

RESOLUTION NO. 2022-10


**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA,
APPROVING A DEVELOPMENT AGREEMENT WITH LGS REAL ESTATE, LLC ("LGS
REAL ESTATE") FOR A NEW SIDEWALK PROJECT IN UPTOWN SEDONA.**

WHEREAS, the City of Sedona ("City") intends to enter into a cost-sharing development agreement ("Development Agreement") with LGS Real Estate, LLC ("LGS Real Estate") for the construction of a sidewalk on segments of Apple Avenue and Cedar Street, as set forth in the terms of the Development Agreement.

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


The City of Sedona, through its Mayor and Council, hereby finds that the Development Agreement with LGS Real Estate, LLC for the construction of a sidewalk on segments of Apple Avenue and Cedar Street is consistent with the Community Plan pursuant to A.R.S. §9- 500.05, and approves the Development Agreement, authorizing the signature by the Mayor and recording by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 12th day of April, 2022.



Sandra J. Moriarty, Mayor

ATTEST:



JoAnne Cook, City Clerk

APPROVED AS TO FORM:



Kurt W. Christianson, City Attorney

WHEN RECORDED RETURN TO:

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

Public Infrastructure Cost-Sharing Development Agreement

This Public Infrastructure Cost-Sharing Agreement ("Agreement") is entered into as of this 14th day of April, 2022, by and between the City of Sedona, an Arizona municipal corporation ("City"), LGS Real Estate, LLC. City and LGS Real Estate may be referred to individually as "Party" and collectively as the "Parties".

RECITALS

- A. LGS Real Estate, LLC. is a Minnesota Corporation, and is the owner of real property located within the limits of the City, commonly known as "LGS Real Estate" located at 350 Jordan Road and 274 Apple Avenue, Sedona, Arizona 86336 (the "Property"). For the purposes of this agreement, LGS Real Estate will be responsible for the financial contributions stated herein.
- B. The City desires to improve walkability in Uptown Sedona. One strategy to accomplish this as identified in the City's Transportation Master Plan, is to improve pedestrian facilities like building new sidewalks or extending existing sidewalks. Pedestrians in Uptown often encounter sidewalks which terminate or do not extend fully to their destination, even within the commercial district. Adding new sidewalk connections or improving substandard surfaces significantly improve safety and walkability for pedestrians as well as discouraging parking on shoulders.
- C. To help achieve this goal as indicated in Recital B, the City and LGS Real Estate have agreed to build a 5-foot wide sidewalk, and associated driveway and lighting improvements, on the north side of Apple Avenue and the west side of Cedar Street on City right-of-way fronting the properties of 350 Jordan Road and 274 Apple Avenue.
- D. Arizona Revised Statutes § 9-500.05 authorizes the City to enter into a development agreement with a land owner or any other person having an interest in real property to facilitate development of the real property by providing for, among other things, the conditions, terms, restrictions, and requirements for public infrastructure and the financing of public infrastructure.
- E. It is in both the interest and welfare of the general public and in the best interests of the Parties that the above-described improvements be constructed in order to improve pedestrian connectivity and safety in Uptown. To that end, the Parties wish to financially participate in the construction of the Apple Avenue and Cedar Street Sidewalk Improvement Project, as part of the City's Transportation Master Plan strategy SIM11 – Bicycle & Pedestrian Improvements.

- F. LGS Real Estate desires to work with the City as a sponsor of the public Project, and the City is willing to participate in the Project as the public sponsor as further described in this Agreement.
- G. The Project is detailed in the construction plans titled "New Sidewalk 350 Jordan Rd. Apple Avenue" (the "Project").

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

AGREEMENT

- A. Accuracy of the Recitals. The Parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.
- B. Term. Once executed by the Parties, the term of this Agreement shall be deemed to commence as of the date that this Agreement is fully executed, and shall continue for two (2) years thereafter.
- C. Financial Contributions for the Project. The Parties shall each share as follows for the contract costs of the Project: The City of Sedona will contribute 50% of the as-bid construction cost, up to a maximum of \$64,919.50 (the "Contribution") and LGS Real Estate, LLC will be responsible for the remaining construction costs. The City shall pay one-half of its Contribution no later than ten (10) calendar days after: (1) the full execution of this Agreement, and (2) written confirmation from the LGS Real Estate to the City of an accepted construction bid amount, in the City's sole discretion, and that the construction contract with the contractor chosen to perform the project work ("Contractor") has been executed. LGS Real Estate will be responsible for: (1) execution of the Right-of-Way Permit, and (2) paying all remaining costs of the Project. The City shall pay the remaining balance of its Contribution prior to June 30, 2022. Any amounts above the Accepted Bid Amount or added to the contract at any time including during construction, not requested in writing by the City, will be the sole responsibility of LGS Real Estate. The award of the construction contract is contingent upon LGS Real Estate executing this Agreement. The City reserves the right to, in its judgment, reject any and all construction bids submitted in the public's interest, including if the bids exceed the engineer's estimated cost of construction.
 - 1. LGS Real Estate shall have the right to add to the original scope and extent of the public infrastructure improvements as depicted in the final design drawings for such things as aesthetic improvements, landscaping, or other improvements intended to be to their sole benefit through change orders approved in advance by the City, which approval shall not be unreasonably withheld or delayed. LGS Real Estate shall submit actual plans and specifications for any augmented improvements to the City, as well as bids or proposals received by LGS Real Estate to construct the augmented improvements, for the City's review and approval. The additional cost of any such augmented improvements shall be borne solely by the Party requesting the improvement, and one hundred percent (100%) of the funding shall be submitted to the City before any change order implementing the improvements is authorized.

2. Improvements made by LGS Real Estate, as noted above, after contract time is no longer available for such improvements, shall be accomplished through a City Building Permit. If a City Building Permit is obtained for this purpose, within 2-years of the contract Final Completion date issued by the City Engineer, the permit fee will be waived.
3. Construction of the Apple Avenue and Cedar Street Sidewalk Improvement Project does not convey to LGS Real Estate any easement, interest in land or property rights to City property. This Section C.3. shall survive the termination of this Agreement.

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

1. The LGS Real Estate shall obtain any and all necessary permits, licenses and approvals from all applicable entities (collectively, "Approvals"), and require that Contractor and all other third parties obtain all necessary, or required Approvals, in order to construct, operate, repair, or that are otherwise required for the Project. The City shall obtain, and shall maintain, all necessary approvals, permits, consents, and authorizations from all governmental authorities and other persons or entities necessary for the City ownership, maintenance, operation, repair, and replacement of the augmented public infrastructure improvements.
 2. LGS Real Estate shall design, plan, bid, and construct the Project and dedicate the sidewalk improvements to the City.
 3. Upon substantial completion, i.e., completion of all major components of the Project, LGS Real Estate shall promptly dedicate and convey to the City the sidewalk improvements, free and clear of all liens and encumbrances. The City Engineer or his/her designee shall inspect the completed Project to determine whether it has been constructed substantially in accordance with the applicable standards and the approved plans. Upon completion of the inspection and review the City shall either: (a) approve the construction of the Project; or (b) provide a punch list of specific items that are not in accordance with applicable standards and/or the approved plans that are to be corrected by LGS Real Estate. So long as the Project is constructed in accordance with the applicable standards and approved plans, all punch lists items have been timely completed, the Project is free and clear of all liens, and accurate "as built" drawings and plans of the Project have been provided to the City, the City shall accept the sidewalk dedication. LGS Real Estate shall bear all risk of, and shall indemnify the City and its officials, employees and City Council members, against any claim arising prior to the City's acceptance of the Project improvements from any injury or property damage to any person, party or utility.
 4. LGS Real Estate hereby agrees to abide, and shall insure that Contractor and all Contractor personnel and officials, abide by, all applicable federal, state and local laws, codes, statutes, rules, regulations and ordinances, including, but not limited to, the United States Foreign Corrupt Practices Act and all other anti-corruption and anti-bribery laws and regulations ("Applicable Laws") and shall require and insure that all employees, contractors, vendors and service providers that are retained by Contractor or any other party for the Project shall abide by all Applicable Laws.
- E. Access/Right of Way. The City of Sedona will grant the Contractor temporary access onto City right-of-way for purposes of completing the Project conditioned upon and subject to the execution of a separate right-of-way permit with such terms and conditions required by the City

of Sedona ("Right-of-Way Permit"). and the City of Sedona shall have the right to terminate this Agreement without penalty if the Contractor fails or refuses to execute the Right-of-Way Permit.

- F. Warranty Period; Maintenance. LGS Real Estate will require the Contractor to warranty all components of the Project for a 2-year period after completion of the Project. After the 2-year warranty period has expired, LGS Real Estate will be responsible for maintaining all driveway improvements on its property constructed as part of the Right-of-way Permit. The City will only be responsible for the sidewalk maintenance on City property after the 2-year warranty period has expired.
- G. Performance. LGS Real Estate shall require that (1) Contractor) diligently and in good faith pursue completion of all work associated with the Project and perform all such work in a good, professional and workmanlike manner and in accordance with all industry standards, contractual requirements and Applicable Laws and (2) Contractor shall at all times enforce strict discipline and good order among, require the highest levels of professionalism and courtesy by, and be responsible for any and all injury or damage to any person and property caused by, Contractor's employees and other persons carrying out any work related to the Project.
- H. City Representations and Warranties. The City represents, warrants, and covenants to LGS Real Estate that all the City's representations, findings, warranties, and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement.
 - 1. That the City is a duly organized, validly existing municipal corporation in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement, and the City's performance hereunder have been duly authorized by all requisite action of the City, and no other approval or consent is required for this Agreement to be binding upon the City. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind the City. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation, or official policy to which the City is a Party or by which the City is bound.
- I. LGS Real Estate, LLC. Representations and Warranties. LGS Real Estate represents, warrants, and covenants to the City that each of its respective representations, warranties, and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement.
 - 1. LGS Real Estate is duly organized and a validly existing corporation licensed to do business in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement, and LGS Real Estate's performance hereunder have been duly authorized by all requisite action, and no other approval or consent is required for this Agreement to be binding upon LGS Real Estate, LLC. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind LGS Real Estate, LLC. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation, or official policy to which LGS Real Estate is a Party or by which LGS Real Estate is bound.

J. Default; Venue; Dispute Resolution.

1. Jurisdiction; Venue; Dispute Resolution. This Agreement shall be governed by and enforced using the law of the State of Arizona. The parties agree that any judicial action brought to enforce the terms or conditions of this Agreement shall be brought in a court of competent jurisdiction in Coconino County, Arizona. If a dispute arises out of or related to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising out of this Agreement or the subject matter thereof and consent to a trial to the court.
2. Default and Cure Period. The failure by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "Cure Period"), after written notice thereof from any other Party, shall constitute a default. In the event such default is not cured within the Cure Period, any non-defaulting Party shall have the right to seek all its rights and remedies, including injunctive relief or mandamus, in a court of competent jurisdiction. In all such cases of breach, the breaching Party shall diligently undertake all reasonable efforts to cure the breach prior to the expiration of the Cure Period.

- K. Notices and Filings. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by: (1) certified or registered mail, postage prepaid, return receipt requested; (2) personal delivery or (3) recognized overnight delivery service. Such notices and communications shall be addressed as follows, or to such other addresses as any Party hereto may from time to time designate in writing and deliver in a like manner:

City	LGS Real Estate
Karen Osburn City Manager City of Sedona 102 Roadrunner Drive Sedona, AZ 86336	LGS Real Estate, LLC. Attn: Larry Schoenecker 7630 Bush Lake Rd Edina, MN 55439
Phone No: 928-204-7127	With copies also sent by email to: larry.schoenecker@biworldwide.com Phone No.: 612-840-4415 and Bill@wpclarkson.com Phone No.: 480-481-0032

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

- L. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or LGS Real Estate, LLC. of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

- M. Termination. Prior to issuing a notice to proceed to the Contractor for the improvements, this Agreement may be terminated without cause by either Party upon written notice to the non-termination Party. After execution of the construction agreement this Agreement may only be terminated upon mutual consent of the Parties or by either Party for any material breach of this Agreement in accordance with the termination provisions provided herein.
- N. Indemnification.
1. LGS Real Estate agrees to indemnify and hold harmless the City, its elected officials, appointees, employees, affiliates, agents, assigns and successors from any liability for claims, suits, losses, damages to persons or property, including investigation and expert witness and attorney's fees, arising as a result of LGS Real Estate's breach of this Agreement or for any injury or death resulting from LGS Real Estate's negligence or willful misconduct.
 2. City agrees to indemnify and hold harmless LGS Real Estate, LLC, their respective parents, subsidiaries and affiliates and each of their respective owners, managers, officers, directors, employees, members, and successors from any liability for claims, suits, losses, damages to persons or property, including investigation and expert witness and attorney's fees, arising as a result of City's breach of this Agreement or for any injury or death resulting from City's negligence or willful misconduct.
 3. This Section N. shall survive the expiration or termination of this Agreement for any reason whatsoever.
- O. Insurance. Upon LGS Real Estate's execution of this Agreement, LGS Real Estate shall furnish, and require that the Contractor furnish, the City with the certificates of insurance and endorsements that meet the requirements described in Exhibit "A" ("Insurance Requirements"). LGS Real Estate and each Contractor understands and agrees that all insurance procured by Contractor is primary and non-contributory over any insurance held by the City and is intended to respond to any indemnification event. The City shall have the sole and unconditional right to terminate this Agreement with written notice to LGS Real Estate if LGS Real Estate fails or refuses to satisfy the Insurance Requirements.
- P. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts, and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document. Facsimile and scanned signatures shall be deemed to be original signatures for purposes of executing this Agreement and amendments hereto and for purposes of issuing all instructions authorized or permitted hereunder.
- Q. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions hereof.

- R. Exhibits. The exhibits attached hereto, and incorporated by this reference, shall have the same force and effect as if fully set forth in the body hereof.
- S. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Without limiting the generality of the foregoing, each of the Parties shall cooperate in good faith regarding the prompt processing of any requests and applications for plan and specification, plat or permit approvals or revisions, and other necessary approvals relating to the development of the property in construction of the infrastructure improvements.
- T. Time of the Essence. Time is of the essence of this Agreement.
- U. Assignment. This Agreement may not be assigned without the express written consent of the non-assigning Parties. Consent shall not be unreasonably withheld.
- V. No Partnership and Third Parties. It is not intended by this Agreement, and nothing contained in this Agreement shall, create any partnership, joint venture, or other similar arrangement between LGS Real Estate, LLC. on one hand, and the City, on the other. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- W. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.
- X. Amendment. No change or additions are to be made to this Agreement except by written amendment executed by the Parties hereto.
- Y. Governing Law. This Agreement is entered into in Arizona, and shall be construed and interpreted under the laws of the State of Arizona. In particular, this Agreement is subject to the provisions of Arizona Revised Statutes § 38-511.
- Z. Recordation. No later than ten (10) days after this Agreement has been executed by the Parties, it shall be recorded in its entirety by the City in the Official Records of Coconino County, Arizona.
- AA. Reformation. Should any term, provision, covenant, or condition of this Agreement be held to be void or invalid, the Parties shall reform this Agreement to conform as closely as possible to the original intent thereof.
- BB. Excused Delay in Performance. In addition to specific provisions of this Agreement, for a period of time equal to the period of the force majeure delay, untimely performance by a Party hereto shall not be deemed to be a default where delays or inability to perform are due to war, insurrection, strikes, slowdowns, lockouts, riots, floods, earthquake, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority (including, but not by way of limitation,

referendums), litigation, severe weather, acts or the failure to act of any utility, public, or governmental agent or entity, and/or other causes beyond the reasonable control of said Party. In the event that a Party hereto is unable to perform due to an event constituting force majeure as provided for above, then the time for performance by said Party shall be extended as necessary for a period of time up to the period of the force majeure delay.

CC. Severability. Every provision of this Agreement is, and will be construed to be, a separate and independent covenant. If any provision of this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this Agreement will be valid and will be enforced to the extent permitted by the law, and the Parties will negotiate in good faith for such amendments of this Agreement that may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

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

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

CITY OF SEDONA, an Arizona municipal corporation

By Sandra Moriarty
Sandy Moriarty, Mayor

Attest: JoAnne Cook
JoAnne Cook, City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

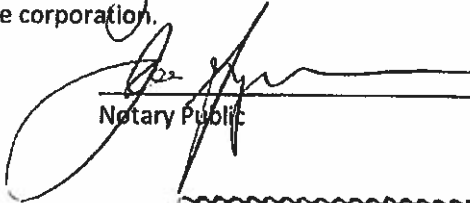
LGS Real Estate, LLC, a Minnesota Corporation

By [Signature]
LARRY SCHWENKER
[Printed Name]

Its MANAGER

STATE OF _____)
County of _____) ss

SUBSCRIBED AND SWORN TO before me this 14th day of April, 2022
by Larry Schaefer, Manager of LGS Real Estate, LLC, a
Minnesota Corporation, on behalf of the corporation.



Notary Public (Seal)

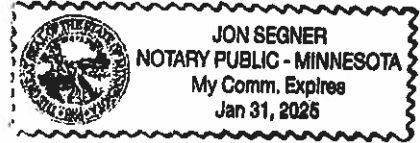


Exhibit "A"
Insurance Requirements

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

The Certificate must include:

1. Additional insured endorsement for general liability naming the City. Coverage is primary and non-contributory. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.
2. Certificate Holders must read:
The City of Sedona
102 Roadrunner Dr.
Sedona, AZ 86336

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

Workers' Compensation and Employer's Liability

Part One - Workers' Compensation: Statutory Limit

Part Two - Employer's Liability: Annual Limits:

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

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

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

Commercial General Liability

General Aggregate \$1,000,000

Personal/Advertising Injury \$1,000,000

Each Occurrence Limit \$1,000,000

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

Automobile Liability

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