

RESOLUTION NO. 2022-21

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH 741 FOREST
ROAD, LLC, FOR THE FOREST ROAD EXTENSION PROJECT.**

WHEREAS, the City is authorized pursuant to A.R.S. 9-500.05 to enter into development agreements with landowners located in the City;

WHEREAS, the City and 741 Forest Road, LLC desire to coordinate placement of excavation material in support of the Forest Road Extension Project on property owned by 741 Forest Road, LLC.

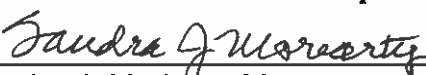
WHEREAS, 741 Forest Road, LLC desires placement of the excavation material on its property and the City desires to place the excavation material on the property to avoid: the high costs related to transportation, including fuel prices and offsite disposal costs, major impacts on traffic congestion and control, significant added wear and tear on the City streets and to provide the Forest Road Extension Project additional support and a location to process excavation material.

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 741 Forest Road, LLC, 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 9th day of August, 2022.



Sandra J. Moriarty, Mayor

ATTEST:



JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:



Kurt W. Christianson, City Attorney

When recorded, mail to:

City Clerk
City of Sedona
102 Roadrunner Road
Sedona, Arizona 86326

DEVELOPMENT AGREEMENT
between the City of Sedona
and
741 Forest Road, LLC

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this 30th day of September, 2022, by and between the City of Sedona, an Arizona municipal corporation (“**City**”), and 741 Forest Road, LLC, an Arizona limited liability company (“**Landowner**”). The City and Landowner are the only Parties to this Agreement, and may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

A. The City is extending Forest Road from its current terminus to Highway 89A (the “**Project**”) in order to address traffic congestion, install utility improvements, address safety needs, and provide other benefits to the City and its residents.

B. The Project is expected to generate a large amount of excavation material, some of which is required to support the roadway, and the City anticipates high costs related to transportation and disposal offsite of excess excavation material, if necessary. The City also anticipates that transportation of excavation material will have a major impact on traffic congestion and control, and impose significant added wear and tear on the City streets.

C. Landowner is the owner of real property located at 741 Forest Road, Sedona, Arizona, which is more specifically described in *Exhibit “A”* (the “**Property**”). The roadway being installed as part of the Forest Road Extension Project (“**Roadway**”) will traverse the Property and as a result of the City’s taking, will divide the Remaining Property into two segments.

D. The City desires to place materials from the Project as backfill on the lower segment of the Remaining Property to support the Roadway. Such placement of backfill material, in the estimated amount of 20,000 cubic yards, would enhance the Roadway stability and visual impacts, reduce the City’s costs related to transportation and disposal, and mitigate other anticipated consequences such as traffic, wear-and-tear, and the need to find a storage location(s) for the excavation materials.

E. Landowner does not oppose construction of the Project, which will increase the accessibility to the proposed Roadway in the lower segment of the Remaining Property. Landowner desires to accept placement of backfill materials from the Project on the lower segment of the Remaining Property subject to and in accordance with the approved grading plan, which may assist in the reduction of any adverse impact and improve accessibility to the Roadway.

F. This Agreement is consistent with the Sedona Community Plan in effect on the Effective Date of this Agreement.

G. The City acknowledges that its construction of the Project and placement of backfill material on the lower segment of the Remaining Property will be beneficial and advantageous to the City and its residents and will not impede Landowner's ability to subdivide the lower segment of the Remaining Property into a minimum of at least two buildable sites under existing R-18 zoning.

H. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City. The City and Landowner acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to fulfill the foregoing objectives, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The introduction and recitals set forth above are hereby incorporated into this Agreement as though fully set forth herein.

2. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1. **"Backfill Material"** shall mean and refer to all Excavation Materials that are placed on the lower segment of the Remaining Property by the City in accordance with paragraphs 211, 211.2 and 211.3 of the Construction Contract and the soils report referenced therein, except as noted below.

2.2. **"Construction Contract"** shall mean and refer to that construction contract entered into by the City to construct the Project.

2.3. **"Excavation Material"** shall mean and refer to material composed of soil, dirt and rock generated by excavation related to the Forest Road Extension Project or the Forest Road Uptown Parking Garage Project.

2.4. **"Grading Plan"** shall mean the approved grading plan attached to this Agreement as part of Exhibit "B" Site & Grading Plan and includes the Rockery Wall and Drain Pipe plans and/or as it may be amended by mutual written agreement of the Parties.

2.5. **"Public Improvements"** shall mean and refer to all the improvements that may be

constructed by the City as part of the Project, including, without limitation, public roads (including curb, gutter, and sidewalk), utilities and the Sedona Trails & Pathways System Shared Use Path.

2.6. “**Project**” shall mean and refer to the construction by the City of a public Roadway along the new Forest Road right-of-way, as well as the construction and installation of other Public Improvements on, over, under, or adjacent to the same, and to the construction by the City of a Shared Use Path.

2.7. “**Remaining Property**” shall mean and refer to the portion of the Property that does not include the Roadway and subject to the easement for the Shared Use Path, and consists of two segments as depicted on the Site Plan (*Exhibit “B”*).

2.8. “**Rockery Wall**” shall mean the Retaining Wall 4 (RW4) to be constructed by the City’s contractor at roughly 13+75 to 18+29 +/- as shown in Exhibit “B”. The Rockery Wall is generally located on the lower segment of the Remaining Property, 1’ off the property/ROW line and includes the immediately adjacent brow/interceptor ditch. The Rockery Wall is being installed for support of the hillside slope and aesthetic purposes and has no direct bearing on the support or stability of the Roadway.

2.9. “**Drain Pipe**” shall mean the Drain Pipe to be installed by the City’s contractor as depicted on Page 6 of Exhibit “B”. The Drain Pipe is generally located on the western side of the lower segment of the Remaining Property along the property line and within the setback.

2.10. “**Temporary Construction Easement**” or “**TCE**” shall mean the Temporary Construction Easement on the lower segment of the Remaining Property as depicted in the form attached to this Agreement as Exhibit “D”.

3. DEVELOPMENT STANDARDS

3.1. Except as modified herein, the Project, the construction of Public Improvements, and any other development that takes place on or within the Property will be governed by the City of Sedona Land Development Code (“LDC”), ordinances, regulations, rules, guidelines, and policies controlling permitted uses of the site, design review standards, the density and intensity of uses, and the maximum and minimum height and size of the buildings in existence as of the Effective Date of this Agreement will apply. The approved Grading Plan meets the applicable requirements of the LDC and other applicable requirements and other than the development standards listed in this Section 3, the City is unaware of other standards that would prevent, hinder or impede the development of the Remaining Property or of any other impediments to subdividing the lower segment of the Remaining Property for development after completion of the Project. If the lower segment of the Remaining Property is developed as single-family residential properties, no sidewalk will be required as part of development of the single-family residences.

3.2. Pursuant to LDC Section 8.8, the following development standards may be applied to any development of the lower segment of the Remaining Property where the natural grade has been impacted by City’s placement of Backfill Material in support of the Project:

3.2.1. LDC Section 2.24.E(1)d.1: Horizontal Plane: An imaginary horizontal plane, from the highest point of the new road-supported grade created by the City in

support of the Forest Road extension Project within the footprint of the building. No part of a building or structure shall exceed 18 feet in height as measured from this plane, except for those authorized exceptions in Section 2.24.E(3).

3.2.2. LDC Section 2.24.E(1)d.2: Parallel Plane: An imaginary plane that parallels the completed terrain, measured vertically from any point of the building or structure to the new road-supported grade created by the City in support of the Forest Road extension Project. No part of a building or structure shall exceed 18 feet in height as measured from this plane except for those authorized exceptions in Section 2.24.E(3) and/or the alternate standards in Section 2.24.E(4).

3.2.3. The standards of Subsections 3.2.1 and 3.2.2 shall apply to development within the fill area shown on the Forest Road Project plans, between approximately stations 13+75 and 20+50, left embankment. This area consists of approximately 54,637 square feet, as depicted in the drawing attached hereto as *Exhibit C Area Subject to Section 3.2*.

3.2.4. These provisions in Section 3.2 shall run with the land for the benefit of Landowner and its successors and assigns.

4. LANDOWNER OBLIGATIONS

4.1. Temporary Construction Easement. Within five days of the Effective Date, Landowner shall provide the City a temporary construction easement (“TCE”) in a form substantially similar to that attached hereto as *Exhibit “D”*:

4.2. Warranty. Landowner represents and warrants that to the best of Landowner’s actual knowledge: (a) the Property is not in violation, nor has it been or is it currently under investigation for a violation of any federal, state or local law; (b) there are no attachments, assignments for the benefits of creditors, receiverships or conservatorships; (c) Landowner has not previously taken any action and will not take any action, which would cause any lien or claim of lien to be made against the Property; (d) Landowner has no actual knowledge of any claims or lawsuits pending or threatened against the Property; (e) Other than the City, Landowner has no actual knowledge of any parties in adverse possession of the Property; and (f) Landowner is not aware of any agreements or leases relating to the Property.

4.3. Landowner agrees to accept placement of Backfill Material from the Project, installation of the Drain Pipe and construction of the Rockery Wall in accordance with Section 5.2 of this Agreement and the approved Site and Grading Plan for the Project. Landowner may hire, at its expense, professionals to 1) review soil compaction reports, periodically during construction inspect and test the placement of the Backfill Material to ensure compliance with the approved Grading Plan, and to certify the geological stability and compaction of Backfill Material in laydown area; and 2) periodically inspect the construction of the Rockery Wall.

4.4. Landowner may move, at its expense, the drainage easement in the area of approximate station 20+50, in order to support the site design, as long as the road stability, and drainage support is maintained to the reasonable satisfaction of the City Engineer. Landowner may also seek abandonment of a portion of the drainage easement in order to support the site design, as long as the road stability, and drainage support is maintained to the reasonable satisfaction of the City Engineer. Any such

request for abandonment is subject to approval of the City, not to be unreasonably withheld.

4.5. Within 30 days' notice from the City of substantial completion of the placement of Backfill Material and construction of the Rockery Wall, the Landowner or his/her designee shall inspect the Backfill Material and Rockery Wall to determine whether it has been placed substantially in accordance with the approved Grading Plan and compact in accordance with paragraphs 211, 211.2 and 211.3 of the Construction Contract and the soils report referenced therein. Upon completion of the inspection and review, the Landowner shall either: (a) approve the Backfill Material and Rockery Wall; or (b) provide a punch list of specific items that are not in accordance with the approved Site & Grading Plan that are to be corrected by the City. So long as the Backfill Material and Rockery Wall is placed in accordance with the approved Site & Grading Plan and is properly compacted in accordance with paragraphs 211, 211.2 and 211.3 of the Construction Contract and the soils report referenced therein, the Landowner shall accept the Backfill Material and Rockery Wall and Landowner shall not unreasonably withhold, condition or delay such acceptance. After acceptance by the Landowner, the City shall have no further obligation to the Landowner or liability with respect to the placement of Backfill Material or Rockery Wall on the lower segment of the Remaining Property and/or any subsequent construction placed on the Backfill Material on the lower segment of the Remaining Property. After acceptance, Landowner shall be responsible for all future maintenance or repairs of the Backfill Material and Rockery Wall, but in no event will the Landowner be liable for any damage to the Rockery Wall caused by any failure of the Roadway due to design, engineering or construction flaws/defects.

4.6. Effective upon the approval by Landowner of the Backfill Material and Rockery Wall in accordance with paragraph 4.5 above, Landowner shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the placement, installation, construction or maintenance of the Backfill Material, Drain Pipe, and Rockery Wall on the lower segment of the Remaining Property or the relocation or change of the drainage easement. This indemnification shall survive the expiration or termination of this Agreement. Nothing in this Agreement shall limit or impact any rights of the Landowner to pursue claims against any third parties related to latent defects or contractor warranty issues that may be discovered related to the installation of the Backfill Material, Drain Pipe and/or Rockery Wall.

4.7. During the term of the TCE, Landowner, its agents, consultants and/or contractors shall be entitled to access the Remaining Property. Any construction related activities to be performed by Landowner or its authorized representatives on the Remaining Property will be coordinated with the City and each party agrees to reasonably cooperate with their respective construction activities to minimize any disruption to either party.

5. CITY OBLIGATIONS

5.1. Public Improvements. The City shall construct, maintain, and repair the Public Improvements at its own expense and in accordance with City policies. The Public Improvements shall include providing access to the public Roadway for the Remaining Property, as reflected in the Site Plan, as well as providing access to City wastewater services through 6" stub-outs in locations selected by the Landowner. If additional utilities are constructed as part of the Public Improvements by the

utility owners, the City will coordinate with other utility providers to provide stubbed out gas, electric, water, phone/internet connections, as available, to the Remaining Property consistent with the Site Plan and utility providers plans.

5.2. Backfill Material Laydown Areas. In exchange for Landowner providing the TCE, and in consideration of the significant benefits that will accrue to the City, the City shall place Backfill Material to support the Project on the lower segment of the Remaining Property per the Site Plan and approved Grading Plan and consistent with Section 211 of the Construction Contract, except that any material containing broken concrete, rocks or other solid materials which are larger than 24 inches in diameter shall not be placed less than 6 feet below the surface of the finished grade and all such Backfill Material shall be compacted to a uniform density of not less than ninety-five (95%) percent of maximum density and moisture condition of plus or minus 2% of optimum moisture as per ASTM D698.

5.2.1. Landowner acknowledges that the City makes no representation as to the nature, quantity, or quality of the Backfill Material. Specifically, Landowner acknowledges that the City makes no representation that Backfill Material placed on the lower segment of the Remaining Property is fit for any purpose, nor that the Backfill Material is suitable for building pads or that the Backfill Material will total any amount. City will provide Landowner with compaction reports for Backfill Material placed on the lower segment of the Remaining Property as prepared and/or upon request. The final quantity of Backfill Material placed on the lower segment of the Remaining Property will be dependent on availability of excess Excavation Material from the Project. City agrees that all excess Excavation Material will be used on the Remaining Property as Backfill Material until the completion of the Site Plan and Grading Plan before it is used for other purposes.

5.2.2. Upon recording of the TCE, Landowner agrees that City vehicles and the City's contractor's vehicles are permitted to enter the lower segment of the Remaining Property for purposes of laying down Backfill Material, installation of the Drain Pipe and construction of the Rockery Wall during the Term of this Agreement. City shall have the right to remove shrubs and vegetation that interfere with the placement of the Backfill Material, installation of the Drain Pipe and construction of the Rockery Wall on the lower segment of the Remaining Property. To the extent that any shrub or vegetation that is required to remain in place under the building permits is damaged, disturbed or removed, the City shall be responsible for its replacement.

5.2.3. City shall ensure Landowner's representatives have adequate prior notice of the placement of the Backfill Material and installation of the Rockery Wall as well as access to the lower segment of the Remaining Property to ensure compliance with the approved Site & Grading Plan.

5.3. During the pendency of the TCE, City shall indemnify, protect, defend and hold harmless the Landowner, its members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation,

reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of claims by adjacent property owners or third parties damaged or injured by the placement of Backfill Material, installation of the Drain Pipe and construction of the Rockery Wall on the lower segment of the Remaining Property. This indemnification shall terminate upon Landowner's acceptance of the Backfill Material and Rockery Wall pursuant to Section 4.5.

6. DEFAULT; REMEDIES

6.1. Events Constituting Default. A Party hereunder shall be deemed to be in default under this Agreement if such Party breaches any obligation required to be performed by the respective Party hereunder within any time period required for such performance and such breach or default continues for a period of 30 days after written notice thereof from the Party not in default hereunder.

6.2. Dispute Resolution. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a 45 day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The City hereby agrees that the Landowner is not subject to the provisions of A.R.S. §12-821.01 if it serves a demand for mediation pursuant to this Section 6.2, and further agrees to toll the statute of limitations for service of a notice of claim so that the accrual date of a claim shall be 20 days after the conclusion of an unsuccessful mediation. The mediations shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five years' experience in mediating or arbitrating disputes relating to property development. The costs of any such mediation shall be divided equally between the City and the Landowner or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the Parties and any Party shall be free to initiate litigation upon the conclusion of mediation. The prevailing party in any litigation regarding or related to this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs.

6.3. Landowner's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 6.1 above, then, in that event, in addition to all other legal and equitable remedies which the Landowner may have, the Landowner may terminate this Agreement by written notice delivered to the City.

6.4. City's Remedies. In the event that the Landowner is in default under this Agreement, and the Landowner thereafter fails to cure any such default within the time period described in Section 6.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Landowner.

6.5. No Personal Liability. No current or former member, official, or employee of the City or Landowner when acting within the scope of their official capacity shall be personally liable (a) in the event of any default or breach by the City or Landowner, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assign; or (c) pursuant to any obligation of the City or Landowner, as applicable, under the terms of this Agreement.

6.6. Termination for Violation of Law. In the event the terms of this Agreement are determined to be in violation of any Federal, State, County or City law, regulation or ordinance, the

either party may terminate this Contract immediately upon giving notice to the other party.

7. GENERAL PROVISIONS

7.1. Effective Date and Term. This Agreement shall be effective (the “Effective Date”) upon execution by the Parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate upon completion of the Project.

7.2. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

To City:

City Manager
City of Sedona
102 Roadrunner Road
Sedona, Arizona 86326

To Landowner:

741 Forest Road, LLC
P.O. Box 3068
Sedona, Arizona 86336

With a copy to:

Shelton Freeman
Rose Law Group PC
19 W. Birch Avenue
Flagstaff, AZ 86001

or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

7.3. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

7.4. 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 of the Agreement.

7.5. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Landowner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Landowner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Party on whose behalf each individual is signing. The Landowner represents to the City that by entering into this Agreement, the Landowner has bound the

Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

7.6. Entire Agreement. This Agreement, including the following exhibits which are incorporated in this Agreement by reference, constitutes the entire agreement between the Parties and supersedes any prior written or oral understandings or agreements between the Parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

- Exhibit "A" Legal Description of Property*
- Exhibit "B" Site & Grading Plan*
- Exhibit "C" Area Subject to Section 3.2*
- Exhibit "D" Temporary Construction Easement*

7.7. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Coconino County Recorder.

7.8. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

7.9. Governing Law/Jury Trial Waiver. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. This Agreement has been made and entered into in Coconino County, Arizona and any lawsuit to dispute or enforce any provision of this Agreement must be brought in Coconino County, Arizona. 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.

7.10. Recordation of Agreement and Subsequent Amendment; Cancellation. The City will record this Agreement, and any amendment or cancellation of it, in the official records of the Coconino County Recorder no later than ten days after the City and the Landowner execute the Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

7.11. No Partnership; Third-Party. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Landowner and the City. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. 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.

7.12. Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association

in which he or she is, directly or indirectly, interested. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

7.13. Compliance with All Laws. City and Landowner will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations, and policies.

7.14. Successors and Assigns; Restriction on Assignment by Landowner. The provisions of this Agreement shall inure to the benefit and be binding upon the permitted successors and assigns of the Parties hereto; City shall not unreasonably withhold its consent to the assignment by Landowner of its rights hereunder to an entity owned by Landowner and/or its principals.

7.15. Liability and Indemnification by Landowner. Landowner shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and remedial actions of any kind, including, without limitation, reasonable attorneys' fees and costs of defense arising directly or indirectly, in whole or in part, from the acts or omissions of the Landowner while exercising its rights or carrying out its duties or responsibilities under this Agreement. This indemnification shall relate solely to the placement of Backfill Material, Drain Pipe and Rockery Wall on the lower segment of the Remaining Property and/or any subsequent construction placed on the Backfill Material on the lower segment of the Remaining Property. Under no circumstances shall Landowner have any responsibility for any claims made by the City related to the use or installation of Backfill Material, Drain Pipe or Rockery Wall by the City for the Project or the Roadway.

7.16. Liability and Indemnification by City. City shall indemnify, protect, defend and hold harmless the Landowner, its members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising directly or indirectly, in whole or in part, out of the acts or omissions of the City while exercising its rights or carrying out its duties or responsibilities under this Agreement.

8. WAIVER OF CLAIM FOR DIMINUTION IN VALUE.

8.1. Landowner agrees and understands that the City is entering into this Agreement in good faith and with the understanding that the City will not be subject to a claim for diminished value of the Property from the Landowner or other parties having an interest in the Property as a result of the placement of Backfill Material, Drain Pipe and Rockery Wall on the lower segment of the Remaining Property as part of the Project, and any other right, duty, or obligation arising from the terms of this Agreement. This waiver for diminution of value does not apply to City's exercise of eminent domain on the Property (Coconino County Superior Court Case No. S0300 CV202200090).

8.2. By signing this waiver, Landowner waives and fully releases any and all financial loss, claims, suits, damages, right to compensation, diminution of value or cause of action Landowner may have now or in the future under the provisions of A.R.S. § 12-1134 through and including A.R.S. § 12-1136 (but specifically excluding any provisions included therein related to eminent domain) arising from this Agreement and the placement of Backfill Material, Drain Pipe and Rockery Wall on the

lower segment of the Remaining Property as part of the Project pursuant to this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Private Property Rights Protection Act with regard to the Property arising from the placement of Backfill Material, Drain Pipe and Rockery Wall on the lower segment of the Remaining Property as part of the Project pursuant to this Agreement. Landowner agrees to indemnify, hold harmless, and defend City, its officers, employees, and agents, from any and all claims, causes of actions, demands, losses and expenses arising from this Agreement, including attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney's fees, or costs under the Act that they may have, as a result of the application of the City's existing land use laws under this Agreement. Landowner acknowledges and agrees that neither this Agreement nor any action of the City related thereto will result in a reduction of the fair market value of the Property as defined in A.R.S. § 12-1136.

8.3. This Waiver runs with the land and is binding upon all present and future owners of the Property. Landowner warrants and represents that it owns all right, title and interest to the Property, free and clear of any lien or encumbrance, and that no other person has an ownership interest in the Property. The person who signs on behalf of Landowner personally warrants and guarantees to the City he/she has the legal power to bind the Landowner to this Waiver.

{Signatures on the following page.}

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

City of Sedona

741 Forest Road, LLC,
an Arizona limited liability company

Sandra J. Moriarty
Sandra J. Moriarty, Mayor

By: [Signature]

Name: JOEL BOWERS

Title: MANAGER

Attest:

Jo Anne Cook
JoAnne Cook, City Clerk

Approved as to form:

[Signature]
Kurt W. Christianson, City Attorney

STATE OF ARIZONA)
COUNTY OF Yavapai)

ACKNOWLEDGMENT

On this 30 day of September, 2022, before me, a Notary Public, personally appeared Joel W. Bowers, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of 741 Forest Road, LLC, an Arizona limited liability company, for the purposes therein contained.



[Signature]
Notary Public
My Commission Expires: 02/25/2026

Exhibit A – Legal Description of Property

That part of the Northwest quarter of the Southeast quarter of Section 7, Township 17 North, Range 6 East of the Gila & Salt River Base and Meridian, Coconino County, Arizona, described as follows:

BEGINNING at a point on the East line of the Northwest quarter of the Southeast quarter of said Section 7, bearing South 01° 02'31" East, a distance of 300.00 feet from the Northeast corner of the Northwest quarter of the Southeast quarter of said Section 7;

THENCE South 01° 02'31" East, along the East line of the Northwest quarter of the Southeast quarter of said Section 7, a distance of 353.32 feet;

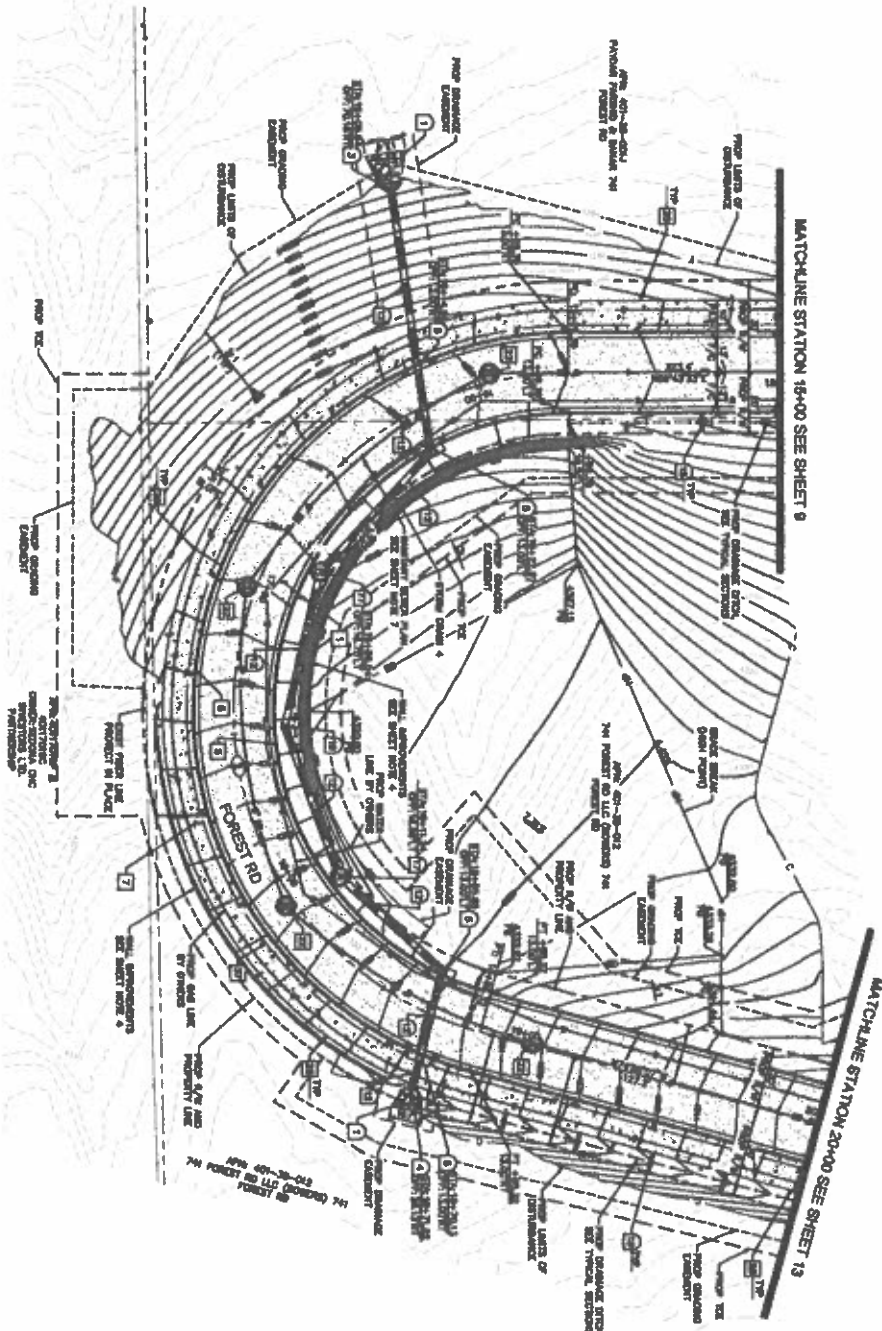
THENCE South 89° 21' 19" West, a distance of 328.17 feet;

THENCE North 01° 02' 31" West, a distance of 352.86 feet;

THENCE North 89° 16'33" East, a distance of 328.18 feet to the POINT OF BEGINNING.

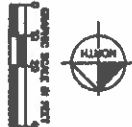


EXHIBIT B (2 OF 6)



FOREST RD & CURVE DATA

CHAIN	R/S	STATION	BEGIN	END	LEN	PI	DT	0	TRUCK
1	19+82.25	487.140	487.143	515.1	27.96	101.07	143.25	0	11.14



NOTICE OF EXTENDED PAYMENT PROVISION

Project	Revision	Date	Appr

Kimley»Horn
 301 NORTH DEWITT STREET, SUITE 100
 PHOENIX, ARIZONA 85004
 WWW.KIMLEY-HORN.COM

CITY OF SEDONA
 PUBLIC WORKS DEPARTMENT
 102 ROADMASTER DRIVE
 SEDONA, ARIZONA 86336
 928-204-7111

FOREST ROAD CONNECTION
 PROJECT NO. SM-05
 ROADWAY PLANS
 STA 15+00 TO STA 20+00

SHEET ID
 PLR2
SHEET NO.
 11 OF 51

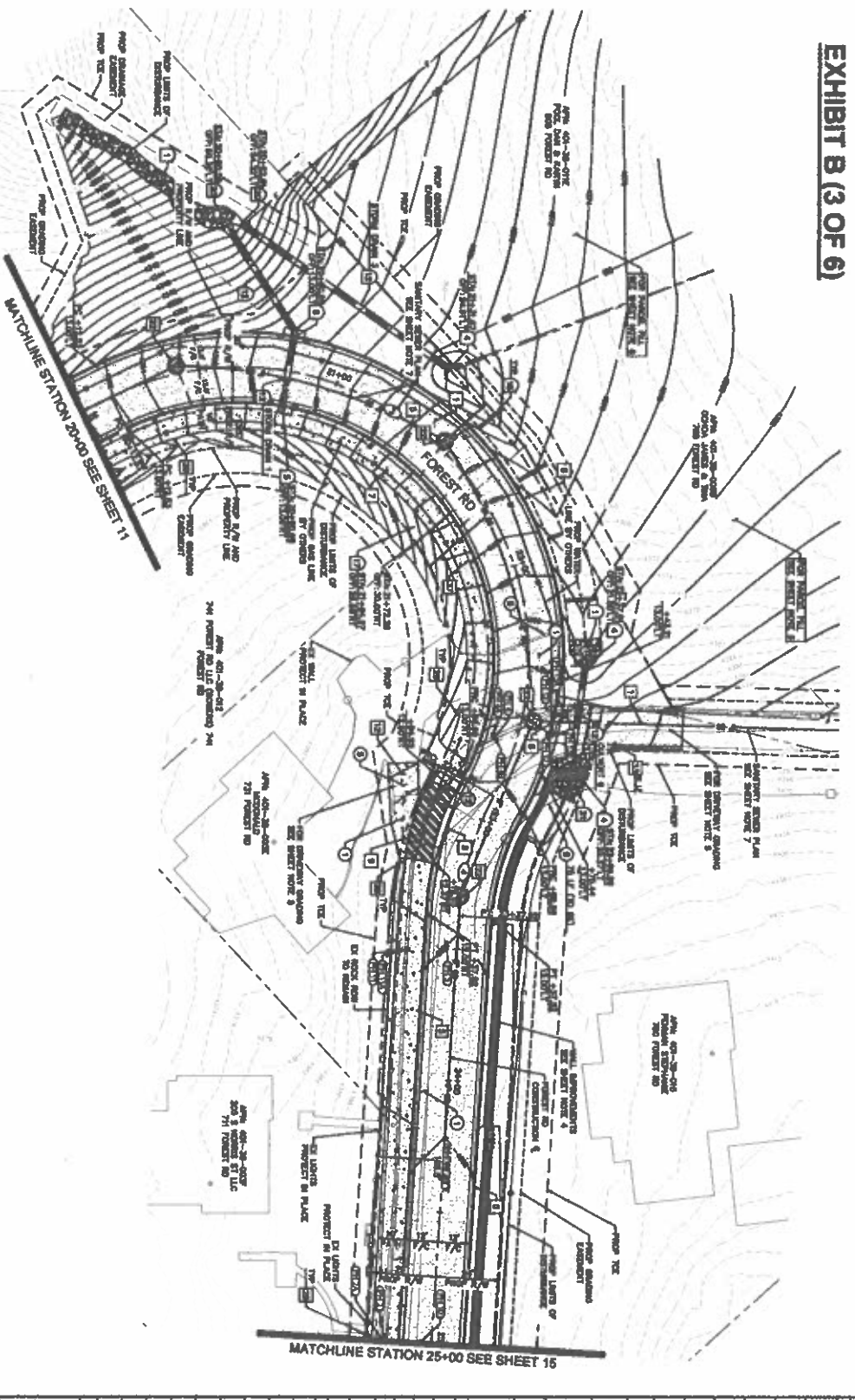
- ROADWAY NOTES**
1. ALL PROVISIONS FOR STRUCTURAL SECTION NO. 1 FOR SHEET 9
 2. CONCRETE UTILITY, CURB AND GUTTER FOR 48" AND 60" DIA. 25'-4" TYPE X
 3. CONCRETE BARRICADE USED FOR 48" AND 60" DIA. WITH 18" RISE
 4. ALL BUT BARRICADE FRAMES AND CURB AND GUTTER FOR 48" DIA.
 5. BARRICADE FRAMES SHALL BE CONCRETE OR APPROVED EQUIVALENT
 6. ALL CURB AND GUTTER SHALL BE 48" OR 60" DIA. WITH 18" RISE
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- GENERAL NOTES**
1. WHEN THE GRANULAR PROPOSED SECTION SLIPES AWAY FROM THE DRIVE, THE SLOPE OF THE DRIVE SHALL BE MAINTAINED AS SHOWN ON THE PLAN.
 2. ALL CURB AND GUTTER SHALL BE 48" OR 60" DIA. WITH 18" RISE.
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- DRIVEWAY NOTES**
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Handwritten signature or initials.

EXHIBIT B (3 OF 6)



GENERAL NOTE

1. REVIEW THE ADVANCED PROSPECT SECTION SLICES AMBY FROM THE DATUM, THE CURVE OF THE OUTER PAV STRIP AND OTHERS FOR PROJECT TO CONSTRUCTION. ALL CURVE DATA SHALL BE SUBJECT TO THE RATION FOR VARIATIONS AND OTHERS FOR PROJECT TO CONSTRUCTION. ALL CURVE DATA SHALL BE SUBJECT TO THE RATION FOR VARIATIONS AND OTHERS FOR PROJECT TO CONSTRUCTION.

Drawn By:	Scale:	Check:
JAV	1"=80'	12/17/2023
Checked By:	Project Code:	Date:
JAV	19182006	12/17/2023

FOREST RD @ CURVE DATA

CLARK	IN STA	WORSING	BEARING	LENGTH	RADIUS	A	B	C	D	THREAT
1	21+81.51	48994.334	88°52'48.4"	577.30'	110.00'	14.85°	35.84°	34.34°	34.34°	24.81'
2	23+15.31	49434.892	95°28'29.9"	43.42'	110.00'	20.00°	20.00°	20.00°	20.00°	24.81'

CITY OF SEDONA PUBLIC WORKS DEPARTMENT
702 ROADUNDER DRIVE
SEDONA, ARIZONA 86336
928-284-7111

**PROJECT NO. S4405
ROADWAY PLANS
STA 20+00 TO STA 25+00**

SHEET NO. 13 OF 51

ROADWAY NOTES

- 1. REMOVE EXISTING SIDEWALK, SECTION NO. 1 PER SHEET 2
- 2. CONCRETE SIDEWALK, CURB AND GUTTER PER STD DTL 200-1, TYPE IV
- 3. CONCRETE SIDEWALK USED PER STD DTL 200-1, TYPE IV, WITH PER PLAN
- 4. EXISTING SIDEWALK PER STD DTL 200-1, TYPE IV, WITH PER PLAN
- 5. STANDARD CONCRETE PAVEMENT "F" THICK
- 6. DIMENSION "F" THICK CLASS A CONCRETE
- 7. ASBEST WASTE/FILL PAKE AND COVER PER STD DTL 200-1, TYPE IV
- 8. INSTALL NEW STREETS (CONCRETE OR APPROVED MATERIAL) PER STD DTL 200-1, TYPE IV
- 9. STREETS TO BE BUILT PER STD DTL 200-1, TYPE IV, WITH PER PLAN
- 10. EXISTING SIDEWALK PER STD DTL 200-1, TYPE IV, WITH PER PLAN
- 11. REMOVE EXISTING SIDEWALK PER STD DTL 200-1, TYPE IV, WITH PER PLAN
- 12. CONCRETE DRIVEWAY PER STD DTL 200-1, TYPE IV, WITH PER PLAN
- 13. CONCRETE DRIVEWAY PER STD DTL 200-1, TYPE IV, WITH PER PLAN
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- 19. CONCRETE DRIVEWAY PER STD DTL 200-1, TYPE IV, WITH PER PLAN
- 20. CONCRETE DRIVEWAY PER STD DTL 200-1, TYPE IV, WITH PER PLAN

REMOVAL/RELOCATION NOTES

- 1. REMOVE EXISTING SIDEWALK
- 2. REMOVE EXISTING SIDEWALK
- 3. REMOVE EXISTING SIDEWALK
- 4. REMOVE EXISTING SIDEWALK
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DRAINAGE NOTES

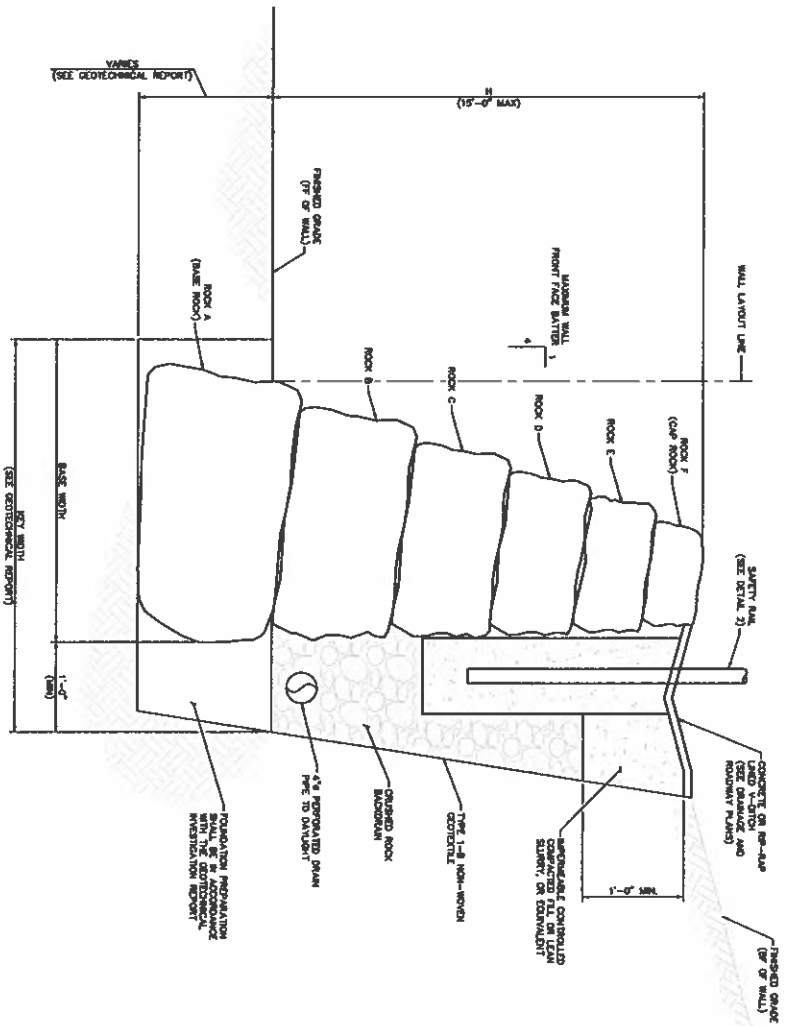
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GENERAL NOTE

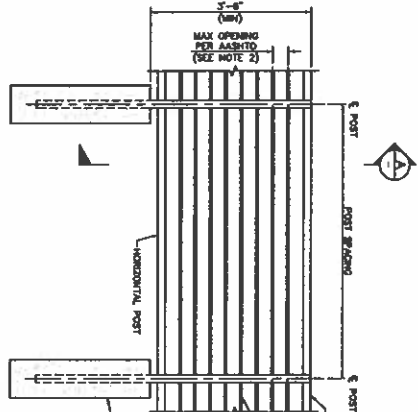
1. REVIEW THE ADVANCED PROSPECT SECTION SLICES AMBY FROM THE DATUM, THE CURVE OF THE OUTER PAV STRIP AND OTHERS FOR PROJECT TO CONSTRUCTION. ALL CURVE DATA SHALL BE SUBJECT TO THE RATION FOR VARIATIONS AND OTHERS FOR PROJECT TO CONSTRUCTION.

(Handwritten signature/initials)

EXHIBIT B (5 OF 6)



1 TYPICAL SECTION



2 TYPICAL SAFETY RAIL DETAIL

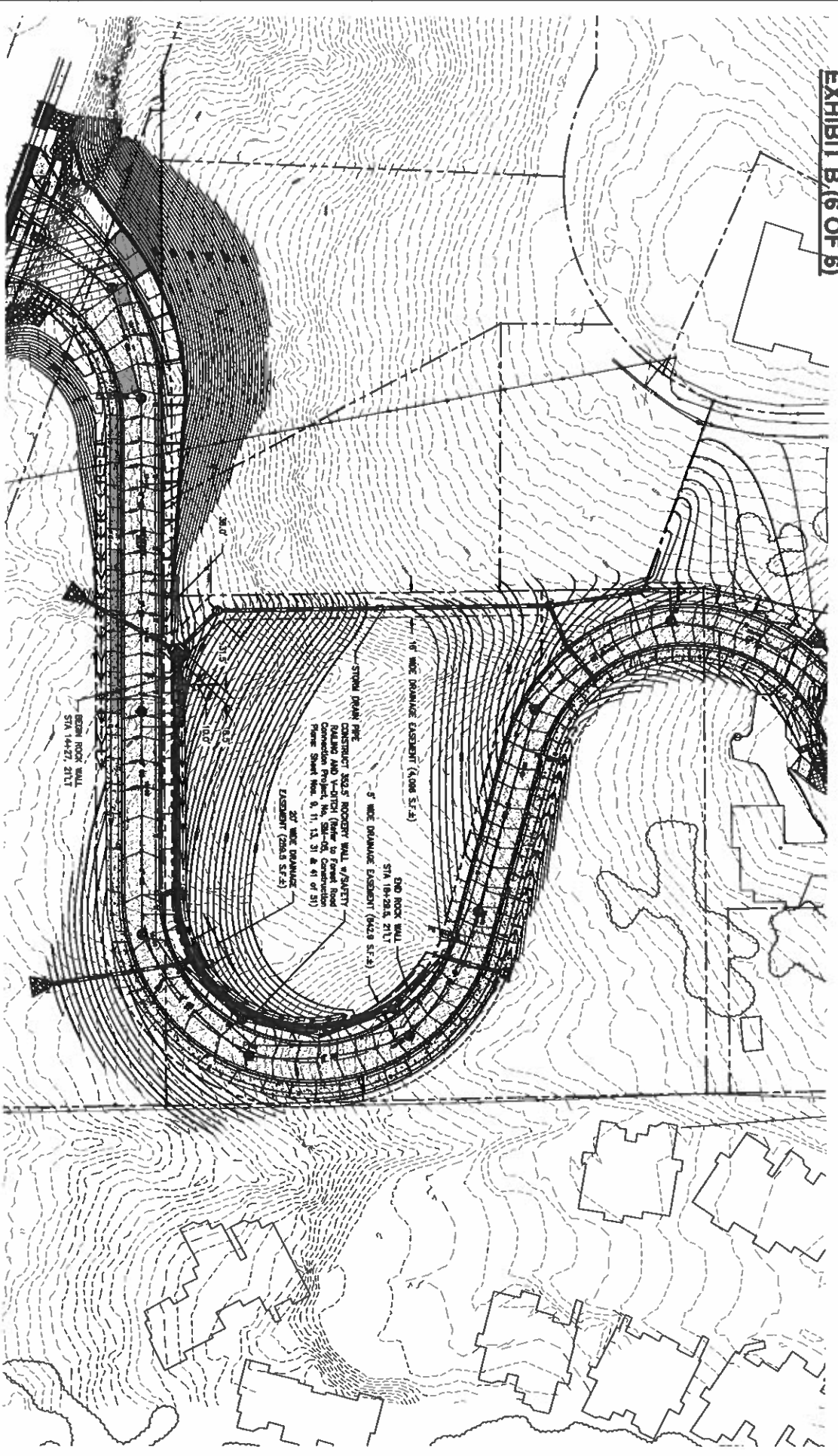
- ROCKERY WALL NOTES:**
1. ALL OPENING FROM VAIN ENGINEERING INC. SHALL BE ON SITE TO MONITOR THE PROGRESS OF THE CONSTRUCTION PER 11.9 CONTRACT.
 2. ALL FINISH AND MATERIALS TO BE USED IN THE CONSTRUCTION SHALL BE APPROVED BY THE ARCHITECT AND THE ENGINEER. THE ARCHITECT SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SEDONA, ARIZONA. THE ARCHITECT SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SEDONA, ARIZONA. THE ARCHITECT SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SEDONA, ARIZONA.
 3. SEE GEOTECHNICAL INVESTIGATION REPORT FOR ROCK SIZE AND WEIGHT, ROCK SPACING, AND OTHER ROCKERY WALL REQUIREMENTS AND RECOMMENDATIONS.

- RAILING NOTES:**
1. CONTRACTOR SHALL SUBMIT FOR REVIEW AND APPROVAL, BEFORE INSTALLATION, ALL RAILING AND BRUSHING, DESIGNED BY A REGISTERED ENGINEER IN THE STATE OF ARIZONA.
 2. RAILING SHALL BE INSTALLED PER THE REGISTERED ENGINEER'S RECOMMENDATIONS IN DETAIL SECTION T-1.

<p>NOTE: OF EXTENDED PAYMENT PROVISION</p> <p>FOR USE ONLY BY THE CONTRACTOR. ANY OTHER USE IS PROHIBITED.</p>				
Revisions	Date	Appr.	Designed By:	Date:
			AA	12/17/2021
			AA	
			Checked By:	Scale:
			NLM	AS SHOWN
			Project Code:	
			191022008	
		<p>Kimley-Horn</p> <p>4300 N. PULASKI AND ASSOCIATES, INC. 301 NORTH MONTELEONE SUITE 200 PHOENIX, ARIZONA 85001 PHONE: 602-486-8721 WWW.KIMLEY-HORN.COM</p>		
		<p>CITY OF SEDONA</p> <p>PUBLIC WORKS DEPARTMENT 102 ROADRUNNER DRIVE SEDONA, ARIZONA 86336 928-204-7111</p>		
<p>SHEET ID</p> <p>ST11</p>		<p>FOREST ROAD CONNECTION</p> <p>PROJECT NO. SM-05</p> <p>ROCKERY WALL DETAILS</p>		
<p>SHEET NO.</p> <p>41 OF 51</p>				

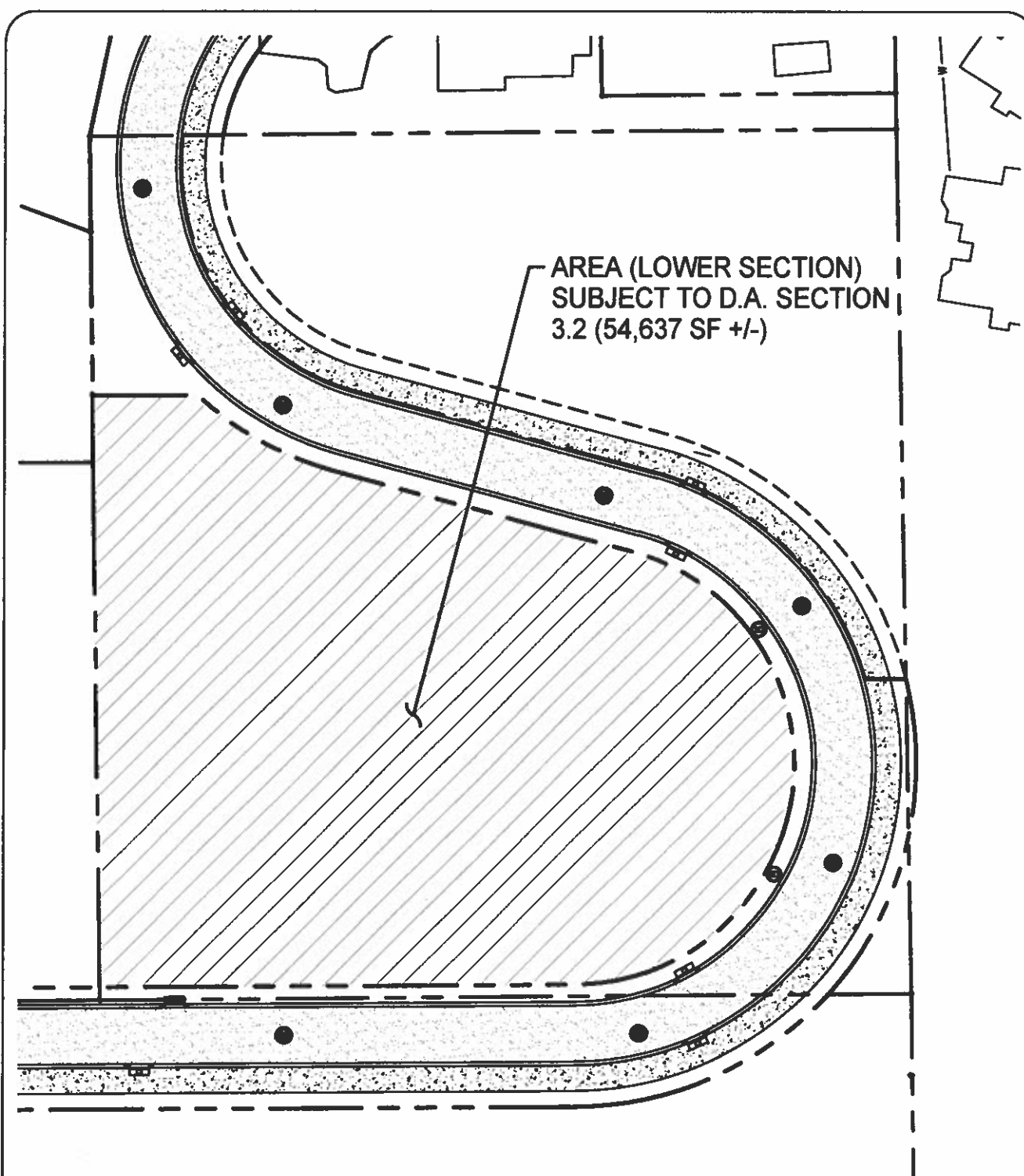
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EXHIBIT B (6 OF 6)



<p>NOTICE OF EXTENDED PAYMENT PROVISION (2024 ARS 26-12240) THE CONTRACTOR AGREES TO WAIVE THE RIGHT TO FILE A CLAIM FOR DAMAGES FOR DELAYED PAYMENT OF INVOICES AND ESTIMATES FOR FINAL PAYMENT.</p>		<p>Symbol</p>
<p>Revisions</p>	<p>Date</p>	<p>Appr.</p>
<p>Drawn by: RAN</p>	<p>Date: 6/20/22</p>	<p>Checked by: RAN</p>
<p>Scale: 1"=50'</p>	<p>Project Code: CIVIL</p>	<p>Project Code: CIVIL</p>
<p>PRELIMINARY NOT FOR CONSTRUCTION</p>		<p>CITY OF SEDONA PUBLIC WORKS DEPARTMENT 102 ROADRUNNER DRIVE SEDONA, ARIZONA 86336 928-204-7111</p>
<p>EXHIBIT B (6 OF 6) FOREST ROAD CONNECTION PROJECT 741 Forest Road LLC, Fill Plan (Lower Section of Remaining Property) SHEET TITLE</p>		<p>SHEET ID C-001 SHEET NO. 1 OF 1</p>

B



City of Sedona

PUBLIC WORKS DEPARTMENT
 102 ROADRUNNER DRIVE
 SEDONA, ARIZONA 86336

PHONE: 928-204-7111

FOREST ROAD
 CONNECTION PROJECT

Forest Road
 Sedona, AZ 86336

EXHIBIT C

AREA SUBJECT TO
 SECTION 3.2

APN: 401-38-012

7/14/22

1"=60'

1

B

EXHIBIT D

Temporary Construction Easement

Parties:
City of Sedona

and:
741 Forest Road, LLC

Assessor's Parcel Number:
401-38-012

County:
Coconino



EXHIBIT D (cont.)

When Executed Return to:

Sedona City Clerk's Office
102 Roadrunner Drive
Sedona, AZ 86336

APN: 401-38-012

TEMPORARY CONSTRUCTION EASEMENT

For value received and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 741 Forest Road, LLC an Arizona Limited Liability Company ("Grantor") does hereby grant and convey to the City of Sedona, an Arizona municipal corporation ("Grantee") and its successors/assigns, a **Temporary Construction Easement** (the "Easement") for purposes of constructing, installing, roadway cut or fill slopes, a rock gravity retaining wall, and processing of excavation material upon the surface of that property situated in the City of Sedona, Coconino County, Arizona, particularly described in **Schedule "A"** attached hereto and incorporated by this reference.

The Easement shall cease to exist once the Forest Road Connection Project is complete, or no later than two years from the execution date of this Easement, whichever occurs first and, upon Grantor's request, Grantee shall execute a recordable termination of the Easement as determined appropriate.

The Grantee is hereby granted a temporary right to enter upon the Easement at all appropriate times and places in connection with normal operations of the Grantee to construct and install grading and sloping pursuant to the Forest Road Connection Project.

While the Easement is in effect, Grantor shall not erect or construct, or permit to be erected or constructed, any building or other structure within the Easement; nor shall Grantor undertake any excavation or drill any well, or plant or permit to be planted any trees within the limits of such Easement without the prior written consent of the Grantee.

Grantee agrees to use reasonable efforts to prevent damage to the existing adjoining property and to restore the same in a reasonable manner and agrees to indemnify Grantor for all losses and damages resulting from Grantee's exercise of its rights hereunder. By accepting this Easement, the Grantee agrees to exercise reasonable care to avoid damage to the premises and all property of Grantor at any time located thereon.



EXHIBIT D (cont.)

IN WITNESS WHEREOF, this Easement has been executed and delivered by the undersigned Grantor, the receipt and sufficiency of which is hereby acknowledged.

Dated: _____

GRANTOR: **741 Forest Road, LLC**

741 Forest Road, LLC

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of _____)

Notary Public
[Seal]

My Commission Expires:

GRANTEE: **City of Sedona**

Sandra J. Moriarty, Mayor

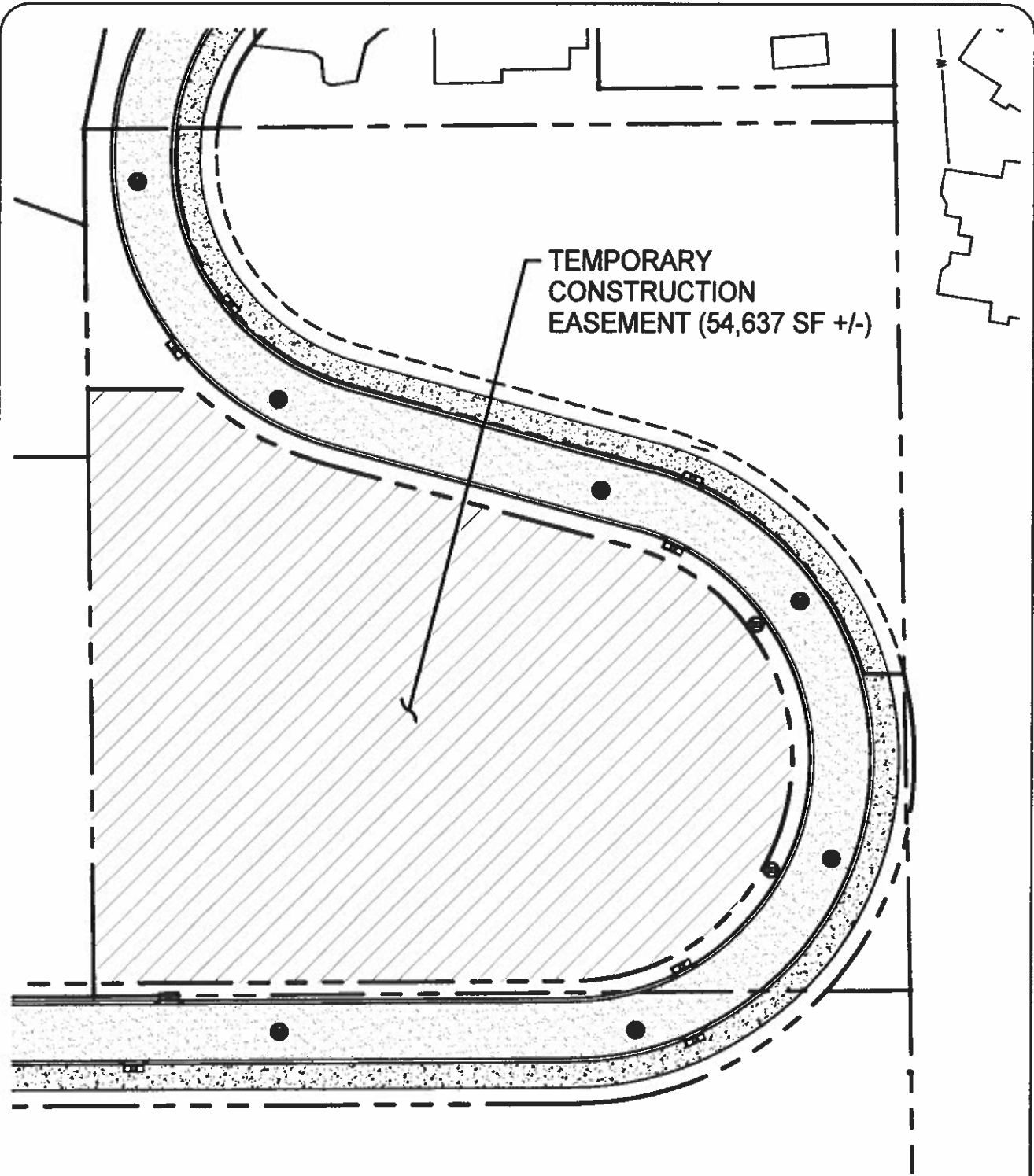
ATTEST:

JoAnne Cook, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney





City of Sedona

PUBLIC WORKS DEPARTMENT
102 ROADRUNNER DRIVE
SEDONA, ARIZONA 86336

PHONE: 928-204-7111

FOREST ROAD
CONNECTION PROJECT

Forest Road
Sedona, AZ 86336

SCHEULE A

Temporary Construction
Easement

APN: 401-38-012

7/14/22

1"=60'

1

FB

EXHIBIT D

Temporary Construction Easement

Parties:
City of Sedona

and:
741 Forest Road, LLC

Assessor's Parcel Number:
401-38-012

County:
Coconino

EXHIBIT D (cont.)

When Executed Return to:

Sedona City Clerk's Office
102 Roadrunner Drive
Sedona, AZ 86336

APN: 401-38-012

TEMPORARY CONSTRUCTION EASEMENT

For value received and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 741 Forest Road, LLC an Arizona Limited Liability Company ("Grantor") does hereby grant and convey to the City of Sedona, an Arizona municipal corporation ("Grantee") and its successors/assigns, a **Temporary Construction Easement** (the "Easement") for purposes of constructing, installing, roadway cut or fill slopes, a rock gravity retaining wall, and processing of excavation material upon the surface of that property situated in the City of Sedona, Coconino County, Arizona, particularly described in **Schedule "A"** attached hereto and incorporated by this reference.

The Easement shall cease to exist once the Forest Road Connection Project is complete, or no later than two years from the execution date of this Easement, whichever occurs first and, upon Grantor's request, Grantee shall execute a recordable termination of the Easement as determined appropriate.

The Grantee is hereby granted a temporary right to enter upon the Easement at all appropriate times and places in connection with normal operations of the Grantee to construct and install grading and sloping pursuant to the Forest Road Connection Project.

While the Easement is in effect, Grantor shall not erect or construct, or permit to be erected or constructed, any building or other structure within the Easement; nor shall Grantor undertake any excavation or drill any well, or plant or permit to be planted any trees within the limits of such Easement without the prior written consent of the Grantee.

Grantee agrees to use reasonable efforts to prevent damage to the existing adjoining property and to restore the same in a reasonable manner and agrees to indemnify Grantor for all losses and damages resulting from Grantee's exercise of its rights hereunder. By accepting this Easement, the Grantee agrees to exercise reasonable care to avoid damage to the premises and all property of Grantor at any time located thereon.

EXHIBIT D (cont.)

IN WITNESS WHEREOF, this Easement has been executed and delivered by the undersigned Grantor, the receipt and sufficiency of which is hereby acknowledged.

Dated: 10/3/22

GRANTOR: **741 Forest Road, LLC**

[Signature]

741 Forest Road, LLC

By: JOEL BOWERS

Its: MANAGER

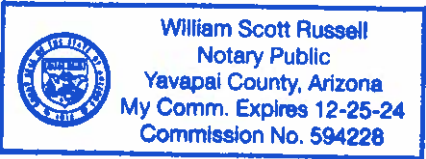
STATE OF ARIZONA)
County of YAVAPAI) ss.

[Signature]

Notary Public
[Seal]

My Commission Expires:

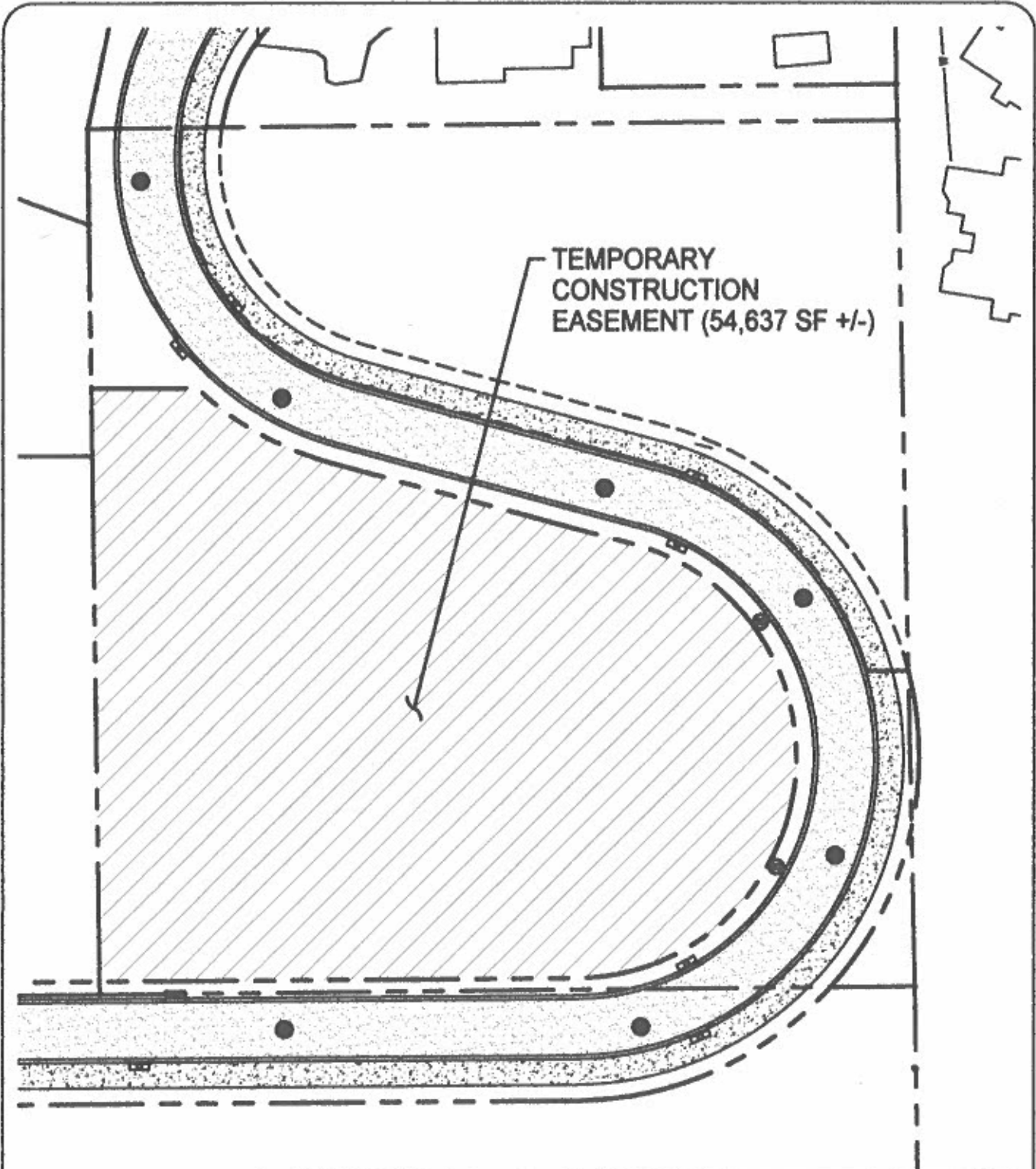
GRANTEE: **City of Sedona**



[Signature]
Sandra J. Moriarty, Mayor

ATTEST:
[Signature]
JoAnne Cook, City Clerk

APPROVED AS TO FORM:
[Signature]
Kurt W. Christianson, City Attorney



City of Sedona

**PUBLIC WORKS DEPARTMENT
102 ROADRUNNER DRIVE
SEDONA, ARIZONA 86336**

PHONE: 928-204-7111

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