIVE ON THE CITY'S WEBSITE AT [WWW.SEDONAAZ.GOV](http://WWW.SEDONAAZ.GOV) OR ON CABLE CHANNEL 4.

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

### 2. CITY'S VISION

### 3. CONSENT ITEMS - APPROVE

LINK TO DOCUMENT =

- Minutes - October 5, 2021 City Council Special Meeting - Executive Session.
- Minutes - October 12, 2021 City Council Regular Meeting.
- Approval of Proclamation, Yavapai Big Brothers Big Sisters 50th Anniversary, December 31, 2021.
- AB 2736 Approval of: 1. a lease purchase of two police hybrid vehicles from Peoria Ford in the approximate amount of \$126,800, plus interest, via the Arizona State Cooperative Purchasing Contract; and 2. a Resolution approving the form of the lease/purchase agreement with Zions Bancorporation, N.A., Salt Lake City, Utah and authorizing the execution and delivery thereof.

### 4. APPOINTMENTS

- AB 2741 **Discussion/possible action** regarding appointment of Paul Schlegel as Magistrate Judge and approval of a two-year contract.

### 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

- Presentation of Proclamation, Yavapai Big Brothers Big Sisters 50th Anniversary, December 31, 2021.

### 8. REGULAR BUSINESS



- AB 2731 **Discussion/possible action** regarding approval of a Linking Agreement, through Mohave Cooperative, with Play It Safe Playgrounds, Inc. for the Shade Structures and Playground Replacement Project at Posse Grounds Park in an amount not to exceed \$434,470.24.
- AB 2714 **Discussion/possible action** regarding regulation of Off-Highway Vehicles within the Sedona City limits and the surrounding area.

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

- c. AB 2737 **Discussion/possible action** regarding approval of a Resolution authorizing the City of Sedona to enter into a Development Agreement with Son Silver West Gallery, Inc., in order to describe and regulate the existing retail business being conducted by Son Silver West pursuant to a conditional use permit (CUP 92-3) approved by the City on September 15, 1992 which allowed a legal nonconforming commercial art gallery and to resolve ongoing litigation. 
- d. AB 2571 **Discussion/possible direction** regarding issues surrounding the COVID-19 pandemic and the City's response. 
- e. **Reports/discussion** regarding Council assignments.
- f. **Discussion/possible action** regarding future meeting/agenda items.

### 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: 10/21/2021

By: DJ

\_\_\_\_\_  
Susan L. Irvine, 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](http://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  
Special City Council Meeting  
City Magistrate Judge Interviews  
Vultee Conference Room, Sedona City Hall,  
106 Roadrunner Drive, Sedona, Arizona  
Tuesday, October 5, 2021, 1:00 p.m.**

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

Mayor Moriarty called the meeting to order at 1:00 p.m.

**2. Roll Call**

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

**Staff in attendance:** City Attorney Kurt Christianson, City Clerk Susan Irvine.

**3. Special Business**

**Motion: Councilor Kinsella moved to enter into Executive Session at 1:02 p.m. Seconded by Councilor Ploog. Vote: Motion carried unanimously with seven (7) in favor (Moriarty, Jablow, Kinsella, Lamkin, Ploog, Thompson, Williamson) and zero (0) opposed.**

- a. **Interviews with candidates for City Magistrate Judge. Discussion and consultation regarding personnel matters per A.R.S. § 38-431.03(A)(1) specifically to discuss the employment and/or appointment of a person to fill the City Magistrate Judge position. Candidates to be interviewed are:**
  - i. **Paul Schlegel**
  - ii. **Tosca Henry**

Reconvened in open session at 4:41 p.m.

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

**Motion: Councilor Thompson moved to direct the City Attorney to proceed as provided in the Executive Session. Seconded by Councilor Williamson. Vote: Motion carried with five (5) in favor (Moriarty, Jablow, Lamkin, Thompson, Williamson) and two (2) opposed (Kinsella, Ploog).**

**4. Adjournment**

Mayor Moriarty adjourned the meeting at 4:42 p.m.

**I certify that the above are the true and correct actions of the Special City Council Meeting held on October 5, 2021.**

\_\_\_\_\_  
Susan L. Irvine, CMC, City Clerk

\_\_\_\_\_  
Date

**Action Minutes**  
**Regular City Council Meeting**  
**City Council Chambers, Sedona City Hall,**  
**102 Roadrunner Drive, Sedona, Arizona**  
**Tuesday, October 12, 2021, 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, Councilor Jessica Williamson.

**Staff Present:** City Manager Karen Osburn, Deputy City Manager Joanne Keene, City Attorney Kurt Christianson, Director of Community Development Jess McNeely, Senior Planner Mike Raber, Principal Planner Cynthia Lovely, Director of Public Works/City Engineer Andy Dickey, Engineering Supervisor Stephen Craver, Associate Engineer Bob Welch, Transit Administrator Robert Weber, Sustainability Manager McKenzie Jones, Sustainability Coordinator Bryce Beck, AmeriCorps Vista Sustainability Intern Gabe Desmond, Communications Manager Lauren Browne, City Clerk Susan Irvine.

**2. City's Vision/Moment of Art**

The City's Vision was read by Councilor Thompson.

Nancy Lattanzi introduced Cannon Winkler, a local artist who shared "The Bushveld Series", a collection of paintings derived from inspiration and a collection of animal footprints from the wilds of South Africa.

**3. Consent Items**

- a. **Minutes - September 28, 2021 City Council Regular Meeting.**
- b. **Minutes - September 29, 2021 City Council Special Meeting.**
- c. **Approval of Proclamation, Sedona Kindness Day, November 13, 2021.**
- d. **AB 2725 Approval of a recommendation regarding an application for a Series 7 Beer and Wine Bar Liquor License for The Art of Wine located at 101 N Hwy 89A, B-9, Sedona, AZ (File #159582).**
- e. **AB 2728 Approval of a recommendation regarding an application for a Series 12 Restaurant Liquor License for Vespa Cafe located at 1350 W Highway 89A, #22, Sedona, AZ (File# 156473).**
- f. **AB 2729 Approval of a recommendation regarding an application for a Series 10 Beer and Wine Store Liquor License for Vespa Cafe located at 1350 W Highway 89A, #22, Sedona, AZ (File# 156543).**
- g. **AB 2730 Approval of a recommendation regarding an application for a Series 10 Beer and Wine Store Liquor License for The Art of Wine located at 101 N Hwy 89A, B-9, Sedona, AZ (File# 159589).**
- h. **AB 2735 Approval of a Real Estate Purchase and Sale Agreement with Dr. Farshid Paydar to purchase the right-of-way property and easements needed for the Forest Road Extension Project on two of Dr. Paydar's residential parcels (APN 401-38-011B and 401-38-011D).**



**Motion: Councilor Williamson moved to approve consent items 3a, 3b, 3c, 3d, 3e, 3f, 3g, and 3h. Seconded by Vice Mayor Jablow. Vote: Motion carried unanimously with seven (7) in favor (Moriarty, Jablow, Kinsella, Lamkin, Ploog, Thompson, Williamson) and zero (0) opposed.**

**4. Appointments – None.**

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

Councilor Ploog advised that she and Councilor Kinsella attended the Arizona Town Hall Creating Vibrant Communities event at Yavapai College and observed that the individual communities have common concerns and issues and make up a larger regional community. She also attended a hearing with Joanne Keene on the redistricting and testified in support of keeping the Verde Valley together. Vice Mayor Jablow advised that the Uptown Halloween Trick or Treat has been cancelled and replaced with Trunk or Treat at Posse Grounds Park lower softball field on October 31<sup>st</sup> from 5:00 to 7:00 p.m. Parks & Recreation also has the following events taking place: registration for Coed Youth Grasshopper Basketball for grades 1-6; Pickleball lessons from 8:30 to 10:00 a.m. beginning October 16<sup>th</sup> at Posse Grounds Park; and Yappy Hour on Thursdays at 9:00 a.m. at Posse Grounds Park. McKenzie Jones introduced Sustainability Coordinator Bryce Beck and advised that AmeriCorps Vista Sustainability Intern Gabe Desmond has also accepted an offer to come on fulltime as the second Sustainability Coordinator.

**6. Public Forum**

Michael Berlly, Sedona, spoke about the importance of citizen involvement and citizen work groups early on related to issues.

**7. Proclamations, Recognitions, and Awards**

**a. Presentation of Proclamation, Sedona Kindness Day, November 13, 2021.**

Mayor Moriarty read the Proclamation and presented it to Jawn McKinley. Ms. McKinley thanked the Council for their recognition and spoke about planned activities related to Sedona Kindness Day.

**8. Regular Business**

**a. AB 2719 Discussion/possible direction regarding initiating the process for the 10-year review and update of the Sedona Community Plan.**

Presentation by Mike Raber, Cynthia Lovely, Jess McNeely, Kurt Christianson, and Karen Osburn.

Questions and comments from Council.

**By majority consensus, Council directed staff to proceed as outlined in their presentation with Council returning suggestions for the work group to the City Manager two weeks after receiving information from staff on the commitment of time and process for the work group.**

Break at 6:52 p.m. Reconvened at 7:15 p.m.

**b. AB 2378 Discussion/possible direction regarding the Sedona in Motion transportation program including selection of the branding for transit.**

Presentation by Robert Weber, Lauren Browne, Andy Dickey, Stephen Craver, Bob Welch, and Karen Osburn. Kimley-Horn employees Andrew Baird, Project Engineer, and Hamza Khan, Traffic Engineer, also presented on this item.

Questions and comments from Council.

Opened to the public at 8:28 p.m.

The following spoke regarding this item: Jesse Alexander, Camp Verde.

Brought back to Council at 8:31 p.m.

**By majority consensus, Council agreed as follows:**

- that they preferred Option 1 for the transit branding but would like to see the rock changed to something more recognizable as Sedona; and
  - that they supported pursuit of the new Kimley-Horn recommendations.
- e. **AB 2571 Discussion/possible direction regarding issues surrounding the COVID-19 pandemic and the City's response.**

No presentation was given.

f. **Reports/discussion regarding Council assignments – None.**

g. **Discussion/possible action regarding future meeting/agenda items.**

Councilor Thompson requested a joint work session with the Planning & Zoning Commission to discuss the Community Plan Update and other matters, and Councilor Ploog seconded the request.

## **9. Executive Session**

**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.**

No Executive Session was held.

## **10. Adjournment**

Mayor Moriarty adjourned the meeting at 9:53 p.m. without objection.

**I certify that the above are the true and correct actions of the Regular City Council Meeting held on October 12, 2021.**

---

Susan L. Irvine, CMC, City Clerk

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Date



## City of Sedona Proclamation Request Form

<b>Full Name of Contact Person</b>	Laura Jones
<b>Contact Phone Number</b>	928 639-1159
<b>Contact Mailing Address</b>	830 S. Main Street #1H Cottonwood, AZ 86324
<b>Contact Email Address</b>	ljones@azbig.org
<b>Group, Organization, Activity or Event Being Recognized</b> (Please make sure you provide complete and current information about the group or event)	Yavapai Big Brothers Big Sisters
<b>Website Address</b> (if applicable)	azbig.org
<b>Name of the sponsor(s) of the Proclamation</b> (2 Council members or the City Manager)	
<b>What is the proclaimed day, days, week or month?</b> (e.g. 10/11/12, October 11-17, 2012, October 2012)	October 26, 2021
<b>Would you like to attend a Council meeting for formal presentation of the Proclamation or would you like to pick it up?</b>	<input checked="" type="checkbox"/> Presentation at Meeting <input type="checkbox"/> Pick up Proclamation
<b>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.</b>	Erin Mabery, Executive Director emabery@azbig.org (928) 301-5870

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

**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?**

2021 marks the 50th Anniversary of Yavapai Big Brothers Big Sisters. Over those 50 years, YBBBS has provided one on one mentoring to over 11,000 youth.

Our volunteer mentors provide support for youth and their families ensuring their ability to succeed.

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

*Office of the Mayor*



**Proclamation  
Yavapai Big Brothers Big Sisters 50th Anniversary  
December 31, 2021**

WHEREAS, in August 1971, Yavapai Big Brothers Big Sisters was established to provide one-on-one mentoring to the children of Yavapai County; and

WHEREAS, in August of 2021, Yavapai Big Brothers Big Sisters celebrated 50 years of serving local children through one-on-one mentoring relationships with caring adult volunteers; and

WHEREAS, Yavapai Big Brothers Big Sisters is the number one mentoring organization in Yavapai County; and

WHEREAS, over 11,000 Little Brothers and Sisters have been matched with Big Brothers and Sisters across Yavapai County; and

WHEREAS, through partnerships with parents and guardians, volunteers and others in the community, each child was helped to achieve higher aspirations, educational success, greater confidence, and learned how to build better relationships; and

WHEREAS, when children have the influence of a caring adult, they are 46% less likely than their peers to start using drugs, 52% less likely to skip school, and 55% more likely to enroll in college; and

WHEREAS, creating and professionally supporting one-on-one mentoring relationships that ignite the promise in us all allows everyone to achieve their full potential; and

WHEREAS, Yavapai Big Brothers Big Sisters Mentoring is Professional; Mentoring is Intentional; Mentoring is Meaningful.

NOW, THEREFORE, I, SANDY MORIARTY, MAYOR OF THE CITY OF SEDONA, ARIZONA, ON BEHALF OF THE SEDONA CITY COUNCIL, hereby proclaim December 31, 2021 to be Yavapai Big Brothers Big Sisters 50<sup>th</sup> Anniversary and express appreciation on behalf of the City of Sedona to the 11,000 volunteers that have provided one-on-one mentoring to the youth of Yavapai County over the last 50 years.

Issued this 26<sup>th</sup> day of October, 2021.

\_\_\_\_\_  
Sandra J. Moriarty, Mayor

ATTEST:

\_\_\_\_\_  
Susan L. Irvine, CMC, City Clerk



**CITY COUNCIL  
AGENDA BILL**

**AB 2736  
October 26, 2021  
Consent Items**

**Agenda Item: 3d**

**Proposed Action & Subject:** Approval of: 1. a lease purchase of two police hybrid vehicles from Peoria Ford in the approximate amount of \$126,800, plus interest, via the Arizona State Cooperative Purchasing Contract; and 2. a Resolution approving the form of the lease/purchase agreement with Zions Bancorporation, N.A., Salt Lake City, Utah and authorizing the execution and delivery thereof.

**Department** Police

**Time to Present** N/A

**Total Time for Item**

**Other Council Meetings** N/A

**Exhibits** A. Pricing Quote for two hybrid police vehicles  
B. Resolution  
C. Lease Purchase Agreement  
D. Escrow Agreement

<b>City Attorney Approval</b>	Reviewed 10/18/2021 KWC	<b>Expenditure Required</b>	
		\$	26,697.84 (FY2023-FY2027 annual lease purchase payments)
<b>City Manager's Recommendation</b>	Approve the lease/purchase and associated Resolution.	<b>Amount Budgeted</b>	
		\$	(lease purchase payments to begin in FY2023)
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** During the budget process for Fiscal Year 2021-2022, Council approved the addition of two police officers. The request for the lease purchasing of two police hybrid vehicles represents necessary equipment for the added police officers.

**Budget and Financing**

Quotes were obtained for the lease purchase financing. The lowest financing quote was Zions Bank. The lease purchase agreement and escrow agreement are included as Exhibits C and D. The lease includes the following terms:

- 5-year term commencing November 18, 2021
- Annual payments of \$26,697.84

- Payments in arrears (at the end of each year instead of the beginning)
- Interest rate of 1.74%
- No prepayment penalty (with such a low interest rate, staff does not plan to pay this off early)

Lease purchase payments would begin in FY2023 and be paid from the Police Department budget in the General Fund.

**Community Plan Consistent:**  Yes -  No -  Not Applicable

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

The request for the two police hybrid vehicles represents furtherance of our objective, through fleet acquisition, to support the City’s Climate Action Plan.

**Board/Commission Recommendation:**  Applicable -  Not Applicable

**Alternative(s):**

**MOTION**

**I move to:** approve the lease purchase for two police hybrid vehicles in the approximate amount of \$126,800, plus interest from Peoria Ford via the Arizona State Cooperative Purchasing Contract.

**I move to:** approve Resolution No. 2021-\_\_\_, approving the form of the lease/purchase agreement with Zions Bancorporation, N.A., Salt Lake City, Utah and authorizing the execution and delivery thereof.



**PFVT MOTORS, INC.**

**CONTRACT # ADSP017-166117**

**QUOTE DATE: 8/23/2021**

**SANDRA GONZALEZ**

9130 West Bell Road

Peoria, Arizona 85382

**Direct: 480-696-5930**

**Cell: 505-850-5504**

Fax: 480-393-5536

Email: [sgonzalez@peoriaford.com](mailto:sgonzalez@peoriaford.com)

**CUSTOMER: SEDONA PD**

CONTACT: NATHAN DORFEY

E-MAIL: [nDorfman@sedonaaz.gov](mailto:nDorfman@sedonaaz.gov)

**REFERENCE: HYBRID UTILITY**

**LEAD TIME: TBD**

LINE ITEM	ORDER CODE	DESCRIPTION	PRICE
1	K8A	2021 BLACK INTERCEPTOR UTILITY - 3.3L Hybrid	\$ 35,263.00
2	86T	REAR TAIL LAMP HOUSING CUT-OUT	\$ 60.00
3	17T	CARGO DOME LAMP	\$ 50.00
4	43D	DARK CAR FEATURE	\$ 25.00
5	SYNC	BLUETOOTH	STD
6	51R	LED DRIVER SIDE SPOTLAMP	\$ 395.00
7	549	POWER HEATED MIRRORS	\$ 60.00
8	55F	KEYLESS ENTRY - 4 REMOTES	\$ 340.00
9	85R	REAR MOUNT PLATE - WIRING CHANNEL	\$ 45.00
10	STD	BACKUP CAMERA	STD
11	DIO	TINT WINDOWS TO AGENCY SPEC	STD
12	86P	FRON HEADLAMP HOUSING CUTOUT	STD
13	DIO	UPFIT PER AIRWAVE QUOTE	
14	76R	REVERSE SENSING	\$ 275.00
15	17A	REAR AUX AIR	\$ 610.00
16	52P	HIDDEN LOCK PLUNGER W REAR DOOR INOPE	\$ 160.00
17	UPFIT	AIRWAVE UPFIT - PHX-1658	\$ 21,359.19
<b>TAXABLE TOTAL</b>			<b>\$ 58,642.19</b>
<b>SALES TAX</b>			<b>\$ 4,750.02</b>
<b>WARRANTY COST</b>			<b>\$ -</b>
<b>TIRE TAX</b>			<b>\$ 5.00</b>
<b>FREIGHT</b>			<b>\$ -</b>
<b>TOTAL PER UNIT</b>			<b>\$ 63,397.21</b>
<b>QUANTITY OF UNITS</b>			<b>2</b>
<b>PO TOTAL</b>			<b>\$ 126,794.41</b>

**THANK YOU FOR YOUR BUSINESS!**



**RESOLUTION NO. 2021-\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING A LEASE PURCHASE AGREEMENT WITH ZIONS BANCORPORATION, N.A., FOR FUNDS TO BE USED BY THE CITY TO LEASE/PURCHASE HYBRID POLICE VEHICLES; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE AND DELIVER SAID AGREEMENT.**

*WHEREAS*, the City of Sedona (“City”) has determined that the leasing of the shuttle buses as described in the Lease Purchase Agreement is for a valid public purpose and is essential to the operations of the City; and

*WHEREAS*, the City Council has reviewed the form of the Lease Purchase Agreement and has found the terms and conditions thereof acceptable; and

*WHEREAS*, the City has taken the necessary steps to comply with legal bidding requirements to arrange for the leasing of such property.

**BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA AS FOLLOWS:**

**SECTION 1.** That it is deemed in the best interest of the City of Sedona and the citizens thereof that the Lease Purchase Agreement for leasing/purchasing of hybrid police vehicles be entered into, which agreement is now on file in the office of the City Clerk.

**SECTION 2.** That Mayor or designee is authorized to execute and deliver said Lease Purchase Agreement in substantially the form presented on behalf of the City. That City officers are authorized to may make such changes to the Lease Purchase Agreement and related documents and certificates as such officers deem necessary and to fulfill all obligations under the terms of the Lease Purchase Agreement.

**PASSED AND ADOPTED** by the Mayor and Council of the City of Sedona, Arizona this 26<sup>th</sup> day of October, 2021.

\_\_\_\_\_  
Sandra J. Moriarty, Mayor

ATTEST:

\_\_\_\_\_  
Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kurt W. Christianson, City Attorney

## ARIZONA FIXED EQUIPMENT LEASE

Long Name of Entity: City of Sedona  
Address: 102 Roadrunner Drive  
City, State Zip: Sedona, AZ 86336  
Attention: Cherie Wright

Public Finance Office:

County: Coconino  
Amount: 126,794.41  
Rate: 1.74  
Maturity Date: November 18, 2026  
First Pmt Date: November 18, 2022  
Payment Dates: November 18  
Auto Extend: 5  
Governing Body: City Council  
Resolution Date: October, 2021  
Dated Date: November, 2021  
Day: 18th  
State: **Arizona**

**\$126,794.41**  
**City of Sedona**  
**Lease Purchase Agreement**

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1. Lease/Purchases Agreement of the City of Sedona
2. Exhibit A. Calculation of Interest Component
3. Exhibit B. Description of Leased Property
4. Exhibit C. Resolution of Governing Body
5. Exhibit D. Opinion of Lessee's Counsel
6. Exhibit E. Security Documents
7. Exhibit F. Delivery and Acceptance Certificate
8. Exhibit G. Escrow Agreement
9. Form 8038-G
10. Wire Transfer Request

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LEASE/PURCHASE AGREEMENT

Dated as of November 18, 2021

by and between

**ZIONS BANCORPORATION, N.A.,**  
as Lessor

and

**CITY OF SEDONA,**  
as Lessee

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## LEASE/PURCHASE AGREEMENT

THIS LEASE/PURCHASE AGREEMENT, dated as of November 18, 2021, by and between ZIONS BANCORPORATION, N.A., a national banking association duly organized and existing under the laws of the United States of America, as lessor (the “Bank” or “Lessor”), and City of Sedona (the “Lessee”), a public agency of the State of Arizona (the “State”), duly organized and existing under the Constitution and laws of the State, as lessee;

### WITNESSETH:

WHEREAS, the Lessee desires to finance the acquisition of the equipment and/or other personal property described as the “Leased Property” in Exhibit B (the “Leased Property”) by entering into this Lease/Purchase Agreement with the Bank (the “Lease”); and

WHEREAS, the Bank agrees to lease the Leased Property to the Lessee upon the terms and conditions set forth in this Lease, with rental to be paid by the Lessee equal to the Lease Payments hereunder; and

WHEREAS, it is the intent of the parties that the original term of this Lease, and any subsequent renewal terms, shall not exceed 12 months, and that the payment obligation of the Lessee shall not constitute a general obligation under State law; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

**SECTION 1.1 Definitions and Rules of Construction.** Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the definitions below. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Lease, refer to this Lease as a whole.

“Acquisition Amount” means \$126,794.41 and is the amount represented by Lessee to be sufficient to acquire the Leased Property and pay any ancillary costs associated therewith.

“Advance” shall have the meaning set forth in Section 2.1(l)(i)(D) hereof.

“Bank” shall have the meaning set forth in the Preamble hereof.

“Business Day” means any day except a Saturday, Sunday, or other day on which banks in Salt Lake City, Utah or the State are authorized to close.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commencement Date” means the date this Lease is executed by the Bank and the Lessee and shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

“Escrow Account” means the fund established and held by the Escrow Agent pursuant to the Escrow Agreement.

“Escrow Agent” means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

“Escrow Agreement” means the Escrow Agreement dated November 18, 2021 executed by Lessee, Bank and the Escrow Agent, pursuant to which the Escrow Account is established and administered. A copy of the Escrow Agreement shall be found in Exhibit G.

“Event of Nonappropriation” shall have the meaning set forth in Section 3.2 hereof.

“Governing Body” means the governing body of the Lessee.

“Lease Payments” means the rental payments described in Exhibit A hereto.

“Lease Payment Date” shall have the meaning set forth in Section 3.4(a) hereof.

“Leased Property” shall have the meaning set forth in the Whereas clauses hereof.

“Lessee” shall have the meaning set forth in the Preamble hereof.

“Net Proceeds” means insurance or eminent domain proceeds received with respect to the Leased Property less expenses incurred in connection with the collection of such proceeds.

“Obligation Instrument” shall have the meaning set forth in Section 2.1(c) hereof.

“Original Term” shall have the meaning set forth in Section 3.2 hereof.

“Permitted Encumbrances” means, as of any particular time: (i) liens for taxes and assessments, if any, not then delinquent, or which the Lessee may, pursuant to provisions of Section 5.3 hereof, permit to remain unpaid; (ii) this Lease; (iii) any contested right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law to the extent permitted under Section 5.4(b) hereof; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the execution date of this Lease and which the Lessee hereby certifies will not materially impair the use of the Leased Property by the Lessee; and (v) other rights, reservations, covenants, conditions or restrictions established following the date of execution of this Lease and to which the Bank and the Lessee consent in writing.

“Rebate Exemption” shall have the meaning set forth in Section 2.1(l)(ii)(A) hereof.

“Regulations” shall have the meaning set forth in Section 2.1(l)(i) hereof.

“Renewal Term” shall have the meaning set forth in Section 3.2 hereof.

“Scheduled Term” shall have the meaning set forth in Section 3.2 hereof.

“State” shall have the meaning set forth in the Preamble hereof.

“Term” or “Term of this Lease” means the Original Term and all Renewal Terms provided for in this Lease under Section 3.2 until this Lease is terminated as provided in Section 3.3 hereof.

SECTION 1.2 Exhibits. Exhibits A, B, C, D, E, F and G attached to this Lease are by this reference made a part of this Lease.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1 Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants to the Bank as follows:

(a) Due Organization and Existence. The Lessee is a public agency of the State duly organized and existing under the Constitution and laws of the State.

(b) Authorization; Enforceability. The Constitution and laws of the State authorize the Lessee to enter into this Lease and to enter into the transactions contemplated by, and to carry out its obligations under, this Lease. The Lessee has duly authorized, executed and delivered this Lease in accordance with the Constitution and laws of the State. This Lease constitutes the legal, valid and binding special obligation of the Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default; Other Liens or Encumbrances. Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby (i) conflicts with or results in a breach of the terms, conditions, provisions, or restrictions of any existing law, or court or administrative decree, order, or regulation, or agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, **including without limitation any agreement or instrument pertaining to any bond, note, lease, certificate of participation, debt instrument, or any other obligation of the Lessee** (any such bond, note, lease, certificate of participation, debt instrument, and other obligation being referred to herein as an “Obligation Instrument”), (ii) constitutes a default under any of the foregoing, or (iii) results in the creation or imposition of any pledge, lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Leased Property except for Permitted Encumbrances.

**By way of example, and not to be construed as a limitation on the representations set forth in the immediately preceding paragraph:**

**(A) no portion of the Leased Property is pledged to secure any Obligation Instrument; and**

**(B) the interests of the Lessor in the Leased Property hereunder do not violate the terms, conditions or provisions of any restriction or revenue pledge in any agreement or instrument pertaining to any Obligation Instrument.**

If any Obligation Instrument existing on the date of execution of this Lease creates any pledge, lien, charge or encumbrance on any revenues, property or assets associated with the Leased Property that is higher in priority to the Bank’s interests therein under this Lease, the Bank hereby subordinates its interests therein, but only to the extent required pursuant to such existing Obligation Instrument.



(d) Compliance with Open Meeting Requirements. The Governing Body has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which the Lessee's execution of this Lease was authorized.

(e) Compliance with Bidding Requirements. Either there are no procurement or public bidding laws of the State applicable to the acquisition and leasing of the Leased Property pursuant to this Lease, or the Governing Body and the Lessee have complied with all such procurement and public bidding laws as may be applicable hereto.

(f) No Adverse Litigation. There are no legal or governmental proceedings or litigation pending, or to the best knowledge of the Lessee threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling, or finding might adversely affect the transaction contemplated in or the validity of this Lease.

(g) Opinion of Lessee's Counsel. The letter attached to this Lease as Exhibit D is a true opinion of Lessee's counsel.

(h) Governmental Use of Leased Property. During the Term of this Lease, the Leased Property will be used solely by the Lessee, and only for the purpose of performing one or more governmental or proprietary functions of the Lessee consistent with the permissible scope of the Lessee's authority, and the Leased Property will not be subject to any direct or indirect private business use.

(i) Other Representations and Covenants. The representations, covenants, warranties, and obligations set forth in this Article are in addition to and are not intended to limit any other representations, covenants, warranties, and obligations set forth in this Lease.

(j) No Nonappropriations. The Lessee has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any municipal lease of the same general nature as this Lease, or under any of its bonds, notes, or other obligations of indebtedness for which its revenues or general credit are pledged.

(k) No Legal Violation. The Leased Property is not, and at all times during the Term of this Lease will not be in violation of any federal, state or local law, statute, ordinance or regulation.

(l) General Tax and Arbitrage Representations and Covenants.

(i) The certifications and representations made by the Lessee in this Lease are intended, among other purposes, to be a certificate permitted in Section 1.148-2(b) of the Treasury Regulations promulgated pursuant to Section 148 of the Code (the "Regulations"), to establish the reasonable expectations of the Lessee at the time of the execution of this Lease made on the basis of the facts, estimates and circumstances in existence on the date hereof. The Lessee further certifies and covenants as follows:

(A) The Lessee has not been notified of any disqualification or proposed disqualification of it by the Commissioner of the Internal Revenue Service as an issuer which may certify bond issues.

(B) To the best knowledge and belief of the Lessee, there are no facts, estimates or circumstances that would materially change the conclusions, certifications or representations set forth in this Lease, and the expectations herein set forth are reasonable.

(C) The Scheduled Term of this Lease does not exceed the useful life of the Leased Property, and the weighted average term of this Lease does not exceed the weighted average useful life of the Leased Property.

(D) Each advance of funds by the Bank to finance Leased Property under this Lease (each an "Advance") will occur only when and to the extent that the Lessee has reasonably determined and identified the nature, need, and cost of each item of Leased Property pertaining to such Advance.

(E) No use will be made of the proceeds of this Lease or any such Advance, or any funds or accounts of the Lessee which may be deemed to be proceeds of this Lease or any such Advance, which use, if it had been reasonably expected on the date of the execution of this Lease or of any such Advance, would have caused this Lease or any such Advance to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code.

(F) The Lessee will at all times comply with the rebate requirements of Section 148(f) of the Code as they pertain to this Lease, to the extent applicable.

(G) In order to preserve the status of this Lease and the Advances as other than "private activity bonds" as described in Sections 103(b)(1) and 141 of the Code, as long as this Lease and any such Advances are outstanding and unpaid:

(I) none of the proceeds from this Lease or the Advances or any facilities or assets financed therewith shall be used for any "private business use" as that term is used in Section 141(b) of the Code and defined in Section 141(b)(6) of the Code;

(II) the Lessee will not allow any such "private business use" to be made of the proceeds of this Lease or the Advances or any facilities or assets financed therewith; and

(III) none of the Advances or Lease Payments due hereunder shall be secured in whole or in part, directly or indirectly, by any interest in any property used in any such "private business use" or by payments in respect of such property and shall not be derived from payments in respect of such property.

(H) The Lessee will not take any action, or omit to take any action, which action or omission would cause the interest component of the Lease Payments to be ineligible for the exclusion from gross income as provided in Section 103 of the Code.

(I) The Lessee is a "governmental unit" within the meaning of Section 141(b)(6) of the Code.

(J) The obligations of the Lessee under this Lease are not federally guaranteed within the meaning of Section 149(b) of the Code.

(K) This Lease and the Advances to be made pursuant hereto will not reimburse the Lessee for any expenditures incurred prior to the date of this Lease and do not constitute a "refunding issue" as defined in Section 1.150-1(d) of the

Regulations, and no part of the proceeds of this Lease or any such Advances will be used to pay or discharge any obligations of the Lessee the interest on which is or purports to be excludable from gross income under the Code or any predecessor provision of law.

(L) In compliance with Section 149(e) of the Code relating to information reporting, the Lessee will file or cause to be filed with the Internal Revenue Service Center, Ogden, UT 84201, within fifteen (15) days from the execution of this Lease, IRS Form 8038-G or 8038-GC, as appropriate, reflecting the total aggregate amount of Advances that can be made pursuant to this Lease.

(M) None of the proceeds of this Lease or the Advances to be made hereunder will be used directly or indirectly to replace funds of the Lessee used directly or indirectly to acquire obligations at a yield materially higher than the yield on this Lease or otherwise invested in any manner. No portion of the Advances will be made for the purpose of investing such portion at a materially higher yield than the yield on this Lease.

(N) Inasmuch as Advances will be made under this Lease only when and to the extent the Lessee reasonably determines, identifies and experiences the need therefor, and will remain outstanding and unpaid only until such time as the Lessee has moneys available to repay the same, the Lessee reasonably expects that (I) the Advances will not be made sooner than necessary; (II) no proceeds from the Advances will be invested at a yield higher than the yield on this Lease; and (III) the Advances and this Lease will not remain outstanding and unpaid longer than necessary.

(O) The Lessee will either (i) spend all of the moneys advanced pursuant to this Lease immediately upon receipt thereof, without investment, on the portion of the Leased Property that is to be financed thereby; or (ii) invest such moneys at the highest yield allowable and practicable under the circumstances until they are to be spent on the portion of the Leased Property that is to be financed thereby, and track, keep records of, and pay to the United States of America, all rebatable arbitrage pertaining thereto, at the times, in the amounts, in the manner, and to the extent required under Section 148(f) of the Code and the Treasury Regulations promulgated in connection therewith. At least five percent (5%) of the total amount of moneys that are expected to be advanced pursuant to this Lease are reasonably expected to have been expended on the Leased Property within six (6) months from the date of this Lease. All moneys to be advanced pursuant to this Lease are reasonably expected to have been expended on the Leased Property no later than the earlier of: (I) the date twelve (12) months from the date such moneys are advanced; and (II) the date three (3) years from the date of this Lease.

(P) This Lease and the Advances to be made hereunder are not and will not be part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the regulations promulgated in connection therewith (I) enabling the Lessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (II) overburdening the tax-exempt bond market, as those terms are used in Section 1.148-10(a)(2) of the Regulations.

(Q) To the best of the knowledge, information and belief of the Lessee, the above expectations are reasonable. On the basis of the foregoing, it is not

expected that the proceeds of this Lease and the Advances to be made hereunder will be used in a manner that would cause this Lease or such Advances to be "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, and to the best of the knowledge, information and belief of the Lessee, there are no other facts, estimates or circumstances that would materially change the foregoing conclusions.

(ii) Arbitrage Rebate Under Section 148(f) of the Code. With respect to the arbitrage rebate requirements of Section 148(f) of the Code, either (check applicable box):

(A) Lessee Qualifies for Small Issuer Exemption from Arbitrage Rebate. The Lessee hereby certifies and represents that it qualifies for the exception contained in Section 148(f)(4)(D) of the Code from the requirement to rebate arbitrage earnings from investment of proceeds of the Advances made under this Lease (the "Rebate Exemption") as follows:

(1) The Lessee has general taxing powers.

(2) Neither this Lease, any Advances to be made hereunder, nor any portion thereof are private activity bonds as defined in Section 141 of the Code ("Private Activity Bonds").

(3) Ninety-five percent (95%) or more of the net proceeds of the Advances to be made hereunder are to be used for local government activities of the Lessee (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Lessee).

(4) Neither the Lessee nor any aggregated issuer has issued or is reasonably expected to issue any tax-exempt obligations other than Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) during the current calendar year, including the Advances to be made hereunder, which in the aggregate would exceed \$5,000,000 in face amount, or \$15,000,000 in face amount for such portions, if any, of any tax-exempt obligations of the Lessee and any aggregated issuer as are attributable to construction of public school facilities within the meaning of Section 148(f)(4)(D)(vii) of the Code.

For purposes of this Section, "aggregated issuer" means any entity which (a) issues obligations on behalf of the Lessee, (b) derives its issuing authority from the Lessee, or (c) is subject to substantial control by the Lessee.

The Lessee hereby certifies and represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D)(i)(IV) of the Code.

Accordingly, the Lessee will qualify for the Rebate Exemption granted to governmental units issuing less than \$5,000,000 under Section 148(f)(4)(D) of the Code (\$15,000,000 for the financing of public school facilities construction as described above), and the Lessee shall be treated as meeting the requirements of Paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States with respect to this Lease and the Advances to be made hereunder.

- or -

(B) Lessee Will Keep Records of and Will Rebate Arbitrage. The Lessee does not qualify for the small issuer Rebate Exemption described above, and the Lessee hereby certifies and covenants that it will account for, keep the appropriate records of, and pay to the United States, the rebate amount, if any, earned from the investment of gross proceeds of this Lease and the Advances to be made hereunder, at the times, in the amounts, and in the manner prescribed in Section 148(f) of the Code and the applicable Regulations promulgated with respect thereto.

(m) Small Issuer Exemption from Bank Nondeductibility Restriction. Based on the following representations of the Lessee, the Lessee hereby designates this Lease and the interest components of the Lease Payments hereunder as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code: (i) this Lease and the Lease Payments hereunder are not private activity bonds within the meaning of Section 141 of the Code; (ii) the Lessee reasonably anticipates that it, together with all “aggregated issuers,” will not issue during the current calendar year obligations (other than those obligations described in clause (iii) below) the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code which, when aggregated with this Lease, will exceed an aggregate principal amount of \$10,000,000; (iii) and notwithstanding clause (ii) above, the Lessee and its aggregated issuers may have issued in the current calendar year and may continue to issue during the remainder of the current calendar year private activity bonds other than qualified 501(c)(3) bonds as defined in Section 145 of the Code. For purposes of this subsection, “aggregated issuer” means any entity which (a) issues obligations on behalf of the Lessee, (b) derives its issuing authority from the Lessee, or (c) is subject to substantial control by the Lessee. The Lessee hereby certifies and represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 265(b)(3)(C) or (D) of the Code.

(n) Reports to State. The Lessee has duly authorized and executed this Lease in accordance with A.R.S. section 35-501 and has filed with the State of Arizona all reports required thereunder relating to this Lease.

**SECTION 2.2 Representations, Covenants and Warranties of the Bank.** The Bank is a national banking association, duly organized, existing and in good standing under and by virtue of the laws of the United States of America, has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same, and has duly authorized the execution and delivery of this Lease. This Lease constitutes the legal, valid and binding obligation of the Bank, enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

### ARTICLE III

#### AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS

**SECTION 3.1 Lease.** The Bank hereby leases the Leased Property to the Lessee, and the Lessee hereby leases the Leased Property from the Bank, upon the terms and conditions set forth herein.

Concurrently with its execution of this Lease, the Lessee shall deliver to the Bank fully completed documents substantially in the forms attached hereto as Exhibits B, C, D E, F and G hereto.

SECTION 3.2 Term. The Term of this Lease shall commence on the date of execution of this Lease, which is also the date on which the Acquisition Amount is deposited with the Escrow Agent, including delivery to the Bank by the Lessee of fully completed documents in the forms set forth in Exhibits B, C, D, E, F and G attached hereto, and continue until the end of the fiscal year of Lessee in effect at the Commencement Date (the "Original Term"). Thereafter, this Lease will be extended for 5 successive additional periods of one year coextensive with Lessee's fiscal year, except for the last such period which may be less than a full fiscal year, (each, a "Renewal Term") subject to an Event of Nonappropriation as described herein below in this Section 3.2 and in Section 3.3 (a), (c) or (e) with the final Renewal Term ending on November 18, 2026, unless this Lease is terminated as hereinafter provided. The Original Term together with all scheduled Renewal Terms shall be referred to herein as the "Scheduled Term" irrespective of whether this Lease is terminated for any reason prior to the scheduled commencement or termination of any Renewal Term as provided herein.

If Lessee does not appropriate funds for the payment of Lease Payments due for any Renewal Term in the adopted budget of the Lessee for the applicable fiscal year (an "Event of Nonappropriation"), this Lease will terminate upon the expiration of the Original or Renewal Term then in effect and Lessee shall notify Bank of such termination at least ten (10) days prior to the expiration of the Original or Renewal Term then in effect.

SECTION 3.3 Termination. This Lease will terminate upon the earliest of any of the following events:

- (a) upon the expiration of the Original Term or any Renewal Term of this Lease following an Event of Nonappropriation;
- (b) the exercise by Lessee of any option to purchase granted in this Lease by which Lessee purchases all of the Leased Property;
- (c) a default by Lessee and Bank's election to terminate this Lease under Article VII herein; or
- (d) the expiration of the Scheduled Term of this Lease, the Lessee having made payment of all Lease Payments accrued to such date.
- (e) Lessee may terminate this Lease at any time pursuant to A.R.S. § 38-511, to the extent applicable.

#### SECTION 3.4 Lease Payments.

(a) Time and Amount. During the Term of this Lease and so long as this Lease has not terminated pursuant to Section 3.3, the Lessee agrees to pay to the Bank, its successors and assigns, as annual rental for the use and possession of the Leased Property, the Lease Payments (denominated into components of principal and interest) in the amounts specified in Exhibit A, to be due and payable in arrears on each payment date identified in Exhibit A (or if such day is not a Business Day, the next succeeding Business Day) specified in Exhibit A (the "Lease Payment Date").

(b) Rate on Overdue Payments. In the event the Lessee should fail to make any of the Lease Payments required in this Section, the Lease Payment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent permitted by law, from the date such amount

was originally payable at the rate equal to the original interest rate payable with respect to such Lease Payments.

(c) Additional Payments. Any additional payments required to be made by the Lessee hereunder, including but not limited to Sections 4.1, 5.3, and 7.4 of this Lease, shall constitute additional rental for the Leased Property.

SECTION 3.5 Possession of Leased Property Upon Termination. Upon termination of this Lease pursuant to Sections 3.3 (a), (c) or (e), the Lessee shall transfer the Leased Property to the Bank in such manner as may be specified by the Bank, and the Bank shall have the right to take possession of the Leased Property by virtue of the Bank's ownership interest as lessor of the Leased Property, and the Lessee at the Bank's direction shall ship the Leased Property to the destination designated by the Bank by loading the Leased Property at the Lessee's cost and expense, on board such carrier as the Bank shall specify.

SECTION 3.6 No Withholding. Notwithstanding any dispute between the Bank and the Lessee, in connection with this Lease or otherwise, including a dispute as to the failure of any portion of the Leased Property in use by or possession of the Lessee to perform the task for which it is leased, the Lessee shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

SECTION 3.7 Lease Payments to Constitute a Current Obligation of the Lessee. Notwithstanding any other provision of this Lease, the Lessee and the Bank acknowledge and agree that the obligation of the Lessee to pay Lease Payments hereunder constitutes a current special obligation of the Lessee payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness of the Lessee within the meaning of any constitutional or statutory limitation or requirement applicable to the Lessee concerning the creation of indebtedness. The Lessee has not hereby pledged the general tax revenues or credit of the Lessee to the payment of the Lease Payments, or the interest thereon, nor shall this Lease obligate the Lessee to apply money of the Lessee to the payment of Lease Payments beyond the then current Original Term or Renewal Term, as the case may be, or any interest thereon.

SECTION 3.8 Net Lease. This Lease shall be deemed and construed to be a "net-net-net lease" and the Lessee hereby agrees that the Lease Payments shall be an absolute net return to the Bank, free and clear of any expenses, charges or set-offs whatsoever, except as expressly provided herein.

SECTION 3.9 Offset. Lease Payments or other sums payable by Lessee pursuant to this Lease shall not be subject to set-off, deduction, counterclaim or abatement and Lessee shall not be entitled to any credit against such Lease Payments or other sums for any reason whatsoever, including, but not limited to: (i) any accident or unforeseen circumstances; (ii) any damage or destruction of the Leased Property or any part thereof; (iii) any restriction or interference with Lessee's use of the Leased Property; (iv) any defects, breakdowns, malfunctions, or unsuitability of the Leased Property or any part thereof; or (v) any dispute between the Lessee and the Bank, any vendor or manufacturer of any part of the Leased Property, or any other person.

## ARTICLE IV

### INSURANCE

SECTION 4.1 Insurance. Lessee, at Bank's option, will either self-insure, or at Lessee's cost, will cause casualty insurance and property damage insurance to be carried and maintained on the Leased Property, with all such coverages to be in such amounts sufficient to cover the value of the Leased Property at the commencement of this Lease (as determined by the purchase price paid for the Leased Property), and public liability insurance with respect to the Leased Property in the amounts required by law, but in no event with a

policy limit less than \$1,000,000 per occurrence. All insurance shall be written in such forms, to cover such risks, and with such insurers, as are customary for public entities such as the Lessee. A combination of self-insurance and policies of insurance may be utilized. If policies of insurance are obtained, Lessee will cause Bank to be a loss payee as its interest under this Lease may appear on such property damage insurance policies, and an additional insured on a primary and noncontributory basis on such public liability insurance in an amount equal to or exceeding the minimum limit stated herein. Subject to Section 4.2, insurance proceeds from insurance policies or budgeted amounts from self-insurance as relating to casualty and property damage losses will, to the extent permitted by law, be payable to Bank in an amount equal to the then outstanding principal and accrued interest components of the Lease Payments at the time of such damage or destruction as provided by Section 8.1. Lessee will deliver to Bank the policies or evidences of insurance or self-insurance satisfactory to Bank, together with receipts for the applicable premiums before the Leased Property is delivered to Lessee and at least thirty (30) days before the expiration of any such policies. By endorsement upon the policy or by independent instrument furnished to Bank, such insurer will agree that it will give Bank at least thirty (30) days' written notice prior to cancellation or alteration of the policy. Lessee will carry workers compensation insurance covering all employees working on, in, or about the Leased Property, and will require any other person or entity working on, in, or about the Leased Property to carry such coverage, and will furnish to Bank certificates evidencing such coverages throughout the Term of this Lease.

**SECTION 4.2 Damage to or Destruction of the Leased Property.** If all or any part of the Leased Property is lost, stolen, destroyed, or damaged, Lessee will give Bank prompt notice of such event and will, to the extent permitted by law, repair or replace the same at Lessee's cost. If such lost, stolen, destroyed or damaged Leased Property is equipment, it shall be repaired or replaced within thirty (30) days after such event. If such lost, stolen, destroyed or damaged Leased Property is other than equipment, it shall be repaired or replaced within one hundred eighty (180) days after such event. Any replaced Leased Property will be substituted in this Lease by appropriate endorsement. All insurance proceeds received by Bank under the policies required under Section 4.1 with respect to the Leased Property lost, stolen, destroyed, or damaged, will be paid to Lessee if the Leased Property is repaired or replaced by Lessee as required by this Section. If Lessee fails or refuses to make the required repairs or replacement, such proceeds will be paid to Bank to the extent of the then remaining portion of the Lease Payments to become due during the Scheduled Term of this Lease less that portion of such Lease Payments attributable to interest which will not then have accrued as provided in Section 8.1. No loss, theft, destruction, or damage to the Leased Property will impose any obligation on Bank under this Lease, and this Lease will continue in full force and effect regardless of such loss, theft, destruction, or damage. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss, theft, destruction, or damage to the Leased Property and for injuries or deaths of persons and damage to property however arising, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such damage to property be to Lessee's property or to the property of others.

## ARTICLE V

### COVENANTS

**SECTION 5.1 Use of the Leased Property.** The Lessee represents and warrants that it has an immediate and essential need for the Leased Property to carry out and give effect to the public purposes of the Lessee, which need is not temporary or expected to diminish in the foreseeable future, and that it expects to make immediate use of all of the Leased Property.



The Lessee hereby covenants that it will install, use, operate, maintain, and service the Leased Property in accordance with all vendors' instructions and in such a manner as to preserve all warranties and guarantees with respect to the Leased Property.

The Lessor hereby assigns to the Lessee, without recourse, for the Term of this Lease, all manufacturer warranties and guarantees, express or implied, pertinent to the Leased Property, and the Lessor directs the Lessee to obtain the customary services furnished in connection with such warranties and guarantees at the Lessee's expense; provided, however, that the Lessee hereby agrees that it will reassign to the Lessor all such warranties and guarantees in the event of termination of this Lease pursuant to Sections 3.3(a) or 3.3(c).

**SECTION 5.2 Interest in the Leased Property and this Lease.** Upon expiration of the Term as provided in Section 3.3(b) or 3.3(d) hereof, all right, title and interest of the Bank in and to all of the Leased Property shall be transferred to and vest in the Lessee, without the necessity of any additional document of transfer.

**SECTION 5.3 Maintenance, Utilities, Taxes and Assessments.**

(a) **Maintenance; Repair and Replacement.** Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all repair and maintenance of the Leased Property shall be the responsibility of the Lessee, and the Lessee shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property excepting ordinary wear and tear, and the Lessee hereby covenants and agrees that it will comply with all vendors' and manufacturers' maintenance and warranty requirements pertaining to the Leased Property. In exchange for the Lease Payments herein provided, the Bank agrees to provide only the Leased Property, as hereinbefore more specifically set forth.

(b) **Tax and Assessments; Utility Charges.** The Lessee shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges, of any type or nature charged to the Lessee or levied, assessed or charged against any portion of the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

(c) **Contests.** The Lessee may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided that prior to such nonpayment it shall furnish the Bank with the opinion of an independent counsel acceptable to the Bank to the effect that, by nonpayment of any such items, the interest of the Bank in such portion of the Leased Property will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. Otherwise, the Lessee shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Bank.

**SECTION 5.4 Modification of the Leased Property.**

(a) **Additions, Modifications and Improvements.** The Lessee shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Leased Property if such improvements are necessary or beneficial for the use of such portion of the Leased Property. All such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the Leased Property or cause it to be used for purposes other

than those authorized under the provisions of State and federal law or in any way which would impair the exclusion from gross income for federal income tax purposes of the interest components of the Lease Payments; and the Leased Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Leased Property immediately prior to the making of such additions, modifications and improvements.

(b) No Liens. Except for Permitted Encumbrances, the Lessee will not permit (i) any liens or encumbrances to be established or remain against the Leased Property or (ii) any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Lessee pursuant to this Section; provided that if any such mechanic's lien is established and the Lessee shall first notify or cause to be notified the Bank of the Lessee's intention to do so, the Lessee may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Bank with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Bank. The Bank will cooperate fully in any such contest.

SECTION 5.5 Permits. The Lessee will provide all permits and licenses necessary for the ownership, possession, operation, and use of the Leased Property, and will comply with all laws, rules, regulations, and ordinances applicable to such ownership, possession, operation, and use. If compliance with any law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Leased Property, such changes or additions will be made by the Lessee at its own expense.

SECTION 5.6 Bank's Right to Perform for Lessee. If the Lessee fails to make any payment or to satisfy any representation, covenant, warranty, or obligation contained herein or imposed hereby, the Bank may (but need not) make such payment or satisfy such representation, covenant, warranty, or obligation, and the amount of such payment and the expense of any such action incurred by the Bank, as the case may be, will be deemed to be additional rent payable by the Lessee on the Bank's demand.

SECTION 5.7 Bank's Disclaimer of Warranties. The Bank has played no part in the selection of the Leased Property, the Lessee having selected the Leased Property independently from the Bank. The Bank, at the Lessee's request, has acquired or arranged for the acquisition of the Leased Property and shall lease the same to the Lessee as herein provided, the Bank's only role being the facilitation of the financing of the Leased Property for the Lessee. **THE BANK MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE LESSEE OF THE LEASED PROPERTY, OR ANY PORTION THEREOF. THE LESSEE ACKNOWLEDGES THAT THE BANK IS NOT A MANUFACTURER OR VENDOR OF ALL OR ANY PORTION OF THE LEASED PROPERTY, AND THAT THE LESSEE IS LEASING THE LEASED PROPERTY AS IS.** In no event shall the Bank be liable for incidental, direct, indirect, special or consequential damages, in connection with or arising out of this Lease, for the existence, furnishing, functioning or Lessee's use and possession of the Leased Property.

SECTION 5.8 Indemnification. To the extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless the Bank, its directors, officers, shareholders, employees, agents, and successors from and against any loss, claim, damage, expense, and liability resulting from or attributable to the acquisition, construction, or use of the Leased Property. Notwithstanding the foregoing, the Bank shall not be indemnified for any liability resulting from the gross negligence or willful misconduct of the Bank.

SECTION 5.9 Inclusion for Consideration as Budget Item. During the Term of this Lease, the Lessee covenants and agrees that it shall give due consideration, in accordance with applicable law, as an item for expenditure during its annual budget considerations, of an amount necessary to pay Lease Payments for the Leased Property during the next succeeding Renewal Term. Nothing herein shall be construed to direct or require that Lessee take or direct that any legislative act be done, or that the Governing Body of Lessee improperly or unlawfully delegate any of its legislative authority.

SECTION 5.10 Annual Financial Information. During the Term of this Lease, the Lessee covenants and agrees to provide the Bank as soon as practicable when they are available: (i) a copy of the Lessee's final annual budget for each fiscal year; (ii) a copy of the Lessee's most recent financial statements; and (iii) any other financial reports the Bank may request from time to time.

## ARTICLE VI

### ASSIGNMENT AND SUBLEASING

SECTION 6.1 Assignment by the Bank. The parties hereto agree that all rights of Bank hereunder may be assigned, transferred or otherwise disposed of, either in whole or in part, including without limitation transfer to a trustee pursuant to a trust arrangement under which the trustee issues certificates of participation evidencing undivided interests in this Lease and/or the rights to receive Lease Payments hereunder, provided that notice of any such assignment, transfer or other disposition is given to Lessee.

SECTION 6.2 Assignment and Subleasing by the Lessee. The Lessee may not assign this Lease or sublease all or any portion of the Leased Property unless both of the following shall have occurred: (i) the Bank shall have consented to such assignment or sublease; and (ii) the Bank shall have received assurance acceptable to the Bank that such assignment or sublease: (A) is authorized under applicable state law, (B) will not adversely affect the validity of this Lease, and (C) will not adversely affect the exclusion from gross income for federal income tax purposes of the interest components of the Lease Payments.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

SECTION 7.1 Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the Lessee to pay any Lease Payment required to be paid hereunder by the corresponding Lease Payment Date.

(b) Covenant Default. Failure by the Lessee to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Bank; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Bank shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the Lessee of a case in bankruptcy, or the subjection of any right or interest of the Lessee under this Lease to any execution, garnishment or

attachment, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

The foregoing provisions of this Section 7.1 are subject to the provisions of Section 3.2 hereof with respect to nonappropriation.

**SECTION 7.2 Remedies on Default.** Whenever any event of default referred to in Section 7.1 hereof shall have happened and be continuing, the Bank shall have the right, at its sole option without any further demand or notice to take one or any combination of the following remedial steps:

(a) take possession of the Leased Property by virtue of the Bank's ownership interest as lessor of the Leased Property;

(b) hold the Lessee liable for the difference between (i) the rents and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, as appropriate, and (ii) the rent paid by a lessee of the Leased Property pursuant to such lease; and

(c) take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease, the Security Documents (defined in Section 9.3), the Escrow Agreement or as a secured party in any or all of the Leased Property or the Escrow Account hereunder.

(d) terminate the Escrow Agreement and apply the proceeds in the Escrow Account to the Lease Payments due hereunder.

**SECTION 7.3 No Remedy Exclusive.** No remedy conferred herein upon or reserved to the Bank is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**SECTION 7.4 Agreement to Pay Attorneys' Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

**SECTION 7.5 Waiver of Certain Damages.** With respect to all of the remedies provided for in this Article VII, the Lessee hereby waives any damages occasioned by the Bank's repossession of the Leased Property upon an event of default.

ARTICLE VIII

PREPAYMENT OF LEASE PAYMENTS IN PART

SECTION 8.1 Extraordinary Prepayment from Net Proceeds. To the extent, if any, required pursuant to Section 4.1 the Lessee shall be obligated to purchase the Leased Property by prepaying the Lease Payments in whole or in part on any date, from and to the extent of any Net Proceeds or other moneys pursuant to Article IV hereof. The Lessee and the Bank hereby agree that in the case of such prepayment of the Lease Payments in part, such Net Proceeds or other moneys shall be credited toward the Lessee's obligations hereunder pro rata among Lease Payments so that following prepayment, the remaining annual Lease Payments will be proportional to the initial annual Lease Payments.

SECTION 8.2 Option to Purchase Leased Property. Subject to the terms and conditions of this Section, the Bank hereby grants an option to the Lessee to purchase all or a portion of the Leased Property by paying on any date a price equal to the portion of the outstanding principal component of the Lease Payments that is allocable to such portion of the Leased Property that is being so purchased, without premium, plus the accrued interest component of such portion of the Lease Payments to such payment date. To exercise this option, the Lessee must deliver to the Bank written notice specifying the date on which the Leased Property is to be purchased (the "Closing Date"), which notice must be delivered to the Bank at least thirty (30) days prior to the Closing Date specified therein. The Lessee may purchase the Leased Property pursuant to the option granted in this Section only if the Lessee has made all Lease Payments when due (or has remedied any defaults in the payment of Lease Payments, in accordance with the provisions of this Lease) and all other warranties, representations, covenants, and obligations of the Lessee under this Lease have been satisfied (or all breaches thereof have been waived by the Bank in writing).

Upon the expiration of the Scheduled Term of this Lease and provided that all conditions of the immediately preceding paragraph have been satisfied (except those pertaining to notice), the Lessee shall be deemed to have purchased the Leased Property (without the need for payment of additional moneys) and shall be vested with all rights and title to the Leased Property.

ARTICLE IX

MISCELLANEOUS

SECTION 9.1 Notices. Unless otherwise specifically provided herein, all notices shall be in writing addressed to the respective party as set forth below (or to such other address as the party to whom such notice is intended shall have previously designated by written notice to the serving party), and may be personally served, telecopied, or sent by overnight courier service or United States mail:

If to Bank:

ZIONS BANCORPORATION, N.A.  
One South Main Street, 17<sup>th</sup> Floor  
Salt Lake City, Utah 84133  
Attention: Kirsi Hansen

If to the Lessee:

City of Sedona  
102 Roadrunner Drive  
Sedona, AZ 86336  
Attention: Cherie Wright

Such notices shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by telecopy, on the date of transmission if transmitted by 4:00 p.m. (Salt Lake City time) on a Business Day or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, two Business Days after delivery to such courier properly addressed; or (d) if by United States mail, four Business Days after depositing in the United States mail, postage prepaid and properly addressed.

SECTION 9.2 System of Registration. The Lessee shall be the Registrar for this Lease and the rights to payments hereunder. The Bank shall be the initial Registered Owner of rights to receive payments hereunder. If the Bank transfers its rights to receive payments hereunder, the Registrar shall note on this Lease the name and address of the transferee.

SECTION 9.3 Instruments of Further Assurance. To the extent, if any, that the Bank's interest in the Leased Property as Lessor under this Lease is deemed to be a security interest in the Leased Property, then the Lessee shall be deemed to have granted, and in such event the Lessee does hereby grant, a security interest in the Leased Property and any moneys and investments held from time to time in the Escrow Account to the Bank, which security interest includes proceeds, and this Lease shall constitute a security agreement under applicable law. Concurrently with the execution of this Lease, the Lessee has executed, delivered, and filed and/or recorded all financing statements, UCC forms, mortgages, deeds of trust, notices, filings, and/or other instruments, in form required for filing and/or recording thereof, as are required under applicable law to fully perfect such security interest of the Bank in the Leased Property (collectively, "Security Documents"). Attached hereto as Exhibit E are copies of all such Security Documents. The Lessee will do, execute, acknowledge, deliver and record, or cause to be done, executed, acknowledged, delivered and recorded, such additional acts, notices, filings and instruments as the Bank may require in its sole discretion to evidence, reflect and perfect the title, ownership, leasehold interest, security interest and/or other interest of the Bank in and to any part or all of the Leased Property, promptly upon the request of the Bank.

SECTION 9.4 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Bank and the Lessee and their respective successors and assigns.

SECTION 9.5 Amendments. This Lease may be amended or modified only upon the written agreement of both the Bank and the Lessee.

SECTION 9.6 Section Headings. Section headings are for reference only and shall not be used to interpret this Lease.

SECTION 9.7 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, to the extent permitted by law, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 9.8 Entire Agreement. This Lease and the attached Exhibits constitute the entire agreement between the Bank and the Lessee and supersedes any prior agreement between the Bank and the Lessee with respect to the Leased Property, except as is set forth in an Addendum, if any, which is made a part of this Lease and which is signed by both the Bank and the Lessee.

SECTION 9.9 Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9.10 Arbitration. To the extent permitted by law, any dispute, controversy or claim arising out of or based upon the terms of this Lease or the transactions contemplated hereby shall be settled exclusively and finally by binding arbitration. Upon written demand for arbitration by any party hereto, the parties to the dispute shall confer and attempt in good faith to agree upon one arbitrator. If the parties have not agreed upon an arbitrator within thirty (30) days after receipt of such written demand, each party to the dispute shall appoint one arbitrator and those two arbitrators shall agree upon a third arbitrator. Any arbitrator or arbitrators appointed as provided in this section shall be selected from panels maintained by, and the binding arbitration shall be conducted in accordance with the commercial arbitration rules of, the American Arbitration Association (or any successor organization), and such arbitration shall be binding upon the parties. The arbitrator or arbitrators shall have no power to add or detract from the agreements of

the parties and may not make any ruling or award that does not conform to the terms and conditions of this Lease. The arbitrator or arbitrators shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages. Judgment upon an arbitration award may be entered in any court having jurisdiction. The prevailing party in the arbitration proceedings shall be awarded reasonable attorney fees and expert witness costs and expenses.

SECTION 9.11 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 9.12 Immigration. To the extent applicable and except as stated below, pursuant to the provisions of the Section 41-4401 of the Arizona Revised Statutes, and in accordance with federal law and Bank's practice, Bank hereby warrants and certifies that Bank complies with the Immigration Reform and Control Act of 1986 and employment with the Bank is contingent on the successful completion of the I-9 verification process and the E-Verify requirements of Section 23-214(A) of the Arizona Revised Statutes. Such employment with Bank is not contingent on any of the other requirements of Section 23-214(A). Bank does not knowingly employ any individuals in the United States who are not legally authorized to work in the United States. For associate confidentiality reasons, Bank generally does not disclose or allow the inspection of its personnel records of its associates to third parties, including I-9 or e-Verify documentation. However, if there are concerns about an individual's eligibility to perform work in connection with this Agreement, please contact Lessor in accordance with Section 9.1 of this Agreement and Lessor will investigate and respond to these concerns.

SECTION 9.13 Boycotting Israel. Pursuant to Section 35-393 et seq., Arizona Revised Statutes, Bank hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term "boycott" has the meaning set forth in Section 35-393, Arizona Revised Statutes. If it is determined that Bank's certification above is false or that it has breached such agreement, Lessee may impose remedies as provided by law.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Bank has caused this Lease to be executed in its name by its duly authorized officer, and the Lessee has caused this Lease to be executed in its name by its duly authorized officer, as of the date first above written.

**ZIONS BANCORPORATION, N.A.**, as Lessor

By: \_\_\_\_\_  
Authorized Officer

**CITY OF SEDONA**, as Lessee

By: \_\_\_\_\_  
\_\_\_\_\_  
Title



EXHIBIT A

FIXED RATE

LEASE PAYMENT DEBT SERVICE SCHEDULE\*

**1. Interest.** Interest components payable on the principal amount outstanding have been computed at the rate of one and seventy-four hundredths percent ( 1.74 %) per annum calculated based on twelve 30-day months during a 360-day year.

**2. Payment Dates and Amounts.**

<u>Date</u>	<u>Principal</u>	<u>Coupon</u>	<u>Interest</u>	<u>Total P+I</u>	<u>Fiscal Total</u>
11/18/2021	-	-	-	-	-
11/18/2022	24,491.61	1.740%	2,206.22	26,697.83	26,697.83
11/18/2023	24,917.77	1.740%	1,780.07	26,697.84	26,697.84
11/18/2024	25,351.34	1.740%	1,346.50	26,697.84	26,697.84
11/18/2025	25,792.45	1.740%	905.39	26,697.84	26,697.84
11/18/2026	26,241.24	1.740%	456.60	26,697.84	26,697.84
Total	\$126,794.41	-	\$6,694.78	\$133,489.19	-

EXHIBIT B

DESCRIPTION OF THE LEASED PROPERTY

Purchase of Police Vehicle:

LINE ITEM	ORDER CODE	DESCRIPTION	PRICE
1	K8A	2021 BLACK INTERCEPTOR UTILITY - 3.3L Hybrid	\$ 35,263.00
2	86T	REAR TAIL LAMP HOUSING CUT-OUT	\$ 60.00
3	17T	CARGO DOME LAMP	\$ 50.00
4	43D	DARK CAR FEATURE	\$ 25.00
5	SYNC	BLUETOOTH	STD
6	51R	LED DRIVER SIDE SPOTLAMP	\$ 395.00
7	549	POWER HEATED MIRRORS	\$ 60.00
8	55F	KEYLESS ENTRY - 4 REMOTES	\$ 340.00
9	85R	REAR MOUNT PLATE - WIRING CHANNEL	\$ 45.00
10	STD	BACKUP CAMERA	STD
11	DIO	TINT WINDOWS TO AGENCY SPEC	STD
12	86P	FRON HEADLAMP HOUSING CUTOUT	STD
13	DIO	UPFIT PER AIRWAVE QUOTE	
14	76R	REVERSE SENSING	\$ 275.00
15	17A	REAR AUX AIR	\$ 610.00
16	52P	HIDDEN LOCK PLUNGER W REAR DOOR INOPE	\$ 160.00
17	UPFIT	AIRWAVE UPFIT - PHX-1658	\$ 21,359.19
<b>TAXABLE TOTAL</b>			<b>\$ 58,642.19</b>
<b>SALES TAX</b>			<b>\$ 4,750.02</b>
<b>WARRANTY COST</b>			<b>\$ -</b>
<b>TIRE TAX</b>			<b>\$ 5.00</b>
<b>FREIGHT</b>			<b>\$ -</b>
<b>TOTAL PER UNIT</b>			<b>\$ 63,397.21</b>
<b>QUANTITY OF UNITS</b>			<b>2</b>
<b>PO TOTAL</b>			<b>\$ 126,794.41</b>

VIN # \_\_\_\_\_.

EXHIBIT D  
Opinion of Lessee's Counsel

To: ZIONS BANCORPORATION, N.A.  
One South Main Street, 17<sup>th</sup> Floor  
Salt Lake City, Utah 84133

As counsel for City of Sedona (“Lessee”), I have examined duly executed originals of the Lease/Purchase Agreement (the “Lease”) dated this 18th day of November, 2021, between the Lessee and ZIONS BANCORPORATION, N.A., Salt Lake City, Utah (“Bank”), and the proceedings taken by Lessee to authorize and execute the Lease (the “Proceedings”). Based upon such examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a body corporate and politic, legally existing under the laws of the State of Arizona (the “State”).
2. The Lease and the Proceedings have been duly adopted, authorized, executed, and delivered by Lessee, and do not require the seal of Lessee to be effective, valid, legal, or binding.
3. The governing body of Lessee has complied with all applicable open public meeting and notice laws and requirements with respect to the meeting at which the Proceedings were adopted and the Lessee's execution of the Lease was authorized.
4. The Lease is a legal, valid, and binding obligation of Lessee, enforceable against Lessee in accordance with its terms except as limited by the state and federal laws affecting remedies and by bankruptcy, reorganization, or other laws of general application affecting the enforcement of creditor's rights generally.
5. Either there are no usury laws of the State applicable to the Lease, or the Lease is in accordance with and does not violate all such usury laws as may be applicable.
6. Either there are no procurement or public bidding laws of the State applicable to the acquisition and leasing of the Leased Property (as defined in the Lease) from the Bank under the Lease, or the acquisition and leasing of the Leased Property from the Bank under the Lease comply with all such procurement and public bidding laws as may be applicable.
7. There are no legal or governmental proceedings or litigation pending or, to the best of my knowledge, threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling or finding might adversely affect the transactions contemplated in or the validity of the Lease.
8. The adoption, execution and/or delivery of the Lease and the Proceedings, and the compliance by the Lessee with their provisions, will not conflict with or constitute a breach of or default under any court decree or order or any agreement, indenture, lease or other instrument or any existing law or administrative regulation, decree or order to which the Lessee is subject or by which the Lessee is or may be bound.
9. Although we are not opining as to the ownership of the Leased Property or the priority of liens thereon, it is also our opinion that the Security Documents attached as Exhibit E to the Lease are sufficient in substance, form, and description, and indicated place, address, and method of filing and/or recording, to completely and fully perfect the security interest in every portion of the Leased Property granted under the Lease, and no other filings and/or recordings are necessary to fully perfect said security interest in the Leased Property.

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Attorney for Lessee

EXHIBIT E

SECURITY DOCUMENTS

[Attach Certificate of Title showing ZIONS BANCORPORATION, N.A. as the lien holder]

EXHIBIT F

DELIVERY AND ACCEPTANCE CERTIFICATE

To: ZIONS BANCORPORATION, N.A.  
One South Main Street, 17<sup>th</sup> Floor  
Salt Lake City, Utah 84133

Reference is made to the Lease/Purchase Agreement between the undersigned (“Lessee”), and ZIONS BANCORPORATION, N.A. (the “Bank”), dated November 18, 2021 , (the “Lease”) and to that part of the Leased Property described therein which comprises personal property (collectively, the “Equipment”). In connection therewith we are pleased to confirm to you the following:

1. All of the Equipment has been delivered to and received by the undersigned; all installation or other work necessary prior to the use thereof has been completed; said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the Lease. Consequently, you are hereby authorized to pay for the Equipment in accordance with the terms of any purchase orders for the same.
2. In the future, in the event the Equipment fails to perform as expected or represented we will continue to honor the Lease in all respects and continue to make our rental and other payments thereunder in the normal course of business and we will look solely to the vendor, distributor or manufacturer for recourse.
3. We acknowledge that the Bank is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.
4. The vehicle identification number for each item of Equipment which is set forth on Exhibit “B ” to the Lease is correct.

This certificate shall not be considered to alter, construe, or amend the terms of the Lease.

Lessee:

**CITY OF SEDONA**

By: \_\_\_\_\_  
(Authorized Signature)

Date: \_\_\_\_\_

EXHIBIT G  
(Escrow Agreement)

## FORM OF ESCROW AGREEMENT

This Escrow Agreement (this “Agreement”) dated November 18, 2021, by and among ZIONS BANCORPORATION, N.A., a national banking association (hereinafter referred to as “Lessor”), CITY OF SEDONA, a body politic and corporate of the State of Arizona (hereinafter referred to as “Lessee”), and ZIONS BANCORPORATION, National Association, a national banking association (hereinafter referred to as “Escrow Agent”).

Reference is made to that certain Lease/Purchase Agreement, dated November 18, 2021, between Lessor and Lessee (hereinafter referred to as the “Lease”), covering the acquisition and lease of certain Leased Property described therein (the “Leased Property”). It is a requirement of the Lease that the Acquisition Amount be deposited with the Escrow Agent hereunder for the purpose of providing a mechanism for the application of such amounts to the payment of Leased Property costs.

The parties agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created a special trust fund to be known as the “City of Sedona Escrow Account” (the “Escrow Account”) to be held in trust by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof. On the date hereof, from proceeds of the Lease, Lessor has caused the amount of \$126,794.41 to be transferred to Escrow Agent for deposit into the Escrow Account.

(b) The Escrow Agent shall invest and reinvest moneys on deposit in the Escrow Account in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither the Escrow Agent nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Account, and Lessee agrees to and does hereby release the Escrow Agent and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Escrow Account. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account and is not a trustee or a fiduciary to Lessee. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this agreement, “Qualified Investments” means any investments which meet the requirements of the investment of public funds by Lessee in accordance with applicable Arizona law and any applicable policy that the governing body of the Lessee has adopted with respect to the investment of public funds.

(c) Lessee covenants that all investments of amounts deposited in the Escrow Account or other fund containing gross proceeds of the Lease will be acquired, disposed of and valued at the fair market value thereof. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”) will be valued at their present value. Terms used in this subsection (c) shall have the meanings given them in the applicable provisions of the Code.

(d) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (e) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Leased Property. Any moneys remaining in the Escrow Account on or after the date on which Lessee executes the Delivery and Acceptance Certificate shall be applied as provided in Section 4 hereof.

(e) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account (including delivery to Lessor by Lessee of an executed Delivery and Acceptance Certificate contained in the Lease), or (ii) written notice given by Lessor of the occurrence of a default or non-appropriation of the Lease.

(f) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(g) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys’ fees and the cost of defending any action, suit or proceeding or resisting any claim.

(h) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs, including reasonable attorneys’ fees, in connection with such civil action, and shall be fully



protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(i) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(j) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for extraordinary administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

(k) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the "Effective Date"), which shall be a date not less than 90 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(l) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no fiduciary or implied duties, responsibilities or obligations shall be read into this Agreement.

## 2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Leased Property, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Leased Property are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Leased Property, and the operation and maintenance thereof.

(b) Authorized Escrow Account Disbursements. Disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the Leased Property Costs and any delivery costs.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and

the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by Cherie Wright (including her successors or anyone whom her successors may appoint to sign) of Lessee (an "Authorized Representative") and by Kirsi Hansen or her designees of Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i)(A) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Escrow Account for costs relating to the Leased Property identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (B) the Leased Property relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee, and (C) Lessee has conducted such inspection and/or testing of the Leased Property relating to such obligation as it deems necessary and appropriate in order to determine the Leased Property's capability and functionality in order to accept such Leased Property; (ii) the Lessee has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (iv) the Leased Property is insured in accordance with the Lease; (v) no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default) has occurred and is continuing and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof; and

2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement); bills of sale (if title to such Leased Property has passed to Lessee); a description, and serial and/or VIN number for each item and any additional documentation reasonably requested by Lessor;

3. Deposit to Escrow Account. Upon execution of the Lease and the satisfaction of any conditions specified in the Lease or otherwise, Lessor will cause the Acquisition Amount of \$126,794.41 to be deposited into the Escrow Account. Lessee agrees to pay any costs with respect to the Leased Property in excess of amounts available therefor in the Escrow Account and to pay delivery costs in excess of amounts available therefor in the Escrow Account; provided, however, that any amount required for either such purpose shall be payable solely from moneys that have been appropriated by Lessee for such purpose.

4. Excessive Escrow Account. Any funds remaining in the Escrow Account on or after the date on which Lessee executes the Delivery and Acceptance Certificate, or upon a

termination of the Escrow Account as otherwise provided herein, shall be delivered by the Escrow Agent to Lessor, and Lessor shall apply such funds to amounts owed under the Lease.

5. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account and all proceeds thereof, and all investments made with any amounts in the Escrow Account. If the Escrow Account or any part thereof, is converted to investments as set forth in this agreement, such investments shall be made in the name of Escrow Agent and the Escrow Agent hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Escrow Account. In order to perfect Lessor's security interest by means of control in (i) the Escrow Account established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Account, (iii) all of Lessee's rights in respect of the Escrow Account, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lessor, Lessee and Escrow Agent further agree as follows:

(a) All terms used in this Section 6 which are defined in the Uniform Commercial Code of the State of Arizona ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Escrow Agent hereby represents and warrants (a) that the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (b) that Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lessor if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Escrow Agent may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Escrow Account, but will not, without the prior written consent

of Lessor, allow Lessee to withdraw any Collateral from the Escrow Account. Escrow Agent acknowledges that Lessor reserves the right, by delivery of written notice to Escrow Agent, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Escrow Account. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lessor to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and Lessee hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on November 18, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Fee Schedule; Initial Fee. \$1,500.00, annually.

9. Miscellaneous.

(a) Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by

all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor:                    ZIONS BANCORPORATION, N.A.  
   1 South Main Street 17<sup>th</sup> Floor  
   Salt Lake City, UT 84133  
   Attn: Jon Dunfield, Vice President

If to Lessee:                    City of Sedona  
   102 Roadrunner Dr.  
   Sedona, AZ 86336  
   Attn: Cherie Wright

If to Escrow Agent:        ZIONS BANCORPORATION, National Association  
   Corporate Trust Department  
   6001 North 24<sup>th</sup> Street, Bldg. B  
   Phoenix, AZ 85016  
   Attn: April Holland, Corporate Trust Officer

(b) As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that the District may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of the District is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of the Escrow Agent or a consultant to the Escrow Agent with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from the District is received by the Escrow Agent unless the notice specifies a later time.

(c) To the extent applicable and except as stated below, pursuant to the provisions of the Section 41-4401 of the Arizona Revised Statutes, and in accordance with federal law and Escrow Agent's practice, Escrow Agent hereby warrants and certifies that Escrow Agent complies with the Immigration Reform and Control Act of 1986 and employment with the Escrow Agent is contingent on the successful completion of the I-9 verification process and the E-Verify requirements of Section 23-214(A) of the Arizona Revised Statutes. Such employment with Escrow Agent is not contingent on any of the other requirements of Section 23-214(A). Escrow Agent does not knowingly employ any individuals in the United States who are not legally authorized to work in the United States. For associate confidentiality reasons, Escrow Agent generally does not disclose or allow the inspection of its personnel records of its associates to third parties, including I-9 or e-Verify documentation. However, if there are concerns about an

individual's eligibility to perform work in connection with this Agreement, please contact Lessor in accordance with Section 9.1 of this Agreement and Lessor will investigate and respond to these concerns.

(d) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, Escrow Agent hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term "boycott" has the meaning set forth in Section 35-393, Arizona Revised Statutes. If it is determined that Escrow Agent's certification above is false or that it has breached such agreement, Lessee may impose remedies as provided by law.

In Witness Whereof, the parties have executed this Escrow Agreement as of the date first above written.

ZIONS BANCORPORATION, N.A.  
as Lessor

CITY OF SEDONA  
as Lessee

By: \_\_\_\_\_  
\_\_\_\_\_, Vice President

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ZIONS BANCORPORATION, National Association  
as Escrow Agent

By: \_\_\_\_\_  
April Holland, Corporate Trust Officer

**SCHEDULE 1**

**TO THE ESCROW AGREEMENT**

**FORM OF DISBURSEMENT REQUEST**

Re: Lease/Purchase Agreement, dated November 18, 2021 (the “*Lease*”), between ZIONS BANCORPORATION, N.A., as Lessor, and CITY OF SEDONA, as Lessee (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow Agreement, dated November 18, 2021 (the “*Escrow Agreement*”) by and among ZIONS BANCORPORATION, N.A., a national banking association (“*Lessor*”), CITY OF SEDONA (“*Lessee*”) and ZIONS BANCORPORATION, National Association, (the “*Escrow Agent*”), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Agreement for the following purposes:

PAYEE’S NAME AND ADDRESS	INVOICE NUMBER	DOLLAR AMOUNT	PURPOSE (INCLUDE SERIAL AND/OR VIN NUMBER)

The undersigned hereby certifies as follows:

(i) The date on which “acceptance” occurred with respect to the portion of the Leased Property for which disbursement is hereby requested is \_\_\_\_\_, and such portion of Leased Property is hereby accepted by Lessee for all purposes of the Lease.

(ii) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Escrow Account for costs relating to the Leased Property identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Leased Property relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Leased Property relating to such obligation as it deems necessary and appropriate in order to determine the



Leased Property's capability and functionality in order to accept such Leased Property. Attached hereto is the original invoice with respect to such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Leased Property is insured in accordance with the Lease.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(ix) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds from the Escrow Account in accordance with the foregoing Disbursement Request hereby is authorized

ZIONS BANCORPORATION, N.A.,  
as Lessor under the Lease

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**CITY COUNCIL  
AGENDA BILL**

**AB 2741  
October 26, 2021  
Appointments**

**Agenda Item: 4a**  
**Proposed Action & Subject:** Discussion/possible action regarding appointment of Paul Schlegel as Magistrate Judge and approval of a two-year contract.

<b>Department</b>	City Attorney
<b>Time to Present</b>	2 minutes
<b>Total Time for Item</b>	5 minutes
<b>Other Council Meetings</b>	N/A
<b>Exhibits</b>	A. Magistrate Judge Contract

City Attorney Approval	Reviewed 10/18/2021 KWC	<b>Expenditure Required</b>	
		\$	105,730 (estimated remainder of FY2022) Estimated annual salary and benefit total - \$173,550
City Manager's Recommendation	N/A	<b>Amount Budgeted</b>	
		\$	124,550 (remainder of FY2022)
		Account No. (Description)	10-5520-01-XXXX (Applicable salary and benefit accounts)
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** On September 14, 2021, the City Council met in executive session and selected applicants for in-person interviews for the position of Magistrate Judge. City Council selected the top applicants, two of whom were subsequently interviewed on October 5, 2021. Following the interviews, Paul Schlegel was selected as the candidate for the position of Magistrate Judge.

Per Arizona Revised Statutes § 22-403: *Presiding officer of municipal court; appointment; compensation; justice of the peace as magistrate*

- A. *The presiding officer of the municipal court shall be a magistrate, who shall be selected in a manner provided by the charter or ordinances of the city or town. The magistrate shall receive such compensation as provided by the governing body of the city or town.*

Furthermore, per Sedona City Code, 2.45.010:

A. *The city magistrate shall be the presiding officer of the magistrate’s court and shall be selected by the council and shall perform those functions necessary to the maintenance of the magistrate’s court as set forth in this code, and as provided by the Constitution and laws of this state, and the applicable orders, rules and directives of the Arizona Supreme Court.*

The terms of the magistrate’s contract are set forth in Sedona City Code, 2.70.030:

*2.70.030 City magistrates – Appointment – Compensation.*

*The magistrate court shall be composed of a presiding magistrate and such other magistrates as may be determined by the council. The council shall appoint and may remove for cause the presiding magistrate and such additional magistrates appointed. All magistrates shall be appointed for a period of two years, with their compensation to be determined by the council.*

**Community Plan Compliant:**  Yes -  No -  Not Applicable

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

**Board/Commission Recommendation:**  Applicable -  Not Applicable

**Alternative(s):** N/A

**MOTION**

**I move to:** approve the appointment of Paul Schlegel as Magistrate Judge for the City of Sedona and approve the two-year employment contract, subject to approval by the City Attorney.

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 26<sup>th</sup> day of October, 2021, by and between the City of Sedona, State of Arizona, a municipal corporation, ("Employer"), and Paul A. Schlegel, ("Employee"), both of whom agree as follows:

### WITNESSETH:

WHEREAS, Employer desires to employ the services of the Employee as Magistrate Judge of the City of Sedona, as provided by A.R.S. § 9-240.B.28 (General powers of common council), A.R.S. § 9-237 (Appointive officers), and Sedona City Code § 2.70.030 (City magistrates – Appointment – Compensation); and

WHEREAS, it is the desire of the Employer to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, Employee desires to accept employment as Presiding Magistrate Judge for said City of Sedona; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, Employer and Employee (collectively, the "Parties") agree as follows:

### Section 1: Duties

Employer hereby agrees to employ the Employee as Magistrate Judge of Employer to perform the functions and duties specified in the Sedona City Code, § 2.45.010 (City magistrate); Title 22 (Justice and Municipal Courts), Chapter 4 (Municipal Courts), Articles 1 (General Provisions) and 2 (Procedure) of the Arizona Revised Statutes; and all regulations, orders, policies and handbooks established by the Arizona Supreme Court, and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign.

### Section 2: Term

- A. This agreement shall be considered effective from the date of November 22, 2021.
- B. Employee agrees to remain in the exclusive employ of Employer until November 21, 2023, and neither to accept other employment nor to become employed by any other employer for any work that results in a conflict with the Employee's duties in the Sedona City Court, except that the Employee may, with the consent of Employer, enter into IGA's for performance of court duties with other municipal courts or Justices of the Peace pursuant to A.R.S. § 22-427.
- C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, subject only to the provision set forth in Section 4 of this agreement.

### **Section 3: Termination and Severance Pay**

In the event Employee is terminated by Council with cause before the expiration of the twenty-four (24) month term of employment, Employer shall have no obligation to pay Employee any severance pay; provided, however, that Employee shall be compensated for all earned vacation days accrued to date, as limited by conditions set forth in the City of Sedona Employee Manual.

### **Section 4: Resignation**

In the event Employee voluntarily resigns his position with Employer before expiration of the aforesaid term of his employment, then Employee shall give Employer thirty (30) days written notice in advance or such other length of notice as may be mutually agreed upon in writing by the parties. In addition to the thirty days' notice, the Employee agrees to be available to the City of Sedona for consultation for an additional (30) thirty days at an hourly rate commensurate with the salary described in Section 6 herein.

### **Section 5: Disability**

If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health for a period of four (4) successive weeks beyond any accrued sick and vacation leave, Employer shall have the option to terminate this agreement.

### **Section 6: Salary**

- A. Employer agrees to pay Employee for his services rendered pursuant hereto an annual base salary of \$125,000.00 payable in installments at the same time as other management employees of the Employer are paid.
- B. Employer agrees to increase said base salary and/or benefits of Employee in such amounts and to such extent as the Council may determine that is desirable to do so on the basis of an annual salary review of said Employee and made at the same time as similar consideration is given other employees generally.

### **Section 7: Hours of Work and Telephone**

- A. It is recognized by the Parties that the duties of Magistrate Judge require work outside of normal office hours and Employee agrees to devote the amount of time and energy necessary to carry out those duties with the highest degree of professionalism possible. Employee is an unclassified employee per Section 105 of the Employee Manual.
- B. The Employee is required to maintain a personal telephone at his place of residence and a cell phone at which he may be reached in emergency situations. Such telephones shall be the financial responsibility of the Employee.
- C. The City shall compensate the Employee \$100 per month for the cost of a personal cell phone.



### **Section 8: Outside Activities**

Employee shall not engage in teaching, consulting, or other non-employer-connected business without the prior approval of the Council.

### **Section 9: Benefits**

The Employee will receive vacation leave accrued at 6.15 hours per pay period up to a maximum accrual of 240 hours. Employee shall be entitled to flexible leave, paid holidays and health insurance options as granted to all full-time employees. Employee shall participate in the Arizona State Retirement System with all applicable employer and employee contributions.

### **Section 10: Dues and Subscriptions**

Employer agrees to budget for and to pay for professional dues and subscriptions of Employee necessary for his full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the Employer.

### **Section 11: Professional Development**

- A. Employer hereby agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to continue the reasonable professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to the Judicial Conference, state conferences, and such other national regional, state, and local governmental groups and committees thereof which Employee serves as a member.
- B. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his professional development and for the good of the Employer.

### **Section 12: Indemnification**

In addition to that required under state and local law, Employer shall defend, save harmless, and indemnify Employee against any tort, professional liability claim, or demand or other legal action arising out of an alleged act or omission occurring while in the course and scope of his employment and consistent with the performance of Employee's duties as City Magistrate. Employer may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

### **Section 13: Bonding**

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

### **Section 14: Residency Required**

The Employee shall reside within an area that would allow a response time to City Hall of 90 minutes and shall continue to do so as long as employed by the City of Sedona.

### **Section 15: Other Terms and Conditions of Employment**

- A. The Council, in consultation with the City Magistrate, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City of Sedona Code, or any other law. Any such terms shall be set forth in writing as part of or an amendment to this or future employment agreements.
- B. Except as otherwise expressly provided herein, all provisions of the City of Sedona Code and regulations and rules of the Employer as set forth in the Employee Manual relating to vacation and flex leave, retirement and pension system contributions, holidays, and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer, in addition to said benefits herein specifically provided for the benefits of Employee.
- C. Employee shall be entitled to receive the same vacation and sick leave benefits as are accorded department heads including provisions governing accrual and payment therefore on termination of employment all as set forth in the Employee Manual.

### **Section 16: No Reduction of Benefits**

Employer shall not at any time during the term of this agreement reduce the salary compensation of Employee.

### **Section 17: Notices**

Notices pursuant to this agreement shall be given to deposit in the custody of the United States Postal Service, postage paid, addressed as follows:

EMPLOYER: Mayor, City of Sedona, 102 Roadrunner Drive, Sedona, Arizona 86336

EMPLOYEE: Paul A. Schlegel, 508 Goshawk Trail, Prescott, AZ 86301

Alternatively, notices required pursuant to this agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United State Postal Service.

**Section 18: General Provisions**

- A. The text herein shall constitute the entire agreement between the parties.
- B. This agreement shall be binding upon and inure to the benefit of the heirs in law and executors of Employee.
- C. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement or portion thereof shall be deemed severable, shall not be affected, and shall remain in full force and effect.

WITNESS WHEREOF, the City of Sedona has caused this agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

  
\_\_\_\_\_  
Paul A. Schlegel, Magistrate Judge

\_\_\_\_\_  
Sandra J. Moriarty, Mayor, City of Sedona

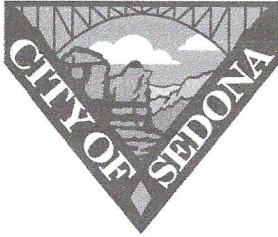
ATTEST:

\_\_\_\_\_  
Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kurt W. Christianson, City Attorney





102 Roadrunner Drive  
Sedona, Arizona 86336  
[www.SedonaAZ.gov](http://www.SedonaAZ.gov)

October 7, 2021

Paul A. Schlegel  
508 Goshawk Trail  
Prescott, AZ 86301

Judge Schlegel,

We are pleased to extend this preemployment letter to you for the City Magistrate Judge position for the City of Sedona.

<b>Compensation</b>	An annual starting salary of \$125,000.00, not to be reduced during term of the contract, with potential merit-based increases subject to availability of funds and annual performance evaluations.
<b>Contract Term</b>	2 years, renewable by agreement of both parties.
<b>Benefits/Health Insurance</b>	All benefits and health insurance available to full-time employees.
<b>Vacation Leave Accrual</b>	4 weeks of vacation leave annually (6.15 hours per pay period).
<b>Retirement</b>	Membership in the Arizona State Retirement System.
<b>Membership Fees</b>	The city will cover the cost of professional memberships determined to support the position.
<b>Training</b>	The city will cover the cost of professional development and training consistent with your position and prevailing council budget direction.
<b>Residency</b>	Within a 90 minutes' drive of City Court.
<b>Cell Phone Allowance</b>	\$100 monthly cell phone allowance.
<b>Start Date</b>	Monday, November 22, 2021.

If these considerations meet your approval, please sign and return this letter at your earliest convenience.

Please note this letter, though not binding, is intended to serve as the basis for negotiating a final written agreement which will contain material terms not mentioned in this letter. The subsequent approval or acknowledgement of an agreement by email, text, or any other electronic communication service shall not be binding upon either party. The parties will not be bound to an agreement unless and until a final and definitive written agreement is reviewed, approved, and executed by the Sedona City Council.

Very respectfully,

CITY OF SEDONA

Kurt W. Christianson  
City Attorney

I, Paul A. Schlegel, by signing below, acknowledge that I have read and accept the conditions contained herein.

Paul A. Schlegel  
Paul A. Schlegel

10/10/21  
Date



**CITY COUNCIL  
AGENDA BILL**

**AB 2731  
October 26, 2021  
Regular Business**

**Agenda Item: 8a**

**Proposed Action & Subject:** Discussion/possible action regarding approval of a Linking Agreement, through Mohave Cooperative, with Play It Safe Playgrounds, Inc. for the Shade Structures and Playground Replacement Project at Posse Grounds Park in an amount not to exceed \$434,470.24.

<b>Department</b>	Public Works
<b>Time to Present</b>	5 minutes
<b>Total Time for Item</b>	15 minutes
<b>Other Council Meetings</b>	N/A
<b>Exhibits</b>	A. Linking Agreement B. Playground Design

<b>City Attorney Approval</b>	Reviewed 10/18/21 KWC	<b>Expenditure Required</b>	
		\$	434,470.24
<b>City Manager's Recommendation</b>	Approve the Linking Agreement, through Mohave Cooperative, with Play It Safe Playgrounds, Inc. for the Shade Structures and Playground Replacement Project at Posse Grounds Park in an amount not to exceed \$434,470.24.	<b>Amount Budgeted</b>	
		\$	440,000.00
		Account No. (Description)	24-5242-89-68C2 25-5242-89-68C2 22-5242-89-68C2 (Shade Structures & Playground Equipment Replacement – Sedona Summit CFD, Fairfield CFD, and Capital Improvements Fund)
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

City staff is requesting the approval of a Linking Agreement through Mohave Educational Services Cooperative with Play It Safe Playgrounds, Inc. for the Shade Structures and Playground Replacement Project at Posse Grounds Park in an amount not to exceed \$434,470.24.

**Background:** It was recommended, in the 2012 Parks and Recreation Master Plan, to install shade structures and replace outdated playground equipment. The design for this project was completed in 2016 and includes replacement of the playground area at Posse Grounds Park. This is the last playground area that needs shade structures installed. This project was

previously delayed to allow the Posse Grounds Park Plan to be completed prior to making the project improvements in case a conflict developed with the existing location. It has been determined that, in all of the proposed Park modifications, the playground area would remain in its existing location, and the improvements may proceed.



*Existing Swings in Playground Area*



*Existing Playground Equipment*



*New Playground Improvements*

The new playground improvements will feature:

- slides
- swings
- climbing boards
- catwalk
- rope ladders
- cyclone spinner
- rubberized flexground
- Seven shade structures
  - Two over playground equipment
  - Five over bleachers along the adjacent field

The new ADA playground design will be inclusive by nature inviting children of all abilities to play together. The rubberized playground surface will be ADA accessible so as not to eliminate anyone (adult or child) from being able to use the park. By installing the weather/sun protective shade structures, it will increase the life of the playground equipment by providing protection from inclement weather and sun, as well as providing the same protection to the users of the playground equipment.

Once the shade structures and playground equipment are installed, additional work will be necessary to complete improvements included in the project design and not included in this project. This additional work will include construction of drainage improvements, ADA compliant sidewalks surrounding the playground, installation of four (4) park benches, and fencing at the northwest entrance of playground area.

**Schedule:**

- The playground equipment and shade structures will be ordered in November 2021 to secure pricing.
- Construction will be delayed due to warmer temperatures needed to pour and set the flexground playground surface.
- Construction timeframe is 45 days and anticipated to begin in early April 2022 and be completed by mid-May 2022.

**Procurement Method:**

Mohave Cooperative Agreement:

This contract is made through the Mohave Cooperative Purchase Agreement of which the City is a member.

**Community Plan Consistent:** Yes - No - Not Applicable

Community Plan Chapter 6: Parks, Recreation, and Open Space: Goal: "Provide activities and amenities that allow for community interactions and encourage active and healthy lifestyles."

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

Climate Action Plan: Materials and Consumption: Goal: "Increase the diversion of waste from the landfill and reduce GHG emissions associated with the consumption of goods and services." The equipment is manufactured by Burke manufacturing who has partnered with the EPA's Green Power program to meet specific green energy goals and reports to the EPA annually. In meeting these goals, the Burke playground structures and components are made with a portion of recycled materials.

**Board/Commission Recommendation:** Applicable - Not Applicable

**Alternative(s):**

1. Failure to replace existing playground equipment will continue deterioration of existing equipment and potentially lead to safety hazards and possible liability.
2. Delaying this project would increase costs and add additional project delays.
3. Failure to complete the project diminishes the enjoyment of the user due to the lack of shade available in the playground area.
4. Currently limits ADA accessibility.

**MOTION**

**I move to:** approve a Linking Agreement, through Mohave Cooperative, with Play It Safe Playgrounds, Inc. for the Shade Structures and Playground Replacement Project

at Posse Grounds Park in an amount not to exceed \$434,470.24., subject to approval by the City Attorney's office.



**LINKING AGREEMENT  
BETWEEN  
THE CITY OF SEDONA, ARIZONA  
AND  
PLAY IT SAFE PLAYGROUNDS AND  
PARK EQUIPMENT, INC.**

THIS LINKING AGREEMENT (this “Agreement”) is entered into as of this 26<sup>th</sup> day of October, 2021, between the City of Sedona, an Arizona municipal corporation (the “City”), and Play It Safe Playgrounds and Park Equipment, Inc., an Arizona corporation (“Contractor”), collectively, the “Parties.”

**RECITALS**

- A. On February 21, 2020, pursuant to a Mohave Cooperative Purchasing Agreement, the Mohave Education Services Cooperative, Inc. entered into a contract with Contractor to purchase the goods and services described in the Playground, Splash Pad, Outdoor Fitness and Related Equipment, Contract No. 19O-PLAY-0221, from IFB 19O-1121 (“Cooperative Purchasing Agreement”), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. On April 2, 2021, pursuant to a Mohave Cooperative Purchasing Agreement, the Mohave Education Services Cooperative, Inc. entered into a contract with Contractor to purchase the goods and services described in the Pre-Engineered Shade Structures, Contract No. 20Q-PLAY2-0402, from IFB 20Q-0107 (“Cooperative Purchasing Agreement”), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- C. SCC Section 3.05.020.C. permits the City to procure goods and services without the formal bidding process by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City’s utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was February 21, 2021, until the date the contract expires on February 21, 2022 unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original

contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond February 21, 2025. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until February 21, 2022. The City may renew the term of this Agreement for four (4) additional one-year periods under the Cooperative Purchasing Agreement between Mohave and the Contractor, until the Cooperative Purchasing Agreement expires on February 21, 2025. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.
- C. The City General Conditions apply, control and are incorporated into this Agreement by this reference, except where noted below and except where conflict occurs with Contract No. 19O-PLAY-0221 and Contract No. 20Q-PLAY2-0402.

Exceptions to the city General Conditions are:

- The General Conditions applicable to other types of work do not apply to this contract.
- Section 9 – schedule format may be other than Microsoft Project.
- Section 13 – contractor will not perform 50% of the work, contractor to provide oversight of work only.
- Section 17 – any utility relocation work will be by City.
- Section 31 – payment is per Exhibit C to this Linking Agreement.
- Section 37B – the city will coordinate work with Contractor’s representative.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed \$434,470.24 annually or \$434,470.24 for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for



employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.
7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.
8. No Boycott of Israel. The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.
9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually ,with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor ,with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Sedona  
c/o  
102 Roadrunner Drive  
Sedona, Arizona 86336  
Phone: 928-  
Email:

And

Play It Safe Playgrounds and Park Equipment, Inc.  
c/o  
7931 E. Pecos Rd., #160  
Mesa, AZ 85212  
Phone:480-347-8486  
Email:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

**CONTRACTOR:**

Play It Safe Playgrounds and Park Equipment, Inc.

By \_\_\_\_\_

Its \_\_\_\_\_

**CITY:**

CITY OF SEDONA, a municipal  
corporation of the State of Arizona

\_\_\_\_\_  
City Manager

Attest

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF SEDONA, ARIZONA  
AND  
PLAY IT SAFE PLAYGROUNDS AND  
PARK EQUIPMENT, INC.**

**EXHIBIT A**

(Mohave Educational Services Cooperative, Inc. Purchasing Agreement  
Pre-Engineered Shade Structures from IFB 20Q-0107; Contract No. 20Q-PLAY2  
0402, from IFB 20Q-0107 AND Playground, Splash Pad, Outdoor Fitness and  
Related Equipment from IFB 19O-1121, Contract No. 19O-PLAY-0221 AND  
Award Letters)

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF SEDONA, ARIZONA  
AND  
PLAY IT SAFE PLAYGROUNDS AND PARK EQUIPMENT, INC.**

**EXHIBIT B**  
Scope of Work

**PROJECT**

Fabrication and installation of playground equipment and related park equipment and shade structures and fabric for projects within the City of SEDONA per scope as described within IFBs 20Q-0107 and 19O-1121 and contracts 20Q-SHADE-0402 and 19O-PLAY-0221.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF SEDONA, ARIZONA  
AND  
PLAY IT SAFE PLAYGROUNDS AND  
PARK EQUIPMENT, INC.**

**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

Goods and services shall be purchased in accordance with the terms and conditions of the Mohave Educational Services, Inc. Cooperative Purchasing Agreement Contract Nos. 20Q-SHADE-0402 and 19O-PLAY-0221 and the terms and rates outlined in IFBs 20Q-0107 and 19O-1121.

Contractor shall be paid upon completion of the contracted scope of work and quote provided and following the City's receipt of a properly completed invoice.

Invoicing: Contractor to provide invoice(s) to City of Sedona authorized representative for payment of the invoice(s) and paid in accordance with city procedures through the City of Sedona Finance Department. Any issues regarding billing or invoicing must be directed to the City of Sedona Public Works Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Service addresses, contract number, and purchase order associated with the contract;
- j. Applicable Taxes;
- k. If applicable, mileage or travel costs; and
- l. Total amount due.

Payment of Funds: Payment will be made upon completion of work within thirty (30) working days through a traditional method of a check from invoice(s) provided by the Contractor.

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project are estimated to be \$\_\_\_\_\_ annually or \$\_\_\_\_\_ for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

Pricing sheets are included in IFBs 20Q-0107 and 19O-1121. Contractor shall use these pricing sheets to formulate a written quote for each project. Each project shall be quoted in writing and shall be reviewed by an authorized City of Sedona representative who shall verify that it meets the contractual pricing before any work begins.

Once a project has been completed, Contractor shall provide a detailed invoice to the City of Sedona. All invoices must match the quote provided and be confirmed by the City of Sedona authorized representative prior to paying.

Existing Parks and Recreation Building

New Low Fence  
New Double Gate

New Colored Concrete Walk

Existing Gate  
Existing Fence

Bleacher Shade Canopies  
Poured in Place Surfacing:  
Green, Blue and Brown

Playground Shade Canopy

Playing Field

New Concrete Playground Curb

Existing Trees to Remain

Existing Ramadas



# Posse Ground! Park

PLAYGROUND RENOVATION  
MASTER PLAN  
March 2016



6 East Aspen Avenue  
Suite 200  
Flagstaff, AZ 86001  
P 930.253.3021  
www.norris-design.com





**CITY COUNCIL  
AGENDA BILL**

**AB 2714  
October 26, 2021  
Regular Business**

**Agenda Item:** 8b  
**Proposed Action & Subject:** Discussion/possible action regarding regulation of Off-Highway Vehicles within the Sedona City limits and the surrounding area.

<b>Department</b>	City Attorney's Office
<b>Time to Present</b>	30 minutes
<b>Total Time for Item</b>	90 minutes
<b>Other Council Meetings</b>	N/A
<b>Exhibits</b>	A. Sedona OHV Report 2019 B. Request to USFS

<b>City Attorney Approval</b>	Reviewed 10/19/21 KWC	<b>Expenditure Required</b>	
		\$	0
<b>City Manager's Recommendation</b>	Approve the letter to the USFS requesting their consideration of a limited entry permit system for motorized use trails in the greater Sedona area.	<b>Amount Budgeted</b>	
		\$	0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:**

Multiple City Councilors requested to meet and discuss possible regulation of OHVs within the Sedona City limits. This agenda item was scheduled to facilitate that discussion.

OHVs are primarily regulated by Title 28 "Transportation," Chapter 3 "Traffic and Vehicle Regulation," Article 20 "Off-Highway Vehicles" of the Arizona Revised Statutes. Article 20 "applies to all lands in [the State of Arizona] except for private land and Indian land."

A.R.S. § 28-1172 "Off-highway vehicle":

(a) Means a motorized vehicle that is operated primarily off of highways and that is designed, modified or purpose-built primarily for recreational nonhighway all-terrain travel.

(b) Includes a tracked or wheeled vehicle, utility vehicle, all-terrain vehicle, motorcycle, four-wheel drive vehicle, dune buggy, sand rail, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind. A.R.S. § 28-1171.



OHVs are a popular activity in and around Sedona. The Arizona State Parks and Trails department publishes four distinct OHV routes for the area west of Sedona, utilizing Forest Road 525 as a staging area. For example, Sedona Route 2 is published on its website found here: <https://azstateparks.com/where-to-ride>. Other trails are accessed via City-owned streets in residential neighborhoods like Broken Arrow, Dry Creek, Schnebly, and Soldiers Pass.

### **City OHV Regulation:**

Many areas of potential OHV regulations are preempted by state law. However, A.R.S. § 28-1174.A envisions local regulation: “A person shall not drive an off-highway vehicle:... 3. On roads, trails, routes or areas closed as indicated in rules or regulations of a federal agency, this state, a county or a municipality or by proper posting if the land is private land.” That same section also states: “B. A person shall drive an off-highway vehicle only on roads, trails, routes or areas that are opened as indicated in rules or regulations of a federal agency, this state, a county or a municipality.”

### **Required equipment under Arizona state law to operate an OHV:**

- A U.S. Department of Transportation-approved helmet is required to be worn by all riders under 18 years old (A.R.S. § 28-1179B)
- Brakes (A.R.S. § 28-1179A.1)
- Lighted head and taillights if operated between one half-hour after sunset and one half-hour before sunrise (A.R.S. § 28-1179A.2)
- A muffler or noise dissipative device that prevents sound above 96 decibels (A.R.S. § 28-1179A.3)
- A United States Department of Agriculture (USDA)-approved spark-arrestor device (A.R.S. § 28-1179A.4)
- Eye protection is required for operators of vehicles not equipped with a windshield (A.R.S. § 28-964A)
- License plate securely fastened to the rear of the OHV and clearly visible (A.R.S. § 28-2512D.1&2)
- Rearview mirror (A.R.S. § 28-964B)
- Brake light and at least one red rear reflector (if taillight does not reflect) (A.R.S. § 28-927)
- Seat and footrests for the operator and passenger if the vehicle is designed to carry a passenger (A.R.S. § 28-964B)
- Sand dunes and certain areas designated by a land managing agency may require a safety flag. The flag shall be at least 6-x-12 inches and attached to the OHV and flying at least 8 feet above the surface of the ground. (28-1179A.5)

### **Required equipment under Arizona state law to make an OHV street legal:**

- A license plate light. (A.R.S. § 28-925C)
- A horn audible from a distance of at least 200 feet. (A.R.S. § 28-954A)
- Proper insurance. (A.R.S. § 28-4142A)
- Emissions: Certain areas may also require you to have your OHV emissions tested (Maricopa and Pima County). (A.R.S. § 49-542C & D)

Whether local legislation by the City is preempted by state law is a “question of legislative intent, which can be either express or implied.” *Babe’s Cabaret v. City of Scottsdale*, 197 Ariz. 98, 102 (App.1999). When an issue affects both local and statewide interests, both the locality and the state may enact relevant laws. *Id.* A state law only preempts conflicting local

ordinances when the subject matter of the legislation is of statewide concern and the state has appropriated the field. See *Winkle v. City of Tucson*, 190 Ariz. 413 (1997).

The City currently has one ordinance regulating OHVs: SCC 10.15.180 "Off-road vehicles." It states:

It is prohibited for any person to drive, ride or use a motorcycle, off-highway motor vehicle, motor vehicle, minibike, dune buggy, motor scooter, jeep or other form of transportation propelled by an internal combustion engine upon any public or private property that is not a driveway, private street way, public street way, public right-of-way or street as defined in SCC 12.05.040 and 12.20.030, or on rights-of-way determined by the city engineer to be inappropriate for such travel, and visibly posted to prohibit such travel, including, but not limited to, public trails, river walks, etc.

This ordinance prevents OHVs and any vehicle from operating on shared use paths.

The City has previously studied regulating OHVs in 2019 through the Sedona OHV Work Group. It issued the Sedona OHV Report (attached as Exhibit A) which found that Off-highway vehicles (ATV/UTVs) are street legal in Arizona and provided recommended and not recommended strategies for reducing noise, increasing safety, and protecting natural and cultural resources. The Report recommended:

1. Education & Information (signs, website, youth education programs, public relations campaign, OHV license information)
2. Law enforcement (checkpoints, speed deterrents)
3. Rental Vehicles (newer, quieter vehicles, improved equipment and technology, electric vehicles)

The Report did not recommend:

1. OHV Sound Regulations
2. Lower Speed Limits
3. Requiring Modified Mufflers
4. Road Restrictions (prohibit ATVs/UTVs on City Streets)
5. Commercial Staging Area

Since 2019, OHV use in Sedona has continued to increase.

### **Potential City Actions:**

Councilors and residents have asked about potential City actions. The following is a partial list.

#### **1. Can the City enact stricter vehicle muffler requirements?**

No. The State has preempted cities when it comes to OHV noise level. A.R.S. § 28-1179A.3 states that OHVs only need a muffler or noise dissipative device that prevents sound above 96 decibels. This is one reason the OHV report did not recommend OHV sound regulations or modified mufflers. Another reason is that a survey of OHVs found only one example of an OHV that exceeded the 96 dBa level, and most were significantly under the noise level.

The City could explore ways of working with OHV rental companies to voluntarily install modified muffler silencers or incentivizing the installation, but the City cannot require them.

A typical city ordinance relating to vehicles and muffler noise only requires that a vehicle have a muffler in good working order. City Council will consider a new citywide noise ordinance at the Council meeting on November 9, 2021.

**2. Can the City enact an OHV-specific ordinance limiting OHV operation between certain hours?**

Yes. The State has not set OHV specific hours. The above provisions supporting local regulation (A.R.S. §§ 28-627 and 1174) support the City in regulating the operating hours as an OHV local rule, regulation, ordinance, or code. Thus, the City could adopt a nighttime closure prohibiting OHVs on City streets between certain hours, perhaps 7 p.m. to 7 a.m. There are a number of practical considerations to adopting any of these regulations that PD and Public Works would want to consider prior to adoption, including signage needs and enforcement capabilities and adequate empirical support for any new regulations.

The City cannot impose any OHV regulations on state highways, SR89A or SR179.

**3. Can the City limit or regulate the number of OHV rental companies within the City through zoning ordinances or business licenses?**

Currently, no. Cities cannot generally cap the number of a particular type of business except for businesses that are generally recognized as having deleterious secondary effects proven through studies. For example, recreational marijuana stores and adult stores are regulated through caps, zoning regulations, and even spacing requirements. Denying a business license to an otherwise qualified applicant just because it is a business the City does not want any more would violate current City ordinances and have State and US Constitution implications, including equal protection concerns.

Although the City has a legitimate interest in controlling the location of businesses through zoning ordinances and could theoretically limit the number of OHV businesses by creating a zoning district customized for that use, the cases that typically allow cities to do so address historically prurient uses, like sexually oriented businesses. The cases supported regulation (typically separation requirements) because of the negative secondary effects of the sexually oriented business uses. It may be possible to make a rational argument that excessive OHV noise causes negative secondary effects as well, but it would be difficult to show they rise to the same level as marijuana or adult stores without concrete evidence to demonstrate the negative effects. Thus, a practical problem may be with the availability of evidence associating OHV noise with the negative secondary effects. Municipalities have relied on the negative effects studies to regulate adult stores. If the City cannot find relevant studies, it may need to conduct its own research.

Another practical problem: any new, more restrictive zoning category or restrictive ordinance could be subject to Private Property Rights Protection Act (Prop 207) challenge under A.R.S. § 12-1134 (property owners are entitled to just compensation for diminution in value caused by land use laws enacted after December 7, 2006). See *Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37 (App. Div. 1 2012) (ordinance providing for criminal enforcement of prohibited transactions involving short-term rentals of residential property was a “land use law” within the meaning of Private Property Rights Protection Act requiring government entities to pay compensation if an ordinance reduces the value of the property). Modifying zoning districts to either impose separation requirements or to limit the total number of businesses permitted to operate OHV businesses is a “land use law” under the statute, and it is reasonably likely that a Prop 207 claim would follow any reduction in the number of OHV businesses permitted on certain property or in the City.

Accordingly, utilizing zoning techniques or business licenses is not appropriate for OHV regulation without concrete evidence that the businesses create negative secondary effects beyond other vehicles/motorcycles.

The City is in the process of verifying that existing OHV businesses are complying with permitting, parking, screening, and other regulations. These findings will be available at the October 26<sup>th</sup> meeting.

**4. Can the City commission an Environmental Impact Study or consult with an environmental law firm?**

Yes, the City may consult with environmental law firm and commission Environmental Impact Study to further research areas for regulation. Evidence of public health and safety issues is necessary in order to take actions limiting numbers of OHVs or OHV businesses. An EIS may provide that needed information.

**5. Work with Forest Service and other stakeholder groups.**

The United States Forest Service, the Sedona Chamber of Commerce & Tourism Bureau, and its newly created Red Rock OHV Conservation Crew (RROCC) will be at the City Council meeting to briefly speak on OHVs and answer questions.

Interested residents have also drafted the attached City of Sedona Request Regarding Motorized Use Trails (Exhibit B) for Council's consideration and possible adoption.

**Conclusion:**

Although current enforcement options are limited, the City can continue studying the issue and working with the USFS, RROCC, and interested residents. City staff continues to welcome suggestions from interested parties on areas of potential regulation.

**Community Plan Consistent:** Yes - No - Not Applicable

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

**Board/Commission Recommendation:** Applicable - Not Applicable

**Alternative(s):**

**MOTION**

**I move to:** approve the letter to the USFS requesting their consideration of a limited entry permit system for motorized use trails in the greater Sedona area.



# Sedona Off-Highway Vehicle (OHV) Report



## Acknowledgments

### Sedona OHV Work Group Members:

- Rob Adams, Broken Arrow Homeowners Association (HOA) and Peaceful Sedona
- Nena Barlow, Barlows Adventures
- Jerry Checchia, recreational OHV owner
- Jimmy Custer, Sedona ATV & Buggy Rentals and Red Rock ATV Rentals
- Jerry Hartleben, Broken Arrow HOA and Peaceful Sedona
- Mary Leas, Red Rock Western Jeep Tours
- Birgit Loewenstein, SOAR
- Chuck Murray, Shadow Estates HOA
- Susan Murrill, Keep Sedona Beautiful
- Dave Norton, Dry Creek Road HOAs representative
- Jerry Piepiora, recreational OHV owner
- Bill Stankey, Shadow Estates HOA
- Dave Swartwout, Safari Jeep Tours

### Agency Representatives:

- Lauren Browne, City of Sedona Citizen Engagement Coordinator
- Justin Clifton, City of Sedona City Manager
- Cynthia Lovely, City of Sedona Senior Planner
- Forrest Saville, Coconino National Forest, Red Rock District Trails and OHV Coordinator
- Kim Jackson, Arizona Game and Fish Department, Boating and OHV Education Program Manager

**May 2019  
+ Appendix 4 Supplement, October 2019**



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## Executive Summary

The scenic red rock landscape is what draws people to Sedona, and residents have always valued the fact that the city is surrounded by public land that is close by and easy to get to. The proximity of the National Forest to residential neighborhoods is now creating challenges as off-highway vehicle (OHV) use has become increasingly popular. The OHV traffic has brought with it concerns about noise, safety, and environmental impacts as well as the quality of life for some Sedona residents.

Residents living along roads that lead to the National Forest brought their concerns to the city in 2013 as the number of rental all-terrain and utility vehicles (ATV/UTV) was rapidly increasing. The city heard from both individual residents and homeowner associations (HOAs) along Soldiers Pass Road, Dry Creek Road, Morgan Road, and to a lesser degree Schnebly Hill Road. In response, the city formed a Work Group under the Citizen Engagement Program in 2014 to address community concerns. The group was made up of representatives from OHV businesses (vehicle rental and guided tour companies), affected residential neighborhoods, recreational OHV owners, and Forest Service and city staff. The Work Group's early efforts led to the successful award of state grant funding to the Forest Service to address some of the issues identified by the group.

In 2017 the city continued to hear from several homeowners associations about OHV noise in particular and responded to these concerns by forming a more focused Work Group with a balance of members representing each interest group that would take on the task of a more in-depth evaluation of potential strategies. There were several objectives of the Work Group, one of which was to bring together people on all sides of the issue to participate in a dialogue that would lead to a better understanding of all perspectives.

The second objective of this effort was to develop an informative report that could serve as a reference for residents, business owners, elected officials and agency staff. This report includes background information essential to understanding OHV use in and around Sedona along with relevant state and city regulations, and previous efforts and accomplishments. Explanations are offered to answer questions as to why some strategies are not being pursued, typically because they are not considered feasible or effective at accomplishing the goals.

The third objective was to provide recommendations for City Council and the Coconino National Forest. The recommendations offer direction on specific actions to focus on, as well as those that should be continued or expanded upon. The report also sheds light on the complexities of the issues and why there is no single, simple solution.



**Key Points of this Report**

The following are the key points of this report:

- Off-highway vehicles (ATV/UTVs) are street legal in Arizona
- There are three OHV user groups in Sedona:
  1. Rentals
  2. Guided tours
  3. Private owners
- Four of the five roads that give OHV users access to the National Forest are city streets through residential neighborhoods:
  1. Dry Creek Road
  2. Soldiers Pass Road
  3. Schnebly Hill Road
  4. Morgan Road/Broken Arrow
- City of Sedona sound regulations (§8.25.090F) exempt “sound from the locomotion of properly muffled motor vehicles on a public right-of-way or residential driveway.”
- State statute (§ 28-1179) sets the maximum sound limit for OHVs at 96 decibels (dBa).
- State statute (§41-194.01)/Senate Bill 1487 prohibits cities from enacting laws that are more restrictive than state laws. If found in violation, the city could lose approximately \$3.9 million in state revenues.

**Summary of Recommendations**

Seven potential strategies are evaluated in this report, addressing the cost/benefits, feasibility, and effectiveness of each strategy to accomplish the desired goals:

1. Reduce OHV noise in neighborhoods,
2. Improve safety for OHV users, and
3. Protect natural and cultural resources (resource protection).

It is recommended that following completion of the current State Parks grant, another grant application should be submitted to implement the recommended strategies.

**Recommended Strategies**

Education & Information:

- Signs
- Website
- Youth Education Programs
- Public Relations Campaign
- OHV License Information

Law enforcement:

- Checkpoints
- Speed Deterrents

Rental Vehicles:

- Newer, Quieter Vehicles
- Improved Equipment and Technology
- Electric Vehicles

Staging area:

- OHV Trailhead on Forest Road (FR) 525

**Not Recommended**

OHV Sound Regulations

Law Enforcement:

- Lower Speed Limits

Rental Vehicles:

- Modified Mufflers

Road Restrictions:

- Prohibit ATVs/UTVs on City Streets
- Restrict Use of Broken Arrow

Staging Area:

- Commercial Staging Area

**Introduction**

**What is an OHV?**

OHV stands for off-highway vehicle, and can include a variety of different types of vehicles, typically with four-wheel drive and designed for use on dirt and unimproved roads. For the purpose of the Work Group discussions and this report, the use of the term OHV is consistent with the State Parks OHV program’s description of an OHV:

*“Simply put, any motorized vehicle used to travel over unpaved roads and trails is an off-highway vehicle.”*

- Arizona Trails 2015, A Statewide Motorized and Non-motorized Trails Plan

The following is the State of Arizona’s legal definition in Title 28 of the Arizona Revised Statutes (A.R.S. §28-1171) of an OHV for purposes of operational regulations, title, and registration.

*Off-highway Vehicle:*  
 (a) Means a motorized vehicle that is operated primarily off of highways and that is designed, modified or purpose-built primarily for recreational nonhighway all-terrain travel.  
 (b) Includes a tracked or wheeled vehicle, utility vehicle, all-terrain vehicle, motorcycle, four-wheel drive vehicle, dune buggy, sand rail, amphibious vehicle, ground effects or air cushion vehicle, and any other means of land transportation deriving motive power from a source other than muscle or wind.  
 A.R.S. §28-1171

**Vehicle Types**



ATV (All Terrain Vehicle) or Quad. Features handlebars and straddle-style seat.



UTV (Utility Task Vehicle), ROV (Recreational Off-highway vehicle), or “side-by-side”, such as Polaris RZR®. Features steering wheel and roll-bar.



4x4/4WD, SUVs (Sport Utility Vehicles), trucks, and Jeep®.

*In this report, “UTV” will refer to both ATVs and UTVs*

The terms ATV and UTV are typically referring to two distinctly different vehicles (as shown in the illustration above). The side-by-side UTV is more commonly seen in Sedona and makes up the majority of the ATV and UTV type of rental vehicles. For simplicity, this report will use the term UTV to represent both types of recreational vehicles.

**User Groups**

There are three user groups in Sedona that are the subject of this report. The number of each type of business operating in the city limits is indicated below.

- 1) Rental companies:
  - UTV rental vehicles (three businesses)
  - Jeep® rental vehicles (one business)
- 2) Tour companies:
  - Guided Jeep® or SUV tours (approximately five businesses)
  - Guided ATV tours (one business)
- 3) Private owners

Many of the proposed strategies address UTVs and UTV rental businesses, however they are not the sole focus of this report. There are many strategies that are applicable to all vehicle types and user groups. For example, everyone would benefit from improved maps and signs, and all could be affected by road restrictions.

*“Street Legal” and the OHV Decal*

Street legal refers to the fact that in Arizona, UTVs are considered legal for on-street use. With the appropriate equipment, UTVs can be registered with the Arizona Motor Vehicle Division and are treated like any other vehicle on the road, and required to obey the same rules of the road. This sometimes comes as a surprise to people not familiar with UTV use, especially when there are some states where driving UTVs on public streets is not permitted.



The state also requires UTVs to obtain an OHV Decal annually in order to operate in Arizona. Revenues from the decal are split 30 percent to the Highway User Revenue Fund, and 70 percent to OHV programs (Arizona State Parks, Game and Fish Department, and State Land Department). These programs then use the funds for education, law enforcement, and the State Parks OHV grant program. The grant program provides funding for OHV projects and programs such as road development and maintenance, law enforcement, and education.

The brochure to the right is an example of educational information produced by the state. For a copy of the 19 page brochure as well as information about the statewide programs and OHV rules and regulations, see the following websites:

- [www.azstateparks.com/ohv](http://www.azstateparks.com/ohv)
- [www.azgfd.com/ohv](http://www.azgfd.com/ohv)



**OHV Access**

Sedona’s geography poses a unique challenge to managing motorized outdoor recreation. The city is surrounded by National Forest and access to most of the popular recreation areas is via city streets through residential neighborhoods. There are four access points that lead from the city to popular OHV routes (see Figure 1 below). The only other option to access OHV routes is west of the city using West State Route (SR) 89A to FR 525, which is not safe for UTVs due to the 55-65 mph speed limit on the highway. Private owners will trailer their UTVs to FR 525 rather than drive them on the highway.

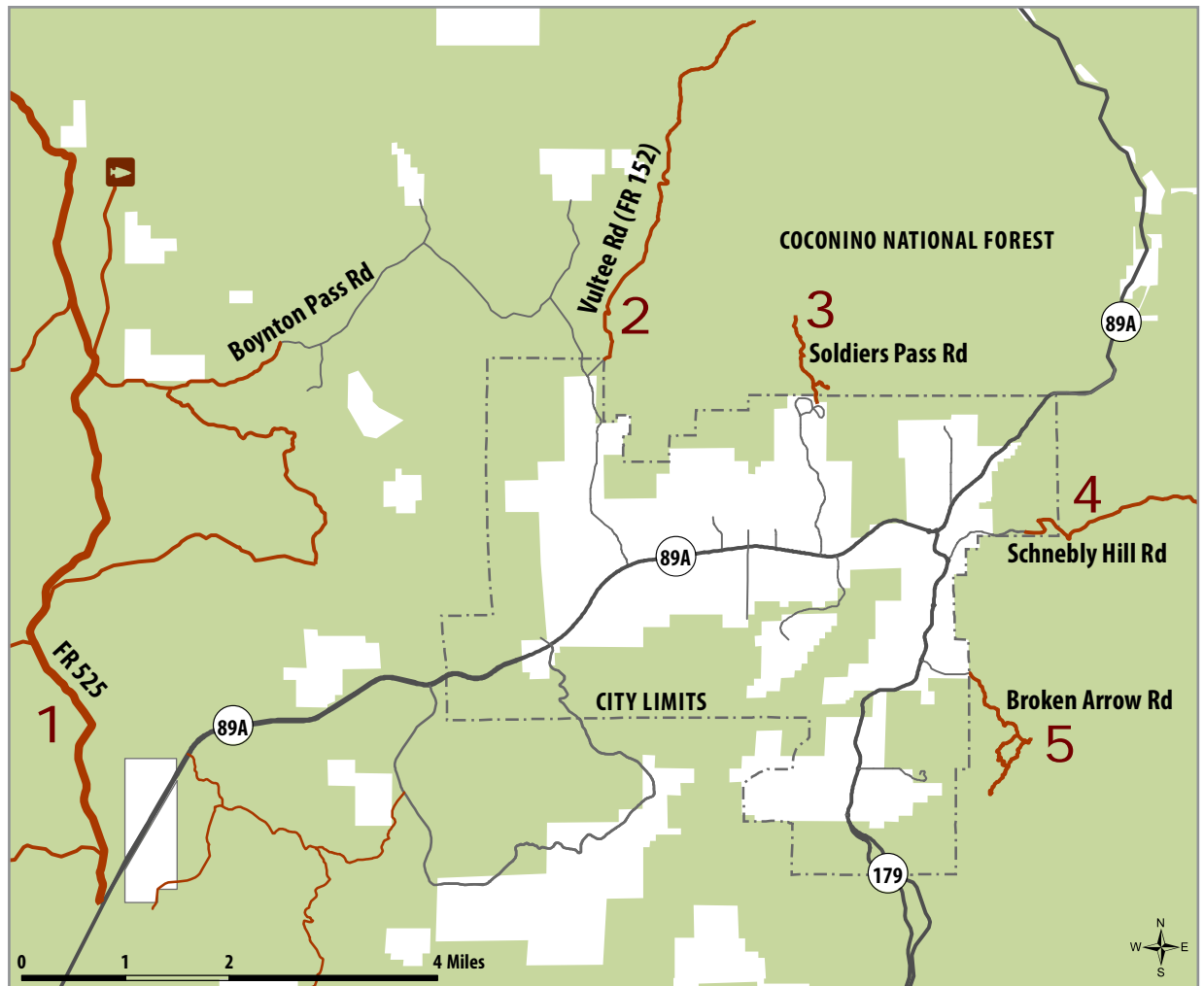


Figure 1. Region map of the City of Sedona and the National Forest showing National Forest roads/OHV routes accessible from the city.

- 1) Loy Butte Rd, FR 525, 11 miles. Accessed from W. SR 89A or from Boynton Pass Rd. Provides access to a network of additional OHV routes and the Palatki and Honanki Heritage Sites.
- 2) Vultee Rd, FR 152, 4 miles. Accessed from Dry Creek Rd.
- 3) Soldiers Pass Forest Rd, FR 9904, 1.25 miles. Accessed from Soldiers Pass Rd. through Shadow Estates HOA. Requires permit which restricts the number of vehicles per day.
- 4) Schnebly Hill, FR 153, 11 miles. Access from SR 179 or Interstate 17.
- 5) Broken Arrow, FR 179F, 2 miles. Accessed from Morgan Rd. Not suitable for standard 4x4 vehicles.

**Background**

**The Growth of UTV Use in Sedona**

The increase in UTV use in Sedona came to the forefront in 2013, when residents approached City Council with their concerns about the increasing number of UTVs on city streets. Unlike other tourist activities like Jeep® tours that have been around for years, UTV rentals were relatively new to Sedona. It appears that the first company to specialize in UTV rentals began in 2010. The growth of that business was apparent as the number of vehicles available for rent multiplied. Another rental business opened in 2015, offering ATV rentals and quickly grew, moving to a more prominent location and expanding the number and type of vehicles. These two companies have since merged under one ownership whose fleet comprises approximately 95% of UTV rentals in the city. While the growth of UTV rental businesses is more apparent, there also appears to be an increase in the number of privately owned UTVs on the road.

*“OHV use in Arizona has exploded (347 percent increase since 1998), outpacing the existing funding to manage that growth, protect wildlife habitat, and help maintain recreational access.”*  
 - Arizona Game and Fish Department, 2009

**History of the Work Group**

Community concerns about OHVs came to the attention of City Council at an HOA outreach meeting in 2013. Representatives of the Shadow Estates HOA and Dry Creek Road neighborhoods expressed concerns about the increasing amount of traffic and noise from OHVs. To hear from other stakeholders, the city hosted a meeting with OHV businesses and Forest Service staff. Council discussed the concerns at a November 2013 work session and directed staff to form a work group with representation from all the stakeholders that would focus on addressing the primary concerns of safety, noise, speeding, and resource damage.

*Work Group 1.0*

The first Work Group meeting was in April 2014, managed by Community Development staff and coordinated through the Citizens Engagement Program. The group was open to interested businesses, neighborhood residents, and agency staff. The purpose of the group was to identify potential solutions to the issues identified by City Council. The diverse mix of participants had a variety of backgrounds and experience and shared their observations on the recent increase and impacts of OHVs. The group quickly came to realize the complexity of the issues and that there was no single or simple solution to the problem. The outcome of this phase of the Work Group was a report to Council in October 2014 that summarized 22 possible strategies, some of which were regulatory (see Appendix 1). Rather than taking a regulatory approach, Council directed staff to partner with the Forest Service, collect more data, and investigate a volunteer ambassador program through the Forest Service.

Since staff and funding was limited, the Forest Service with the support of the City, applied for and received a grant from Arizona State Parks to fund a staff position and projects to better address OHV issues. The Work Group’s efforts had paid off, as the grant application criteria values collaborative projects with community support. While the Work Group was not active in 2015 and 2016, the Forest Service and City continued to address the issues, and those accomplishments are described on the following pages.

*Work Group 2.0*

The Work Group reconvened in 2017 in response to receiving the grant and at the request of neighborhood residents. Several meetings were held to discuss what had been done since 2014 and what more could be done, especially to address the issue of noise in the neighborhoods. It was then decided to form a more focused and balanced group that would have a more specific mission of evaluating and recommending strategies to the Forest Service and City Council.



Work Group 3.0

Prior to the formation of the third work group, City staff began hearing more consistent complaints from the Broken Arrow HOA and HOAs along Dry Creek Road that constant OHV noise was negatively affecting resident quality of life -- to the point residents in the Broken Arrow neighborhood formed Peaceful Sedona, a grassroots effort to urge the City to prohibit ATVs on residential streets in Sedona. Peaceful Sedona's on-line petition collected 740 supporters on www.change.org.

This, in addition to City Council looking for more concrete solutions, led the City to put together the OHV Work Group 3.0. This group revisited the strategies from the previous groups, focusing on OHV noise and safety issues and evaluating which strategies would be worthwhile to investigate further and ultimately come up with recommendations for this report.

The revamped group had a balance of members representing different interests:

- Rental companies
- Tour guide companies
- Environmental advocates
- OHV users (private owners)
- HOA representatives



To ensure that balance, participation was limited to designated representatives. The idea was that if a group with competing interests could come to an agreement on which strategies to pursue, their recommendations would carry more weight for those making the decision about what to act upon. The new Work Group meetings were structured to focus on a proposed strategy and featured guest speakers on specific topics. The group met eight times between October 2017 and June 2018.

**Accomplishments  
2015-2018**

One of the strategies identified in 2014 by the first work group was to apply for a State Parks OHV grant. Neither the City nor the Forest Service had staff available to focus on OHV issues, however a grant could provide funding to hire staff. Relying on the efforts of the Work Group as an example of inter-agency coordination and community support, the Forest Service submitted the grant application with the City as a contributing partner. The grant was awarded to the Forest Service in the amount of \$300,000 for a 3-year program that started in 2016. The grant requires a 50 percent match that included in-kind match for Forest Service staff time, City of Sedona staff time, and the volunteers' time on the OHV Work Group.

**Greater Sedona Area OHV Coordination Project  
2016-2019**

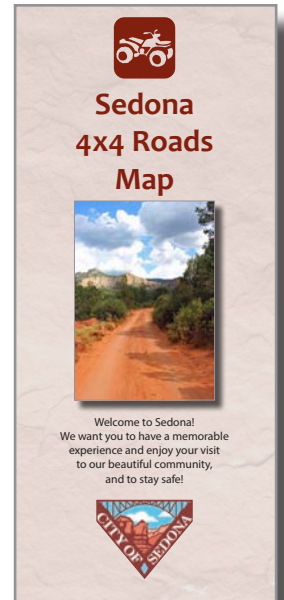
Grantor: Arizona State Parks OHV Grant Program  
Grantee: Coconino National Forest  
Grant Amount: \$300,000

The following are funded by the grant:

- Forest Service staff
  - OHV Coordinator
  - Two seasonal employees
- Increased field presence and law enforcement
- Comprehensive planning, inter-agency coordination, volunteer coordination
  - City of Sedona, OHV Work Group
  - OHV Ambassador Program volunteer training
- Educational programs, maps, and information
- Route maintenance, designation, and signage
  - 33 miles route maintenance in 2018
  - Installed 53 new signs in 2018
- Resource damage mitigation and restoration
  - Rehabilitated 4,500 feet of closed roads in 2018

The following are City initiated efforts to address neighborhood concerns:

- The City created a new map/brochure that focused on OHV use in neighborhoods. It was distributed to OHV rental companies and the Forest Service visitor center, and is available online. This brochure is expected to be replaced by a more comprehensive brochure being developed by the Forest Service as one of the grant projects with the assistance of the Tread Lightly!® program.
- Street signs were installed in the Shadow Estates neighborhood to improve directional information to and from Soldiers Pass trailhead. This was in response to vehicles getting lost and driving around neighborhood streets in search of the trailhead or exit.
- The Police Department set up several checkpoints during holiday weekends in 2015 for the purpose of providing educational information (such as the brochure), data collection on the volume and type of vehicles, and inspecting for safety equipment.
- Police Department volunteers monitored the number and speed of UTVs on several city streets in the Spring of 2018.



**Soldiers Pass Forest Road NEPA Study**

*See Appendix 2 for details on the NEPA process*

One of the significant developments that occurred in 2017 was the Forest Service decision to control public access to the Soldiers Pass Forest Road. The decision was made following a lengthy National Environmental Policy Act (NEPA) study that evaluated multiple alternatives addressing the increased use of the road. The City supported the completion of this study as a means of addressing the concerns of neighborhood residents. The study looked at the effects of OHV use on natural resources, the amount of OHV use, and effects of OHV use on other recreational users. The final decision was to continue the permit program for guided tours and institute a permit program that limited public use to 12 vehicles per day. This was considered a compromise between the extreme options of closing the road to vehicles altogether or continuing unlimited public access. While not the primary focus of the NEPA study, the decision alleviated resident concern about excessive OHV noise in the Shadow Estates neighborhood. The Forest Service is currently monitoring other OHV routes to determine if there has been an increase in use as a result of the restrictions to Soldiers Pass.



Gate at Soldiers Pass Forest Road

**Data Collection**

The 2014 report to Council recognized that more information was needed about OHV use in Sedona. The Forest Service started collecting data in 2015 using stationary cameras posted on National Forest roads. Data collection has proven to be more challenging than expected as it requires staff time, equipment, and diligence to collect accurate, complete, and consistent information. The information presented below can be considered snapshots in time based on available data. Unfortunately there are gaps in the data, most of which are due to equipment failure resulting in multiple days of no data, including several holiday weekends with no data. The most complete data which was used for the following charts was collected in 2017 and 2018.

Figure 2 is a comparison of OHV use on Broken Arrow Road and Vultee Road, specifically the average vehicles per day on a weekend (Saturdays and Sundays). These roads are on opposite sides of the city and offer different experiences. The nature of Broken Arrow's challenging terrain is not suitable for all vehicle types, and is more appropriate for experienced drivers. This is likely to influence OHV use, for example the comparison shows that Broken Arrow sees less UTVs and 4x4s than on Vultee Rd.

As the highest use days, Saturdays and Sundays were chosen for the comparison. The time frame of the comparison is limited due to the fact that Vultee Road data was collected for only four months in 2017. The "Tours" category represents guided tour vehicles permitted by the Forest Service, which limits the number per day. "UTVs" includes ATVs, RZR<sup>®</sup>s, and other two to four seat off-road vehicles; and "4x4" are all other vehicles such as Jeeps<sup>®</sup> and SUVs. This data collection method (camera) was unable to distinguish between private or rental vehicles, thus UTVs and 4x4s may be private or rental vehicles. See Appendix 3 for a spreadsheet of the complete data from Broken Arrow and Vultee Road.

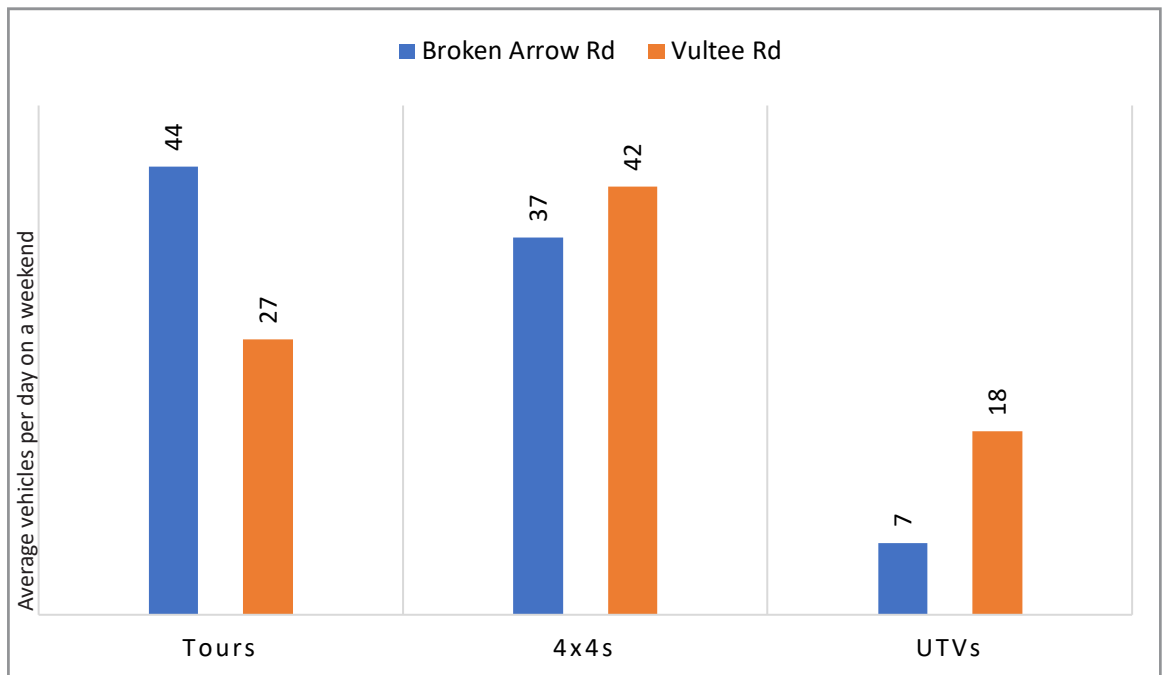


Figure 2. Comparison of OHV Use on Broken Arrow Road and Vultee Road: Average vehicles per day, between July and November 2017.



**Broken Arrow Data Collection**

Figure 3 shows the proportion of OHVs by type at Broken Arrow. The Tours category represents Pink Adventure Group, the exclusive permittee for Broken Arrow guided Jeep® tours.

Figure 4 addresses an observation that there was an increase in use from 2017 to 2018. In order to make a comparable analysis, this data set was limited to corresponding dates in 2017 and 2018 - between March and September for a total of 145 days. Based on this data there was a 16% increase in OHV use at Broken Arrow from 2017 to 2018.

The pattern of increased use has continued through May of 2019, however there was a significant increase in UTVs during July, August and September of 2018. In comparison, that spike was not seen with other 4x4 vehicles. Data from 2019 will be of interest to see if the spike in UTV use is repeated during those three months.\*

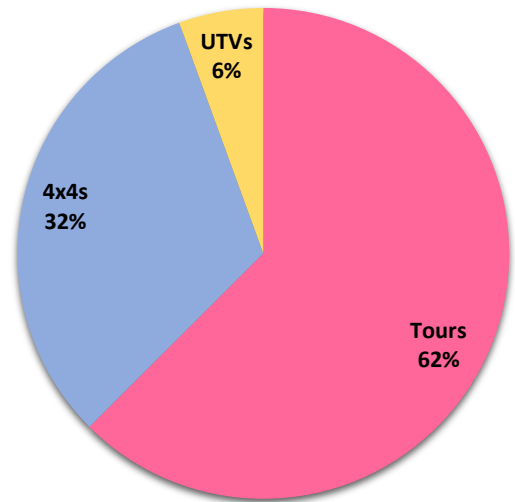
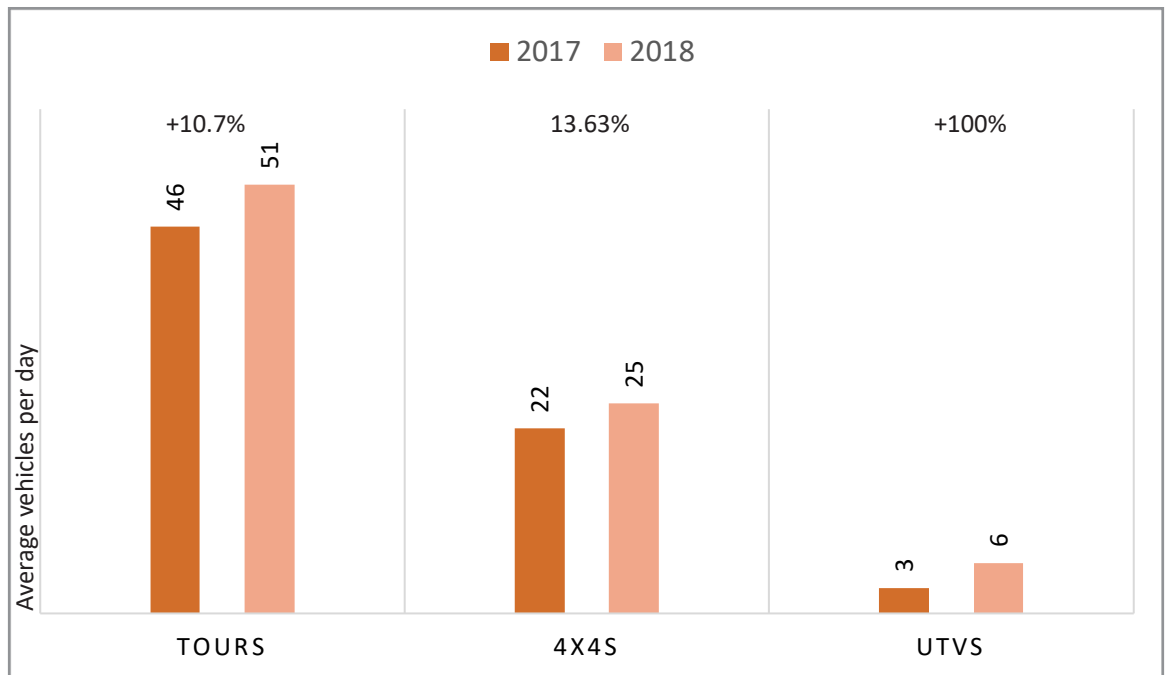


Figure 3. Broken Arrow Use by Type of Vehicle Based on 463 days between March 2017 and September 2018

\*See Appendix 4 (page 58) for an updated Figure 4 with 2019 data



\*Figure 4. Comparison of 2017 and 2018 Average Vehicles Per Day at Broken Arrow. Based on 145 days between March and September of 2017 and 2018.

## Goals

The focus of the Work Group in 2017 and 2018 was to evaluate potential strategies that would address: noise, safety, and natural and cultural resource protection. This report includes an evaluation of how effective each strategy is at addressing these goals.

The primary goal is to find solutions that will reduce the impact of OHV noise on residential neighborhoods. The neighborhoods that are the most affected by the noise are Dry Creek Road, Morgan Road (Broken Arrow subdivision), Schnebly Hill Road, and Soldiers Pass Road.

The following are the specific concerns about noise, safety, and resource protection that have been mentioned over the last four years of Work Group discussions:

### Noise

- The sound of engines as well as UTV tires on paved neighborhood streets.
- Multiple OHVs passing by at one time and groups of OHVs.
- People talking loudly, and loud music while driving through neighborhoods.
- OHV noise that can be heard by people on non-motorized trails.

### Safety

- UTVs sharing the road with larger vehicles.
- ATVs which do not have seatbelts or roll bars.
- Inexperienced or reckless drivers.
- Speeding on city streets and dirt roads.

### Resource Protection

- Natural resource impacts such as driving over vegetation and soil erosion.
- Impacts to cultural resources (archaeological sites or artifacts).
- The impacts of dust on prehistoric rock art.
- Uncontrolled widening of dirt roads.
- Driving off designated roads.
- Air quality impacts from vehicle exhaust and dust.
- The degradation of dirt roads, usually from driving in muddy conditions.
- Black tire marks on the red rocks.

Additional concerns:

- The increasing numbers of OHVs (rental and tour vehicles) contributing to traffic congestion, especially during holidays and the peak seasons.
- Private OHV owners parking trailers and unloading vehicles in inappropriate locations such as shopping center parking lots, trailheads, and neighborhood streets.
- User conflicts where dirt roads and hiking/biking trails intersect.

**Proposed Strategies**

The strategies that are the focus of this report are the result of a May 2017 Work Group meeting where the group discussed a list of previously suggested ideas to determine which were worth exploring further. The strategies that the group did not select for further discussion are listed in Appendix 1.

**Proposed Strategies**

The proposed strategies that are evaluated in this report:

1. Education and information
2. Sound regulations
3. Law enforcement
4. Rental vehicles
5. Road restrictions
6. Staging areas
7. Alternative access

**Evaluation Criteria**

This report evaluates each strategy by addressing the following questions:

- 1) Does the strategy accomplish the goals?
  - a. Reduce noise
  - b. Improve safety
  - c. Protect resources
- 2) Who will this affect?
- 3) What are the obstacles to implementing the strategy?
- 4) What resources would be needed to implement the strategy?
 

Examples: cost, time, staff, skills, equipment, etc.
- 5) What is the balance of costs versus benefits?
- 6) Based on the evaluation, what is the recommendation?



Broken Arrow FR 179F



Vultee FR 152

**Strategy 1 - Education & Information**

Education and information is essential to make the public aware of the issues and to bring about changes that can reduce noise, improve safety, and protect resources. To be effective, information should be presented in a variety of formats for a variety of different audiences.

- ✓ 1a. Signs: recommended
- ✓ 1b. Website: recommended
- ✓ 1c. Youth Education Programs: recommended
- ✓ 1d. Public Relations Campaign: recommended
- ✓ 1e. OHV License Information: recommended

It needs to be consistent and clear, especially to compete with other messages aimed towards Sedona visitors. Since the first Work Group began, there have been many suggestions for improved education and information, and some of those ideas are either underway or in the planning stages as part of the grant (see page 10). The Work Group felt this topic was important enough to focus on as there were additional ideas to discuss and others that could be improved or expanded on.

The Work Group meeting on November 15, 2017 was dedicated to education and information ideas. Kim Jackson, Boating and OHV Safety Education Program Manager for the Arizona Game and Fish Department (AZGF) was invited to share her experiences in boating safety with example messages and materials that could be applied to OHVs.

The Forest Service OHV Coordinator, Forrest Saville provided a summary of grant funded projects (as of 2017) that were in progress or planned, some of which will capitalize on the AZGF examples, such as:

- A safety checklist for rental customers modeled after a boating safety version.
- A mobile trailer used for educational programs similar to the AZGF trailer. This could be set up on high traffic roads such as FR 525 during busy weekends where volunteers and staff can talk to OHV users and hand out information.
- The Forest Service map of the FR 525 area will be redesigned with an easier to read map that would be available in print, on-line, or on trailhead kiosks.
- An educational brochure that will be made available to rental customers and the public.
- Signing routes and establishing standardized names for the routes.

**SUGGESTED STRATEGIES**

**1a. Signs**

Neighborhood residential areas could have “Quiet Zone” signs such as the example to the right which is on a Forest Road in Yavapai County. The signs should be standardized for uniformity and consistency, including messaging, symbols, and colors. Additional signs have been suggested for the Broken Arrow neighborhood, such as “No Unloading or Parking”.



**1b. Website**

Improving website information will be addressed as part of the grant, however there were several new suggestions that could be incorporated into that effort. The group felt that a lot of the information about where to go was on social media sites, and in order to compete and catch people’s attention the website needs to be attractive, informative, and accurate with professional quality maps and photos. Detailed, comprehensive maps can be an incentive that could attract people to the website. The new website should be prominent, and with links to as many other websites as possible, including social media. There will need to be research on who should host, design, and maintain the site. One suggestion was to look into partnering with the Chamber of

**Strategy 1 - Education & Information continued**

Commerce's "Visit Sedona" site.

**1c. Youth Educational Programs.**

Responsible OHV use could be taught to kids through a youth education program that teaches rules, etiquette, and safety related to OHV recreation. The Arizona Game and Fish Department has a similar program that is presented at schools, youth groups, and special events. Program materials may need to be developed unless materials from existing programs are available. Staff or volunteers could be trained to give the presentations.

**1d. Public Relations Campaign**

A comprehensive communication and marketing strategy should be developed to advertise a new website and to provide educational information about safe and responsible OHV use. While there are state and national programs, this strategy would be Sedona specific to address our unique issues. This communication strategy could include videos, radio spots, news articles, and print media. The campaign could target the busy seasons and weekends. There would need to be a consistent, professional, and quality message to be most effective. Ideally a professional public relations expert would develop the program. Grant funding could be sought to fund the cost of a consultant and implementation.

**1e. OHV License Information**

Educational information could be provided to everyone who registers an OHV or renews a license. As this requires changes to the Arizona Department of Transportation Motor Vehicle Division procedures, implementing this strategy could be a challenge. One approach that was suggested is to lobby the Governor, State Highway Safety Office, and other relevant individuals and offices. This would need to be a coordinated effort involving businesses, interest groups, and governmental agencies.

**EVALUATION****Does the strategy accomplish the goals to reduce noise, improve safety, and protect resources?**

Each of these strategies will raise awareness and understanding of the issues, which can influence behavior and ultimately result in addressing each of the goals.

**Who will this affect?**

Improved information and educational efforts has the potential to reach all user groups, and some efforts can target specific users, for example rental companies providing information to customers.

**What are the obstacles to implementing the strategy?**

There are very few obstacles to implementing 1a-1d other than the availability of staff and funding to complete the projects.

1e. The obstacle to providing information to people registering or renewing an OHV license is the potential difficulty of adding this to the State Motor Vehicle Division's responsibilities and procedures.

**What resources would be needed to implement the strategy?**

1a. Signs: City staff time to order and install the signs and the cost to purchase the signs (which is a relatively low cost). The time and cost would depend on the number and size of signs.

1b. Website: Staff time and skills to create and/or maintain a website. The website will require a host site, which could be a partnership with an appropriate and willing organization.

**Strategy 1 - Education & Information continued**

1c. Youth Programs: Staff and/or volunteer availability and skills (training should be provided), and cost of materials.

1d. Public Relations Campaign: If a professional consultant is hired, funding will be needed to hire a consultant, and a grant may be able to cover the cost.

1e. License Information: Dedicated staff and volunteers will be needed to spearhead this effort, preferably those experienced working with state agencies. This could be a partnership effort with the Arizona Game and Fish Department and other agencies and organizations.

**What is the balance of costs versus benefits?**

With each of these suggestions, the costs are relatively low compared to the far-reaching benefits of providing improved messages through a variety of media.

**Based on the evaluation, what is the recommendation?**

It is recommended that these projects are pursued as they are low cost, can be completed in a short amount of time, and fit well with efforts already underway or in the planning stages. Additional grant funding could be pursued to cover the costs of these efforts.

Considering existing efforts planned or underway and the resources required, the following is the priority order for implementation:

- 1a. Signs
- 1b. Website
- 1d. Public relations campaign
- 1e. OHV license information
- 1c. Youth educational programs



Arizona Game and Fish Department Mobile Education Trailer



**Strategy 2 - Sound Regulations**

The most common question from citizens is whether or not UTVs are violating the City’s sound regulations. Upon learning that UTVs are exempt, the most common suggestion has been to change the City’s sound regulation.

**☒ 2. City OHV Sound Regulations: not recommended**

Glenn Sharshon, Senior Code Enforcement Officer, City of Sedona joined the January 17, 2018 Work Group meeting and provided information on City and state regulations regarding sound, how the regulations are enforced, and how sound is measured, which is summarized below.

**City and State Regulations**

The relevant City of Sedona ordinance §8.25 of the City Code, “Sound Regulations - Sound Control” and the “Exceptions” (§8.25.090F) exempts “sound from the locomotion of properly muffled motor vehicles on a public right-of-way or residential driveway.” Thus OHVs are exempt from the decibel limits set for other uses in the city, along with airplanes, garbage trucks, etc.

The state statute sets the maximum sound limits for OHVs at 96 decibels (dBa) in § 28-1179, “off-highway vehicle equipment requirements”: A.3. “except when operating on a closed course, either a muffler or other noise dissipative device that prevents sound above ninety-six decibels.”

Another state regulation which is not specific to OHVs, but is relevant to several of the proposed strategies is Senate Bill (S.B.) 1487/§41-194.01. It essentially says that city laws cannot be more restrictive than state laws, and if new city laws are passed that are more restrictive, the state can withhold all state funds. This could be an issue if the City was to set a sound limit for OHVs that is lower than the state limit of 96 decibels.

**Measuring Sound**

The City has received complaints from residents that OHVs driving through their neighborhoods were exceeding the sound regulations. There are many factors that can influence sound, such as wind speed, temperature, the surroundings, etc. The City’s Code Enforcement Officers are certified in the use of sound meters through a program at Rutgers University. Professional grade sound meters (Quest type I) are used, which are calibrated yearly for accuracy. The procedure for responding to noise complaints is to measure the sound from the complainant's property. The biggest challenge of addressing OHV noise complaints is that by the time an officer arrives the vehicle is usually long gone.

To address the concerns about excessive OHV noise, City staff conducted several sound readings to gather data on OHV noise. The first was conducted in March 2017, stationed at the edge of the following streets: Morgan Road, Canyon Shadows, and Dry Creek. None of the OHVs driving past ever exceeded 96 decibels. All were under 90 decibels, and the range was between 75-85 dBa.

Additional sound readings were conducted in January 2018 with the intent of obtaining data in a worst case scenario - from inside the vehicle. The largest type of rental vehicle offered in the city was chosen, a 2017 4-seat Polaris RZR® 1000. The Sedona Off-Road Center provided the vehicle which was driven by their employee. The City’s Senior Code Enforcement Officer sat in the backseat. While stationary and idling, from 10-feet away the sound reading was 73 dBa. The vehicle was driven down SR 179 to the Broken Arrow Trailhead with the officer sitting in the back seat holding the sound meter two feet from the engine. While driving at various speeds the vehicle sound (measured two feet from the engine) varied from 84-92 dBa. The sound did reach 96-97 dBa once, at maximum speed, full throttle going 40 mph uphill.

**Strategy 2 - Sound Regulations continued****SUGGESTED STRATEGY**

The original suggestion was to revise the City Code to remove the exception for OHVs and set a decibel limit for OHVs lower than the state maximum level of 96 dBa. The suggestion did not specify what the new limit should be. Another approach would be to work at the state level to change the state regulation to a level lower than 96 dBa.

**EVALUATION****Does the strategy accomplish the goals to reduce noise, improve safety, and protect resources?**

The desired effect of this strategy is to reduce noise levels. How much of an impact will depend on what the new level is set to, and the enforcement of the new regulation. It is possible that if most UTVs were still found to be below the new limit then the new regulation would have little to no change on the amount of noise from UTVs. This strategy would not affect safety or resource protection.

**Who will this affect?**

This proposed strategy has the potential to affect rental businesses and private owners of UTVs when the vehicles do not meet the revised decibel limit.

**What are the obstacles to implementing the strategy?**

If the new maximum decibel level is lower than the sound emitted by the average UTV, the obstacle becomes one of enforcement. This will also depend on the user group. Private vehicles driving down the road are a challenge for code enforcement. On the other hand, if rental vehicles were to exceed the new sound limit, they would need to be modified to come into compliance.

The second obstacle is triggering the state's S.B. 1487 by creating a regulation that is more restrictive than the state regulation. If a violation was found to exist, the City would risk losing approximately \$3.9 million in state shared revenue. Another obstacle could come from OHV advocacy groups (national, state, and regional groups), local businesses, and manufacturers that may be opposed to the change.

**What resources would be needed to implement the strategy?**

Further study by a professional consultant would be necessary to determine what would be an optimal limit other than 96 decibels, and how it could be enforced. There would be a cost to hiring the consultant. In addition, time would be needed to complete the study and develop procedures necessary to establish and implement a new ordinance.

**What is the balance of costs versus benefits?**

The obstacles pose significant challenges, especially the potential for the City to lose state shared revenue. The benefits are questionable as to how much or if a new regulation would reduce noise, thus the costs seem to outweigh the benefits.

**Based on the evaluation, what is the recommendation?**

This strategy is not recommended.



### Strategy 3 - Law Enforcement

Increasing the presence of law enforcement has been suggested as one way to address the community's concerns with UTVs on city streets, specifically noise and speeding. The City of Sedona Chief of Police at the time, David McGill was invited to the February 21, 2018 Work Group meeting to discuss possible strategies related to law enforcement in the city.

- 3a. Checkpoints: recommended
- 3b. Speed Deterrents: recommended
- 3c. Lower Speed Limits: not recommended

#### SUGGESTED STRATEGIES

##### 3a. Checkpoints

One suggestion is to increase law enforcement presence with checkpoints on busy weekends. Checkpoints are where an officer is stationed on the road and stops vehicles to check for safety (such as helmets on those under 18 in a UTV) and hand out educational information. The City Police Department did this in 2015, and also counted the number of OHVs. As a result of the relatively low number of contacts made, it was questionable as to whether this was a valuable use of an officers time. Rather than use police officers, an alternative could be to train civilian employees such as Community Service Aids and/or volunteers to staff the checkpoints during peak seasons.

##### 3b. Speed Deterrents

To address OHVs speeding on residential streets, there were two suggestions: place an unmanned squad car in the residential neighborhoods, and speed trailers that display a vehicle's speed placed on streets where there is a concern about speeding, such as Dry Creek Road. These strategies could reduce speeding which could then reduce noise and improve safety. On several occasions since it was suggested, an unmanned squad car has been placed on Morgan Road and a speed trailer placed on Dry Creek Road. This effort was met with positive feedback from residents.

##### 3c. Lower Speed Limits

One suggestion was to lower the speed limit for UTVs only, especially on the city's northern portion of Dry Creek Road where the speed limit is currently 35 mph. Again, the intent is to decrease noise and improve safety, however it is likely to be a safety problem if OHVs are driving at a slower speed than other cars. The safety concern is the potential conflict of UTVs using the same travel lane as passenger vehicles that would be driving at a higher speed.

One drawback of lowering the speed limit is that it may lengthen the duration of noise as the vehicles drive through the residential area at a lower speed, while having a negligible change in decibel volume.

Another suggestion was to lower the speed limit on Morgan Road which is currently 25 mph. Unlike Dry Creek Road, Morgan Road is a narrow residential street with large trees on each side which seems to already inhibit speeding. Lowering the speed limit is not likely to have much of an impact, especially when vehicles rarely drive above 25 mph on Morgan Road.

**Strategy 3 - Law Enforcement continued****EVALUATION**

Strategies 3a Checkpoints and 3b Speed Deterrents have been used in the past, and it is recommended that these strategies continue as needed.

The following is an evaluation of the proposed strategy 3c. Lower Speed Limits.

**Does the strategy accomplish the goals to reduce noise, improve safety, and protect resources?**

Lowering speed limits could result in a slight reduction in noise from UTVs, although it would also extend the duration of noise as it takes longer for the vehicle to pass through the neighborhood.

In April of 2018 the City's Police Department monitored UTV traffic on Dry Creek Road and the results were consistent with past records - there are very few UTVs that exceed the speed limit. Figure 3.1 on the following page summarizes the data. While monitoring was also attempted on Morgan Road and Soldiers Pass Road, there were not enough vehicles to justify the effort.

**Who will this affect?**

These proposed strategies are focused primarily on UTVs and would affect both rental customers and private owners of UTVs. A lower speed limit would also affect the other drivers on the road that would need to drive at a lower speed when behind a UTV.

**What are the obstacles to implementing the strategy?**

Lowering speed limits could result in opposition from residents and others that regularly use the roads. The safety of the UTV driver is also a concern on a road where other larger vehicles are traveling faster, resulting in potential conflicts and safety concerns.

**What resources would be needed to implement the strategy?**

Relatively few resources would be needed to implement this strategy. Once implemented, additional time for officers to monitor and enforce this may be necessary.

**What is the balance of costs versus benefits?**

The safety cost of a different speed limit for UTVs outweighs the benefits gained by lowering the speed limit.

**Based on the evaluation, what is the recommendation?**

Lowering speed limits is not recommended because the benefit of reducing UTV noise is not significant enough to justify the change, and due to the safety concerns. It is recommended that strategies 3a. Checkpoints, and 3b. Speed Deterrents are continued as needed.



Figure 3.1: Infographic summarizing results of Police Department monitoring of UTVs on Dry Creek Rd. in April 2018

## Strategy 4 - Rental Vehicles

Rental UTVs was the topic of discussion at the January 17, 2018 meeting, with information provided by Dave Swartwout, Arizona Safari Jeep Tours, and Jimmy Custer, Sedona ATV & Buggy Rentals. Background information was provided on electric UTVs, and some of the changes to rental business operations. Some of the changes may seem small, but cumulatively could make an impact on addressing the goals of reducing noise, improving safety, and protecting resources.

- 4a. Newer, Quieter Vehicles: recommended
- 4b. Improved Equipment: recommended
- 4c. Modified Mufflers: not recommended
- 4d. Electric Vehicles: recommended

### SUGGESTED STRATEGIES

#### 4a. Newer, Quieter Vehicles

As UTVs are becoming an increasingly popular type of vehicle, the competition among manufacturers appears to be resulting in improvements with each new model. This includes reducing vehicle noise which can improve the user experience and alleviate complaints about OHVs. As of 2018, the largest rental company in the city was transitioning to a lease program with the manufacturer. The advantage to this approach is that the vehicles are replaced more frequently with new, improved, and quieter vehicles which also reduces maintenance costs over the long-term.

#### 4b. Improved Equipment

Rental businesses can improve vehicle equipment to better address the goals, such as replacing stock tires, which is a relatively simple change that can help reduce UTV noise on pavement. The primary UTV rental business in Sedona is replacing the tires as well as installing new GPS systems on the rental vehicles. The GPS can help monitor the location of rental vehicles for improved safety and enforcement, as well as provide maps and directional information to customers while on the road.

Some rental businesses have also added governors or speed limiting devices. Those are set to a maximum of 40 mph, which coincides with the maximum speed limit on city streets. Any lower could be considered a safety hazard if the OHV was slower than other vehicles on the road.

#### 4c. Modified Mufflers

Rental businesses could modify or replace mufflers to create less noise, which was tried by a previous business owner. The practice was discontinued as it was considered unsustainable due to the cost of staff time and specialized skills required to install the equipment, and the cost of installation every time a vehicle is replaced. There was also a question as to whether the decrease in noise was sufficient enough to justify the cost.

#### 4d. Electric Vehicles

Electric UTVs, like electric cars are very quiet, which could solve the issue of noise - at least for rental vehicles. Electric UTVs are available however there are several challenges for businesses to offer only electric vehicles. Safety is a concern because a vehicle battery could run out of power and leave people stranded, in some cases far from the city. Another concern is that some electric vehicles may not have enough power to drive up and over the hills and rocky terrain of Sedona's National Forest roads. An important concern to business owners is that electric vehicles are much more expensive than standard vehicles. All of these concerns may be addressed over time, as the technology improves. In the meantime, one of the businesses is considering testing an electric vehicle.

**Strategy 4 - Rental Vehicles continued****EVALUATION**

Strategies 4a. Newer, Quieter Vehicles and 4b. Improved Equipment are either underway or in the planning stages. It is recommended that businesses continue these efforts. The following is an evaluation of 4c. Modified Mufflers, and 4d. Electric Vehicles. With both suggestions there are two options for implementation: 1) rental businesses voluntarily implement the strategies, or 2) they are required by City regulation. If the actions are required, a new City regulation would need to be enacted, along with the staff resources to implement and enforce the new requirement.

**Does the strategy accomplish the goals to reduce noise, improve safety, and protect resources?**

4c. Modified mufflers will reduce noise, however the amount will vary depending on various factors such as the engine and type of modification.

4d. Electric vehicles will eliminate the noise from rental vehicles.

Neither strategy will have any impact on improving safety or protecting resources.

**Who will this affect?**

These strategies would affect UTV rental businesses and their customers. Residents could benefit if the strategy reduces noise levels.

**What are the obstacles to implementing the strategy?**

4c. The primary obstacle to modified mufflers is the cost to install. Another consideration is that it may not be possible to modify the mufflers if businesses are leasing the vehicles.

4d. The obstacle for electric vehicles is that technology is not yet advanced enough to make it a reasonable option for businesses. Battery life, power, and cost are the concerns with the current choices in electric vehicles. At this point in time, there is a difference in price between conventional and electric vehicles, from an additional \$3,000 or an additional \$14,000 for vehicles with a lithium-ion battery. Further research would be needed to determine if it is possible to lease electric vehicles.

**What resources would be needed to implement the strategy?**

Businesses would have additional expenses to purchase or lease electric vehicles. Modified mufflers would be a lesser expense.

**What is the balance of costs versus benefits?**

4c. Modified mufflers: further research would be needed to determine the balance of costs and benefits. Left to the businesses as a voluntary option, the fact that it is no longer being done implies that the businesses feel that the costs outweigh the benefits.

4d. If and when the technology of electric vehicles is sufficient to meet the needs, the benefits outweigh the costs, especially when this is likely to have the most significant impact on vehicle noise. At this point, the costs and challenges of existing electric vehicles exceed the benefits.

**Based on the evaluation, what is the recommendation?**

It is recommended that businesses that rent UTVs voluntarily transition to electric vehicles when the technology and cost of electric vehicles makes it a reasonable option. The other suggestions are recommended as voluntary measures, including those now underway. If, after trying this approach, it is determined to be unsuccessful, a more regulatory approach should be explored.

**Strategy 5 - Road Restrictions**

Reducing the amount of OHV traffic through residential neighborhoods is the intent of the following suggestions, which either address restricting or limiting OHV use on city streets or National Forest roads. This was the focus of the March 2018 Work Group meeting, with background information provided by Robert Pickels, Attorney, City of Sedona; Judy Adams, Land Use Specialist, Forest Service; and Julie Rowe, Recreation Special Uses Program Manager, Forest Service. Since the focus of this meeting was road restrictions, the Forest Service clarified the fact that the Forest Service holds legal access rights on Morgan Road that ensures public access to the National Forest and predates the residential subdivision.

- ☒ 5a. Prohibit UTVs on City Streets: not recommended
- ☒ 5b. Restrict Use on Broken Arrow: not recommended

**SUGGESTED STRATEGIES**

**5a. Prohibit UTVs on City Streets**

The suggestion is to establish a new City regulation that would prohibit the use of UTVs on city streets. There are four city streets now used for OHVs to access the National Forest, and all go through residential neighborhoods:

- Dry Creek Road
- Schnebly Hill Road
- Morgan Road
- Soldiers Pass Road

The restriction could apply to these city streets only or all streets under the City’s jurisdiction. This would not affect SR 89A and SR 179 which are under state jurisdiction.

**5b. Restrict Use of Broken Arrow Forest Road**

The Broken Arrow neighborhood residents are concerned about the number of OHVs on Morgan Rd. and UTVs in particular due to the noise. Neighborhood representatives have suggested that the Forest Service enact restrictions for Broken Arrow similar to what was put in place at the Soldiers Pass Forest Road in 2017.

In the case of Soldiers Pass, the Forest Service undertook a study (see page 11) due to concerns that motorized use of the road had exceeded the desired level set by the “Land and Resource Management Plan for the Coconino National Forest” (Forest Plan). The outcome of the study was a new permit system that limited the number of

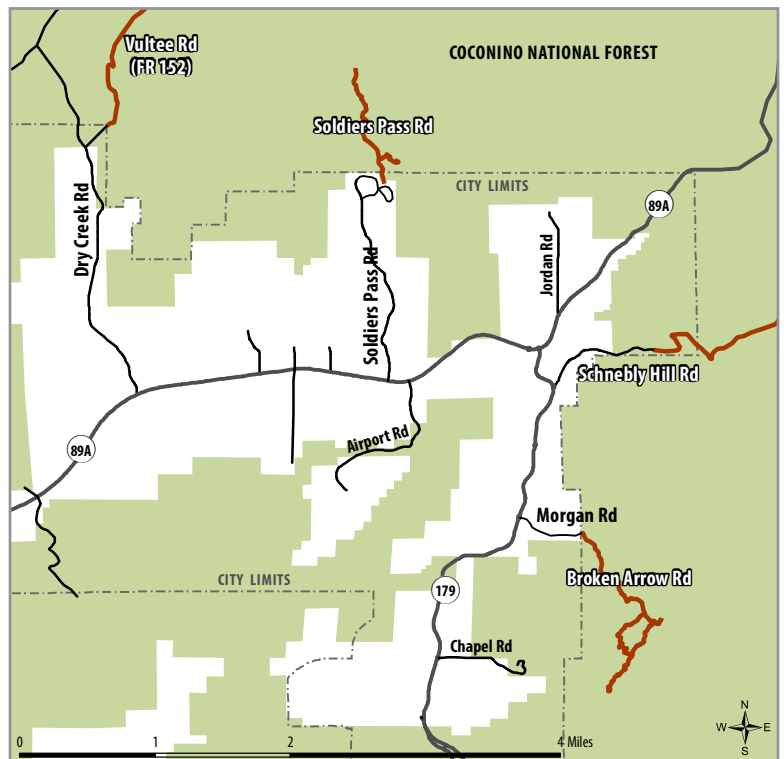


Figure 5.1: National Forest roads accessible from the City

**Strategy 5 - Road Restrictions continued**

vehicles per day, requiring the public to obtain a permit to drive the Forest Road. The Forest Plan has set a higher level for vehicle encounters with other recreational users at Broken Arrow, and those levels have yet to be exceeded. The Forest Service is monitoring the level of use at Broken Arrow to determine if and when capacity has been reached. If it is found to be out of compliance with the Forest Plan, a similar study may be undertaken to evaluate the use and impacts and determine alternative management approaches.

**EVALUATION****Does the strategy accomplish the goals to reduce noise, improve safety, and protect resources?****5a. Prohibition on City Streets.**

- **Noise:** This would eliminate the noise of UTVs in neighborhoods, however use (and noise) would continue on the state highways, and there are some residential areas along the highways. If UTVs had to be trailered to the National Forest, there could also be noise and traffic from the vehicles towing the trailers.
- **Safety:** Safety is unlikely to improve since UTVs would continue to use the state highways which have a higher speed limit than neighborhood streets.
- **Resource Protection:** No effect.

**5b. Broken Arrow Restrictions.**

Reducing the number of vehicles on the Broken Arrow Forest Road is likely to reduce noise and may reduce the impacts. How much will depend on the level of restrictions (number of vehicles per day).

- **Noise:** Reducing noise will be dependent on the number of vehicles per day.
- **Safety:** Unlikely to affect safety.
- **Resource Protection:** Will depend on the number of vehicles per day.

**Who will this affect?****5a. Prohibition on City Streets**

- **OHV Users:** UTVs only, both private owners and rental companies
- **Residents:** Neighborhoods along the following streets would benefit: Dry Creek Road, Schnebly Hill Road, Morgan Road, and Soldiers Pass Road.

**5b. Broken Arrow Restrictions.**

- **OHV Users:** All user groups and vehicle types that visit Broken Arrow.
- **Residents:** Morgan Road/Broken Arrow neighborhood residents would see a decrease in noise and traffic. The Schnebly Hill Road and Dry Creek Road neighborhoods may see an increase in traffic from the displaced vehicles.

**What are the obstacles to implementing the strategy?****5a. Prohibition on City Streets**

The most significant obstacle is that a new city regulation prohibiting UTV use on city streets would be contrary to state regulations which could trigger a violation of S.B. 1487/A.R.S. 41-194.01 which states that a city cannot enact laws more restrictive than the state without risking a loss of state shared revenues.

The alternative to driving on city streets is to trailer vehicles to the National Forest, which raises two additional obstacles:



**Strategy 5 - Road Restrictions continued**

- 1) There is little to no parking or unloading space on many National Forest roads. New or expanded trailheads may need to be built to accommodate trailers (requiring NEPA).
- 2) The Forest Service requires businesses to have a permit to trailer vehicles to the National Forest, and would need to consider increasing the number of permits available as there are no additional permits of this type available. UTV rental businesses may no longer be viable if permits were not available to trailer vehicles and customers were unable to drive them to the National Forest.

**5b. Broken Arrow Restrictions**

The Forest Service does not plan to undertake a study on potential restrictions unless use has exceeded the Forest Plan’s expectations. One of the obstacles to restricting use on Broken Arrow could be opposition expected from OHV advocacy and user groups at the state, regional, and national levels. This is a well-known and popular destination, which is perpetuated by the internet and social media.

**What resources would be needed to implement the strategy?**

5a. Prohibiting UTV use on city streets would require the following city resources: 1) staff time to establish the ordinance, staff time and funding to purchase and install signs, staff time to enforce the changes, and staff time to provide public information about the change.

5c. Broken Arrow Restrictions would require the necessary resources for the Forest Service to complete a study and implement the restrictions (see costs below).

**What is the balance of costs versus benefits?**

5a. Prohibition on City Streets. The benefits are eliminating UTV noise and traffic on certain city streets. The costs are the risk of the city losing state funding (approximately \$3.9 million annually). There would also be costs to local businesses. UTVs would continue to use W. SR 89A and SR 179, so it would not eliminate them from driving through the city. The costs exceed the benefits gained from this strategy.

5b. Broken Arrow Restrictions. The benefits are reduced noise and traffic on Morgan Road. The Forest Service would be required to complete a NEPA study, which can take one to five years and cost \$50,000 to \$100,000. There may also be costs to implement the restrictions, such as staff time, signs, gates, etc. Another consideration is the potential impacts to other neighborhoods that could see increased traffic from the displaced vehicles. There is also no guarantee that the NEPA study would result in the desired outcome of restricting vehicle use. At this time, the costs outweigh the benefits.

**Based on the evaluation, what is the recommendation?**

5a. Prohibition on City Streets. This is not recommended based on the obstacles listed above.

5b. Broken Arrow Restrictions. This is not recommended at this time, however if the Forest Service determines that use exceeds capacity, it is recommended that the Forest Service undertake a study to evaluate alternatives. The Work Group representatives from the Broken Arrow HOA did not agree with this recommendation and believe, despite the reasons listed above, that both of these strategies should be pursued because the benefits to the neighborhood outweigh any trade-offs.

*See Appendix 2 for details on the NEPA process*



**Strategy 6 - Staging Areas**

There were two types of staging areas discussed at the April and May 2018 Work Group meetings. An OHV staging area could be a simple trailhead parking lot or a fully developed facility with commercial services. The value of a staging area would vary depending on the location and what is offered, but the primary intent is to divert OHV use away from neighborhoods.

- 6a. Trailhead: recommended
- 6b. Commercial Staging Area: not recommended

There are currently no OHV-specific trailheads. The largest parking area used by private OHV owners is west of the city on FR 525 where OHV trailers are parked in a cleared area just north of SR 89A. In Sedona, people have also been known to park and unload their trailers in shopping center parking lots or along neighborhood streets such as Morgan Road.

**SUGGESTED STRATEGIES**

**6a. OHV Trailhead**

An improved OHV trailhead has been proposed for FR 525 near the intersection with SR 89A with sufficient space to accommodate a large number of OHV trailers. A new trailhead could include kiosks with maps and educational information about OHV safety and etiquette, and possibly restrooms.

**6b. Commercial Staging Area**

The intent of this strategy is to provide an alternate location for UTV rental operations that would alleviate the need for customers to drive UTVs in the city. In addition to parking areas for business use, this could also provide trailer parking for private owners. There were two suggested locations: 1) FR 525/SR 89A, or 2) the City Wastewater Treatment property. A staging area on FR 525 would be on the National Forest and use the established road that leads to many popular OHV routes. The Wastewater Treatment land is City property, and would require building a new road connection to FR 525 as well as the construction of new facilities.



Figure 6.1. Forest Road 525, City Wastewater Treatment Plant property, and proximity to city limits.

## Strategy 6 - Staging Areas continued

**EVALUATION****Does the strategy accomplish the goals to reduce noise, improve safety, and protect resources?**

## 6a. Trailhead:

Noise - If the trailhead attracted private owners and reduced the number of OHVs driving through the city, there would be a reduction in noise. It is unknown how many vehicles this would divert. Additionally, it would not necessarily prevent the same owners from also visiting other locations such as Schnebly Hill Road and Broken Arrow.

Safety - With direct access to the FR 525 network, this would reduce the safety issues associated with driving UTVs on paved roads.

Resource Protection - A new established parking area would reduce resource impacts as opposed to the damage that occurs when vehicles park off of the road in natural areas due to a lack of parking areas.

## 6b. Commercial Staging Area:

This would accomplish the goals only if all rental operations were to relocate to this location and customers no longer drove UTVs in the city. If the existing rental companies were to use this as an additional, new location the results would vary depending on the ratio of use between this and the city locations.

One potential drawback would be if this was considered an opportunity for business expansion, or an invitation for new businesses. If that was the case, it would only increase the amount of OHV use and not accomplish the desired goals. The group speculated that if an existing business did relocate to a new staging area, it is possible that another company would seize the opportunity of filling the void left behind, only to increase OHV use.

**Who will this affect?**

## 6a. Trailhead:

OHV Users - Private owners, all vehicle types.

Residents - Depending on the level of use of a new trailhead on FR 525, all neighborhoods could see a decrease in the number of private UTVs.

## 6b. Commercial Staging Area:

OHV Users - This would impact rental companies if they choose to utilize it. Private owners would be affected if they chose to park at the new staging area.

Residents - Due to the location west of Sedona, it is more likely to affect Dry Creek Road neighborhoods. A decrease in traffic/noise would depend on how many vehicles use the new staging area instead of Dry Creek Road.

**What are the obstacles to implementing the strategy?**

## 6a. Trailhead:

The obstacles are the current lack of funding to plan and build a new, improved trailhead. The complexity (and cost) of the NEPA process would depend on the location and design.

*See Appendix 2  
for details on the  
NEPA process*

**Strategy 6 - Staging Areas continued****6b. Commercial Staging Area:**

If the staging area is on the National Forest, the major obstacle is the cost of planning, design and construction, which would be dependent on the outcome of the NEPA process. The obstacles if located on the City's property are the competing uses for the land, which is either already in use or planned for use by the Wastewater Department.

**What resources would be needed to implement the strategy?****6a. Trailhead:**

Building a new trailhead will take time to complete the NEPA process, and will require funding for construction. It may be possible to apply for a State OHV Grant to help fund construction.

**6b. Commercial Staging Area:**

Due to the increased complexity and additional facilities, the cost would be higher than a trailhead. The costs would vary depending on the design and operations. If located on City property the most important resource would be the City land, which is currently dedicated to wastewater operations. Construction of a road from the city property to FR 525 would also require NEPA, which would be an added cost.

**What is the balance of costs versus benefits?****6a. Trailhead:**

The benefits of a new and improved trailhead are believed to outweigh the costs.

**6b. Commercial Staging Area:**

The costs are believed to outweigh the benefits. The main concern is whether or not it would be used by the rental companies, and if it would be used instead of or in addition to current operations. There would be no benefit if it was not used, and a risk that it could actually increase the number of rental vehicles.

**Based on the evaluation, what is the recommendation?****6a. Trailhead:**

This is recommended, especially if State OHV Grant funding was available to defray costs.

**6b. Commercial Staging Area:**

This is not recommended because there are too many unknown variables. This could be a very costly endeavor with no guarantee as to whether or not it would be utilized by rental companies or to what extent. There is also a concern that it could become a popular destination that actually attracts even more OHV use to Sedona.

**Strategy 7 - Alternative Access**

The April 2018 Work Group meeting addressed two ideas for creating new routes into the National Forest. These were suggested as solutions that could either remove or reduce traffic on neighborhood streets.

- ☒ 7a. New Girdner Road: not recommended
- ☒ 7b. New Chicken Point Road: not recommended

**SUGGESTED STRATEGIES**

**7a. New National Forest Road: Girdner**

The suggestion is to build a new road in the National Forest from the Girdner Pit (north of the old Cultural Park) to existing National Forest roads north of Dry Creek. The Girdner Pit is a Forest Service materials storage area (gravel pit) and the road, which ends at the gravel pit is for administrative access only. While the road is not open to public motorized vehicles, it is used by hikers and mountain bikers.

The intent of this suggestion was to provide an alternative to Dry Creek Road in order to reduce UTV traffic and noise impacts on the Dry Creek Road neighborhoods. Currently, access to the FR 525 network and the Honanki and Palatki heritage sites is either from Dry Creek Road to Boynton Canyon Road, or W. SR 89A to FR 525. The highway is not a viable or safe option for UTVs because of the 65 mph speed limit.

Known as the Western Gateway, the area is slated for an expanded non-motorized trail system which is expected to be complete in 2019. The project also proposes a new, larger hub trailhead to replace the existing trailhead now located at the end of the old Cultural Park Road.

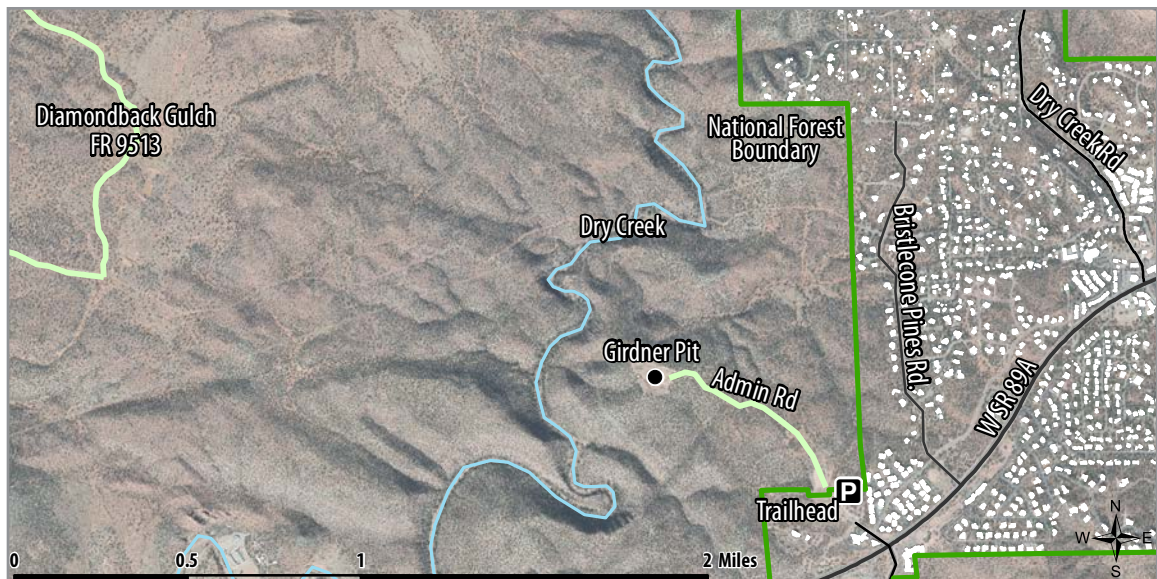


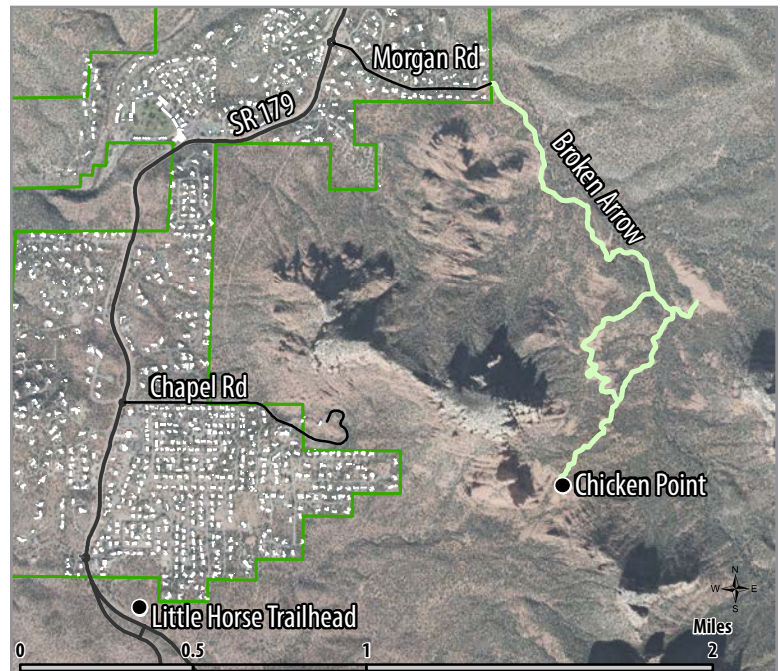
Figure 7.1: The Girdner Pit and Dry Creek.



Strategy 7 - Alternative Access continued

**7b. New National Forest Road: Chicken Point**

This suggestion proposes to build a new road on the National Forest from SR 179 near Little Horse Trailhead to Chicken Point/Broken Arrow. Originally, the idea was to replace the Morgan Road access to the National Forest with this new route in order to eliminate OHVs from the Broken Arrow neighborhood. As discussed in Strategy 6, closing National Forest access from Morgan Road is not feasible, thus the evaluation of this strategy will only address the addition of a new road to Chicken Point.



Currently, the only vehicular access to Broken Arrow is from Morgan Road. Figure 7.2: Broken Arrow, Chicken Point, and residential neighborhoods.

The Broken Arrow 4x4 road ends at Chicken Point, which is a cliff-top saddle between two mountains. Chicken Point is a popular destination for hikers, mountain bikers, and OHVs that culminates with dramatic views into two scenic valleys.

**EVALUATION**

**Does the strategy accomplish the goals to reduce noise, improve safety, and protect resources?**

**7a. Girdner Road:**

Noise - The new route could reduce noise on Dry Creek Road, but would not eliminate it. OHVs will continue to use Dry Creek Road to access the Vultee Road, and Boynton Canyon Road which is a more scenic option than a route from the Girdner Pit.

A new Girdner Road would introduce OHV noise to new neighborhoods along the highway as well as the nearby Bristlecone Pines neighborhood and Sedona Summit Resort. The location of a new road through a popular and growing recreation area would also impact trail users (hikers, mountain bikers, and equestrians). Thus, any reduction in noise on Dry Creek Road will be an increase in noise for other neighborhoods.

Safety - Depending on the design of the trail through steep terrain, there is the potential for safety hazards on what could be a technically challenging and more advanced route. Another safety concern is the potential use of a gas pipeline road.

Resource Protection - This would create significant new impacts on natural resources and potentially cultural resources. A new road from the vicinity of the Girdner Pit would require crossing Dry Creek where it transitions to a canyon with steep hillsides and cliffs on each side. Although it is an intermittent creek that is often dry, Dry Creek does see significant flows after storms and winter snow melt. The corridor along the creek is a riparian area that provides valuable wildlife habitat

**Strategy 7 - Alternative Access continued**

characterized by the diversity of vegetation and large trees.

Due to the terrain, it is not entirely clear where or how a new road would be designed and constructed, but regardless of the exact route there would be significant impacts from the construction by clearing a route, cutting into hillsides, removing vegetation and wildlife habitat, and introducing vehicles and potential pollutants to the Dry Creek riparian area.

**7b. Chicken Point Road:**

**Noise** - While noise may decrease in one neighborhood, it would increase in others. Getting from town to a new Chicken Point road would require driving an additional 2 miles on the highway past residential neighborhoods. The new road would be located south of the Chapel neighborhood, where the valley and surrounding mountains could further amplify the sound. The sound would then be heard by approximately 350 houses in the Chapel neighborhood as opposed to about 50 homes in the Broken Arrow neighborhood. Sound from OHVs on the new road is also likely to be heard at the Chapel of the Holy Cross, a city and national historic landmark located less than a mile from Chicken Point.

**Safety** - If an OHV route through Chicken Point is feasible, the challenging terrain could pose safety hazards to OHV drivers and passengers, as well as hikers and mountain bikers that would be sharing the same route.

**Resource Protection** - Construction of a new road through a natural area will have significant impacts to natural resources and potentially cultural resources. The new road could have significant impacts on the viewshed from SR 179, a National Scenic Byway. It may also result in additional noise, dust, and erosion.

**Who will this affect?****7a. Girdner Road:**

**OHV Use** - The new road is likely to be open to all user groups (private, rental, and guided tours) and all vehicle types.

**Residents** - Dry Creek *may* see a reduction in OHV traffic, however Bristlecone Pines, Sedona Summit, and neighborhoods on the highway would see an increase in OHV noise and traffic.

**Trail Users** - Hikers, mountain bikers, and equestrians use the existing trails, as well as the planned expansion of the Western Gateway trail system which is expected to increase the number of trail users in the area. A motorized road through the center of this trail system would alter the non-motorized experience and introduce potential conflicts with motorized vehicles where there would be intersecting routes and possibly shared routes.

**7b. Chicken Point Road:**

**OHV Use** - The new road is likely be open to all user groups (private, rental, and guided tours) and all vehicle types.

**Residents** - The Broken Arrow neighborhoods *may* see a reduction in OHV traffic. The new road would introduce OHV noise and traffic to the SR 179 and Chapel neighborhoods.

**Trail Users** - Hikers, mountain bikers, and equestrians in both areas would be impacted by additional

**Strategy 7 - Alternative Access continued**

noise and traffic on or near the non-motorized trail system.

**What are the obstacles to implementing the strategy?**

There are three significant obstacles that apply to both of the suggested strategies:

- 1) The challenging topography and need to build a new road through steep terrain.
- 2) The natural resource impacts of building a new road through natural areas, especially Dry Creek and its associated riparian habitat.
- 3) The potential opposition from those unaccustomed to OHV use in these areas - adjacent residential neighborhoods as well as the non-motorized trail users.

**What resources would be needed to implement the strategy?**

The cost and staff time to 1) complete the NEPA planning process, 2) design, 3) construction, and 4) maintenance of new roads. Due to the challenges and complexities of both planning and construction, the costs are expected to be significantly higher than other proposed strategies.

**What is the balance of costs versus benefits?**

The costs exceed the benefits for both suggestions. There are considerable challenges to the planning and construction of new roads on the National Forest, and the benefits gained by one neighborhood simply result in new impacts to another.

**Based on the evaluation, what is the recommendation?**

Neither of the proposed new roads are recommended.

## Summary & Next Steps

The Work Group knew going into the process that a single solution was unlikely. After talking about all of the strategies, hearing from experts, and conceding on perhaps their personal “in a perfect world” opinions, members of the Work Group see the recommended actions as a holistic approach to managing OHV issues in Sedona.

The group immediately saw the need for more education, which is an area that the grant has targeted and will continue to target until its completion. There are still many opportunities to improve education on OHV use, either in conjunction with the current grant, in addition to the grant, or as part of a future grant application. This includes signs in the neighborhoods informing drivers of the expectations, a better map for businesses to hand out, and better dissemination of information - from the rental counter to websites for people planning their visit to Sedona.

Second, the group agreed that a more strategic law enforcement approach would help set the tone in the community. This includes moving the speed trailer to different neighborhoods throughout the year, placing an unmanned police vehicle on neighborhood streets when needed, and conducting OHV checkpoints during busy weekends.

Third, the group sees value in the creation of an OHV trailhead/staging area near the intersection of FR 525 and the W. SR 89A, with adequate trailer parking and informative maps and kiosks that could incentivize people to start outside of town, potentially minimizing OHV trips in town, especially on Dry Creek Road.

And lastly, while out of our hands, the group believes that if and when the transition to electric vehicles occurs, this will solve the majority of the issue by nullifying the sound complaints. In the meantime, the businesses are fully aware of the concerns and improvements continue to be made with the rental vehicles and operations.

Not one of these strategies solves the problem on its own, but combined, they will make a significant impact on OHV noise, safety, and resource protection, helping to regain the balance between resident quality of life and OHV recreation.

### NEXT STEPS

This report will be provided to City Council and the Coconino National Forest District Ranger. It will also be made available on the City of Sedona website ([www.sedonaz.gov](http://www.sedonaz.gov)). Some of the proposed strategies are underway and will continue (education and information), some will occur periodically (speed deterrents, checkpoints), and some will require future planning, design, and funding (such as a new FR 525 trailhead). It is recommended that following completion of the State Parks grant, another grant application should be submitted to implement many of the strategies recommended in this report.

The Work Group has completed its task yet will continue to be available in an advisory and support role during completion of the grant projects. The group will also be kept up-to-date on projects and any new developments, and can be reconvened as needed.



**SUMMARY OF STRATEGIES**

<u>Suggested Strategies</u>	<u>Recommendation</u>	
	<u>Yes</u>	<u>No</u>
<b>1. Education &amp; Information</b>		
1a. Signs	✓	
1b. Website	✓	
1c. Youth Educational Programs	✓	
1d. Public Relations Campaign	✓	
1e. OHV License Information	✓	
<b>2. Sound Regulations</b>		✓
<b>3. Law Enforcement</b>		
3a. Checkpoints	✓	
3b. Speed Deterrents	✓	
3c. Lower Speed Limits		✓
<b>4. Rental Vehicles</b>		
4a. Newer, Quieter Vehicles	✓	
4b. Improved Equipment	✓	
4c. Modified Mufflers		✓
4d. Electric Vehicles	✓	
<b>5. Road Restrictions</b>		
5a. Prohibit UTVs on City Streets		✓
5b. Restrict Use of Broken Arrow		✓
5c. Privatize Morgan Road		✓
<b>6. Staging Areas</b>		
6a. OHV Trailhead on FR 525	✓	
6b. Commercial Staging Area		✓
<b>7. Alternative Access</b>		
7a. New National Forest Road: Girdner		✓
7b. New National Forest Road: Chicken Point		✓

**Glossary & Acronyms**

4x4	Four wheel drive vehicles capable of traversing a variety of unimproved terrain
ADOT	Arizona Department of Motor Vehicles
A.R.S.	Arizona Revised Statutes
ATV	All-terrain Vehicle. Designed to travel on four low-pressure tires, with a straddle-style seat and handlebars.
AZGF	Arizona Game and Fish Department
dBa	A-weighted decibels, a measurement of sound
F.R.	Forest Road
GPS	Global Positioning System
HOA	Home Owners Association
MVD	Motor Vehicle Department, State of Arizona
NEPA	National Environmental Policy Act
OHV	Off-highway Vehicle Term that often refers to all type of vehicles that can be used on unimproved dirt roads
ROV	Recreational Off-highway Vehicle, another term for UTVs and side-by-side vehicles
Side-by-Side	Refers to UTV and ROVs, because of the two side-by-side seats
S.B.	Senate Bill
SR	State Route
SUV	Sport Utility Vehicle
USFS	United State Forest Service
UTV	Utility Task/type/terrain Vehicle. Includes side-by-side, vehicles characterized by steering wheel, seats for 2 or 4 passengers, and roll bars.

## References

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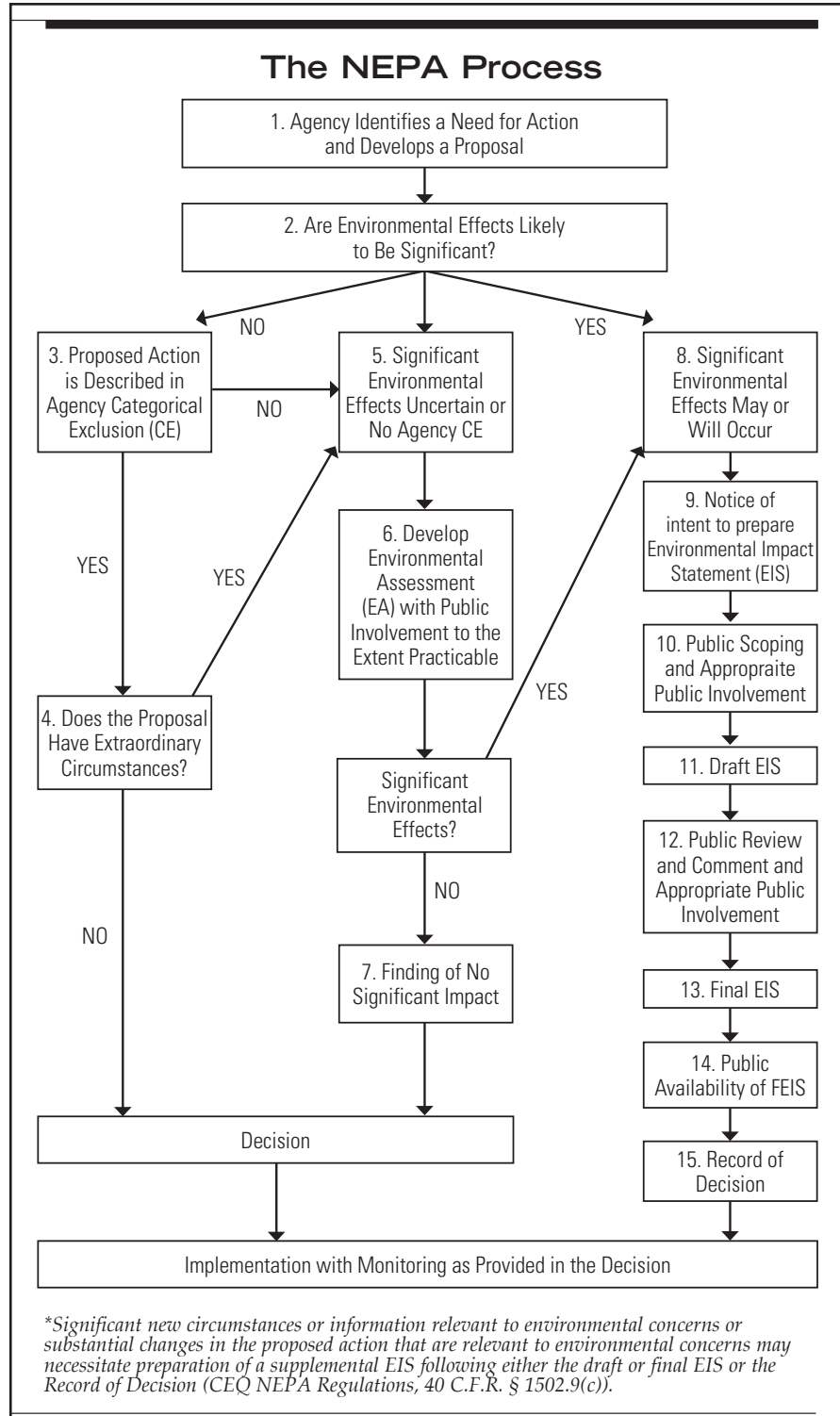
**Appendix 1. Additional Suggestions**

The following are additional ideas that have been suggested and are not considered feasible or likely to address the goals.

<u>Suggestion</u>	<u>Challenges and Obstacles</u>
Prohibit the rental of UTVs in the city limits.	<ul style="list-style-type: none"> <li>-Businesses could relocate outside city limits with same impacts (noise, traffic).</li> <li>-Opposition from businesses.</li> <li>-Does not address private OHVs.</li> </ul>
Limit number of rental vehicles a) per business, or b) in the city, or c) rented at any one time	<ul style="list-style-type: none"> <li>-Businesses could relocate outside city limits.</li> <li>-Businesses could split into multiple businesses.</li> <li>-Enforcement challenges.</li> <li>-Requires a new city regulation.</li> <li>-Opposition from businesses.</li> <li>-Does not address private OHVs.</li> </ul>
City Inspection Program and/or require business standards such as: - mandatory training - vehicle identification standards	<ul style="list-style-type: none"> <li>-Does not directly address goals.</li> <li>-Cost and staff time to implement/enforce.</li> <li>-Does not address private OHVs.</li> <li>-Enforcement challenges.</li> </ul>
Establish a city tax on vehicles to fund OHV programs/improvements.	<ul style="list-style-type: none"> <li>-Does not directly address goals.</li> <li>-Need new city regulation.</li> <li>-Potential opposition from businesses.</li> <li>-Staff time to implement/enforce.</li> </ul>
Establish quotas on the number of vehicles allowed on a route at any one time.	<ul style="list-style-type: none"> <li>-Enforcement challenges.</li> <li>-Cost and staff time.</li> </ul>
Limit group size of UTVs on National Forest.	<ul style="list-style-type: none"> <li>-Does not directly address goals.</li> <li>-Enforcement challenges.</li> <li>-Potential loopholes.</li> </ul>
USFS Permits: a) for guided UTV tours, or b) for businesses to trailer vehicles to National Forest.	<ul style="list-style-type: none"> <li>-Does not directly address goals.</li> <li>-Potential for increased number of businesses and/or number of vehicles.</li> </ul>
Privatize Morgan Road	<ul style="list-style-type: none"> <li>-Forest Service has legal access rights for public access to the National Forest.</li> <li>-Currently a city street, the city would need to abandon the road and the HOA would take on responsibility, including maintenance.</li> </ul>
Designate a day of the week when UTVs are not permitted to operate in the city or on the National Forest.	<ul style="list-style-type: none"> <li>-Cost and staff time to implement/enforce.</li> <li>-Enforcement challenges.</li> <li>-Need new city regulation.</li> <li>-Potential opposition from businesses and private users.</li> </ul>

**Appendix 2. The NEPA Process**

The following chart provides an explanation of the National Environmental Policy Act (NEPA) process, from “A Citizen’s Guide to the National Environmental Policy Act.”



**Appendix 3. Data Collection**

The following spreadsheet is the data collected at Broken Arrow and Vultee Road in 2017 and 2018.

**Broken Arrow  
and Vultee Road  
Data 2017-2018**

Broken Arrow				
Date	Tours	4x4s	UTVs	Total
Saturday, July 8, 2017	55	29	4	88
Sunday, July 9, 2017	47	33	4	84
Saturday, July 15, 2017	51	59	7	117
Sunday, July 16, 2017	55	27	5	87
Saturday, July 22, 2017	57	40	4	101
Sunday, July 23, 2017	55	32	7	94
Saturday, July 29, 2017	43	35	6	84
Sunday, July 30, 2017	43	34	3	80
Saturday, August 5, 2017	44	55	7	106
Sunday, August 6, 2017	47	43	6	96
Saturday, August 19, 2017	48	39	10	97
Sunday, August 20, 2017	39	27	3	69
Saturday, August 26, 2017	37	36	0	73
Sunday, August 27, 2017	48	31	5	84
Saturday, September 2, 2017	69	37	9	115
Sunday, September 3, 2017	54	62	21	137
Saturday, September 9, 2017	40	34	17	91
Sunday, September 10, 2017	26	24	1	51
Saturday, September 16, 2017	43	35	3	81
Sunday, September 17, 2017	38	25	6	69
Saturday, September 23, 2017	49	36	26	111
Sunday, September 24, 2017	42	37	1	80
Saturday, September 30, 2017	48	50	12	110
Sunday, October 1, 2017	39	31	2	72
Saturday, October 7, 2017	49	26	7	82
Saturday, October 21, 2017	40	57	18	115
Sunday, October 22, 2017	43	34	7	84
Saturday, October 28, 2017	44	36	7	87
Sunday, October 29, 2017	34	25	2	61
Saturday, November 4, 2017	29	25	5	59
Sunday, November 5, 2017	32	25	0	57
Saturday, November 11, 2017	42	45	5	92
Sunday, November 12, 2017	34	31	4	69
Saturday, November 18, 2017	35	25	3	63
Sunday, November 19, 2017	43	36	1	80
Saturday, November 25, 2017	45	70	10	125
Sunday, November 26, 2017	44	28	7	79

Vultee Road				
Date	Tours	4x4s	UTVs	Total
Saturday, July 8, 2017	29	30	16	75
Sunday, July 9, 2017	19	37	15	71
Saturday, July 15, 2017	58	37	21	116
Sunday, July 16, 2017	37	44	11	92
Saturday, July 22, 2017	49	53	24	126
Sunday, July 23, 2017	47	31	27	105
Saturday, July 29, 2017	42	37	10	89
Sunday, July 30, 2017	17	32	23	72
Saturday, August 5, 2017	30	35	16	81
Sunday, August 6, 2017	39	39	20	98
Saturday, August 19, 2017	31	60	26	117
Sunday, August 20, 2017	22	25	25	72
Saturday, August 26, 2017	29	36	26	91
Sunday, August 27, 2017	19	33	19	71
Saturday, September 2, 2017	42	42	22	106
Sunday, September 3, 2017	25	57	32	114
Saturday, September 9, 2017	20	20	19	59
Sunday, September 10, 2017	23	36	9	68
Saturday, September 16, 2017	28	50	17	95
Sunday, September 17, 2017	26	25	4	55
Saturday, September 23, 2017	27	59	18	104
Sunday, September 24, 2017	19	38	13	70
Saturday, September 30, 2017	21	44	22	87
Sunday, October 1, 2017	25	48	13	86
Saturday, October 7, 2017	18	49	12	79
Saturday, October 21, 2017	26	59	17	102
Sunday, October 22, 2017	29	30	8	67
Saturday, October 28, 2017	19	39	17	75
Sunday, October 29, 2017	18	43	14	75
Saturday, November 4, 2017	17	42	20	79
Sunday, November 5, 2017	14	37	17	68
Saturday, November 11, 2017	17	73	32	122
Sunday, November 12, 2017	23	27	17	67
Saturday, November 18, 2017	13	55	12	80
Sunday, November 19, 2017	23	53	12	88
Saturday, November 25, 2017	24	53	24	101
Sunday, November 26, 2017	16	34	16	66

**Broken Arrow  
Data 2017-2018**

The following is data collected at Broken Arrow in 2017 and 2018.

Date	Tours	4x4s	UTVs	TOTAL
Friday, March 17, 2017	33	19	5	57
Saturday, March 18, 2017	55	24	3	82
Sunday, March 19, 2017	53	17	2	72
Monday, March 20, 2017	55	17	3	75
Tuesday, March 21, 2017	55	10	1	66
Wednesday, March 22, 2017	56	27	16	99
Thursday, March 23, 2017	55	58	4	117
Friday, March 24, 2017	20	10	0	30
Monday, March 27, 2017	41	16	2	59
Tuesday, March 28, 2017	55	21	0	76
Wednesday, March 29, 2017	55	22	0	77
Thursday, March 30, 2017	55	15	0	70
Friday, March 31, 2017	59	11	0	70
Saturday, April 1, 2017	55	45	2	102
Sunday, April 2, 2017	40	26	3	69
Sunday, April 9, 2017	28	20	1	49
Monday, April 10, 2017	60	23	1	84
Tuesday, April 11, 2017	58	28	0	86
Wednesday, April 12, 2017	60	27	1	88
Thursday, April 13, 2017	59	33	1	93
Friday, April 14, 2017	58	44	2	104
Saturday, April 15, 2017	60	49	12	121
Sunday, April 16, 2017	24	11	6	41
Monday, April 17, 2017	40	8	0	48
Tuesday, April 18, 2017	60	17	0	77
Wednesday, April 19, 2017	31	4	0	35
Thursday, April 20, 2017	57	17	0	74
Friday, April 21, 2017	60	25	3	88
Saturday, April 22, 2017	50	55	5	110
Sunday, April 23, 2017	46	50	0	96
Monday, April 24, 2017	47	10	0	57
Tuesday, April 25, 2017	46	9	1	56
Saturday, April 29, 2017	45	8	0	53
Sunday, May 7, 2017	35	26	0	61
Monday, May 8, 2017	42	17	4	63
Tuesday, May 9, 2017	27	17	0	44
Wednesday, May 10, 2017	34	20	3	57
Thursday, May 11, 2017	43	17	1	61
Friday, May 12, 2017	44	47	6	97
Saturday, May 13, 2017	56	65	4	125
Sunday, May 14, 2017	45	65	0	110
Monday, May 15, 2017	13	7	1	21
Tuesday, May 16, 2017	41	19	0	60
Wednesday, May 17, 2017	42	11	2	55
Thursday, May 18, 2017	42	10	0	52
Friday, May 19, 2017	45	18	0	63
Saturday, May 20, 2017	50	43	8	101

Date	Tours	4x4s	UTVs	TOTAL
Sunday, May 21, 2017	48	42	5	95
Friday, June 2, 2017	37	16	3	56
Saturday, June 3, 2017	50	45	3	98
Sunday, June 4, 2017	37	19	0	56
Monday, June 5, 2017	50	23	2	75
Tuesday, June 6, 2017	43	8	0	51
Wednesday, June 7, 2017	41	10	2	53
Thursday, June 8, 2017	50	17	1	68
Friday, June 9, 2017	40	21	1	62
Saturday, June 10, 2017	51	42	1	94
Sunday, June 11, 2017	46	35	2	83
Monday, June 12, 2017	52	11	2	65
Tuesday, June 13, 2017	53	12	0	65
Wednesday, June 14, 2017	55	18	1	74
Thursday, June 15, 2017	45	17	0	62
Friday, June 16, 2017	47	19	0	66
Saturday, June 17, 2017	57	31	3	91
Sunday, June 18, 2017	48	32	3	83
Monday, June 19, 2017	47	15	3	65
Tuesday, June 20, 2017	50	16	0	66
Wednesday, June 21, 2017	37	12	2	51
Thursday, June 22, 2017	45	15	4	64
Friday, June 23, 2017	55	23	3	81
Saturday, June 24, 2017	66	52	4	122
Sunday, June 25, 2017	51	34	2	87
Monday, June 26, 2017	50	17	0	67
Tuesday, June 27, 2017	59	15	1	75
Wednesday, June 28, 2017	54	4	2	60
Thursday, June 29, 2017	46	13	4	63
Friday, June 30, 2017	45	15	2	62
Saturday, July 1, 2017	54	36	6	96
Sunday, July 2, 2017	65	55	8	128
Monday, July 3, 2017	58	25	13	96
Tuesday, July 4, 2017	59	38	3	100
Wednesday, July 5, 2017	45	10	0	55
Thursday, July 6, 2017	46	12	0	58
Friday, July 7, 2017	52	17	2	71
Saturday, July 8, 2017	55	29	4	88
Sunday, July 9, 2017	47	33	4	84
Monday, July 10, 2017	45	10	4	59
Tuesday, July 11, 2017	40	11	4	55
Wednesday, July 12, 2017	45	12	7	64
Thursday, July 13, 2017	48	7	0	55
Friday, July 14, 2017	52	19	0	71
Saturday, July 15, 2017	51	59	7	117
Sunday, July 16, 2017	55	27	5	87
Monday, July 17, 2017	52	8	4	64



Date	Tours	4x4s	UTVs	TOTAL
Tuesday, July 18, 2017	44	17	3	64
Wednesday, July 19, 2017	50	6	0	56
Thursday, July 20, 2017	46	12	3	61
Friday, July 21, 2017	52	16	2	70
Saturday, July 22, 2017	57	40	4	101
Sunday, July 23, 2017	55	32	7	94
Monday, July 24, 2017	36	12	0	48
Tuesday, July 25, 2017	50	14	1	65
Wednesday, July 26, 2017	52	12	5	69
Thursday, July 27, 2017	43	8	4	55
Friday, July 28, 2017	49	11	5	65
Saturday, July 29, 2017	43	35	6	84
Sunday, July 30, 2017	43	34	3	80
Monday, July 31, 2017	41	12	3	56
Tuesday, August 1, 2017	47	15	2	64
Wednesday, August 2, 2017	52	4	2	58
Thursday, August 3, 2017	47	11	1	59
Friday, August 4, 2017	43	23	2	68
Saturday, August 5, 2017	44	55	7	106
Sunday, August 6, 2017	47	43	6	96
Monday, August 7, 2017	45	10	5	60
Tuesday, August 8, 2017	47	7	0	54
Wednesday, August 9, 2017	39	10	1	50
Thursday, August 10, 2017	41	11	1	53
Friday, August 11, 2017	50	10	1	61
Saturday, August 12, 2017	48	37	10	95
Sunday, August 13, 2017	47	28	2	77
Monday, August 14, 2017	44	10	0	54
Tuesday, August 15, 2017	38	10	1	49
Wednesday, August 16, 2017	34	7	1	42
Thursday, August 17, 2017	41	9	0	50
Friday, August 18, 2017	41	12	0	53
Saturday, August 19, 2017	48	39	10	97
Sunday, August 20, 2017	39	27	3	69
Monday, August 21, 2017	25	9	2	36
Tuesday, August 22, 2017	31	7	0	38
Wednesday, August 23, 2017	36	11	2	49
Thursday, August 24, 2017	34	10	0	44
Friday, August 25, 2017	31	17	0	48
Saturday, August 26, 2017	37	36	0	73
Sunday, August 27, 2017	48	31	5	84
Monday, August 28, 2017	36	6	3	45
Tuesday, August 29, 2017	24	11	4	39
Wednesday, August 30, 2017	18	10	3	31
Thursday, August 31, 2017	26	5	3	34
Friday, September 1, 2017	38	8	3	49
Saturday, September 2, 2017	69	37	9	115

Date	Tours	4x4s	UTVs	TOTAL
Sunday, September 3, 2017	54	62	21	137
Thursday, September 7, 2017	20	7	2	29
Friday, September 8, 2017	29	7	2	38
Saturday, September 9, 2017	40	34	17	91
Sunday, September 10, 2017	26	24	1	51
Monday, September 11, 2017	35	6	2	43
Tuesday, September 12, 2017	28	13	1	42
Wednesday, September 13, 2017	41	9	1	51
Thursday, September 14, 2017	31	11	1	43
Friday, September 15, 2017	34	12	5	51
Saturday, September 16, 2017	43	35	3	81
Sunday, September 17, 2017	38	25	6	69
Monday, September 18, 2017	39	18	3	60
Tuesday, September 19, 2017	31	9	2	42
Wednesday, September 20, 2017	40	4	0	44
Thursday, September 21, 2017	43	5	2	50
Friday, September 22, 2017	44	15	4	63
Saturday, September 23, 2017	49	36	26	111
Sunday, September 24, 2017	42	37	1	80
Monday, September 25, 2017	36	15	0	51
Tuesday, September 26, 2017	33	9	1	43
Wednesday, September 27, 2017	35	11	3	49
Thursday, September 28, 2017	36	17	5	58
Friday, September 29, 2017	46	12	4	62
Saturday, September 30, 2017	48	50	12	110
Sunday, October 1, 2017	39	31	2	72
Monday, October 2, 2017	41	7	1	49
Tuesday, October 3, 2017	36	13	2	51
Wednesday, October 4, 2017	44	23	1	68
Thursday, October 5, 2017	47	17	2	66
Friday, October 6, 2017	49	14	7	70
Saturday, October 7, 2017	49	26	7	82
Monday, October 16, 2017	31	7	4	42
Tuesday, October 17, 2017	45	13	2	60
Wednesday, October 18, 2017	40	22	2	64
Thursday, October 19, 2017	45	23	3	71
Friday, October 20, 2017	45	26	0	71
Saturday, October 21, 2017	40	57	18	115
Sunday, October 22, 2017	43	34	7	84
Monday, October 23, 2017	46	15	4	65
Tuesday, October 24, 2017	36	8	2	46
Wednesday, October 25, 2017	36	18	3	57
Thursday, October 26, 2017	42	19	2	63
Friday, October 27, 2017	42	9	2	53
Saturday, October 28, 2017	44	36	7	87
Sunday, October 29, 2017	34	25	2	61
Monday, October 30, 2017	36	7	3	46

Date	Tours	4x4s	UTVs	TOTAL
Tuesday, October 31, 2017	30	5	4	39
Wednesday, November 1, 2017	28	6	1	35
Thursday, November 2, 2017	28	9	2	39
Friday, November 3, 2017	26	13	0	39
Saturday, November 4, 2017	29	25	5	59
Sunday, November 5, 2017	32	25	0	57
Monday, November 6, 2017	33	8	2	43
Tuesday, November 7, 2017	38	7	2	47
Wednesday, November 8, 2017	40	17	2	59
Thursday, November 9, 2017	41	16	3	60
Friday, November 10, 2017	41	20	6	67
Saturday, November 11, 2017	42	45	5	92
Sunday, November 12, 2017	34	31	4	69
Monday, November 13, 2017	31	8	3	42
Tuesday, November 14, 2017	27	16	3	46
Wednesday, November 15, 2017	26	8	1	35
Thursday, November 16, 2017	26	7	1	34
Friday, November 17, 2017	28	8	0	36
Saturday, November 18, 2017	35	25	3	63
Sunday, November 19, 2017	43	36	1	80
Monday, November 20, 2017	48	18	3	69
Tuesday, November 21, 2017	45	26	6	77
Wednesday, November 22, 2017	46	27	2	75
Thursday, November 23, 2017	30	28	3	61
Friday, November 24, 2017	47	55	5	107
Saturday, November 25, 2017	45	70	10	125
Sunday, November 26, 2017	44	28	7	79
Monday, November 27, 2017	28	14	1	43
Tuesday, November 28, 2017	15	5	0	20
Wednesday, November 29, 2017	18	4	1	23
Thursday, November 30, 2017	19	8	2	29
Friday, December 1, 2017	24	10	0	34
Saturday, December 2, 2017	32	24	2	58
Tuesday, January 2, 2018	32	14	9	55
Wednesday, January 3, 2018	45	20	9	74
Thursday, January 4, 2018	44	16	3	62
Friday, January 5, 2018	39	19	5	62
Saturday, January 6, 2018	36	44	5	84
Sunday, January 7, 2018	16	28	1	45
Monday, January 8, 2018	11	3	1	15
Tuesday, January 9, 2018	13	4	0	17
Wednesday, January 10, 2018	21	8	1	30
Thursday, January 11, 2018	25	6	3	34
Friday, January 12, 2018	33	12	2	47
Saturday, January 13, 2018	33	41	7	81
Sunday, January 14, 2018	37	50	6	93
Monday, January 15, 2018	34	15	3	52

Date	Tours	4x4s	UTVs	TOTAL
Tuesday, January 16, 2018	25	13	0	38
Wednesday, January 17, 2018	21	2	3	26
Thursday, January 18, 2018	17	9	0	26
Tuesday, January 23, 2018	17	17	0	34
Wednesday, January 24, 2018	25	5	1	31
Thursday, January 25, 2018	30	9	2	41
Friday, January 26, 2018	23	18	2	43
Saturday, January 27, 2018	34	53	10	97
Sunday, January 28, 2018	28	28	6	62
Friday, February 2, 2018	30	20	5	55
Saturday, February 3, 2018	34	44	5	83
Sunday, February 4, 2018	25	14	3	42
Monday, February 5, 2018	31	17	4	52
Tuesday, February 6, 2018	38	7	0	45
Wednesday, February 7, 2018	23	4	0	27
Thursday, February 8, 2018	31	18	2	51
Friday, February 9, 2018	34	17	7	58
Saturday, February 10, 2018	45	32	11	88
Sunday, February 11, 2018	48	35	2	85
Monday, February 12, 2018	21	7	0	28
Tuesday, February 13, 2018	28	18	2	48
Wednesday, February 14, 2018	34	7	1	42
Thursday, February 15, 2018	43	6	2	51
Friday, February 16, 2018	49	30	6	85
Saturday, February 17, 2018	52	59	3	114
Sunday, February 18, 2018	54	47	9	110
Monday, February 19, 2018	41	20	3	64
Tuesday, February 20, 2018	52	13	2	67
Wednesday, February 21, 2018	57	21	1	79
Thursday, February 22, 2018	50	15	0	65
Friday, February 23, 2018	31	14	0	45
Saturday, February 24, 2018	44	47	2	93
Sunday, February 25, 2018	41	35	2	78
Monday, February 26, 2018	41	13	1	55
Tuesday, February 27, 2018	28	5	0	33
Wednesday, February 28, 2018	20	8	2	30
Thursday, March 1, 2018	38	18	2	58
Friday, March 2, 2018	50	10	3	63
Saturday, March 3, 2018	51	60	6	117
Sunday, March 4, 2018	42	33	3	78
Monday, March 5, 2018	19	9	3	31
Tuesday, March 6, 2018	43	23	5	71
Wednesday, March 7, 2018	48	19	0	67
Thursday, March 8, 2018	46	13	3	62
Friday, March 9, 2018	53	17	1	71
Saturday, March 10, 2018	51	57	9	117
Sunday, March 11, 2018	58	42	8	108

Date	Tours	4x4s	UTVs	TOTAL
Monday, March 12, 2018	56	21	6	83
Tuesday, March 13, 2018	56	33	2	91
Wednesday, March 14, 2018	56	21	5	82
Thursday, March 15, 2018	56	18	0	74
Friday, March 16, 2018	58	37	7	102
Saturday, March 17, 2018	51	37	4	92
Sunday, March 18, 2018	50	40	0	90
Monday, March 19, 2018	51	16	2	69
Tuesday, March 20, 2018	57	23	4	84
Wednesday, March 21, 2018	55	21	0	76
Thursday, March 22, 2018	55	14	3	72
Friday, March 23, 2018	55	18	2	75
Saturday, March 24, 2018	55	48	4	107
Sunday, March 25, 2018	55	56	6	117
Monday, March 26, 2018	61	33	5	99
Tuesday, March 27, 2018	56	35	7	98
Wednesday, March 28, 2018	56	43	4	103
Thursday, March 29, 2018	56	41	4	101
Friday, March 30, 2018	55	37	9	101
Saturday, March 31, 2018	56	51	8	115
Sunday, April 1, 2018	54	51	1	106
Monday, April 2, 2018	52	21	6	79
Tuesday, April 3, 2018	54	34	3	91
Wednesday, April 4, 2018	61	30	4	95
Thursday, April 5, 2018	60	31	6	97
Friday, April 6, 2018	60	35	1	96
Saturday, April 7, 2018	59	61	9	129
Sunday, April 8, 2018	62	57	1	120
Monday, April 9, 2018	55	9	2	66
Tuesday, April 10, 2018	59	13	5	77
Wednesday, April 11, 2018	58	11	1	70
Thursday, April 12, 2018	56	12	0	68
Friday, April 13, 2018	55	17	5	77
Saturday, April 14, 2018	55	52	9	116
Sunday, April 15, 2018	41	26	6	73
Monday, April 16, 2018	58	15	4	77
Tuesday, April 17, 2018	59	17	3	79
Wednesday, April 18, 2018	59	19	3	81
Thursday, April 19, 2018	60	21	3	84
Friday, April 20, 2018	55	28	2	85
Saturday, April 21, 2018	61	50	9	120
Sunday, April 22, 2018	58	31	4	93
Monday, April 23, 2018	53	21	3	77
Tuesday, April 24, 2018	51	18	2	71
Wednesday, April 25, 2018	54	14	1	69
Thursday, April 26, 2018	60	19	2	81
Friday, April 27, 2018	55	28	6	89

Date	Tours	4x4s	UTVs	TOTAL
Saturday, April 28, 2018	56	55	16	127
Sunday, April 29, 2018	51	42	4	97
Monday, April 30, 2018	50	15	2	67
Tuesday, May 1, 2018	44	15	2	61
Wednesday, May 2, 2018	21	6	0	27
Thursday, May 3, 2018	56	16	0	72
Friday, May 4, 2018	57	17	7	81
Saturday, May 5, 2018	55	60	21	136
Sunday, May 6, 2018	52	28	20	100
Monday, May 7, 2018	40	21	4	65
Tuesday, May 8, 2018	45	13	0	58
Wednesday, May 9, 2018	40	25	4	69
Thursday, May 10, 2018	43	20	1	64
Friday, May 11, 2018	51	14	5	70
Saturday, May 12, 2018	51	44	2	97
Sunday, May 13, 2018	49	37	4	90
Monday, May 14, 2018	54	9	3	66
Tuesday, May 15, 2018	48	26	4	78
Wednesday, May 16, 2018	41	27	2	70
Thursday, May 17, 2018	46	26	0	72
Friday, May 18, 2018	49	34	5	88
Saturday, May 19, 2018	55	102	4	161
Sunday, May 20, 2018	56	64	1	121
Monday, May 21, 2018	43	15	0	58
Tuesday, May 22, 2018	44	8	1	53
Wednesday, May 23, 2018	51	12	0	63
Thursday, May 24, 2018	47	12	5	64
Friday, May 25, 2018	59	28	4	91
Saturday, May 26, 2018	60	41	4	105
Sunday, May 27, 2018	61	76	9	146
Monday, May 28, 2018	60	36	1	97
Tuesday, May 29, 2018	62	15	1	78
Wednesday, May 30, 2018	53	15	2	70
Thursday, May 31, 2018	52	13	2	67
Friday, June 1, 2018	48	17	1	66
Saturday, June 2, 2018	48	31	6	85
Sunday, June 3, 2018	53	25	3	81
Monday, June 4, 2018	58	10	0	68
Tuesday, June 5, 2018	53	14	1	68
Wednesday, June 6, 2018	54	17	3	74
Thursday, June 7, 2018	61	15	2	78
Friday, June 8, 2018	60	15	0	75
Saturday, June 9, 2018	55	32	8	95
Sunday, June 10, 2018	56	20	4	80
Monday, June 11, 2018	56	16	2	74
Tuesday, June 12, 2018	54	11	0	65
Wednesday, June 13, 2018	62	13	1	76

Date	Tours	4x4s	UTVs	TOTAL
Thursday, June 14, 2018	54	11	3	68
Friday, June 15, 2018	60	22	3	85
Saturday, June 16, 2018	48	44	4	96
Sunday, June 17, 2018	59	26	8	93
Monday, June 18, 2018	59	24	4	87
Tuesday, June 19, 2018	60	20	3	83
Wednesday, June 20, 2018	62	13	0	75
Thursday, June 21, 2018	50	19	3	72
Friday, June 22, 2018	62	19	3	84
Saturday, June 23, 2018	58	35	13	106
Sunday, June 24, 2018	60	43	6	109
Monday, June 25, 2018	56	6	5	67
Tuesday, June 26, 2018	61	15	3	79
Wednesday, June 27, 2018	60	15	2	77
Thursday, June 28, 2018	57	13	0	70
Friday, June 29, 2018	58	21	1	80
Saturday, June 30, 2018	63	45	7	115
Sunday, July 1, 2018	59	30	12	101
Monday, July 2, 2018	57	16	3	76
Tuesday, July 3, 2018	60	14	3	77
Wednesday, July 4, 2018	57	31	4	92
Thursday, July 5, 2018	52	19	3	74
Friday, July 6, 2018	57	24	5	86
Saturday, July 7, 2018	59	29	10	98
Sunday, July 8, 2018	59	34	6	99
Monday, July 9, 2018	51	12	1	64
Tuesday, July 10, 2018	51	19	5	75
Wednesday, July 11, 2018	49	15	3	67
Thursday, July 12, 2018	60	13	2	75
Friday, July 13, 2018	54	15	2	71
Saturday, July 14, 2018	50	45	12	107
Sunday, July 15, 2018	50	31	4	85
Monday, July 16, 2018	48	20	9	77
Tuesday, July 17, 2018	47	8	6	61
Wednesday, July 18, 2018	49	24	11	84
Thursday, July 19, 2018	39	22	9	70
Friday, July 20, 2018	38	23	11	72
Saturday, July 21, 2018	61	48	25	134
Sunday, July 22, 2018	54	48	21	123
Monday, July 23, 2018	57	10	13	80
Tuesday, July 24, 2018	52	20	7	79
Wednesday, July 25, 2018	55	12	6	73
Thursday, July 26, 2018	58	12	7	77
Friday, July 27, 2018	48	24	3	75
Saturday, July 28, 2018	52	48	12	112
Sunday, July 29, 2018	54	37	9	100
Monday, July 30, 2018	56	12	8	76

Date	Tours	4x4s	UTVs	TOTAL
Tuesday, July 31, 2018	56	13	3	72
Wednesday, August 1, 2018	39	10	6	55
Thursday, August 2, 2018	55	7	4	66
Friday, August 3, 2018	50	15	5	70
Saturday, August 4, 2018	45	22	19	86
Sunday, August 5, 2018	52	30	8	90
Monday, August 6, 2018	57	13	5	75
Tuesday, August 7, 2018	49	14	11	74
Wednesday, August 8, 2018	57	12	3	72
Thursday, August 9, 2018	57	9	6	72
Friday, August 10, 2018	50	19	4	73
Saturday, August 11, 2018	54	22	25	101
Sunday, August 12, 2018	52	65	28	145
Monday, August 13, 2018	52	7	8	67
Tuesday, August 14, 2018	46	14	8	68
Wednesday, August 15, 2018	48	20	5	73
Thursday, August 16, 2018	31	15	11	57
Friday, August 17, 2018	33	18	9	60
Saturday, August 18, 2018	39	49	23	111
Sunday, August 19, 2018	52	57	16	125
Monday, August 20, 2018	47	8	4	59
Tuesday, August 21, 2018	39	9	4	52
Wednesday, August 22, 2018	35	10	17	62
Thursday, August 23, 2018	38	11	4	53
Friday, August 24, 2018	20	12	9	41
Saturday, August 25, 2018	45	59	35	139
Sunday, August 26, 2018	34	34	20	88
Monday, August 27, 2018	33	14	9	56
Tuesday, August 28, 2018	33	8	7	48
Wednesday, August 29, 2018	25	4	4	33
Thursday, August 30, 2018	33	13	6	52
Friday, August 31, 2018	39	15	10	64
Saturday, September 1, 2018	59	61	29	149
Sunday, September 2, 2018	54	67	22	143
Monday, September 3, 2018	47	42	10	99
Tuesday, September 4, 2018	36	13	6	55
Wednesday, September 5, 2018	28	6	1	35
Thursday, September 6, 2018	47	8	4	59
Friday, September 7, 2018	39	14	4	57
Saturday, September 8, 2018	50	33	12	95
Sunday, September 9, 2018	33	17	8	58
Monday, September 10, 2018	40	14	12	66
Tuesday, September 11, 2018	41	10	4	55
Wednesday, September 12, 2018	30	11	3	44
Thursday, September 13, 2018	29	8	0	37
Friday, September 14, 2018	40	16	10	66
Saturday, September 15, 2018	47	66	18	131



Date	Tours	4x4s	UTVs	TOTAL
Sunday, September 16, 2018	42	27	11	80
Monday, September 17, 2018	46	20	0	66
Tuesday, September 18, 2018	49	10	4	63
Wednesday, September 19, 2018	30	10	2	42
Thursday, September 20, 2018	49	26	9	84
Friday, September 21, 2018	59	13	9	81
Saturday, September 22, 2018	55	54	25	134
Sunday, September 23, 2018	47	34	10	91
Monday, September 24, 2018	43	13	2	58
Tuesday, September 25, 2018	45	18	10	73
Wednesday, September 26, 2018	52	12	3	67
Thursday, September 27, 2018	53	16	2	71
Friday, September 28, 2018	55	17	4	76
Saturday, September 29, 2018	49	38	22	109
Sunday, September 30, 2018	52	41	6	99
Monday, October 1, 2018	33	13	2	48
Tuesday, October 2, 2018	15	6	3	24
Wednesday, October 3, 2018	35	9	5	49
Thursday, October 4, 2018	51	10	8	69
Friday, October 5, 2018	58	21	15	94
Saturday, October 6, 2018	55	23	4	82
Sunday, October 7, 2018	45	26	8	79
Monday, October 8, 2018	52	18	4	74
Tuesday, October 9, 2018	53	16	10	79
Wednesday, October 10, 2018	50	26	4	80
Thursday, October 11, 2018	60	30	4	94
Friday, October 12, 2018	43	10	1	54
Saturday, October 13, 2018	52	41	4	97
Sunday, October 14, 2018	54	51	9	114
Monday, October 15, 2018	54	20	5	79
Tuesday, October 16, 2018	40	7	0	47
Wednesday, October 17, 2018	47	20	5	72
Thursday, October 18, 2018	43	24	0	67
Friday, October 19, 2018	49	19	9	77
Saturday, October 20, 2018	53	54	5	112
Sunday, October 21, 2018	51	28	20	99
Monday, October 22, 2018	49	15	2	66
Tuesday, October 23, 2018	38	7	2	47
Wednesday, October 24, 2018	48	5	4	57
Thursday, October 25, 2018	46	24	3	73
Friday, October 26, 2018	46	29	5	80
Saturday, October 27, 2018	50	45	2	97
Sunday, October 28, 2018	49	40	7	96
Monday, October 29, 2018	41	11	1	53
Tuesday, October 30, 2018	42	6	2	50
Wednesday, October 31, 2018	30	9	1	40
Thursday, November 1, 2018	23	6	4	33

Date	Tours	4x4s	UTVs	TOTAL
Friday, November 2, 2018	41	15	1	57
Saturday, November 3, 2018	45	63	9	117
Sunday, November 4, 2018	39	33	3	75
Monday, November 5, 2018	38	12	2	52
Tuesday, November 6, 2018	32	10	2	44
Wednesday, November 7, 2018	43	12	0	55
Thursday, November 8, 2018	41	8	3	52
Friday, November 9, 2018	41	8	4	53
Saturday, November 10, 2018	43	31	9	83
Sunday, November 11, 2018	46	38	6	90
Monday, November 12, 2018	40	21	1	62
Tuesday, November 13, 2018	38	22	0	60
Wednesday, November 14, 2018	30	11	1	42
Thursday, November 15, 2018	35	6	1	42
Friday, November 16, 2018	41	22	3	66
Saturday, November 17, 2018	43	45	8	96
Sunday, November 18, 2018	44	37	4	85
Monday, November 19, 2018	43	25	9	77
Tuesday, November 20, 2018	47	24	6	77
Wednesday, November 21, 2018	46	22	5	73
Thursday, November 22, 2018	30	27	4	61
Friday, November 23, 2018	48	77	8	133
Saturday, November 24, 2018	45	51	13	109
Sunday, November 25, 2018	37	33	3	73
Monday, November 26, 2018	31	16	1	48
Tuesday, November 27, 2018	24	10	3	37
Wednesday, November 28, 2018	23	7	1	31
Thursday, November 29, 2018	23	3	1	27
Friday, November 30, 2018	22	11	1	34
Saturday, December 1, 2018	30	19	8	57
Sunday, December 2, 2018	29	24	5	58
Monday, December 3, 2018	18	9	0	27
Tuesday, December 4, 2018	21	13	0	34
Wednesday, December 5, 2018	24	12	1	37
Thursday, December 6, 2018	13	5	0	18
Friday, December 7, 2018	21	12	4	37
Saturday, December 8, 2018	38	30	3	71
Sunday, December 9, 2018	10	8	0	18
Sunday, December 16, 2018	27	21	1	49
Monday, December 17, 2018	29	12	1	42
Tuesday, December 18, 2018	21	6	1	28
Wednesday, December 19, 2018	26	6	1	33
Thursday, December 20, 2018	27	13	6	46
Friday, December 21, 2018	26	13	1	40
Saturday, December 22, 2018	43	30	7	80
Sunday, December 23, 2018	46	36	2	84
Monday, December 24, 2018	35	36	7	78

Date	Tours	4x4s	UTVs	TOTAL
Tuesday, December 25, 2018	0	34	1	35
Wednesday, December 26, 2018	44	41	6	91
Thursday, December 27, 2018	46	32	3	81
Friday, December 28, 2018	26	14	2	42
Saturday, December 29, 2018	44	52	5	101
Sunday, December 30, 2018	44	73	3	120
Monday, December 31, 2018	15	7	0	22
Tuesday, January 1, 2019	1	15	0	16
Wednesday, January 2, 2019	3	3	0	6
Thursday, January 3, 2019	3	10	1	14
Friday, January 4, 2019	39	23	1	63
Saturday, January 5, 2019	43	43	4	90
Sunday, January 6, 2019	14	18	1	33
Monday, January 7, 2019	28	3	1	32
Tuesday, January 8, 2019	25	12	2	39
Wednesday, January 9, 2019	24	7	1	32
Thursday, January 10, 2019	24	12	1	37
Friday, January 11, 2019	27	16	2	45
Saturday, January 12, 2019	37	32	8	77
Sunday, January 13, 2019	30	20	1	51
Monday, January 14, 2019	28	14	2	44
Tuesday, January 15, 2019	11	6	0	17
Wednesday, January 16, 2019	19	5	1	25
Thursday, January 17, 2019	24	9	0	33
Friday, January 18, 2019	34	15	2	51
Saturday, January 19, 2019	41	36	12	89
Sunday, January 20, 2019	42	47	7	96
Monday, January 21, 2019	37	19	0	56
Tuesday, January 22, 2019	31	10	1	42
Wednesday, January 23, 2019	31	9	1	41
Thursday, January 24, 2019	27	12	1	40
Friday, January 25, 2019	35	11	3	49
Saturday, January 26, 2019	41	38	2	81
Sunday, January 27, 2019	35	42	8	85
Sunday, February 3, 2019	16	13	1	30
Monday, February 4, 2019	32	4	1	37
Tuesday, February 5, 2019	22	7	2	31
Wednesday, February 6, 2019	27	6	0	33
Thursday, February 7, 2019	26	11	0	37
Friday, February 8, 2019	43	17	1	61
Saturday, February 9, 2019	47	35	3	85
Sunday, February 10, 2019	43	54	8	105
Monday, February 11, 2019	36	11	1	48
Tuesday, February 12, 2019	44	9	2	55
Wednesday, February 13, 2019	42	9	2	53
Thursday, February 14, 2019	27	3	0	30
Friday, February 15, 2019	45	14	7	66

Date	Tours	4x4s	UTVs	TOTAL
Saturday, February 16, 2019	53	51	10	114
Sunday, February 17, 2019	53	24	0	77
Monday, February 18, 2019	2	14	0	16
Tuesday, February 19, 2019	33	15	1	49
Wednesday, February 20, 2019	31	10	4	45
Thursday, February 21, 2019	1	1	0	2
Friday, February 22, 2019	1	2	0	3
Saturday, February 23, 2019	1	0	0	1
Sunday, February 24, 2019	3	3	0	6
Monday, February 25, 2019	27	12	0	39
Tuesday, February 26, 2019	40	4	0	44
Wednesday, February 27, 2019	39	16	2	57
Thursday, February 28, 2019	43	9	11	63
Friday, March 1, 2019	53	8	5	66
Saturday, March 2, 2019	40	32	3	75
Sunday, March 3, 2019	51	35	6	92
Monday, March 4, 2019	51	10	2	63
Tuesday, March 5, 2019	38	11	4	53
Wednesday, March 6, 2019	52	16	4	72
Thursday, March 7, 2019	55	14	1	70
Friday, March 8, 2019	48	18	4	70
Saturday, March 9, 2019	57	42	3	102
Sunday, March 10, 2019	21	19	2	42
Monday, March 11, 2019	53	31	4	88
Tuesday, March 12, 2019	40	9	11	60
Wednesday, March 13, 2019	53	14	20	87
Thursday, March 14, 2019	44	22	6	72
Friday, March 15, 2019	57	22	4	83
Saturday, March 16, 2019	55	54	5	114
Sunday, March 17, 2019	52	40	8	100
Monday, March 18, 2019	55	27	11	93
Tuesday, March 19, 2019	55	49	7	111
Wednesday, March 20, 2019	50	25	6	81
Thursday, March 21, 2019	55	29	3	87
Friday, March 22, 2019	55	21	4	80
Saturday, March 23, 2019	57	48	7	112
Sunday, March 24, 2019	45	22	5	72
Monday, March 25, 2019	58	23	5	86
Tuesday, March 26, 2019	58	24	5	87
Wednesday, March 27, 2019	55	18	1	74
Thursday, March 28, 2019	51	20	4	75
Friday, March 29, 2019	55	32	2	89
Saturday, March 30, 2019	54	68	13	135
Sunday, March 31, 2019	56	59	3	118
Monday, April 1, 2019	57	22	3	82
Tuesday, April 2, 2019	55	37	10	102
Wednesday, April 3, 2019	56	39	3	98

Date	Tours	4x4s	UTVs	TOTAL
Thursday, April 4, 2019	58	34	4	96
Friday, April 5, 2019	56	34	9	99
Saturday, April 6, 2019	55	54	8	117
Sunday, April 7, 2019	29	15	4	48
Sunday, April 21, 2019	52	41	18	111
Monday, April 22, 2019	63	28	8	99
Tuesday, April 23, 2019	61	16	2	79
Wednesday, April 24, 2019	56	12	1	69
Thursday, April 25, 2019	58	37	1	96
Friday, April 26, 2019	60	51	13	124
Saturday, April 27, 2019	59	70	16	145
Sunday, April 28, 2019	59	44	10	113
Monday, April 29, 2019	42	13	1	56
Tuesday, April 30, 2019	40	14	3	57
Wednesday, May 1, 2019	50	17	5	72
Thursday, May 2, 2019	39	19	8	66
Friday, May 3, 2019	53	24	7	84
Saturday, May 4, 2019	53	68	8	129
Sunday, May 5, 2019	52	43	5	100
Monday, May 6, 2019	53	8	3	64
Tuesday, May 7, 2019	39	9	0	48
Wednesday, May 8, 2019	38	16	1	55
Thursday, May 9, 2019	41	16	0	57
Friday, May 10, 2019	54	24	9	87
Saturday, May 11, 2019	54	58	8	120
Sunday, May 12, 2019	51	32	6	89
Monday, May 13, 2019	52	4	5	61
Tuesday, May 14, 2019	50	27	4	81
Wednesday, May 15, 2019	43	15	4	62
Thursday, May 16, 2019	47	30	3	80
Friday, May 17, 2019	57	51	6	114
Saturday, May 18, 2019	59	134	6	199
Sunday, May 19, 2019	51	90	0	141
Monday, May 20, 2019	38	29	0	67
Tuesday, May 21, 2019	44	18	3	65
Wednesday, May 22, 2019	44	12	1	57
Thursday, May 23, 2019	42	13	3	58
Friday, May 24, 2019	59	18	6	83
Saturday, May 25, 2019	57	72	17	146
Sunday, May 26, 2019	7	1	0	8

**Appendix 4. Updated Figure 4 Broken Arrow Data**

Comparison of Daily Averages

The following is the updated Figure 4 with the addition of 2019 data.

**Broken Arrow  
Data 2017-2019**

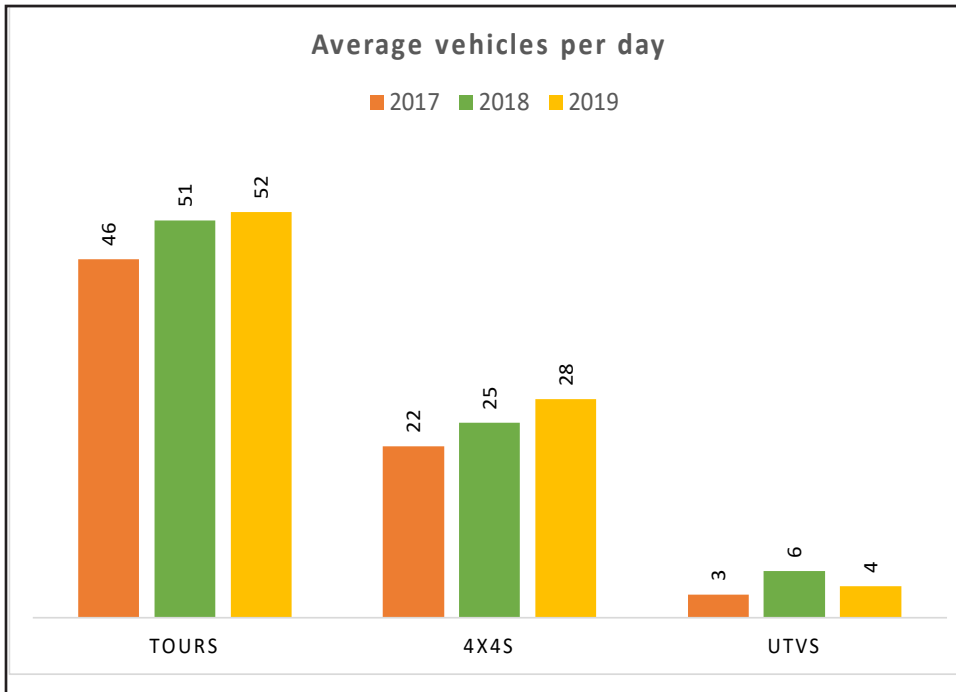


Figure 4 (updated)  
Comparison of Average Vehicles Per Day at Broken Arrow.  
Based on 131 days between March and September of 2017, 2018, and 2019.

OCTOBER 19, 2019

Disclaimer: There were gaps in the data collection when the camera was not working. In order to make a consistent comparison from year to year, only the dates with data available every year were used. As an example, if there was no data from May 1-5 in 2017, then no data from May 1-5 in 2018 or 2019 was used.

## City of Sedona Request Regarding Motorized Use Trails

The Sedona Mayor and City Council, on behalf of concerned residents both within City limits and in the nearby rural communities, are requesting that the USFS implement a limited entry permit system for motorized use trails in the greater Sedona area, similar to the permit system implemented at Soldier's Pass. The City acknowledges that no two areas are exactly alike, and each should be assessed and appropriate capacity determined based on its own unique circumstances. Soldier's Pass, for example, currently allows for 12 visitors per day, but that may not be the right threshold for other areas.

Sedona is one of the most beautiful places on earth, and we must protect every acre of this sacred land we have been entrusted with. This unregulated traffic has created substantial environmental damage, health and public safety issues, high fire danger from dead trees, potential harm to the precious heritage sites, and general nuisance issues within residential neighborhoods, such as noise, trash, and odor emissions. The current situation is unsustainable and must be corrected.

The Sedona area has seen an increase in off-road travel in the past few years. As a result, there are negative impacts on natural resources, heritage sites, wildlife, and local residents' quality of life.

Time is of the essence. Restrictions are absolutely necessary to save our beautiful Sedona.

The following are reasons for a limited entry system:

***Dust levels and air pollution*** from traffic on all forest service roads and OHV trails in the affected areas are causing the following environmental damage:

- Dust levels contribute to thousands of dead and dying trees
- Dust levels are damaging to grasslands
- Dust creates air pollution (Clean Air Act must apply)
- Dust levels create zero visibility dust clouds
- Breathing fugitive dust is harmful to humans (local residents and tour operators are at risk)
- Even when vehicles are traveling at speeds as low as 20 mph, dust levels are killing trees, damaging grasslands, and causing dangerous air pollution

***Current Noise levels:***

- Constant noise levels have the potential to cause hearing loss
- Noise levels disturb wildlife
- Noise levels diminish the outdoor experience for all other forest visitors
- Noise levels diminish the quality of life for local residents

**Off-trail travel** is causing the following environmental damage:

- Damage to native plants
- Compaction of soil
- Erosion

**Speeding and Reckless driving** is causing the following issue:

- Environmental damage
- Local residents afraid to drive on our own roads
- Forest roads are in poor condition
- Doughnuts cause significant environmental damage
- Ruins the outdoor experience for other forest visitors

**OHV accidents** are becoming more common:

- Inexperienced drivers may be contributing to a rise in accidents
- OHV accidents are becoming more frequent and more severe
- Some non-injury accidents are not reported, so true accident numbers may be higher than documented

Thank you for the attention the USFS has already given to these issues. The City recognizes that this is a complex issue with no easy solutions. The City also appreciates the tangible progress your team is making with respect to allocating resources to these efforts; hiring a new grant coordinator; your partnership with the Sedona Chamber of Commerce and Tourism Bureau to engage the industry to identify mitigations; engaging Tread Lightly for land preservation and education; and for seeking state grant funding for supplemental education.

Thank you in advance for your consideration of our request.





**CITY COUNCIL  
AGENDA BILL**

**AB 2737  
October 26, 2021  
Regular Business**

**Agenda Item: 8c**

**Proposed Action & Subject:** Discussion/possible action regarding approval of a Resolution authorizing the City of Sedona to enter into a Development Agreement with Son Silver West Gallery, Inc., in order to describe and regulate the existing retail business being conducted by Son Silver West pursuant to a conditional use permit (CUP 92-3) approved by the City on September 15, 1992 which allowed a legal nonconforming commercial art gallery and to resolve ongoing litigation.

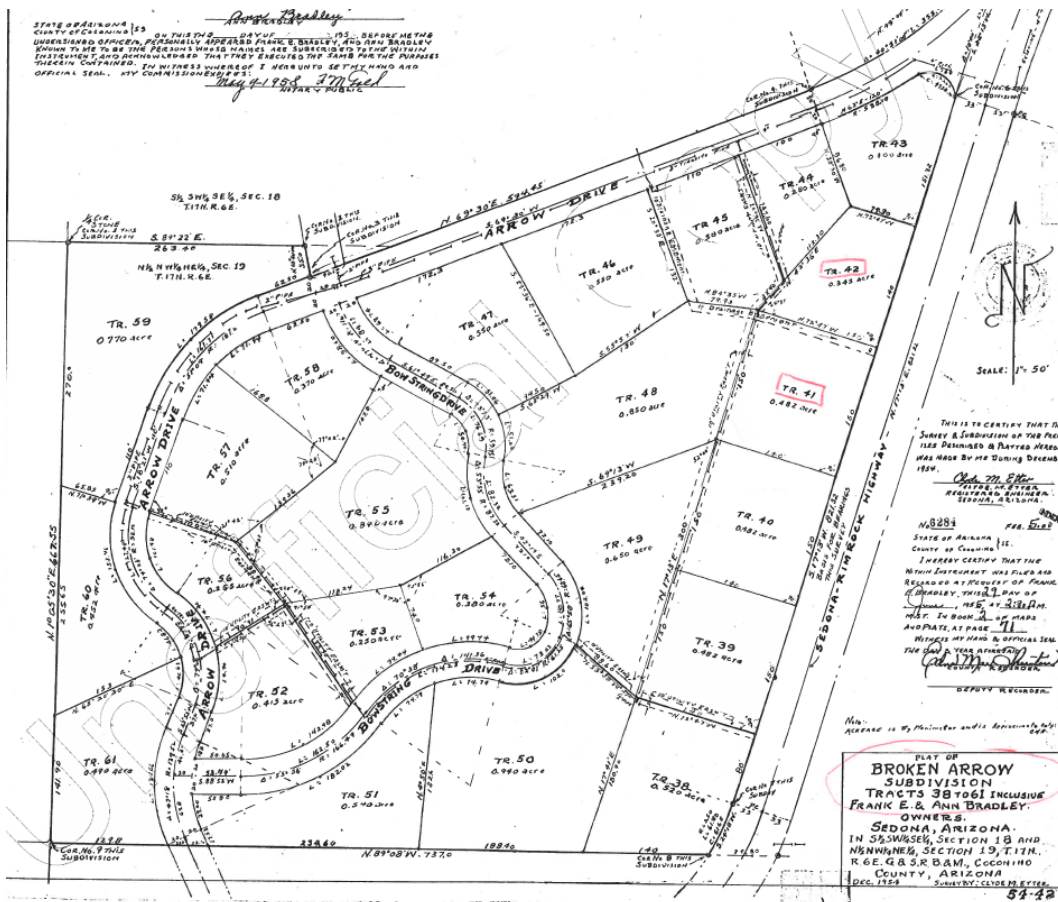
<b>Department</b>	City Attorney's Office
<b>Time to Present</b>	30 Minutes
<b>Total Time for Item</b>	90 Minutes
<b>Other Council Meetings</b>	January 14, 2020
<b>Exhibits</b>	A. Development Agreement B. Resolution C. November 10, 2015 Notice of Violation

<b>City Attorney Approval</b>	Reviewed 10/19/21 KWC	<b>Expenditure Required</b>	
		\$	0
<b>City Manager's Recommendation</b>	Approve the Resolution and Development Agreement to regulate Sun Silver West.	<b>Amount Budgeted</b>	
		\$	0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:**

In 1960, a homeowner in the Broken Arrow subdivision of Sedona opened and operated a small art gallery in her home. In 1964, Coconino County zoned the subdivision residential, but because the art gallery predated the rezoning, the county allowed it to continue operating as a legal nonconforming use. The Robson family ("Robsons") purchased the property in 1981 and renamed it Son Silver West ("SSW"). They purchased the adjacent lot in 1987 which they used for parking and as outdoor retail space. According to zoning maps, the original property is referred to as Lot 42, and the adjacent lot purchased in 1987 is Lot 41. After the City incorporated in 1988, the Robsons were able to continue legally operating the gallery as a nonconforming use.



In 1989, SSW received their first Notice of Violation (“NOV”) from Sedona. After inspecting the Robsons’ properties, Sedona’s Director of Community Development (the “Director”) notified the Robsons that their use of Lot 41 was in violation of Sedona’s Land Development Code. In response, the Robsons applied for and received a conditional use permit (“CUP 92-3”) in 1992, retroactively authorizing the gallery’s expansion from Lot 42 to Lot 41. CUP 92-3 included an estimated 5,000 square feet of outdoor retail area.

Over the next few years, the Robsons obtained minor adjustments to CUP 92-3, along with various permits that further developed Lots 41 and 42. In 1994, Sedona adopted a new Land Development Code, which precluded SSW from expanding CUP 92-3 beyond what already existed and was approved.

Between 1990 and 2014, the Robsons purchased three additional properties surround SSW—two houses on Lots 45 and 49 and one vacant lot on Lot 40 (collectively the “non-CUP properties”). SSW agrees that CUP 92-3 does not extend to these properties. During those same years, Sedona discovered and acted on multiple violations of SSW’s properties. Some violations were resolved through compliance and some through after-the-fact permits. Each resolution was reached through cooperation between SSW and the City, and no pre-2014 violations ever progressed beyond the issuance of an NOV.

In 2014, the Director received complaints regarding the non-CUP properties. The Director met with the Robsons and inspected these properties in September and the following month issued NOV’s. The Robsons requested and were granted stays on the NOV’s so they could apply for comprehensive zoning changes that would allow for commercial use of the non-CUP Properties. In May 2015, SSW submitted a Community Plan Amendment and rezoning application, but after discussing with City representatives, ultimately decided to withdraw the application.

Following withdrawal of the application, the Director took two actions: 1) renewed the 2014 NOV's on the non-CUP Properties, and 2) based upon information provided by the Robsons during the rezoning application process, issued two new NOV's alleging CUP 92-3 violations on Lots 41 and 42. All of the violations were listed in a November 10, 2015 letter from the Director to SSW (**Exhibit "C"** to the Agenda Bill). SSW appealed the Director's NOV to the Board of Adjustment arguing that the previous Director had approved SSW's right to operate in violation of CUP 92-3 and the Land Development Code. The Board of Adjustment ("BOA") mostly upheld the Director's enforcement actions. Specifically, the BOA determined that corrective actions A.1, A.3, A.5, C.1, C.2, D.1, D.3, D.4, D.6, and D.7 be upheld; that A.2, A.4, B.1, B.2 were resolved through compliance; and that the City and SSW work to mutually resolve D.2 and D.5.

SSW then appealed some of the corrective actions via special action to the superior court, alleging that the BOA failed to address their arguments regarding vested rights and equitable estoppel and the BOA exceeded its authority by directing the parties to work out actions D.2 and D.5 between themselves. The superior court mostly upheld the BOA's decision.

SSW appealed the superior court's decision, and the court of appeals, on October 30, 2018, largely upheld the Director's enforcement of violations of the Land Development Code and CUP 92-3 against SSW.

Despite the court orders, SSW failed to fully abate all of the violations. On January 23, 2019, the City filed a complaint in the superior court requesting the court order abatement of the violations and a permanent injunction preventing SSW from continuing the violations outlined in the November 10, 2015 Notices of Violation.

SSW is currently compliant with all corrective actions as outlined in the November 15, 2015 NOV.

### **Development Agreement:**

City Staff recommends City Council adopt the attached Development Agreement to memorialize compliance with CUP 92-3. This includes: an engineered site plan depicting the areas comprising the outdoor retail display area which SSW has marked with permanent ground markers for ease of inspection, conditions by which SSW must allow inspections to occur, predetermined daily fines for breaches of the development agreement, and binding arbitration in lieu of traditional court processes. Specifically, the City and SSW would agree to the following.

### **Son Silver West agrees to:**

1. Limit the enclosed retail space to 4,900 square feet and the Outdoor Retail Area to 5,563.81 square feet and install permanent ground markers delineating the Outdoor Retail Area. All currently clear areas will remain free of any merchandise or items. Not store or place any items not within the Outdoor Retail Area on Lots 40, 41, and 42, without permission of the Community Development Director.
2. Allow City staff entry onto Lots 40, 41, and 42 at any time during regular business hours for inspection.
3. Only use the chapel for personal religious purposes.
4. Prohibit parking of vehicles on Lot 40, the vacant lot, and not use Lot 40 for commercial purposes except for the existing commercial driveway.
5. Install and maintain pre-approved screening along frontage of Lots.
6. Update all outdoor lighting fixtures to be shielded and dark-sky compliant.

7. Not use Lots 45 and 49, the non-CUP properties for commercial purposes, including fabrication, employee parking or warehousing merchandise and to allow City Staff to inspect each residence upon 48 hours' notice.
8. Pay a \$500 per day fine for violations that are not cured within 48 hours. For third or subsequent violations within 12 months the fine increases to \$1,000 per day.

City agrees to:

1. Dismiss the City's abatement and injunction Case No. CV2019-00022.
2. Issue business license to SSW.
3. Follow procedures outlined in the Development Agreement for inspections and issuing notices of violations.

**Community Plan Consistent:** Yes - No - Not Applicable

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

**Board/Commission Recommendation:** Applicable - Not Applicable

**Alternative(s):** Modify or not approve the Development Agreement.

**MOTION**

**I move to:** approve Resolution 2021-\_\_\_, authorizing the City of Sedona to enter into a Development Agreement with Son Silver West Gallery, Inc. and the Robsons, to regulate the existing retail business being conducted by Son Silver West pursuant to the Development Agreement and CUP 92-3 and to resolve ongoing litigation.

**WHEN RECORDED, RETURN TO:**

City Clerk  
City of Sedona  
102 Roadrunner Drive  
Sedona, Arizona 86336-3710

**DEVELOPMENT AGREEMENT  
(Son Silver West Gallery)**

This Development Agreement (“*Agreement*”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “*Effective Date*”), by and between the **CITY OF SEDONA, ARIZONA**, an Arizona municipal corporation (the “*City*”) and **SON SILVER WEST GALLERY, INC.** an Arizona corporation (“*Son Silver West*” or “SSW”), and Linda Rose Robson and William B. Robson, husband and wife, Linda Rose Robson and William B. Robson, trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999, William B. Robson and Linda Rose Robson, trustees of the William B. Robson Living Trust u/t/a dated July 12, 1999, and Rio Cody Robson, an unmarried man, (the Linda Rose Robson Living Trust, William B. Robson Living Trust, and Rose, Bill and Rio Cody Robson are collectively called “the Robsons”). Hereinafter, the City, SSW and the Robsons are jointly referred to as the “parties”.

**RECITALS**

**A.** Within the Broken Arrow Subdivision, recorded at Map 2, Page 71 Coconino County Official Records, Tracts 40, 41 and 42 are owned by Linda Rose Robson and William B. Robson, trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999, Tract 45 is owned by Rio Cody Robson and Tract 49 is owned by William B. Robson and Linda Rose Robson, trustees of the William B. Robson Living Trust, and William B. Robson and Linda Robson (the “Property”). Tract 49 is also known as 365 Bowstring Drive. Tract 45 is also known as 61 Arrow Drive. Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust, as Lessor, and Son Silver West Gallery, Inc., as Lessee, have entered into an existing lease for the purpose of Son Silver West operating a commercial art gallery business on Tracts 41 and 42.

**B.** There is an existing retail business being conducted by Son Silver West on Tracts 41 and 42 of the Property pursuant to a conditional use permit approved by the City on or about September 15, 1992 which allowed a legal nonconforming commercial art gallery on Tract 42 to be expanded onto Tract 41 (CUP 92-3), the terms of which are hereby incorporated by reference into this Agreement.

**C.** On or about November 10, 2015, the City issued a Notice of Violation to Son Silver West in which various violations of the specific terms of CUP 92-3 and the Sedona Land Development Code were identified, along with the Corrective Actions required to bring the Son

Silver West business into compliance with CUP 92-3 and the Sedona Land Development Code. Corrective Actions were designated with a capital letter and a number, e.g. A.5. The November 10, 2015 Notice of Violation is hereby incorporated by reference into this Agreement.

**D.** On June 3, 2016, the City of Sedona Board of Adjustment (BOA) heard an appeal made by Son Silver West regarding the November 10, 2015 Notice of Violation and issued an Order with respect to its findings. The BOA's June 3, 2016 Order is hereby incorporated by reference into this Agreement.

**E.** On September 18, 2017, in Cause No. CV2016-00306, Hon. Dan Slayton of the Coconino County Superior Court entered a Final Judgment with respect to a Special Action Complaint brought by Son Silver West and the Robsons to challenge the June 3, 2016 decisions of the City of Sedona BOA. The Judgment upheld the BOA Order except as to Corrective Actions A.5, D.5 and D.6. Judge Slayton's Judgment is hereby incorporated by reference into this Agreement.

**F.** Upon appeal by Son Silver West and the Robsons in Cause No. 1 CA-CV 17-0761, on October 30, 2018, the Arizona Court of Appeals, Division One, issued a Memorandum Decision in which the Court vacated Paragraphs 7 (Corrective Action D.2) and 10 (Corrective Action D.5) of the Superior Court's Final Judgment and reinstated the City of Sedona Board of Adjustment's decision regarding these Corrective Actions previously reversed by the Superior Court and affirmed the remainder of the Superior Court's Order. The Court of Appeals Memorandum Decision is hereby incorporated by reference into this Agreement.

**G.** On November 10, 2018, the City of Sedona issued a Notice of Violation to Son Silver West and the Robsons. On December 3, 2018, the City of Sedona issued a Notice of Violation to Son Silver West and the Robsons. The Notices of Violation are hereby incorporated by reference into this Agreement.

**H.** On January 24, 2019, the City of Sedona filed Cause No. CV201900022 in the Coconino County Superior Court seeking abatement of violations that remain out of compliance and authorization for injunctive relief authorizing the City to undertake such abatement, if necessary. The City's Complaint and the Answer of Son Silver West and the Robsons are hereby incorporated by reference into this Agreement.

**I.** Son Silver West and the Robsons have submitted an engineered Site Plan of the Building and Shade Canopies Areas of Tracts 40, 41 and 42 and a Site Plan of Outdoor Retail Area of Tracts 41 and 42 (the "Outdoor Retail Area") based upon a scaled drawing prepared by the City of the allowable outdoor retail area (attached hereto and made part of this agreement as Exhibits A and C, respectfully) which have been determined by the parties to accurately reflect the conditions adopted in CUP 92-3 and which, if adhered to by Son Silver West, will establish compliance with CUP 92-3 and resolve all violations as identified in the November 10, 2018 and December 3, 2018 Notices of Violation.

**J.** Tracts 41 and 42 are located in Community Focus Area (CFA) 11: Morgan Road of the Sedona Community Plan. One of the listed attributes of CFA 11 is the existing

nonconforming commercial uses.

**K.** Arizona Revised States Section 9-500.05 allows a municipality and a landowner or any other person having an interest in real property located in a municipality to enter into a development agreement pertaining to any matter relating to the use of such real property, including applicable land use rules, regulations and official policies; permitted land uses; density and intensity of land use; phasing of development and duration of the development agreement; and development fees.

**L.** The parties desire to create assurances that continued operation of the Son Silver West business remains in compliance with CUP 92-3 and that an equitable process is established for the City and Son Silver West and the Robsons to work together in a cooperative manner to maintain said compliance.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises above and the mutual covenants and agreements contained herein, the parties, intending to be legally bound, covenant and agree, for themselves, and their successors-in-ownership and assigns, as follows:

**1. Recitals.** The Recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

**2. Covenants of Son Silver West and the Robsons.** Son Silver West and the Robsons agree as follows:

(a) To remain in compliance with the conditions established in September 15, 1992 staff report, adopted in association with CUP 92-3, as adjudicated by the BOA, Judge Slayton and the Arizona Court of Appeals, and any minor adjustments as referenced by the Arizona Court of Appeals, which includes, as shown on Exhibit A, “SSW Site Plan of Building and Shade Canopies” incorporated herein by this reference:

- i. 4,900 square feet of retail space in enclosed buildings<sup>1</sup>
- ii. 5,563.81 square feet of Outdoor Retail Area<sup>2</sup>
- iii. 1,845 square feet of single family dwelling<sup>3</sup>
- iv. 620 square feet of storage space
- v. 1271 square feet of workshop<sup>4</sup>

(b) To refrain from using more than the maximum allowable space on Tract 45 located at 61 Arrow Drive (APN 401-31-016) as a home occupation, as that

<sup>1</sup> See Footnote #1 described on Footnote Addendum attached hereto..

<sup>2</sup> See Footnote #2 described on Footnote Addendum attached hereto.

<sup>3</sup> See Footnote #3 described on Footnote Addendum attached hereto.

<sup>4</sup> See Footnote #4 described on Footnote Addendum attached hereto.

use is defined in the Sedona Land Development Code, or for commercial purposes including, but not limited to, fabrication, employee parking and warehousing of merchandise in support of the Son Silver West business activities and to allow the City staff upon notice to have access to the residence at 61 Arrow Dr. for the purpose of inspection as identified herein.

- (c) To erect and maintain a Code compliant fence on the property line between the structure located at 61 Arrow Drive commonly referred to as “the chapel” and Tract 42 and that a residential-sized gate be maintained along the shared property line between Tracts 42 and 45. Further, that the chapel only be used for personal religious or contemplative purposes.
- (d) To ensure that the boundaries of the Son Silver West business do not illegally encroach onto adjacent properties, and that all walls or fences are permitted and properly aligned with legal property boundaries.
- (e) To refrain from using more than the maximum allowable space on Tract 49 located at 365 Bowstring Dr. (APN 401-31-020) as a home occupation, as that use is defined in the Sedona Land Development Code, or for commercial purposes including, but not limited to, fabrication, employee parking and warehousing of merchandise in support of the Son Silver West business activities and to allow the City staff upon notice to have access to the residence at 365 Bowstring Dr. for the purpose of inspection as provided herein.
- (f) To prohibit the parking of vehicles on Tract 40 located at 1535 SR 179 (APN 401-31-011), to maintain a physical barrier between Tract 40 and Tract 41 at the south edge of the improved driveway on Tract 40, and to refrain from the use of Tract 40 for commercial purposes, except for the existing commercial drive which shall be used only for ingress and egress of automobiles and for the loading and unloading of shipments of business merchandise; provided, however, that unloading and loading of any such shipments shall occur before close of business by Son Silver West the same day as the arrival of the truck used for shipping and, provided further, that merchandise received shall be removed from the commercial driveway area within 24 hours after being offloaded.<sup>5</sup>
- (g) To install and maintain pre-approved screening and vegetation next to the existing wrought iron fencing, including the gates used for pedestrian access, on Tract 41 and Tract 42 along the frontage adjacent to State Route 179 so as to minimize visual impacts and maintain an attractive appearance of the Outdoor Retail Area.

<sup>5</sup> See Footnote #5 described on Footnote Addendum attached hereto.



- (h) To update all outdoor lighting fixtures to be shielded and dark-sky compliant in accordance with existing City code requirements.
- (i) To install permanent ground markers which will delineate the authorized Outdoor Retail Area as authorized in CUP 92-3 and accurately depicted on the site plan which is incorporated herein as Exhibit C. Further, that all areas and clear spaces on Tracts 42 and 41 lying outside the Outdoor Retail Area shown on Exhibit C without a use designation, shall be kept open and free of any merchandise or other tangible items at all times and maintained in their current state. Further, the Robsons and SSW agree to not store, place or locate anything, including but not limited to objects, items, merchandise, or artwork, whether for sale or not, at any exterior location on Tracts 40, 41 and 42 not within the Outdoor Retail Area as shown in Exhibits B and C and as described in Section 2(a)ii. of this Agreement without prior written permission from the City Community Development Director which shall not be unreasonably withheld. The City Community Development Director pre-approves only those non-retail items currently displayed outside the Outdoor Retail Area as recorded by video and photographs taken on July 12, 2021, by City staff and by photos provided by SSW to City staff on May 25, 2021.
- (j) To allow the City staff entry onto Tract 40, Tract 41 and Tract 42 at any time during regular business operating hours of Son Silver West for the purpose of conducting inspections, including the taking of photographs, for compliance with CUP 92-3 and this Agreement in accordance with the City's standard practices for inspecting commercial properties within the City of Sedona.
- (k) To promptly resolve any and all violations of CUP 92-3 or this Agreement identified through a properly conducted inspection by the City as identified herein.
- (l) (i) Subsequent to the full compliance acknowledged in this Agreement, Son Silver West will freely and voluntarily pay to the City a penalty in the amount of \$500 per day during which any violation of CUP-92-3 or this Agreement continues without cure beyond forty-eight (48) hours after notice. The 48-hour cure period shall commence upon delivery of notice to Son Silver West as set forth in Section 5.1 provided, however, if Rio Cody Robson is absent from the State of Arizona for the purpose of purchasing merchandise and/or raw materials used in manufacturing by Son Silver West of merchandise for sale at the time of delivery of a notice, then notice shall be deemed effective seven (7) days after delivery of the notice provided, further, that (i) Rio Cody Robson shall furnish to the City reasonable evidence of such business purpose for his out-of-state travel; and (ii) the maximum number of 7-day grace periods shall not exceed four (4) during any 12-month period accruing from and after the execution of this

Agreement. The 7-day grace period is specific to Rio Cody Robson and shall not transfer to any successor, heir or assign. In the event that any part of the 48-hour cure period were to include any day in which the City is not open for business, the City, nevertheless, will make available a Community Development Department employee to inspect the Property during such 48-hour period to confirm whether or not the noticed violation has been cured.

(ii) In the event that any violation as described in this Section 2(m) continues for more than forty-eight (48) hours after notice, the Parties agree that the dispute resolution process identified in Section 5.14 herein shall immediately commence. The daily penalties shall not be tolled and will continue to accrue during the pendency of any such resolution process subject to resolution of daily penalties through the mediation or arbitration process. In the event that a re-inspection by the City does not occur until after the initial forty-eight (48) hour cure period and the Robsons have not cured the noticed violation, the penalties described in this Section 2(m) for failure to cure a violation will relate-back to the date which is forty-eight (48) hours following the notice in which the violation is identified.

(iii) Any violation of CUP 92-3 or this Agreement that is the third (3<sup>rd</sup>) or more violation in any twelve (12) month period accruing from and after the execution of this Agreement, the daily penalty shall increase from \$500 per day to \$1,000 per day.

(iv) Any violation of CUP 92-3 or this Agreement that is the sixth (6<sup>th</sup>) or more violation in any thirty-six (36) month period accruing from and after the execution of this Agreement will result in the City having the unilateral discretion of whether to proceed with the dispute resolution process identified in Section 5.14 herein or to pursue litigation for breach of this Agreement in a court of competent jurisdiction.

(v) Each covenant identified in CUP 92-3 and this Agreement is considered a separate violation for purposes of the assessment of daily penalties and shall not be consolidated in any dispute resolution process or other legal proceeding. However, multiple violations of the same covenant noticed during the same inspection shall not be treated as more than a single violation.

(m) An alleged violation by Son Silver West of any City code not specifically identified in CUP 92-3 or this Agreement will not be subject to the provisions in Section 2(l) herein and shall be treated as would any violation of a City regulation pursuant to the City's standard practices.

**3. Covenants of City. City agrees as follows:**

- (a) To provide written confirmation to Son Silver West and the Robsons that suspension of CUP 92-3 is no longer in effect and the Son Silver West business has been found to be in compliance with CUP 92-3 and this Agreement.
- (b) To issue current City business licenses to Son Silver West and the Robsons upon submittal of a complete application for Business Licenses, including payment of all associated licensing fees.
- (c) To voluntarily dismiss with prejudice Cause No. CV201900022 in the Coconino County Superior Court.
- (d) To provide Son Silver West with no less than forty-eight (48) hours written (email) and verbal notice of the City's intent to conduct an inspection of Tract 45 or Tract 49 for compliance with CUP 92-3 and this Agreement provided that any such inspection shall not occur on a Saturday, Sunday, or legal holiday. In the event that the Rio Cody Robson is out-of-town or otherwise unavailable on the date of the noticed inspection, Rio Cody Robson shall designate an agent or agents with the authority to consent to the inspection within forty-eight (48) hours and the inspection may still proceed without his presence, but the inspector(s) shall not question any of the designated agents. Any questions by the inspector(s) shall be posed directly to Rio Cody Robson either verbally or in a written notice given pursuant to Section 5.1.
- (e) For inspections of Tract 40, Tract 41 or Tract 42, City staff shall identify themselves and the purpose for the inspection at the time of their arrival and shall ask for Rio Cody Robson to accompany them during any inspection, but, in the event that Rio Cody Robson is not available, the inspection may proceed in his absence so long as the City does not engage other Son Silver West employees in questioning.
- (f) For any inspection conducted under this Section 3, Son Silver West agrees to allow photographs to be taken by City staff for the Parties' mutual benefit of documenting conditions as existing at the time of the inspection.
- (g) If Rio Cody Robson is present at the Property during any inspection, any violation(s) noticed by the City staff shall be reported to Rio Cody Robson so that such violation(s) may be cured during the inspection. Any violation cured during an inspection shall not be treated as a violation under CUP 92-3 or this Agreement.
- (h) To include in every notice of violation, a written report of the inspection results and findings which identifies the specific location of the violation with reference to Exhibit A and/or C attached hereto and, in the case of a violation of the allowable Outdoor Retail Area, a current photograph depicting the violation.

- (i) To provide Son Silver West with a written report of inspection results and findings no later than five (5) of City's business days following any properly noticed inspection.

**4. Term.** This Agreement shall remain in full force and effect in perpetuity from the date of its full execution by the parties. In the event that Son Silver West makes an application and the City approves an application(s) to amend the Sedona Community Plan and to rezone Tracts 40, 41 and 42 so as to allow as a matter of right commercial uses to be conducted and maintained on Tracts 41 and 42, together with Tract 40 so as to constitute an integral development of Tracts 40, 41 and 42, the purpose of this Agreement shall be deemed fulfilled, and this Agreement shall terminate without further action or consent of the parties.

**5. Miscellaneous.**

- 5.1. Notice. Unless otherwise specifically provided in this Agreement, all notices, demands or other communication to be given shall be in writing and shall be deemed to have been duly delivered upon personal delivery or three (3) business days after deposit in the U.S. Postal System or one (1) business day after the sending of email notice (given between the hours of 8 am and 5 pm on a business day):

To City:  
City of Sedona  
Attn: Sedona Community Development Director  
102 Roadrunner Drive  
Sedona, Arizona 86336-3710  
[jmcneely@sedonaaz.gov](mailto:jmcneely@sedonaaz.gov)

Copy To:  
Sedona City Attorney  
102 Roadrunner Drive  
Sedona, Arizona 86336-3710  
[kchristianson@sedonaaz.gov](mailto:kchristianson@sedonaaz.gov)

To Son Silver West:  
Rio Cody Robson  
1476 State Route 179  
Sedona, Arizona 86336  
[rio@sonsilverwest.com](mailto:rio@sonsilverwest.com)

Copy To:  
Francis J. Slavin  
Francis J. Slavin, P.C.  
2198 East Camelback Road, Suite 285  
Phoenix, Arizona 85016  
[b.slavin@fjslegal.com](mailto:b.slavin@fjslegal.com)

William and Rose Robson  
25 Alpine  
Sedona, Arizona 86336  
[bill@sonsilverwest.com](mailto:bill@sonsilverwest.com)

Either party may change the notice recipient or address by giving written notice to the other party as provided above.

- 5.2. Amendments. This Agreement may be amended only by a mutual written agreement fully executed by the parties.
- 5.3. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona.
- 5.4. Waiver. No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition.
- 5.5. Severability. If any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
- 5.6. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference as though fully set forth in this Agreement. The exhibits are as follows:

Exhibit A: Son Silver West Gallery Site Plan of Building and Shade Canopies Area  
Exhibit B: Legal Description of Perimeter of Sun Silver West Outdoor Retail Area  
Exhibit C: Son Silver West Gallery Site Plan of Outdoor Retail Area

A full-size copy of Exhibit A and Exhibit C, are on file with the City of Sedona and with the Robsons at the respective addresses set forth under Section 5.1.

- 5.7. Entire Agreement. This Agreement and the referenced exhibits and collateral materials constitute the entire agreement between the parties pertaining to the subject matter and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties, oral or written, are superseded and merged in this Agreement.
- 5.8. Counterparts. This Agreement may be executed in multiple counterparts.
- 5.9. Consents and Approvals. City and Son Silver West shall at all times act reasonably and in good faith with respect to any and all matters which require either party to review, consent or approve any act or other matter pertaining to the subject matter of this Agreement.
- 5.10. Mutual Benefits. City and Son Silver West agree that in making the promises contained in this Agreement that certain benefits and advantages will accrue to both parties as a result of the performance of this Agreement, and that this Agreement is entered into in reliance upon the actual benefits afforded each of the parties.
- 5.11. Conflict of Interest. No member, official or employee of City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law. All parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of ARS Section 38-511.
- 5.12. Enforcement by Either Party. This Agreement shall be enforceable by either party notwithstanding any change in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building ordinance adopted by City which substantially changes, alters or amends the applicability of said plans or ordinances to the Agreement.
- 5.13. Cumulative Remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by such defaulting party.
- 5.14. Mediation; Arbitration. The parties agree that any properly noticed violation arising out of or in connection with this Agreement shall be resolved through mediation with the American Arbitration Association

(“AAA”). If the parties cannot reach a resolution of such claimed violations in mediation, the violation shall be resolved by binding arbitration through AAA which shall be conducted at a neutral location in Sedona, Arizona. The mediation and, if required, the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules and Mediation Procedures. The AAA shall invoice the City and Son Silver West or the Robsons each for one-half of the AAA’s fees and costs for conducting this mediation and arbitration. Each party shall timely pay its invoiced share of such fees and costs. The decision of the arbitrator shall be final and binding upon, and non-appealable by, the parties, and any judgment may be had on the decision or award so rendered in any court of competent jurisdiction. The prevailing party is entitled to be awarded all costs incurred in connection with the arbitration proceeding including fees of the arbitrator, its reasonable attorneys’ fees, witness fees and any other costs as determined by the arbitrator.

- 5.15. Assignment and Successors. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successor and assigns.
- 5.16. No Third-Party Beneficiaries and No Partnership. This Agreement is made and entered into for the sole protection and benefit of the parties. No person other than the parties and their successors in interest shall have any right of action based upon any provision of this Agreement. Nothing contained in this Agreement shall create any partnership, joint venture or agency relationship between the parties.
- 5.17. Effective Date, Term and Recordation. This Agreement will be effective (“*Effective Date*”) upon execution by the undersigned parties and recordation in accordance with ARS Section 9-500.05.
- 5.18. Time of the Essence. Time is of the essence in this Agreement.
- 5.19. Review Process. City agrees to use its best efforts to expedite all approvals relating to the subject matter of this Agreement.
- 5.20. Sale of Tracts 45 or 49. This Agreement will terminate automatically as to Tract 45 (61 Arrow Drive) or Tract 49 (365 Bowstring Drive) upon the sale and conveyance of title by the Robsons of Tract 45 or Tract 49 to an unrelated person or entity. This Agreement shall automatically reapply and reattach to Tract 45 or Tract 49 upon a repurchase or lease of Tract 45 or Tract 49 by the Robsons, Son Silver West or any related person or entity.
- 5.21. Sale of Tracts 40, 41 and 42. In the event that the Robsons sell, transfer and convey title to Tracts 40, 41 and 42, the terms and conditions of this Agreement shall remain in full force and effect and be binding upon any future owner(s) of Tracts 40, 41 and 42.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**



**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**CITY OF SEDONA, ARIZONA**, an Arizona municipal corporation

\_\_\_\_\_  
Sandra J. Moriarty, Mayor

ATTEST:

\_\_\_\_\_  
Susan L. Irvine, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kurt W. Christianson, City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared Sandra J. Moriarty, the Mayor of the CITY OF SEDONA, ARIZONA, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above/attached document.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**SON SILVER WEST GALLERY, INC.**

By: \_\_\_\_\_

Linda Rose Robson

Its: President

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by Linda Rose Robson, President of Son Silver West Gallery, Inc., on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

**LINDA ROSE ROBSON**

\_\_\_\_\_  
Linda Rose Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by Linda Rose Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

**WILLIAM B. ROBSON**

\_\_\_\_\_  
William B. Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by William B. Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

**WILLIAM B. ROBSON**

\_\_\_\_\_  
William B. Robson, Trustee of the William B. Robson Living Trust u/t/a dated July 12, 1999.

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by William B. Robson, Trustee of the William B. Robson Living Trust u/t/a dated July 12, 1999.

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

**RIO CODY ROBSON**

\_\_\_\_\_  
Rio Cody Robson, an unmarried man

STATE OF ARIZONA        )  
                                      ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2021 by Rio Cody Robson.

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

**LINDA AND WILLIAM B. ROBSON**

\_\_\_\_\_  
Linda Robson

\_\_\_\_\_  
William B. Robson, her spouse

STATE OF ARIZONA        )  
                                      ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2021 by Linda Robson and William B. Robson.

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

**EXHIBIT A  
TO  
DEVELOPMENT AGREEMENT**

**Building & Shade Canopies Areas @ Son Silver West filed this \_\_\_\_\_ day of \_\_\_\_\_,  
2021 in Book \_\_\_\_\_ of Maps of Surveys at Page \_\_\_\_\_, Fee No. \_\_\_\_\_ of the  
Official Records of the Recorder of Coconino County, Arizona.**

**EXHIBIT B  
TO  
DEVELOPMENT AGREEMENT**

Legal Description of Perimeter of Sun Silver West Outdoor Retail Area

See following page

**EXHIBIT C  
TO  
DEVELOPMENT AGREEMENT**

**Outdoor Retail Area @ Son Silver West filed this \_\_\_\_\_ day of \_\_\_\_\_, 2021 in Book  
\_\_\_\_\_ of Maps of Surveys at Page \_\_\_\_\_, Fee No. \_\_\_\_\_ of the Official  
Records of the Recorder of Coconino County, Arizona.**



**RESOLUTION NO. 2021-\_\_**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH SON SILVER  
WEST GALLERY, LLC, ETC., FOR THE OPERATION OF THE SON SILVER WEST  
ART GALLERY IN THE CITY OF SEDONA.**

WHEREAS, the City is authorized pursuant to A.R.S. § 9-500.05 to enter into development agreements with businesses or landowners located in the City;

WHEREAS, Son Silver West is located in Community Focus Area (CFA) 11: Morgan Road of the Sedona Community Plan. One of the listed attributes of CFA 11 is the existing nonconforming commercial uses; and

WHEREAS, the City and Son Silver West desire to create assurances that continued operation of the Son Silver West business remains in compliance with CUP 92-3 and that an equitable process is established for the City and Son Silver West and the Robsons to work together in a cooperative manner to maintain said compliance.

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

Section 1. That it is deemed in the best interest of the City of Sedona and its citizens that the City enter into a Development Agreement with Son Silver West Gallery, Inc., Linda Rose Robson Living Trust, William B. Robson Living Trust, and Rio Cody Robson which provides for the operation of the Son Silver West Art Gallery, Sedona, Arizona, which Agreement is now on file in the office of the City Clerk of the City of Sedona.

Section 2. That the Mayor is authorized and directed to execute and deliver said agreement on behalf of the City of Sedona.

ADOPTED AND APPROVED by the Mayor and Council of the City of Sedona, Arizona, this 26<sup>th</sup> day of October, 2021.

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Sandra J. Moriarty, Mayor

ATTEST:

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Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

---

Kurt W. Christianson, City Attorney



## City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

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### NOTICE OF VIOLATION

November 10, 2015

Son Silver West Gallery Inc.  
Robson Design  
Robson LR Living Trust  
Robson Linda Rose and William B Trustees  
C/O Rio Robson  
1476 State Route 179  
Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has determined that your businesses, Son Silver West Gallery Inc. and Robson Design continue to operate in violation of the Sedona Land Development Code and City Code. On October 8, 2014, a Notice of Violation (NOV) for several code violations was issued to Son Silver West Gallery, Inc. and Robson Design. As a result of that NOV, you began working with City staff towards submitting an application for an amendment to the Sedona Community Plan and rezoning that, if approved, would have addressed those code violations. City Staff made the determination to suspend code enforcement actions pending the outcome of those applications.

However, on August 12, 2015, the City received notice from your agent, Brian Furuya, of Aspey, Watkins and Diesel, PLLC, that you were withdrawing these applications. As a result of this decision, the City had no alternate course to remedy non-compliance and had to reinstate code enforcement activities. However, based on an additional meeting on September 8, 2015 with you and your new legal counsel, staff once again agreed to suspend formal code enforcement action until your counsel could submit information relative to the identified issues. However, after review of the documentation submitted, staff found no evidence that provided any formal approval allowing for the existing conditions and expansion above that which was approved as part of the 1992 CUP. Therefore, staff is once again resuming formal code enforcement actions as evidenced in this Notice of Violation.

As discussed at the September 8, 2015 meeting, in addition to the violations identified in the October 8, 2014 NOV, additional violations have been identified that also require immediate attention. These violations are based on the statements contained in your Community Plan amendment and rezoning applications, citizen input, and staff observations.

As you are aware, because Son Silver West Gallery Inc. was operating as a commercial business on a single-family residential property (1476 SR 179, APN 401-31-012A) prior to the City's incorporation in 1988, it is considered grandfathered as a legal nonconforming use. Based on Article 12 (Nonconforming Situations) of the Sedona Land Development Code, Son Silver West, as operating currently, is a nonconforming development containing a nonconforming use. Pursuant to this article, a legal nonconforming development and use cannot expand unless the expansion conforms to the regulations



## City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

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specified for the zoning district in which it is located. When a nonconforming use occupies a building, expanding the use into additional buildings or land areas is prohibited. As a result of illegal expansions in the early 1990s, Conditional Use Permit (CUP) 92-3 was granted by the Planning and Zoning Commission on September 15, 1992.

Condition 1 of the Conditions of Approval for CUP 92-3 (enclosed) states that the "uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2)". The uses and physical improvements listed in the staff report (enclosed) are as follows:

- 2,250 square feet of retail space in enclosed buildings
- 5,000 square feet of outside retail display area
- 1,950 square foot single family dwelling
- 1,300 square foot pottery shop with kiln
- 590 square feet of storage space
- 750 square foot workshop
- Sculpture
- 2 free standing signs
- Building coverage at approximately 17%
- Parking located between gallery and Highway 179 (*This was later modified to the south-side of the property to address State Route 179 improvements*)

Staff has determined that Son Silver West has expanded beyond this scope and is conducting business activity in violation of CUP 92-3, single-family zoning regulations, and nonconforming use restrictions. In addition to the significant expansion of the retail operation at 1476 SR 179 (APN 401-31-012A), the expansion also includes the use of three nearby single-family residential properties also zoned RS-18b (61 Arrow Drive, 365 Bowstring Drive, 1535 SR 179). As explained in the past, the existing zoning for these single-family residential lots (RS-18b) does not allow for commercial uses.

The following is a summary of the outstanding Code violations and the timeframe for compliance:

- A. **VIOLATION: 61 Arrow Drive, Single-family house (APN 401-31-016)** alleged violations include warehousing, manufacturing (welding and assembly), shipping/receiving and employee parking which are uses that are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b), Article 9 (Development Standards), Article 12 (Nonconforming Situations), and City Code Chapter 15 (Building Code).

During discussions with you and Mr. William Robson, it was disclosed that Mrs. Robson has an office space at 61 Arrow Drive. Because this location is not Mrs. Robson's primary residence, this use is not in compliance with Sedona Land Development Code, Article 6 (District Regulations RS-18b), and Article 9 (Development Standards).

Also in the early 1990s it was discovered that a shed was constructed in the rear portion of the property without a building permit. An after-the-fact building permit application was submitted in



## City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

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1993. Sometime after this approval, the shed was converted to a commercial "Chapel" and an unpermitted block wall was constructed across property lines in order to permit a portion of the yard at 61 Arrow Drive to become a part of the 1476 SR 179 (APN 401-31-012A) retail property. These modifications and construction activity are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b), Article 9 (Development Standards), Article 12 (Non-Conforming Situations), and City Code Chapter 15 (Building Code).

- A.1 **CORRECTIVE ACTION:** Cease and desist all commercial use of this property including but not limited to employee parking, warehousing, manufacturing (welding and assembly) activities, shipping/receiving associated with Son Silver West Gallery and Robson Design and return the structure back to a single family house and use within 30 days of the date of this Notice.
  - A.2 **CORRECTIVE ACTION:** Cease and desist any office/commercial use that is not in compliance with the Land Development Code Home Occupation requirements within 30 days of the date of this Notice.
  - A.3 **CORRECTIVE ACTION:** Submit an application for a compliant building permit for the block wall constructed on 61 Arrow Drive and 1476 SR179 without a permit or remove wall within 30 days of the date of this Notice.
  - A.4 **CORRECTIVE ACTION:** Cease using space located on the rear portion of 61 Arrow Drive adjoining to 1476 SR179 property as commercial space within 30 days of the date of this Notice.
  - A.5 **CORRECTIVE ACTION:** Revert "Chapel" back to its approved use as a shed within 30 days of the date of this Notice.
- B. **VIOLATION:** 365 Bowstring Drive, Single-family house (parcel #401-31-020) issues include employee parking and commercial activities including warehousing of merchandise
- B.1 **CORRECTIVE ACTION:** Immediately cease and desist all use of this property for Son Silver West Gallery and Robson Design for employee parking.
  - B.2 **CORRECTIVE ACTION:** Immediately cease and desist all commercial activities including but not limited to warehousing for Son Silver West Gallery and Robson Design.
- C. **VIOLATION:** 1535 SR 179, Vacant (parcel #401-31-011) issues include "over-flow" parking, receiving and storage of merchandise which are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b) and Article 12 (Non-Conforming Situations).
- C.1 **CORRECTIVE ACTION:** Immediately cease and desist all use of this property for parking.
  - C.2 **CORRECTIVE ACTION:** Immediately cease and desist all use of this property for commercial purposes including but not limited to shipping/receiving activities and storage of merchandise.
- D. **VIOLATION:** 1476 SR 179 (parcel #401-31-012) Uses approved for the commercial activity are bound by conditions of approval of the 1992 CUP. Condition 1 states that uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992 and as approved by the Planning and Zoning Commission (alternative site plan #2). Therefore, all uses and physical improvements beyond those outlined above are in violation of the



## City of Sedona Community Development Department

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conditions of approval for the 1992 CUP. Condition 6 states that outside sales/display area shall be screened by a six-foot high fence; the existing outside sales/display area is not in compliance with this requirement. Condition 9 states that all exterior outside lighting shall be shielded; the existing outdoor lighting does not meet shielded lighting requirements.

- D.1 **CORRECTIVE ACTION:** Remove all outdoor retail display area in excess of the approved 5,000 square feet within 30 days of the date of this Notice.
- D.2 **CORRECTIVE ACTION:** Remove all enclosed building retail areas in excess of the approved 2,250 square feet within 30 days of the date of this Notice. Buildings "A and B" as included on the site plan for the recent applications need to be returned to storage sheds and not retail display or other commercial purposes.
- D.3 **CORRECTIVE ACTION:** restore 1,950 square feet of the primary dwelling unit back to single-family residential within 30 days of the date of this Notice.
- D.4 **CORRECTIVE ACTION:** In accordance with Condition 6 and the Sedona Land Development Code, to minimize visual impacts and maintain an attractive appearance of the outdoor display area, suitable screening needs to be incorporated and found to be in compliance by the Community Development Director within 30 days.
- D.5 **CORRECTIVE ACTION:** In accordance with Condition 9 and the Sedona Land Development Code, update outdoor lighting fixtures to be shielded and found to be in compliance by the Community Development Director within 30 days of the date of this Notice.
- D.6 **CORRECTIVE ACTION:** Submit building permit applications for the shade structures erected and/or expanded without prior approvals within 30 days of the date of this Notice.
- D.7 **CORRECTIVE ACTION:** Submit a building permit application for the wall/fence erected along the backside of the property without prior approvals within 30 days of the date of this Notice.

*Note: Several of the above referenced corrective actions may require the submittal and approval of a building permit. If unsure whether a building permit is required, please check with staff prior to starting the work.*

**Revocation of Conditional Use Permit (Section 402.10 Sedona Land Development Code).** The Sedona Land Development Code states that if it is determined that the conditions of approval for a CUP are not being met, then the CUP is suspended automatically. You are hereby officially notified that your property is not in conformance with the conditions of approval of the 1992 CUP based on the issues outlined in this Notice. If the issues identified in this Notice are not corrected within 30 days, the Planning and Zoning Commission will hold a public hearing within 40 days in accordance with the procedures prescribed in subsection 402.04 of the Sedona Land Development Code. If not satisfied that the conditions in question are being complied with, the Commission may revoke the conditional use permit or take action necessary to ensure compliance.

Staff understands that you believe many of these violations have been addressed through an email exchange with former Community Development Director John O'Brien in 2011/2012. While we are aware of certain limited communications discussing the site conditions, staff's records reflect that no formal approval in conformance with the Sedona Land Development Code or Sedona City Code has been granted. Staff believes that while the documentation submitted by your legal counsel provides a



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detailed overview of the history of the property, the information presented does not offer satisfactory proof that any formal approvals exist allowing the expansion of the site beyond what was approved in the 1992 CUP. Further, based on the regulatory process outlined in the Land Development Code, former Director O'Brien did not have the legal authority to approve any modifications to this CUP.

**Business Licenses and Regulations** Section 5.05.020 of the Sedona City Code requires that all businesses be in compliance with any and all regulations specified in the Sedona City Code, Sedona Land Development Code, and Arizona Revised Statutes. Per Section 5.05.040(A) of the Sedona City Code, a business license may be suspended, revoked or deemed invalid, if it is determined that a business owner has violated or is not in compliance with either the Sedona City Code, Sedona Land Development Code or the Arizona Revised statutes. It is considered unlawful to operate a business within the Sedona City limits without a business license.

**PENALTIES:** In addition to the revocation or suspension of the conditional use permit, failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 per offense for each day that offense is occurring or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

It is our hope that you will voluntarily bring the alleged violations into compliance or provide evidence of compliance within the 30 day time period. Staff will schedule a walk through inspection in 30 days from the date of this NOV to verify compliance. Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audree Juhlin, Director

Community Development Department

cc: Justin Clifton, Sedona City Manager  
Karen Daines, Assistant City Manager  
Robert Pickels, Sedona City Attorney  
Glenn Sharshon, Senior Code Enforcement Officer  
Ray Cota, Sedona Police Chief  
Cherie Wright, Finance Director

Encl. CUP-92-3 Conditions of Approval  
October 8, 2014 Notice of Violation



**CITY COUNCIL  
AGENDA BILL**

**AB 2571  
October 26, 2021  
Regular Business**

**Agenda Item:** 8d  
**Proposed Action & Subject:** Discussion/possible direction regarding issues surrounding the COVID-19 pandemic and the City's response.

<b>Department</b>	City Manager
<b>Time to Present</b>	10 minutes
<b>Total Time for Item</b>	15 minutes
<b>Other Council Meetings</b>	March 24, 2020, April 14, 2020, April 28, 2020, May 12, 2020, May 26, 2020, June 9, 2020, June 23, 2020, July 14, 2020, July 28, 2020, August 11, 2020, September 8, 2020, September 22, 2020, October 13, 2020, October 27, 2020, November 10, 2020, November 24, 2020, December 9, 2020, January 12, 2021, January 26, 2021, February 9, 2021, February 23, 2021, March 9, 2021, March 23, 2021, April 13, 2021, April 27, 2021, May 11, 2021, May 25, 2021, June 8, 2021, June 22, 2021, July 13, 2021, July 27, 2021, August 10, 2021, September 14, 2021, September 28, 2021, October 12, 2021
<b>Exhibits</b>	None

City Attorney Approval	Reviewed 10/18/21 KWC	<b>Expenditure Required</b>	
		\$	0
City Manager's Recommendation	For discussion and possible direction only.	<b>Amount Budgeted</b>	
		\$	0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** This item was added to ensure opportunity to discuss the latest updates with the COVID-19 pandemic and the City's response.

The City continues regular communication with state and county health departments, hospitals, other healthcare providers, emergency responders, emergency managers, and policy experts. During the meeting staff will present up-to-date information on COVID-19 related data, regulatory changes, and news on City finances.

**Community Plan Consistent:**  Yes -  No -  Not Applicable

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

**Board/Commission Recommendation:**  Applicable -  Not Applicable

**Alternative(s):** N/A

**MOTION**

**I move to:** for discussion and possible direction only.