

# AGENDA



# 4:30 P.M.

## CITY COUNCIL MEETING

## TUESDAY, NOVEMBER 22, 2022

### NOTES:

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

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

THE MEETING CAN BE VIEWED LIVE ON THE CITY'S WEBSITE AT [WWW.SEDONAAZ.GOV](http://WWW.SEDONAAZ.GOV) OR ON CABLE CHANNEL 4.

### GUIDELINES FOR PUBLIC COMMENT

#### PURPOSE:

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

#### PROCEDURES:

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

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

## 2. CITY'S VISION

## 3. CONSENT ITEMS - APPROVE

LINK TO DOCUMENT =

- a. Minutes - November 8, 2022 City Council Regular Meeting.
- b. Minutes - November 9, 2022 City Council Special Meeting.

## 4. APPOINTMENTS

- a. AB 2878 **Discussion/possible action** regarding the appointment of Public Safety Personnel Retirement System (PSPRS) Local Board Members.
- b. AB 2885 **Discussion/possible action** regarding the appointment of Planning & Zoning Commissioners.
- c. AB 2890 **Discussion/possible action** regarding the appointment of Historic Preservation Commissioners.

## 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 - None.

## 8. REGULAR BUSINESS



- a. AB 2893 **Discussion/possible action** regarding the adoption of a Resolution approving the sale and execution and delivery of an Excise Tax Revenue Obligation, Second Series 2022, in an amount not to exceed \$10.2 million; approving the form and authorizing the execution and delivery of necessary agreements, instruments and documents; delegating authority to determine certain matters with respect to the foregoing and declaring an emergency.
- b. AB 2894 **Discussion/possible action** regarding the approval of a Resolution authorizing the City of Sedona to enter into a purchase agreement to acquire the Real Property located near Hwy 89-A and Cultural Park Drive, Sedona, AZ 86336 (APN# 408-47-004C, 004W, 005A, 007, 008, 009A, 009B and 408-11-176B).
- c. AB 2850 **Public hearing/discussion/possible action** regarding adoption of a Resolution and Ordinance updating the City of Sedona's Consolidated Fee Schedule.
- d. AB 2887 **Discussion/possible action** regarding an Ordinance revising the Sedona City Code, Chapter 5.05.030 Section B, related to special event business licensing.
- e. AB 2897 **Discussion/possible action** regarding approval of a grant agreement with the Arizona Department of Emergency Management in the amount of \$900,000 for the City of Sedona's Emergency Operations Center project.

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

- f. AB 2837 **Discussion/possible action** regarding approval of a Resolution and Ordinance amending Sedona City Code Chapter 5.25 Short Term Rental Regulation to include implementation of SB 1168. 
- g. AB 2892 **Discussion/possible action** regarding an Ordinance amending City Code Section 2.15.050 to consider increasing the mayor's salary by \$100 per month and city councilor salaries by \$50 per month. 
- h. **Reports/discussion** regarding Council assignments.
- i. **Discussion** regarding ideas for 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: 11/17/2022

By: CF

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JoAnne Cook, CMC,  
City Clerk

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

A copy of the packet with materials relating to the agenda items is typically available for review by the public in the Clerk's office after 1:00 p.m. the Thursday prior to the Council meeting and on the City's website at [www.SedonaAZ.gov](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**  
**Regular City Council Meeting**  
**City Council Chambers, Sedona City Hall,**  
**102 Roadrunner Drive, Sedona, Arizona**  
**Tuesday, November 8, 2022, 4:30 p.m.**

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

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

**Council Present:** Mayor Sandy Moriarty, Vice Mayor Scott Jablow, Councilor Kathy Kinsella, Councilor Tom Lamkin, Councilor Jon Thompson, and Councilor Jessica Williamson. Councilor Ploog was excused absent. Mayor Moriarty arrived at 4:45 p.m.

**Staff Present:** City Manager Karen Osburn, Deputy City Manager Joanne Keene, Assistant City Manager/Director of Public Works Andy Dickey, Engineering Supervisor Kurt Harris, City Attorney Kurt Christianson, Police Chief Stephanie Foley, Arts Coordinator Nancy Lattanzi, Public Relations Coordinator Kegn Moorcroft, and City Clerk JoAnne Cook.

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

The City's Vision video was played.

Nancy Lattanzi presented the Sedona Historical Society's 40<sup>th</sup> Anniversary Time Capsule Project and introduced Sedona Heritage Museum Executive Director Nate Meyers and Board of Trustee Member Kathy Levin. The capsule will be 'buried' in a public event on November 16<sup>th</sup> at 11:30 a.m. at the Sedona Heritage Museum.

**3. Consent Items**

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

Item 3e was pulled by Councilor Kinsella.

Presentation by Andy Dickey and Kurt Harris.

Questions from Council.

Opened to Public at 4:58 p.m.

Jesse Alexander, Sedona, spoke in favor of the Canyon Portal 3, LLC development agreement.

Brought back to Council at 5:01 p.m.

Comments from Council.

**Motion: Councilor Kinsella moved to approve consent items 3a-3d. Seconded by Councilor Thompson. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.**

**Motion: Councilor Kinsella moved to approve consent item 3e. Seconded by Councilor Williamson. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Thompson, and Williamson) and zero (0) opposed.**

**4. Appointments - None.**

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

Vice Mayor Jablow said the Grasshopper Youth Basketball registration is open for youth in grades 1-6, registration is \$35 per player with \$3 discount for siblings. Register online through November 13<sup>th</sup>; the registration is open for Beginners Edge Sports Training Program (B.E.S.T.) Sports for Kids youth for youth ages 16 months up to 10 years old, the cost is \$96 per registrant per sport/session. Councilor Williamson encouraged all to attend the Library's Courtyard Grand Opening on Sunday, November 13<sup>th</sup> at 3:00 p.m. Councilor Thompson said the Sedona Historical Society's "burial" of the time capsule event will take place on Wednesday, November 16<sup>th</sup> at 11:30 a.m. at the Sedona Heritage Museum.

**6. Public Forum-None.**

**7. Proclamations, Recognitions & Awards**

**a. America Recycles Day, November 17, 2022.**

Mayor Moriarty presented the America Recycles Day, November 17, 2022 Proclamation to Doug Cobb. Doug thanked Council for their support and shared information about the work at the center. He encouraged residents to visit their website and to read flyers for what items are accepted. Councilor Thompson encouraged all to attend the Sedona Recycles Day Event on the 15<sup>th</sup>. Visit [Sedonarecycles.org](http://Sedonarecycles.org) for a current list of accepted items.

**b. Presentation of Certificates to Citizen's Academy graduates.**

Presentation by Kegn Moorcroft.

Mayor Moriarty thanked all graduates for their participation in the program. She

presented certificates to the following participants: Melissa Dunn, Christian Eaton, Dave O'Donnell, Mei Wei Wong, Jim Kapsales, Jeanne Blum Frieder, P.J. Harrison, Stephanie Harrison, Allison Nichols, Sarah Watts, Donna Wilson, Rosemary Zimmerman, Jessica Sierra.

The following graduates were not present for the presentation: Sterling West, Timothy Dickey, Sunday Larson, Samaire Armstrong, Cara Kretz, Jennifer Strait, Joetta Winter, Mary Duiker, Jean Griesenbeck.

## **8. Regular Business**

### **a. AB 2881 Discussion/possible action regarding an Ordinance revising the Sedona City Code, Chapter 9.10, adding Section 9.10.020 related to public urination and defecation.**

Presentation by Kurt Christianson and Chief Foley.

Questions and comments from Council.

#### **(After First Reading)**

**Motion: Councilor Williamson moved to approve Ordinance 2022-09, amending City Code Chapter 9.10 by adding Section 9.10.020 related to public urination and defecation. Seconded by Councilor Thompson. Vote: Motion passed with five (5) in favor (Moriarty, Jablow, Lamkin, Thompson, and Williamson) and one (1) opposed (Kinsella). Councilor Kinsella opposed because she did not agree with the imposed fine and the lack of discretion offered to the court.**

### **b. AB 2880 Discussion/possible action regarding a Resolution and Ordinance amending the Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits).**

Presentation by Kurt Christianson.

Questions and comments from Council.

**Motion: Councilor Williamson moved to approve Resolution No. 2022-33, establishing as a public record the proposed amendment to Sedona City Code Chapter 8.50 entitled "2022 Amendments to Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits) as amended to include a minimum \$250 fine. Seconded by Councilor Thompson. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin, Ploog, Thompson, and Williamson) and zero (0) opposed.**

#### **(After First Reading)**

**Motion: Councilor Williamson moved to adopt Ordinance No. 2022-10 an ordinance of the Mayor and Council of the City of Sedona, Arizona adopting amendments to the Sedona City Code Chapter 8.50 (Prohibition on Use of Fireworks in City Limits as amended with a \$250 fine. Seconded by Councilor Thompson. Vote: Motion carried unanimously with six (6) in favor (Moriarty, Jablow, Kinsella, Lamkin,**

**Thompson, and Williamson) and zero (0) opposed.**

**c. Reports/discussion regarding Council assignments-None.**

**d. Discussion regarding ideas for future meeting/agenda items**

Councilor Thompson requested an item regarding the annual stipend for Mayor and Councilors be added to a future agenda. Councilor Lamkin supported his 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 6:19 p.m. without objection.

**I certify that the above are the true and correct actions of the Regular City Council Meeting held on November 8, 2022.**

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

\_\_\_\_\_  
Date

**Action Minutes  
Special City Council Meeting  
City Council Chambers, Sedona City Hall,  
102 Roadrunner Drive, Sedona, Arizona  
Wednesday, November 9, 2022, 3:00 p.m.**

**1. Call to Order**

Mayor Moriarty called the meeting to order at 3:00 p.m.

**2. Roll Call**

**Roll Call:** Mayor Sandy Moriarty, Vice Mayor Scott Jablow, Councilor Kathy Kinsella, Councilor Tom Lamkin, Councilor Holli Ploog (present via Zoom), Councilor Jon Thompson, Councilor Jessica Williamson.

**Staff in attendance:** City Manager Karen Osburn, Deputy City Manager Joanne Keene, City Attorney Kurt Christianson, Assistant City Manager/Director of Public Works Andy Dickey, Finance Director Cherie White, City Clerk JoAnne Cook, Deputy City Clerk Cherise Fullbright.

**3. Special Business**

- a. AB 2760 Presentation/discussion/possible direction regarding the status update from the Sedona Chamber of Commerce and Tourism Bureau (SCC&TB) on the FY23 work program and budget.**

Presentation by SCC&TB President/CEO Michelle Conway, SCC&TB Programs Manager Maralea Norden, and Karen Osburn.

Local business owners/representatives Jay Kriske, Nena Barlow, and Steve Segner also presented to Council.

Questions and comment from Council.

Opened to the public 4:49 p.m.

The following spoke regarding this item: Donna Joy Varney, Sedona, Robert Pifke, Sedona, Nena Barlow, Clarkdale, Steve Segner, Sedona, Mary Leas, Sedona, Al Comello, Sedona, Brian Fultz, Sedona.

Brought back to Council at 5:10 p.m.

Break at 5:11 p.m. Reconvened at 5:19 p.m.

Additional questions and comments from Council.

**Presentation and discussion only.**

- b. AB 2760 Discussion/possible direction regarding the future relationship between the City and the SCC&TB, possible request for organizational restructuring of the SCC&TB to better delineate between the chamber of commerce and destination management divisions of the organization, and the use of the proceeds of the 1/2 cent bed tax increase that was added in 2014.**

Presentation by Karen Osburn, Kurt Christianson, SCC&TB President/CEO Michelle Conway, SCC&TB Board Chairman Jennifer Perry, and SCC&TB Finance Director Gary Stewart.

Questions and comments from Council.

**Presentation and discussion only. Michelle Conway stated that SCC&TB intends to have a position by the joint meeting in January.**

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

None.

#### **4. 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.**

None.

#### **5. Adjournment**

Mayor Moriarty adjourned the meeting at 6:52 p.m.

**I certify that the above are the true and correct actions of the Special City Council Meeting held on November 9, 2022.**

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Cherise Fullbright, Deputy City Clerk

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Date





**CITY COUNCIL  
AGENDA BILL**

**AB 2878  
November 8, 2022  
Appointments**

**Agenda Item:** 4a  
**Proposed Action & Subject:** Discussion/possible action regarding the appointment of Public Safety Personnel Retirement System (PSPRS) Local Board Members.

<b>Department</b>	City Clerk
<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. Applications

City Attorney Approval	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	\$ 0
City Manager's Recommendation	N/A	<b>Amount Budgeted</b>	\$ 0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** The Public Safety Personnel Retirement System (PSPRS) Board advertised seeking applicants to fill one (1) seat on the Board, with the first review to be completed on July 21, 2022. The open seats were due to the resignation of a board member. A total of six (6) applications were received for this vacancy. Two applicants withdrew their applications, and four (4) interviews were scheduled.

The Selection Committee, made up of Mayor Sandy Moriarty and Vice Mayor Scott Jablow and PSPRS Board Chairman Kathy Kinsella, interviewed the applicants on October 12 & 25, 2022 and recommended the appointment of Lynn Zonakis to the open seat on the Public Safety Personnel Retirement System (PSPRS) Board. This term will begin immediately and end July 31, 2026 or until a successor is appointed, whichever is later.

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

**Alternative(s):** Council may request that the vacancy be reposted.

**MOTION**

**I move to:** appoint Lynn Zonakis to the Public Safety Personnel Retirement System (PSPRS) Board with a term beginning immediately and ending July 31, 2026, or until a successor is appointed, whichever is later.



**PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS) LOCAL BOARD APPLICATION**

**RECEIVED**

JUL 18 2022

CITY OF SEDONA  
CITY CLERK'S OFFICE

**Thank you for your interest in serving on the City of Sedona Public Safety Personnel Retirement System Local Board**

**Before You Begin.** Please read the following instructions carefully before filling out your application – type or print clearly in ink only. A resume is not required, but you are encouraged to submit one. However, you must complete all questions and furnish all requested information. If an item does not apply to you, or if there is no information to be given write in the letters "NA" for "Not Applicable". Return your completed application to the City Clerk's Office at 102 Roadrunner Drive. Applications will be forwarded to the Mayor and City Council for evaluation and appointment.

All information submitted in this application is public information and subject to disclosure in response to a public records request.

YOUR NAME: John Mazzarella

ADDRESS: [Redacted] SEDONA AZ 86336  
Street Address (No P.O. Boxes) (City) (State) (Zip)

MAILING ADDRESS (if different): \_\_\_\_\_

PHONE: Home [Redacted] <sup>CELL</sup> Work: [Redacted] Message Phone: \_\_\_\_\_

E-MAIL ADDRESS: [Redacted]

Do you live within the incorporated boundaries of the City of Sedona? Yes  No  If so, for how many years? 1yr

If you live outside the incorporated boundaries of the City of Sedona, are you employed, own a business or have substantial ties (e.g. own property) within the incorporated boundaries of the City of Sedona? Yes  No  If so, please explain.

Have you previously been appointed to any position by the City of Sedona? Yes  No  If so, what and for what length of term? \_\_\_\_\_

In answering the following questions, if more space is required, please attach a separate sheet of paper.

Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.

I WAS A CAPTAIN & CHECK AIRMAN FOR AMERICAN AIRLINES FOR 27 YEARS.

DURING THAT TIME I WAS A GUARDIAN AD LITEM FOR ABUSED & NEGLECTED CHILDREN IN FLORIDA.

What skills do you feel you possess that would enable you to help to achieve consensus on issues?

AFTER I RETIRED I BECAME AN ARBITRATOR FOR FINRA. FINRA IS A FINANCIAL REGULATORY AUTHORITY HEARING CASES AGAINST BROKERAGE FIRMS AND THE PUBLIC.

What are your perceptions of the duties, responsibilities, and role of the PSPRS Local Board? AS A CITIZEN OF SEDONA I WANT OUR POLICE TO HAVE A COMPATIBLE RETIREMENT AS IN OTHER COMMUNITIES.

What experience and special skills would you bring that would demonstrate an understanding of law enforcement retirement issues?

WE MUST BACK UP OUR POLICE BOTH ON THE JOB AND IN THEIR RETIREMENT PROGRAM. ALSO WE MUST CHECK OTHER COMMUNITIES LIKE OUR OWN AND BE COMPETITIVE.

ALSO IF THERE IS ANY WAY TO RETAIN THESE OFFICERS.

If appointed to the PSPRS Local Board, are you willing to serve the full term of the appointment (4 years)?

Yes

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Thank you for your interest to serve on the PSPRS Local Board. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 928-282-3113. For questions about the board, please contact Human Resources at 928-203-5038.



# PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS) LOCAL BOARD APPLICATION

RECEIVED

JUL 03 2022

Thank you for your interest in serving on the City of Sedona Public Safety Personnel Retirement System Local Board

CITY OF SEDONA CITY CLERK'S OFFICE

Before You Begin. Please read the following instructions carefully before filling out your application - type or print clearly in ink only. A resume is not required, but you are encouraged to submit one. However, you must complete all questions and furnish all requested information. If an item does not apply to you, or if there is no information to be given write in the letters "NA" for "Not Applicable". Return your completed application to the City Clerk's Office at 102 Roadrunner Drive. Applications will be forwarded to the Mayor and City Council for evaluation and appointment.

All information submitted in this application is public information and subject to disclosure in response to a public records request.

YOUR NAME: Lynn Zonakis

ADDRESS: [Redacted] Street Address (No P.O. Boxes) (City) (State) (Zip)

MAILING ADDRESS (if different):

PHONE: Home [Redacted] Work: Message Phone:

E-MAIL ADDRESS: [Redacted]

Do you live within the incorporated boundaries of the City of Sedona? Yes [X] No [ ] If so, for how many years? 2.5 years

If you live outside the incorporated boundaries of the City of Sedona, are you employed, own a business or have substantial ties (e.g. own property) within the incorporated boundaries of the City of Sedona? Yes [ ] No [ ] If so, please explain.

Have you previously been appointed to any position by the City of Sedona? Yes [X] No [ ] If so, what and for what length of term?

In answering the following questions, if more space is required, please attach a separate sheet of paper.

Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.

My background includes degrees in Psychology and nursing. I began my career as a Registered Nurse and have strong clinical expertise. Between 1992 and 1997 I did disability case management and Occupational Health. In 1997 I moved into employee benefit management and in various phases of my career since then was responsible for multiple corporate programs including Workers' Compensation, Disability, Time off from Work. From 2003 thru my retirement in 2015 I was responsible for Health Strategy and

What skills do you feel you possess that would enable you to help to achieve consensus on issues?

Most of my career has required consensus building, from guiding patients towards quality providers and best treatments, to balancing corporate goals with employee needs in devising corporate benefits, and presenting complex benefits strategy that requires multi-stake holder buy in and support. All these tasks required listening, and the ability to modify plans as needed and sell an idea.

What are your perceptions of the duties, responsibilities, and role of the PSPRS Local Board?

I believe they will be similar to what we do on the SFD PSPRS. Activities include review of retirement applications, review of the annual budget, and review of disability applications.

What experience and special skills would you bring that would demonstrate an understanding of law enforcement retirement issues?

While I have not directly worked with law enforcement, I have a strong understanding of how retirement and disability plans work including financials, Summary Plan Documents, and review of medical and other information supportive of both regular and disability retirements. The process associated with retirements follow a standardized process outlined in associated Summary Plan Requirements or other Legal descriptions for documentation. I am intimately familiar with this kind of review.

If appointed to the PSPRS Local Board, are you willing to serve the full term of the appointment (4 years)?

**yes**

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Thank you for your interest to serve on the PSPRS Local Board. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 928-282-3113. For questions about the board, please contact Human Resources at 928-203-5038.



**PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS) LOCAL BOARD APPLICATION**

**RECEIVED**  
JUL 06 2022  
CITY OF SEDONA  
CITY CLERK'S OFFICE

**Thank you for your interest in serving on the City of Sedona Public Safety Personnel Retirement System Local Board**

**Before You Begin.** Please read the following instructions carefully before filling out your application – type or print clearly in ink only. A resume is not required, but you are encouraged to submit one. However, you must complete all questions and furnish all requested information. If an item does not apply to you, or if there is no information to be given write in the letters "NA" for "Not Applicable". Return your completed application to the City Clerk's Office at 102 Roadrunner Drive. Applications will be forwarded to the Mayor and City Council for evaluation and appointment.

**All information submitted in this application is public information and subject to disclosure in response to a public records request.**

**YOUR NAME:** Wesley Little

**ADDRESS:** [Redacted] Sedona AZ 86336  
Street Address (No P.O. Boxes) (City) (State) (Zip)

**MAILING ADDRESS (if different):** \_\_\_\_\_

**PHONE:** Home [Redacted] Work: \_\_\_\_\_ Message Phone: \_\_\_\_\_

**E-MAIL ADDRESS:** [Redacted]

Do you live within the incorporated boundaries of the City of Sedona? Yes  No  If so, for how many years? 6

If you live outside the incorporated boundaries of the City of Sedona, are you employed, own a business or have substantial ties (e.g. own property) within the incorporated boundaries of the City of Sedona? Yes  No  If so, please explain.

Have you previously been appointed to any position by the City of Sedona? Yes  No  If so, what and for what length of term? \_\_\_\_\_

In answering the following questions, if more space is required, please attach a separate sheet of paper.



**Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.**

I had been employed by the Social Security Administration for over 33 years. I held several jobs within the agency pertinent to the proper administration and maintenance of benefit programs; e.g. Retirement, Disability, & Medicare.

My positions included: Claims Representative, Operations Supervisor, Assistant District Manager, and District Manager.

**What skills do you feel you possess that would enable you to help to achieve consensus on issues?**

In my previous role(s) at the agency, I routinely handled appeals requests. It was crucial that we clearly cite only relevant regulation in all of our determinations.

In an environment such as this, it is imperative that a decision-maker be impartial and fair. By sticking to these guardrails, one can avoid distractions.

**What are your perceptions of the duties, responsibilities, and role of the PSPRS Local Board?**

At present, I would assume it we be to determine if an applicant met the requirements for pension membership, for possible entitlement of retirement, disability, and/or survivor benefits. I assume it also involves the possibility of evaluating the merging previous outside job-related pension membership.

**What experience and special skills would you bring that would demonstrate an understanding of law enforcement retirement issues?**

During my time at the agency I have had literally decades of speaking about--and evaluating entitlement to various benefits both in a public setting, as a training instructor, and as claims representative.

Both public service retirement and Social Security entitlement are predicated on well established rules and regulations. By communicating clearly and consistently all parties are served.

If appointed to the PSPRS Local Board, are you willing to serve the full term of the appointment (4 years)?

**yes.**

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Thank you for your interest to serve on the PSPRS Local Board. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 928-282-3113. For questions about the board, please contact Human Resources at 928-203-5038.



**PUBLIC SAFETY PERSONNEL RETIREMENT  
SYSTEM (PSPRS) LOCAL BOARD  
APPLICATION**

**R E C E I V E D**

JUL 20 2022

CITY OF SEDONA  
CITY CLERK'S OFFICE

**Thank you for your interest in serving on the City of Sedona Public  
Safety Personnel Retirement System Local Board**

Before You Begin. Please read the following instructions carefully before filling out your application - type or print clearly in ink only. A resume is not required, but you are encouraged to submit one. However, you must complete all questions and furnish all requested information, if an item does not apply to you, or if there is no information to be given write in the letters "NA" for "Not Applicable". Return your completed application to the City Clerk's Office at 102 Roadrunner Drive. Applications will be forwarded to the Mayor and City Council for evaluation and appointment.

All information submitted in this application is public information and subject to disclosure in response to a public records request.

YOUR NAME: Gary D. Jordan

ADDRESS: [Redacted] Sedona AZ 86336  
Street Address (No P.O. Boxes) (City) (State) (Zip)

MAILING ADDRESS (if different): 2370 W. SR89A, Ste 11 PB 241, Sedona AZ 86336

PHONE: Home [Redacted] Work: ..... Message Phone: \_\_\_\_\_

E-MAIL ADDRESS: [Redacted]

Do you live within the incorporated boundaries of the City of Sedona? Yes  No  (d) If so, for how many years? 10

If you live outside the incorporated boundaries of the City of Sedona, are you employed, own a business or have substantial ties (e.g. own property) within the incorporated boundaries of the City of Sedona? Yes  No  If so, please explain.

Have you previously been appointed to any position by the City of Sedona?  
Yes  No  If so, what and for what length of term? \_\_\_\_\_

In answering the following questions, if more space is required, please attach a separate sheet of paper.

**Qualifications - Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.**

I served in a military for 23 years, active and Reserve. First, in the U.S. Navy then in the U.S Air Force

In the Air Force. I was in the Security Police career field and have experience from law enforcement patrolman through Special Weapons teams; nuclear and information security and executive protection. Served on the HQ Tactical Air Command Staff and in the Air Force Operational Test and Evaluation Center.

I served the North Bay Fire District as a firefighter through Assistant Fire (volunteer) and then Assistant Chief (Fire Marshal and Operations Chief)

I was also a Florida Commission on Criminal Justice Standards and Training instructor for 10 years with Northwest Florida State College.

I also complete the Sedona Citizen's Academy in 2014 and the Citizen's Police Academy in 2015.

**What skills do you feel you possess that would enable you to help to achieve consensus on issues?**

I have been involved in negotiations (hostage and personnel) and contract management for several years. I have had to work with Air Force and civilian staffs members at all levels to gain consensus on a variety of issues as well as being a member of the labor negotiations tea for several years. I was also part of the team negotiating the transition from a defined contributions retirement plan to a defined benefits plan.

**What are your perceptions of the duties, responsibilities, and role of the PSPRS Local Board?**

- To decide all questions of eligibility and service credits, and determine the amount, manner and time of payment of any benefits under the system.
- To prescribe procedures to be followed by claimants in filing applications for benefits.
- To make a determination as to the right of any claimant to a benefit and to afford any claimant or the board of trustees, or both, a right to a rehearing on the original determination.

**What experience and special skills would you bring that would demonstrate an understanding of law enforcement retirement issues?**

With my association with law enforcement through the years, I have found the retirement issues to be similar to the fire service. Combined with my law enforcement experience, and as a veteran, I believe I can both empathize with a law enforcement officer's situation.

If appointed to the PSPRS Local Board, are you willing to serve the full term of the appointment (4 years)? Yes

Thank you for your interest to serve on the PSPRS Local Board. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 928-282-3113. For questions about the board, please contact Human Resources at 928-203-5038.

**Gary D. Jordan**  
2370 West SR89A  
Suite 11, PMB 241  
Sedona, AZ 86336

PHONE: [REDACTED] E-Mail: [REDACTED]

**PROFILE:**

Retired U.S. Air Force Officer; retired Assistant Fire Chief (Operations) of the North Bay Fire Control District in Niceville, FL; and adjunct instructor and course developer, Bachelor of Science in Safety Management program for Embry-Riddle Aeronautical University.

**EDUCATION AND CREDENTIALS:**

- FBI National Academy, graduate 1984
- Chief Fire Officer Designation 2002
- National Fire Academy Executive Fire Officer Program, graduate 2002
- Associate degree, Police Science, 1977 – Youngstown State University
- Bachelor's Degree, Law Enforcement Administration/Corrections, 1978 -- Youngstown State University
- Master's Degree, Public Administration, 1988 – Ball State University
- Associate degree, with honors, Fire Science, 1996 – Central Florida Community College
- Doctor of Philosophy, Engineering, Warren National University, 2009

**PROFESSIONAL EXPERIENCE:**

- 1970 - 1974: U.S Navy, submarine service. Interior Communications Electrician Third Class (Submarine Qualified)
- 1974 – 1976: U.S. Navy Reserves. Interior Communications Electrician Third Class (Submarine Qualified)
- 1977 -1978: Unite States Air Force Reserve. Law Enforcement Specialist (Staff Sergeant)
- 1977 – 1978: Department of Defense Police, Youngstown Municipal Airport/Air Force Reserve Base
- 1978 – 1994: U.S. Air Force, various positions worldwide the Security Police career field. Squadron, installation, major command, and HQ USAF assignments.
- 1990 – 2011: North Bay Fire Control District; volunteer firefighter, firefighter/EMT; firefighter/EMT/fire Inspector/fire investigator; Lieutenant, Captain and Assistant Chief (1990-1994); career Assistant Chief (1994-2011).
- 1/2002 – 3.2011 Northwest Florida State College, Florida Training Academy 21: Instructed basic and advanced law enforcement and Firefighter academies and courses.
- 2010 to present: Embry-Riddle Aeronautical University, adjunct instructor and course developer, in undergraduate Bachelor of Science in Safety Management program.



**CITY COUNCIL  
AGENDA BILL**

**AB 2885  
November 22, 2022  
Appointments**

**Agenda Item:** 4b  
**Proposed Action & Subject:** Discussion/possible action regarding the appointment and reappointment of Planning & Zoning Commissioners.

<b>Department</b>	City Clerk
<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. Applications

City Attorney Approval	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	\$ 0
City Manager's Recommendation	N/A	<b>Amount Budgeted</b>	\$ 0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** The Planning & Zoning Commission advertised seeking an applicant to fill three (3) open seats on the Commission with an application deadline of September 28, 2022. The vacancy is the result of three current member terms approaching expiration. A total of eight (8) applications were received for the vacancy, but two applicants withdrew so six (6) interviews were scheduled.

The Selection Committee, made up of Mayor Sandy Moriarty, Vice Mayor Scott Jablow, and Commissioner Charlotte Hosseini, interviewed the applicants on November 1, 2022 and unanimously recommended the reappointment of Kathy Levin, Sarah Wiehl, and appointment of Will Hirst to a seat on the Planning & Zoning Commission. The terms for Kathy and Sarah will begin immediately and end October 31, 2025 or until a successor is appointed, whichever is later, and the term for Will Hirst will begin immediately and end October 31, 2024 or until a successor is appointed, whichever is later.

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

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

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

**Alternative(s):** Council may request that the vacancies be reposted.

## MOTION

**I move to:** reappoint Kathy Levin and Sarah Wiehl to seats on the Planning & Zoning Commission with a term beginning immediately and ending October 31, 2025 or until a successor is appointed, whichever is later, and appoint Will Hirst to a seat on the Planning & Zoning Commission with a term beginning immediately and ending October 31, 2024 or until a successor is appointed, whichever is later.





**PLANNING AND ZONING COMMISSION APPLICATION**

**READ THE FOLLOWING INSTRUCTIONS CAREFULLY  
BEFORE FILLING OUT YOUR APPLICATION – TYPE OR PRINT CLEARLY  
IN INK ONLY.**

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given, write in the letters "N/A" for "Not Applicable".

**A RESUME MAY BE SUBMITTED, HOWEVER, YOU MUST COMPLETE ALL  
INFORMATION REQUESTED ON THE APPLICATION.**

Resume Attached: Yes  No

**R E C E I V E D**

**All information submitted in this application is public information and subject to  
disclosure in response to a public records request.**

SEP 05 2022

CITY OF SEDONA  
CITY CLERK'S OFFICE

**APPLICANT'S NAME:** Ronald Minzer

**MAILING ADDRESS:** [REDACTED]  
(Street or P.O. Box) (City) (State) (Zip)

**HOME ADDRESS:** Same  
(Street or P.O. Box) (City) (State) (Zip)

**PHONE:** Home: [REDACTED] Work: \_\_\_\_\_ Cellular: \_\_\_\_\_

**EMAIL:** [REDACTED]

Are there any days you will not be available for an interview?

no

**Sedona residency is a requirement to serve on the Planning and Zoning Commission.**

Do you live within the incorporated boundaries of the City of Sedona? Yes  No

If so, for how many years? 14

Have you previously been appointed by the City of Sedona to any position or commission/board other than the one for which you are currently applying?

Yes  No  If so, for which board/commission and for what length of term?

\_\_\_\_\_

In answering the following questions, if more space is required, please attach a separate sheet of paper.

**Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.**

I have been in the business of selling personal line insurance for approximately 40 years till my retirement

**What skills do you believe you possess that would enable you to help to achieve consensus on issues?**

I listen to all sides of a presentation before making a decision

**What are your perceptions of the duties, responsibilities, and role of the Planning and Zoning Commission?**

Doing what is best for the people of Sedona

**What experience and special skills would you bring that would demonstrate an understanding of the potential impacts, both positive and negative, of land development, i.e., environment, aesthetics, economics, transportation, storm-water/drainage, parking, etc.?**

I know nothing regarding all of these items and therefore come to serve without any preconceived issues

**What do you believe are the major land use and/or planning issues facing the Planning and Zoning Commission and the City at this time?**

The most obvious issue Sedona has is the lack of effective road system

Application Page 2

What do you hope to accomplish as a Planning and Zoning Commissioner?  
Listening to the issues the city is facing and doing the most effective thing to correct the issues.

If appointed to the Planning and Zoning Commission, are you willing to serve the full term of the appointment?  
Yes

Have you read the Sedona Community Plan, Land Development Code, or the Design Review Manual?  
No

Explain the differences between the Sedona Community Plan, the Land Development Code, and the Design Review Manual.  
At this time I have no idea

As a Planning and Zoning Commissioner, how will you make your decisions about a proposal or planning issue?  
Listening to all the facts and making a decision based on what is best for the people of the city

If you are appointed as a Planning and Zoning Commissioner and you are faced with a proposal that is supported by the Community Plan and applicable zoning codes, but you have reservations or do not personally support the proposal, what would you do?  
I would listen and decide based on what is best for all concerned i.e the people of the city and the city

**I thank you for your interest in serving on the Planning and Zoning Commission. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 282-3113. For questions about the Planning and Zoning Commission, please contact the Community Development Department at 282-1154.**

**Application Page 4**



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SEP 14 2022

PLANNING AND ZONING COMMISSION APPLICATION CITY OF SEDONA CITY CLERK'S OFFICE

READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE FILLING OUT YOUR APPLICATION - TYPE OR PRINT CLEARLY IN INK ONLY.

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given, write in the letters "N/A" for "Not Applicable".

A RESUME MAY BE SUBMITTED, HOWEVER, YOU MUST COMPLETE ALL INFORMATION REQUESTED ON THE APPLICATION.

Resume Attached: Yes [X] No [ ]

All information submitted in this application is public information and subject to disclosure in response to a public records request.

APPLICANT'S NAME: BRUCE K. MISAMORE

MAILING ADDRESS: [Redacted] (Street or P.O. Box) (City) (State) (Zip)

HOME ADDRESS: JANE (Street or P.O. Box) (City) (State) (Zip)

PHONE: Home: [Redacted] Work: [Redacted] Cellular: [Redacted]

EMAIL: [Redacted]

Are there any days you will not be available for an interview?

MANY - SET AN APPOINTMENT

Sedona residency is a requirement to serve on the Planning and Zoning Commission.

Do you live within the incorporated boundaries of the City of Sedona? Yes [X] No [ ]

If so, for how many years? HOMEOWNER FOR 14 YEARS

Have you previously been appointed by the City of Sedona to any position or commission/board other than the one for which you are currently applying?

Yes [ ] No [X] If so, for which board/commission and for what length of term?

In answering the following questions, if more space is required, please attach a separate sheet of paper.

Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.

FORMERLY ONE OF THE MOST SENIOR OIL AND GAS INDUSTRY EXECUTIVES IN THE WORLD. FORMER BOARD & EXECUTIVE COMMITTEE MEMBER OF REGIONAL PLANNING COMMISSION, CHAIR OF ZONING COMMITTEE FOR CITY, COUNTY ZONING COMMITTEE, CITY HOUSING CODE COMMITTEE, COUNTY AND CITY TRANSPORTATION COMMITTEE, COUNTY EDUCATION COMMITTEE

What skills do you believe you possess that would enable you to help to achieve consensus on issues?

TOP MANAGEMENT SKILLS, FINANCIAL SKILLS, STRATEGIC PLANNING SKILLS, RELEVANT TOP LEVEL PLANNING AND ZONING EXPERIENCE

What are your perceptions of the duties, responsibilities, and role of the Planning and Zoning Commission?

OVERSEEING PLANNING AND ZONING DECISIONS IN LINE WITH THE COMMUNITY PLAN.

What experience and special skills would you bring that would demonstrate an understanding of the potential impacts, both positive and negative, of land development, i.e., environment, aesthetics, economics, transportation, storm-water/drainage, parking, etc.?

PREVIOUS TOP LEVEL EXPERIENCE IN ALL THESE AREAS

What do you believe are the major land use and/or planning issues facing the Planning and Zoning Commission and the City at this time?

TRANSPORTATION, AFFORDABLE HOUSING, PROTECTION OF LAND TO PRESERVE CHARACTER OF SEDONA, AMENDMENTS TO ZONING AND DEVELOPMENT CODES TO FACILITATE THESE CONCERNS.

What do you hope to accomplish as a Planning and Zoning Commission member?

BRING MY CORPORATE AND PLANNING EXPERIENCE TO  
BEAR ON LOCAL SEDONA ISSUES.

If appointed to the Planning and Zoning Commission, are you willing to serve the full term of the appointment?

YES

Have you read the Sedona Community Plan, Land Development Code, or the Design Review Manual?

NOT RECENTLY - BUT FORMERLY

Explain the differences between the Sedona Community Plan, the Land Development Code, and the Design Review Manual.

COMMUNITY PLAN - STRATEGY  
LAND DEVELOPMENT - TACTICS  
DESIGN REVIEW - ADMINISTRATION

As a Planning and Zoning Commissioner, how will you make your decisions about a proposal or planning issue?

TO THE BEST OF MY ABILITY.

If you are appointed as a Planning and Zoning Commissioner and you are faced with a proposal that is supported by the Community Plan and applicable zoning codes, but you have reservations or do not personally support the proposal, what would you do?

WE'LL SEE.

Thank you for your interest in serving on the Planning and Zoning Commission. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 282-3113. For questions about the Planning and Zoning Commission, please contact the Community Development Department at 282-1154.



## **BRUCE K. MISAMORE**

**Home Mailing Address:** [REDACTED]

**Mobile Telephone:** [REDACTED]

**E-Mail:** [REDACTED]

**Sedona Telephone:** [REDACTED]

### **CAREER HISTORY**

**YUKOS OIL COMPANY** – Moscow, Russian Federation – February 2001 to December 2005

**Chief Financial Officer and Member of the Managing Board; Member of the Executive Committee of the Board of Directors; Deputy Chairman of the Managing Board**

Was the senior financial executive for the largest Russian oil company and fourth largest oil company in the world, responsible for all aspects of financial management of the company as well as executive responsibilities as a member of the Managing Board and as a member of the Executive Committee of the Board of Directors. Direct and indirect reports of about 5,000. Led a legal campaign against Russia and Vladimir Putin for the largest expropriation in history resulting in over \$80 billion in verdicts against Russia.

**PENNZENERGY COMPANY** – Houston, Texas – December 1998 to October 1999

**Senior Vice President – Finance and Treasurer**

Managed the financial birth of a new, large, public independent oil & gas company – the then largest independent oil and gas company in the US - and then as a result of the merger of PennzEnergy (former Pennzoil Company) with Devon Energy Corporation elected to temporarily retire.

**PENNZOIL COMPANY** - Houston, Texas - July 1993 to December 1998

**Vice President and Treasurer** - June 1996 to December 1998; **Assistant Treasurer** - July 1993 to May 1996

Designed, implemented and led Pennzoil's corporate wide strategic planning process leading to a fully integrated system which included implementation of long-term strategic planning, value-based management, a new capital budgeting process, implementation of defined strategic initiatives arising from the plan including coordination of all M&A activities and new incentive compensation plans; accomplished several billion \$ of innovative financings and was a leader in joint venture financing activities, including notably chairing the Azerbaijan International Oil Company financing effort for an "early oil" pipeline from the Caspian Sea. Managed the financial aspects of the spin-off of Pennzoil's downstream operations in 1998 and the successful merger with Quaker State Corporation and worked with the operating groups in developing strategic and operating plans for the new Pennzoil-Quaker State Company.

**Bruce K. Misamore - Page 2**

**USX CORPORATION/MARATHON OIL COMPANY - May 1976 to July 1993**

- Director, Corporate Finance, USX - Pittsburgh, Pennsylvania – May 1993 to July 1993
- Manager, Financial Planning, Marathon Oil Company - Houston, Texas - April 1991 to May 1993, Findlay, Ohio - January 1984 to March 1991
- Assistant Treasurer, Marathon Petroleum Company - Findlay, Ohio - October 1983 to December 1983
- International Financial Representative - London, England - July 1979 to September 1983
- Supervisor, International Banking - Findlay, Ohio - June 1978 to June 1979
- Acting Manager, Credit Analysis - Findlay, Ohio - February 1978 to May 1978
- Advanced Financial Analyst, Financial Planning - Findlay, Ohio - May 1977 to January 1978; Financial Analyst, Financial Planning - Findlay, Ohio - May 1976 to April 1977
- From 1983-1993 was responsible for all of Marathon's corporate finance activities, including arranging over \$4 billion of innovative financings; was Treasurer for all of Marathon's international companies and Treasurer of virtually all of the domestic subsidiaries.
- While in London was Treasurer of Marathon's U.K. operations and its international oil & gas development/production organization which was based in London; built the London Treasury organization, managed over \$1 billion of innovative financings and assisted in arranging the largest builders' risk package ever arranged to that point on Lloyd's.
- Was Marathon's representative for all joint venture financing activities in all segments of its business operations and chaired or was a leader in the financing activities of all of those ventures.

**THE TOLEDO TRUST COMPANY - Toledo, Ohio – January 1974 to April 1976**

**Assistant Investment Officer**

Managed personal and pension trust funds, provided bank management and investment management consulting services for correspondents, accomplished bank acquisitions for the holding company, and coordinated new branch bank applications. Additionally, taught bank management and investment management courses for the American Institute of Banking.

**BOWLING GREEN STATE UNIVERSITY – Bowling Green, Ohio – September 1972 to June 1974**

**Instructor of Finance** – September 1973 to June 1974

**Graduate Assistant in Finance** – September 1972 to June 1973

Taught junior and senior level courses in basic corporate finance, case problems in finance, and a course in quantitative finance.

**EDUCATIONAL DATA**

**Findlay High School, Findlay, Ohio**

1968 - College Preparatory

**Bowling Green State University, Bowling Green, Ohio**

B.S.B.A. Degree - June 1972

Major in Finance, Banking and Credit Management

M.B.A. Degree - June 1973

Concentration in Finance

**PROFESSIONAL DEVELOPMENT PROGRAMS**

Marathon Oil Company Management Practices Program – 1978

International Financial Management Program, International Management Institute, Geneva, Switzerland – 1983

Marathon Oil Company Advanced Management Program, Indiana University - 1983

**PROFESSIONAL ASSOCIATIONS AND OTHER**

Member of Financial Executives International (FEI), and former 11 year member of the Board of its Houston Chapter. Director of FEI Houston Scholarship Foundation from 2012 until early 2021. Past member of FEI National International Oversight Committee and FEI Communications Work Group.

Member of the President's Club, the Dean's Council of the College of Business Administration, and past member of the Board of Directors, Executive Committee of the Board, Treasurer and past Chairman of the Investment Committee of the BGSU Foundation at Bowling Green State University. Member of both BGSU Campaign Steering Committees.

Past Chairman, Finance Department Advisory Council, BGSU.

Member of Knights of the Vine (Master Knight), the Chaine des Rotisseurs (VP and Treasurer of Sedona Bailliage, Houston Bailliage, Lacs Et Des Bois Bailliage), the International Wine and Food Society ( at large member and past VP, Cellar Master and Director of Houston Chapter).

Co-owner of Javelina Leap Winery, Cornville, AZ. Member of Verde Valley Wine Consortium – 2009 to present; Founding member of Southwest Wine Center, Yavapai College.

**DIRECTORSHIPS**

Director, US-Russia Business Council, Washington, D.C. – from 2001 until April, 2006  
Director, International Institute for Management Development (IMD) Foundation, Lausanne, Switzerland – from 2002 until October, 2006  
Supervisory Board Member, Mazeikiu Nafta, Lithuania – from 2002 until May, 2006  
Director of Yukos Finance B.V., Yukos International UK B.V. and associated Yukos-related companies – 2005 to 2015; Director of 2 Dutch Stichtings which held YUKOS Oil Company international assets  
Director Emeritus, CompUDopt, Houston, TX – on Board 2011-2017– providing used computers to needy kids

**RECOGNITIONS**

As a result of civic involvement and achievement while living in Toledo, was recognized as one of Toledo's Ten Outstanding Young Men of 1975. Am listed in the 1978 edition of Outstanding Young Men of America, and various editions of Who's Who in Finance and Industry and similar publications.

2004 IR Magazine Awards – Award for the Best Investor Relations by a CEO/CFO in Russia.

Recognized as an Accomplished Graduate of Bowling Green State University – March, 2004

Commencement Speaker at BGSU – December, 2011

## **PAST CIVIC AND PROFESSIONAL ACTIVITIES**

**Financial Analysts Society of Toledo and Financial Analysts Federation - 1974-79**

**Toledo Jaycees (Treasurer; Outstanding First Year Jaycee in Toledo and Toledo Metropolitan Area; representative to Community Planning Council of Northwest Ohio) - 1975-76**

**United Way of Northwest Ohio - Small Business Account Executive - 1975-76**

**Findlay Civic Music Association - Campaign roles - 1978-79**

**American Red Cross - Hancock County Chapter - Volunteer - 1976-1979 & 1983-1991**

**BGSU Alumni Association - Recent Graduates Committee - 1975-76  
Alumni Awards Committee - Chairman - 1991  
Toledo Alumni Chapter - Organizing Committee - 1975-76  
Hancock County Alumni Chapter - Organizing Committee - 1976-79**

**BGSU Alumni Band - Board Member - 1984-88, President - 1986-87.**

**BGSU College of Business Administration Alumni Advisory Council - 1986-1992**

**Kiwanis Club of Findlay, Ohio - Member - 1976-1979 & 1983-1991, Chair of Various Committees, Board of Directors - 1979 & 1985-1991, Vice President - 1989-1990, President - 1990-91, Distinguished Officer - Ohio District - 1990-91**

**Findlay Kiwanis Foundation - Founding Trustee, President - 1990**

**Hancock County Regional Planning Commission - Board of Trustees - 1978-79 & 1984-1991, Executive Committee - 1985-1991, Findlay Zoning Advisory Committee Chairman - 1988-1991, Transportation Committee, Housing Code Committee, Hancock County Zoning Committee**

**Hancock County United Way - Special Gifts Division Chairman - 1978-79, Campaign Consultants Chairman - 1984, Corporate Division Team Captain - 1985, Assistant Corporate Division Chairman - 1986, Corporate Division Chairman - 1987.**

**Findlay YMCA Indian Guides - Member - 1983-1991, Nation Chief - 1989-90, Nation Sachem - 1990-91**

**Put Han Sen Area Council - Boy Scouts of America – Eagle Scout – 1964, Cubmaster - 1987-89, Council Executive Committee - 1989-1991, Council Vice President of Cub Scouting - 1989-1991**

**Hancock County Historical Museum Campaign - Audit Committee Chairman - 1984**

**Findlay-Hancock County Chamber of Commerce - Member - 1989-1991**

**Findlay Community Development Foundation - Education Committee - 1990-91**

**Citizens for Findlay Schools, Inc. - Treasurer - 1989-91**

**Findlay City Schools Reorganization Committee - 1988-89.**

**Findlay Enrichment Programs, Inc. (gifted education) - Founding Trustee and Board Member - 1986-88.**

**Findlay Silver Blades Ice Skating Club - Board Member, Treasurer - 1987-89, Vice President - 1989-90.**

**Champions Park North Subdivision – Board Member, Treasurer – 1992-1995, President – 1995-1997, Treasurer – 1998-1999**

**Sam Houston Area Council – Boy Scouts of America – Troop Committee – 1991-1996**

**Houston Planning Forum – 1993-2001**

**Champions MPC Homeowners Association – Vice President – 2007-2008**

**National Campaign Steering Committee – Bowling Green State University – 2006-2009; 2016-2021**

RECEIVED

SEP 14 2022



**PLANNING AND ZONING COMMISSION APPLICATION**

CITY OF SEDONA  
CITY CLERK'S OFFICE

**READ THE FOLLOWING INSTRUCTIONS CAREFULLY  
BEFORE FILLING OUT YOUR APPLICATION – TYPE OR PRINT CLEARLY  
IN INK ONLY.**

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given, write in the letters "N/A" for "Not Applicable".

**A RESUME MAY BE SUBMITTED, HOWEVER, YOU MUST COMPLETE ALL  
INFORMATION REQUESTED ON THE APPLICATION.**

Resume Attached: Yes  No

**All information submitted in this application is public information and subject to  
disclosure in response to a public records request.**

**APPLICANT'S NAME:** Will Hirst

**MAILING ADDRESS:** [Redacted] Sedona AZ 86336  
(Street or P.O. Box) (City) (State) (Zip)

**HOME ADDRESS:** [Redacted] Sedona AZ 86336  
(Street or P.O. Box) (City) (State) (Zip)

**PHONE:** Home: [Redacted] Work: \_\_\_\_\_ Cellular: [Redacted]

**EMAIL:** [Redacted]

**Are there any days you will not be available for an interview?**

No

**Sedona residency is a requirement to serve on the Planning and Zoning Commission.**

Do you live within the incorporated boundaries of the City of Sedona? Yes  No

If so, for how many years? 3

Have you previously been appointed by the City of Sedona to any position or commission/board other than the one for which you are currently applying?

Yes  No  If so, for which board/commission and for what length of term?

\_\_\_\_\_

**In answering the following questions, if more space is required, please attach a separate sheet of paper.**

**Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.**

In the course of building several homes, a mountain cabin and a commercial building, I have gained a layman's knowledge of Planning and Zoning. I have been the principal of several businesses and for many years, I served as the Executive Director of a labor organization that represented city and county employees. I also served as the Executive Director of the Monterey County IHSS Public Authority and sat on a number of advisory boards and committees. This has provided me with a working knowledge of Roberts Rules of order, open meeting laws, and how successful government commissions work. I served as the chief negotiator for hundreds of memorandums of understandings and have completed course work at Harvard on win-win negotiations.

**What skills do you believe you possess that would enable you to help to achieve consensus on issues?**

I have years of experience helping extremely diverse bargaining teams reach consensus on some tough issues. Successful negotiations requires the ability to get to yes. I have learned how to listen and am not afraid to ask questions. If selected, I would use these skills to help achieve consensus on difficult decisions presented to the Planning and Zoning Commission.

**What are your perceptions of the duties, responsibilities, and role of the Planning and Zoning Commission?**

I believe I would have the responsibility to attend meetings, take the time to thoroughly prepare for those meetings, and participate in site visits as needed. I believe I would have the responsibility to ask questions to insure that I fully understand the issues. I believe that I must at all times to be ethical, and avoid any conflicts of interest.

**What experience and special skills would you bring that would demonstrate an understanding of the potential impacts, both positive and negative, of land development, i.e., environment, aesthetics, economics, transportation, storm-water/drainage, parking, etc.?**

The residents and business owners of Sedona have some strong and often competing ideas on what our future should look like. Part of my success over the years has been in the ability to achieve consensus with diverse groups. We clearly have a traffic problem, a housing shortage, and drainage and sewer issues. There isn't a simple fix for any of these, but we can work to improve them and do everything possible to make sure we do not make them worse. We need to make an extreme effort to insure that Sedona can remain the amazing paradise that nature has blessed us with. I also believe that climate change is real and believe this needs to be kept in mind if we are to make the best decisions possible. Sedona is a very special place and I hope that I can play a small roll achieving a better tomorrow for our community.

**What do you believe are the major land use and/or planning issues facing the Planning and Zoning Commission and the City at this time?**

I believe those that serve our community should be able to live in or reasonably near the community they serve. We have a Traffic problem that will be difficult to fix. We are loved to death. We have a high percentage of seniors with limited Medical facilities. Parking, especially near some of our amazing trail heads continues to be an issue for both tourists and residents.

**What do you hope to accomplish as a Planning and Zoning Commission member?**

I do not have any magic bullets for the problems facing Sedona. I do have a passion to see that it remains a remarkable place to live and visit. I hope that my contribution will be to insure that we succeed in having a well-functioning commission that serves Sedona in a way that we can all be proud of.

**If appointed to the Planning and Zoning Commission, are you willing to serve the full term of the appointment?**

Yes

**Have you read the Sedona Community Plan, Land Development Code, or the Design Review Manual?**

Yes

**Explain the differences between the Sedona Community Plan, the Land Development Code, and the Design Review Manual.**

The Community Plan is an expression of the community's goals and policies for future growth and development. So the Community Plan is a goal. The Land Development Code promotes the public health, safety, and welfare by providing appropriate and reasonable controls for the development and use of lands in Sedona, while also protecting the rights of property owners. So, compliance of the Code is not just a goal, it is required. The Design Review Manual includes supporting materials to the Land Development Code.

**As a Planning and Zoning Commissioner, how will you make your decisions about a proposal or planning issue?**

Everyone deserves to be treated fairly. So, I will ask if it is in line with our Community Plan. I will ask if it meets the requirements of our Land Development Code and is in line with our Design Review Manual. If the project meets all of those requirements, I would explore if there are any possible adjustments that should at least be considered in the best interest of our communities' future.

**If you are appointed as a Planning and Zoning Commissioner and you are faced with a proposal that is supported by the Community Plan and applicable zoning codes, but you have reservations or do not personally support the proposal, what would you do?**

I would share my reservations with the other commissioners and see if it might be possible to reach a consensus on what it would take to resolve those issues.



**Thank you for your interest in serving on the Planning and Zoning Commission. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 282-3113. For questions about the Planning and Zoning Commission, please contact the Community Development Department at 282-1154.**

RECEIVED

AUG 08 2016

CITY OF SEDONA  
CITY CLERK'S OFFICE

*Re-applied*



Received  
SEP 20 2013  
CITY OF SEDONA  
CITY CLERK'S OFFICE

# PLANNING & ZONING COMMISSION APPLICATION

**Thank you for your interest in serving on  
the City of Sedona Planning and Zoning Commission**

**Before You Begin.** Please read the following instructions carefully before filling out your application – type or print clearly in ink only. A resume is not required, but you are encouraged to submit one. However, you must complete all questions and furnish all requested information. If an item does not apply to you, or if there is no information to be given write in the letters "NA" for "Not Applicable". Return your completed application to the City Clerk's Office at 102 Roadrunner Drive. Applications will be forwarded to the Mayor and City Council for evaluation and appointment.

All information submitted in this application is public information and subject to disclosure in response to a public records request.

YOUR NAME: Kathleen M. Levin

ADDRESS: [Redacted] Sedona AZ. 86336  
(Street No P.O. Boxes) (City) (State) (Zip)

MAILING ADDRESS (if different): \_\_\_\_\_

PHONE: Home [Redacted] Work: \_\_\_\_\_ Message Phone: [Redacted]

E-MAIL ADDRESS: [Redacted]

Sedona residency is a requirement to serve on the Planning and Zoning Commission. Do you live within the incorporated boundaries of the City of Sedona? Yes (X) No ( ) If so, for how many years? 27

Have you previously been appointed to any position by the City of Sedona? Yes (X) No ( ) If so, what and for what length of term? Planning & Zoning Commission  
Two year term

In answering the following questions, if more space is required, please attach a separate sheet of paper. See attached.

Resume included.

RECEIVED  
SEP 08 2022  
CITY OF SEDONA  
CITY CLERK'S OFFICE

*Re-applied*

RECEIVED  
AUG 27 2019  
CITY OF SEDONA  
CITY CLERK'S OFFICE  
*Re-applied*

2a

Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.

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2b

What skills do you feel you possess that would enable you to help to achieve consensus on issues?

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2c

What are your perceptions of the duties, responsibilities and role of the Planning and Zoning Commission?

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2d

What experience and special skills would you bring that would demonstrate an understanding of the potential impacts, both positive and negative, of land development, i.e., environment, aesthetics, economics, transportation, storm-water/drainage, parking, etc?

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3a What do you feel are the major land use and/or planning issues facing the Planning and Zoning Commission and the City at this time?

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3b What do you hope to accomplish as a Planning and Zoning Commission member?

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3c If appointed to the Planning and Zoning Commission, are you willing to serve the full term of the appointment?

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3d Have you read the Sedona Community Plan, Land Development Code or the Design Review Manual?

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3e Explain the differences between the Sedona Community Plan, the Land Development Code and the Design Review Manual.

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4a As a Planning and Zoning Commissioner, how will you make your decisions about a proposal or planning issue?

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4b If you are appointed as a Planning and Zoning Commissioner and you are faced with a proposal that is supported by the Community Plan and applicable zoning codes, but you have reservations or do not personally support the proposal, what would you do?

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Thank you for your interest to serve on the Planning and Zoning Commission. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 282-3113. For questions about the Planning and Zoning Commission, please contact the Community Development Department at 282-1154.

**Kathleen M. Levin**  
**Planning & Zoning Application Commission Responses**

**Question 2a**

I have a B.A. in Sociology, an M.A. in Sociology (Planning) and a Paralegal degree. I have worked in regional and city planning for 13 years (NACOG and the City of Sedona). I also served on the first Sedona Planning and Zoning Commission from 1988-90. My relevant employment experiences include working with city staff, the public, volunteer commissions and citizens committees on housing, transportation, historic preservation, general plans and in the review of current development projects. I have served on many non-profit boards and I have lived in Sedona for 37 years (my maternal grandparents retired here in 1956). See attached resume.

**Question 2b**

I am a team player by nature, analytical, methodical, and dependable.

**Question 2c**

The P&Z has the responsibility to deliberate and consider for approval new development projects, conditional use permits, amendments to the Community Plan, revisions to the Land Development Code, and review of Specific Plans that are presented to the Commission.

**Question 2d**

My employment with the City of Sedona involved the review of current development projects and the preparation of staff reports for their consistency with the Community Plan. This entailed the review of applicant submissions including letters of intent, blueprints, site plans, economic analyses, and traffic impact studies. I was also responsible for preparing revisions to the Land Development Code ("Code") and two complete re-codifications of the Code.

**Question 3a**

This is an exciting time for the City of Sedona because the new Community Plan is moving toward a public vote in March 2014 and development is picking up after the great recession. I don't see "issues" so much as I see upcoming opportunities to 1) encourage development in keeping with the citizens' stated vision for Sedona as expressed in the new Community Plan and 2) participate in the creation of "Specific Plans" for key areas in Sedona.

**Kathleen M. Levin**  
**Planning & Zoning Commission Application Responses**  
**Page 2**

**Question 3b**

My goal as a commissioner is to be well informed, well prepared and able to articulate the city's regulations, policies, and the new Community Plan vision. I have no personal agenda.

**Question 3c**

Yes

**Question 3d**

Yes

**Question 3e**

The Sedona Community Plan articulates a "vision" for our community and serves as a guide for future growth, the development of more "Specific Plans" and the city's capital improvement plan. The Land Development Code is a set of land use and zoning regulations that help implement the Plan. As part of the Land Development Code, the Design Review Manual establishes design standards for buildings, siting, orientation, landscaping, massing and lighting.

**Question 4a**

My decisions will be based on an understanding of the material provided by applicants, staff's analysis and recommendations on the proposal/issue, and the comments of other commissioners and the public. I will apply my knowledge and experience to the deliberation as well.

**Question 4b**

The role of a commissioner is to review and approve projects that meet or exceed the expectations of the Community Plan and applicable zoning codes. If I had a reservation or question about the project, I would first raise it in a commission work session. Beyond that, I might also meet with the staff person responsible for the project and/or the Director of Community and Economic Development for clarification.

**EDUCATION**

**Northern Arizona University, Flagstaff, Arizona**  
Masters of Arts, Applied Sociology (Planning) May 1981

**Philadelphia Institute of Paralegal Training, Philadelphia, PA**  
Paralegal Degree in Litigation June 1972

**Allegheny College, Meadville, PA**  
Bachelor of Arts, Sociology March 1972

**PUBLICATIONS**

As Associate Planner for the City of Sedona, prepared brochures, website, and all collateral material related to the update to the Community Plan and for the Historic Preservation Commission

As Wish Coordinator for the Make-A-Wish Foundation of Northern Arizona, prepared volunteer training manual, board training modules in fund-raising and board recruitment

As head of the Sedona Montessori School, responsible for all external publications, including the Parent Handbook and school brochure

As Director of Development of the Verde Valley School, responsible for all publications related to student recruitment, annual fund, capital campaign, and alumni relations

As Community Planner for NACOG, responsible for wide range of studies, surveys, grants, comprehensive plans on land use, economic development, housing and transit

**EMPLOYMENT**

**City of Sedona, Arizona, Sedona, Arizona**  
Department of Community Development  
Associate Planner, Long Range Planning Division November 2004 – 2012 (Retired)

**Primary Responsibilities**

- Principal responsibility for citizen engagement and public outreach materials for the update to the Sedona Community Plan
- Provide research, evaluation and update of ordinances and amendments related to the Land Development Code.
- Assist in the initiation, management and coordination of special projects and studies pertaining to long-range community development issues and activities
- Prepare staff reports for new development projects
- Serve as staff liaison to the Historic Preservation Commission

**Make-a-Wish Foundation of No. Arizona, Sedona, Arizona**  
Wish Coordinator, May 1997- May 2004 Part-time  
Interim Executive Director, August-November, 2001

Responsible for all program services. Design and execute medical outreach and volunteer training programs. Research and prepare grant applications. Fulfill public speaking engagements with large and small businesses and organizations. As interim Executive Director, supervise staff of two, conduct board training, and manage all operations of chapter office affiliated with the largest wish-granting charity in the world.

**Levin & Associates, Sedona, Arizona 1994-1997**  
Private consulting offering grant-writing and technical assistance to non-profit boards

Prepared successfully competitive federal and state government funded grants totaling \$1.2 million for the following clients: Sedona Cultural Park, Sedona-Red Rock High School, and Coconino County in cooperation with Northern Arizona University. Acted as the liaison for the Sedona Academy with N.A.U. and supervised the research effort



and preparation of the Background Report for the Sedona Forum XIII on Youth.

**Sedona Montessori School**, Sedona, Arizona 1989 -1993  
Administrator

Responsible for the administration of non-profit, tuition based independent school operation for (3) pre-primary, elementary, after-school and summer programs. Managed the teaching staff of 12, and responsible for community relations, fund-raising, publications, marketing, student recruitment, compliance with all state and federal agencies.

**Verde Valley School**, Sedona, Arizona 1983-1988  
Director of Development and Assistant Headmaster

Responsible for fund-raising (\$150K annual fund and \$1 million capital campaign), alumni relations, external publications, publicity, and event planning on and off campus for independent tuition-based boarding and day college-preparatory high school. Supervised staff of two and 100 volunteers nationwide. Assumed the role of the Headmaster in his absence. Publications included semi-annual newsletter, annual fund appeals, capital campaign booklet, and alumni events. Traveled extensively within the U.S. for fund-raising and alumnae events.

**Northern Arizona Council of Governments**, Flagstaff, Arizona 1978-1983  
Community and Regional Planner

Provided technical assistance in the areas of housing rehabilitation, planning and zoning, transit and economic development on a regional level and to the towns of Williams and Holbrook, and Apache County. Oversaw regional multi-million dollar H.U.D. Community Development Block Grant program for the five northern Arizona counties.

**Coconino County Planning Department**, Flagstaff, Arizona June-September, 1978  
Planning Assistant for graduate internship

**Vermont Department of Social Welfare and Vermont Community Action**  
White River Junction, Vermont 1976-1977  
Social Worker

**Gifford Hospital**, Randolph, Vermont 1974-1976  
Out Patient X-Ray and Laboratory Department Clerk

**Richard Burstein, Esq.**, Randolph, Vermont 1974-1977  
Paralegal

**Clapp & Eisenberg, Esqs.**, Newark, New Jersey 1972-1974  
Paralegal

## ACTIVITIES

- \* Verde Valley Voices member (current)
- \* Sedona Arts Center, board member (current)
- \* Volunteer for the Make-A-Wish Foundation of Arizona
- \* St. Andrew's Episcopal Church Vestry member
- \* The Orme School Senior Class Annual Fund Chairperson
- \* Flagstaff Arts and Leadership Academy, Board of Trustees
- \* Sedona Academy, board member
- \* Yavapai County Community Foundation, affiliate of the Arizona Community Foundation, board member
- \* Verde Valley Sanctuary, founding board member and chairman
- \* City of Sedona Planning and Zoning Commission member (appointed)
- \* Citizens for Incorporation of Sedona, chairman of boundary committee
- \* Sedona Youth Activity Program, founding board member
- \* Sedona Historical Society, board member
- \* Sedona Sanitary District, board member and chairman (elected)
- \* ADEQ Unique Waterway for Oak Creek committee member
- \* Sedona Inter-Agency Working Group member
- \* Sedona-Red Rock Taxpayers Association board member

## **Cherise Fullbright**

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**From:** Donna Puckett  
**Sent:** Tuesday, August 27, 2019 3:47 PM  
**To:** Susan Irvine; Cherise Fullbright  
**Cc:** Karen Osburn; Warren Campbell; Kathy Levin2  
**Subject:** Fw: City of Sedona: Three PZ commissioners sought

**From:** Kathy Levin <[REDACTED]>  
**Sent:** Tuesday, August 27, 2019 3:41 PM  
**To:** Donna Puckett <DPuckett@sedonaaz.gov>  
**Subject:** Re: City of Sedona: Three PZ commissioners sought

Donna,

I wish to apply for a continued seat on the Planning and Zoning Commission.

Kathy

Begin forwarded message:

**From:** Sedona eNotify <noreply@sedonaaz.gov>  
**Date:** August 27, 2019 at 11:00:50 AM MST  
**To:** [REDACTED]  
**Subject:** City of Sedona: Three PZ commissioners sought  
**Reply-To:** noreply@sedonaaz.gov

### **Three PZ commissioners sought**

Post Date: 08/27/2019 10:21 a.m.

SEDONA, Ariz. -- The city of Sedona is seeking applicants for three seats on the Planning and Zoning Commission as one member has resigned and two current member terms approach expiration.

This voluntary body, established by city council, consists of seven citizens appointed to play a critical role in the city's planning process. The commission serves as council advisor on land use, growth, and development issues. Commission duties include making recommendations to the city council on Community Plan annual and 10-year updates, Land Development Code amendments, property zone changes, and subdivision applications. In addition, the commission makes the final decision on conditional use permits and development review applications.

Applicants must reside within Sedona city limits and should have interest, experience, or knowledge in land use or related fields including, but not limited to, architecture, construction, landscaping, and planning.



RECEIVED  
SEP 12 2022

RECEIVED  
APR 28 2021

**PLANNING AND ZONING COMMISSION APPLICATION**  
CITY OF SEDONA PLANNING AND ZONING COMMISSION OFFICE  
*Re-Applied*

READ THE FOLLOWING INSTRUCTIONS CAREFULLY  
BEFORE FILLING OUT YOUR APPLICATION – TYPE OR PRINT CLEARLY  
IN INK ONLY.

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given, write in the letters "N/A" for "Not Applicable".

A RESUME MAY BE SUBMITTED, HOWEVER, YOU MUST COMPLETE ALL INFORMATION REQUESTED ON THE APPLICATION.

Resume Attached: Yes  No

All information submitted in this application is public information and subject to disclosure in response to a public records request.

APPLICANT'S NAME: SARAH JANE WIEHL

MAILING ADDRESS: [REDACTED] SEDONA AZ 86336  
(Street or P.O. Box) (City) (State) (Zip)

HOME ADDRESS: [REDACTED] SEDONA AZ 86336  
(Street or P.O. Box) (City) (State) (Zip)

PHONE: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cellular: [REDACTED]

EMAIL: [REDACTED]

Are there any days you will not be available for an interview?  
NO, OTHER THAN IF TRAVELING

**Sedona residency is a requirement to serve on the Planning and Zoning Commission.**

Do you live within the incorporated boundaries of the City of Sedona? Yes  No

If so, for how many years? SINCE 2017 PART TIME  
SINCE 2020 FULL TIME

Have you previously been appointed by the City of Sedona to any position or commission/board other than the one for which you are currently applying?

Yes  No  If so, for which board/commission and for what length of term?

In answering the following questions, if more space is required, please attach a separate sheet of paper.

RECEIVED  
SEP 15 2025

## PLANNING AND ZONING COMMISSION APPLICATION

**Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.**

Please see attached resume.

**What do you believe you possess that would enable you to help to achieve consensus on the issues?**

Skills that I possess that have helped me achieve consensus include:

- Conflict Resolution
- Cross Generational Conversations and Effective Communication
- Collaborative and Egalitarian Attitude
- Solution Oriented & Growth Mindset

**What are your perceptions of the duties, responsibilities, and role of the Planning and Zoning Commission?**

I believe role would be to serve the citizens of Sedona by assisting the Planning & Zoning Commission in making land use and zoning decisions that are consistent with the policies and plans as formally adopted by the Sedona Community Plan, and in support of improving the quality of life for the City of Sedona residents.

**What experience and special skills would you bring that would demonstrate an understanding of the potential impacts, both positive and negative, of land development, i.e., environment, aesthetics, economics, transportation, storm-water/drainage, parking, etc.?**

Please see attached resume.

**What do you believe are the major land use and/or planning issues facing the Planning and Zoning Commission and the City at this time?**

- Traffic and Walkability
- Economic Diversity and Affordable Housing
- Sustainability
- Environmental Stewardship

**What do you hope to accomplish as a Planning and Zoning Commission member?**

I would work in a collaborative effort to support the City of Sedona's long term planning goals, while integrating and addressing concerns of local businesses and residents. Through this approach, I would expect to achieve progress and forward movement through innovation and

high-level problem solving skills for the well-being and in the best interest of the greatest amount of people possible. I would be a conduit for bridging the gap in areas of conflict in order to achieve effective resolution and targeted solutions.

**If appointed to the Planning and Zoning Commission, are you willing to serve the full term of the appointment:**

If appointed, I would be pleased and honored to serve the full term.

**Have you read the Sedona Community Plan, Land Development Code, or the Design Review Manual?**

As a professional engineer, I have read all three, and am familiar with them.

**Explain the differences between the Sedona Community Plan, the Land Development Code, and the Design Review Manual.**

The Sedona Community Plan is a comprehensive document expressing the community goals, priorities and policies for future growth and development within the City of Sedona. It outlines major outcomes desired for implementation, with a focus on sustainability and unified vision. The Plan is a resource guide providing the foundation/goals for Planning Commission and City Council development decisions. It is an umbrella to which other more specific/detailed plans (LDC, DRM, etc.) and capital improvements are to adhere and support.

The Land Development Code is a regulatory document created to implement the goals, objectives and policies of the City of Sedona through a series of guidelines and controls for the development and use of lands within City limits. The LDC provides requirements related to zoning districts, land use, building & site design, wireless communication, transportation, landscaping and signage.

The Design Review Manual provides documentation in support of the Land Development Code regarding submittals requirements, design guidelines and technical engineering standards.

**As a Planning and Zoning Commissioner, how will you make your decisions about a proposal or planning issue?**

After listening to the testimony regarding a specific proposal of planning issue and weighing the options, my decisions will be based upon, and in alignment with, what I believe are the goals and policies set forth in the Sedona Community Plan. While sometimes the extremely vocal minority can overpower the sometimes silent majority, I would focus on what's right for all of Sedona, not just the loudest voice.

**If you are appointed as Planning and Zoning Commissioner and you are faced with a proposal that is supported by the Community Plan and applicable zoning codes, but you have reservations or do not personally support the proposal, what would you do?**

My job would be to support the Community Plan and apply it appropriately to my actions. If I have reservations about an element of the Community Plan, the appropriate time to discuss those would be during an amendment process to the Community Plan, not on a particular proposal that might happen to follow an aspect of the Plan with which I might have such reservations. I will vocalize those concerns in an open and transparent format encouraging constructive and productive dialogue. I welcome respectful and thoughtful discussions in order for all points of view to be considered. My personal support, or lack thereof, for a proposal will not sway my official support, as my commitment in being a Planning and Zoning Commissioner is to be of service in supporting progress and action of the community goals and vision as outlined in the Community Plan.



## ECO ELEGANT ENGINEERING

### **Sarah Wiehl, PE, LEED® AP (BD+C)**

**PRINCIPAL / Project Manager / Civil Engineering**

As Principal and Project Manager of Eco Elegant Engineering, Sarah is responsible for client contact, establishment of fees and schedules, project design and production, overall project coordination and construction management and administration services.

Her specialty is providing civil engineering design services for high end residential private estates with a focus on green and sustainable design practices. Sarah has worked on several estates in the Los Angeles/Bel Air/ Beverly Hills area, some of which have been featured in Architectural Digest. She is currently mid-construction on her first project in Sedona, Arizona, her own home. In alignment with her core values, she is implementing those design principals that she has studied and considers the basic foundation, in integrating construction and environmentally conscious design.

Sarah is a LEED® accredited professional. She is responsible for working with design teams in evaluating a projects LEED® potential, design implementation and subsequent LEED® documentation. Sarah has 20 years of experience as a civil engineer. Her passion is client relationships, responsiveness, green initiatives and sustainable design. Sarah believes in applying a growth mindset in all her affairs.

Listed below are relevant projects for which Sarah has been responsible:

#### **Higher Education:**

- UCLA Ostin Music Center, Los Angeles, CA**
- Santa Monica College Student Services Building, Santa Monica, CA**
- UC Riverside Arroyo Student Housing (Glen Mor I), Riverside, CA**
- UC Riverside Student Academic Support Services, Riverside, CA**
- UC Riverside CHASS, Riverside, CA**
- Campbell Hall, Los Angeles, CA**
- Harvey Mudd College Teaching and Learning Center, Claremont, CA**
- College of the Desert Student Services Center, Palm Desert, CA**

#### **Entertainment:**

- Fox Studios Building 104, Los Angeles, CA**
- Fox Studios Parking Structure, Los Angeles, CA**
- Culver Studios Building J, Culver City, CA**
- William Morris Agency, Beverly Hills, CA**



#### **Education**

University of Delaware  
BS, Civil Engineering

#### **Registration**

Professional Engineer: CA (C72976)  
Professional Engineer: AZ (64128)  
LEED® AP (BD+C)

#### **Professional Affiliations**

United States Green Building  
Council  
Green Building Certification Institute

#### **Commitment to community involvement**

Sarah is a long time member of the United States Green Building Council and volunteered her time in helping to develop the LEED Fellow Program. She also actively participated in the City of Santa Monica Sustainable Works Green Living Workshops and volunteered her time at her son's school participating in the Green/Sustainable Committee that developed and implemented sustainable and environmentally considerate practices and principles for the school.



## **ECO ELEGANT ENGINEERING**

Sarah Wiehl project experience continued:

### **Parks/Recreation:**

**Marsh Park, Los Angeles, CA**

**Vista Hermosa Park, Los Angeles, CA**

**City of Santa Monica Accessible Playground, Santa Monica, CA**

**Annenberg Beach House, Santa Monica, CA**

**San Gabriel River Discovery Center, South El Monte, CA**

### **Office/Mixed-Use:**

**2000 Avenue of the Stars Business Center, Los Angeles, CA**

**National Center for the Preservation of Democracy, Los Angeles, CA**

**The Tower Beverly Hills, Beverly Hills, CA**

**La Mar Mixed-Use Lofts, Manhattan Beach, CA**

**Abbot Kinney Commercial and Residential Lofts, Venice, CA**

**700 Corporate Pointe, Culver City, CA**

**Selma and Vine Commercial (LEED), Brentwood, CA**

**4<sup>th</sup> and Broadway, Santa Monica, CA**

**Southeast Los Angeles Court House, Los Angeles, CA**

### **Single Family Residential:**

**Chalon Private Estate, Bel Air, CA**

**Alta Drive Private Estate, Beverly Hills, CA**

**Kenworthy Private Estate, Brentwood, CA**

**Mandeville Private Estate, Brentwood, CA**

**Veterans Private Estate (LEED), Brentwood, CA**

**Charing Cross Private Estate, Los Angeles, CA**

**Chautauqua Private Estate, Los Angeles, CA**

**Huvane Private Estate, Los Angeles, CA**

**Karsh Private Estate, Los Angeles, CA**

**Bellagio Estate, Beverly Hills, CA**

**Pasadena Private Estate, Pasadena, CA**

**Muskingum Estate, Pacific Palisades**

**Greenbridge Estate, Beverly Hills, CA**

**Oporto Estate, Beverly Hills, CA**



## **Cherise Fullbright**

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**From:** JoAnne Cook  
**Sent:** Monday, September 12, 2022 5:24 PM  
**To:** Cherise Fullbright  
**Subject:** FW: City of Sedona - Planning and Zoning Commission

FYI

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**From:** Sarah Wiehl <[REDACTED]>  
**Sent:** Monday, September 12, 2022 12:11 PM  
**To:** JoAnne Cook <JCook@sedonaaz.gov>  
**Cc:** Cari Meyer <CMeyer@sedonaaz.gov>  
**Subject:** City of Sedona - Planning and Zoning Commission

Hi JoAnne,

I hope this email finds you doing well. I am reaching out as I would like to apply again for the City of Sedona Planning and Zoning Commission. It's my understanding that my seat is one of the seats expiring this October. Do I need to fill out an application again, or just let you know my interest? Please let me know.

Thank you and have a great week,

*Sarah*

Sarah Jane Wiehl, P.E.  
Principal



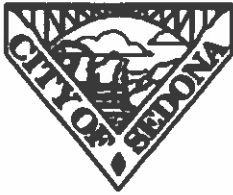
***Eco Elegant Engineering***

[REDACTED] Sedona, Arizona 86336

Cell: [REDACTED]  
[REDACTED]



*...and print this email only if necessary.*



RECEIVED  
SEP 19 2022

CITY OF SEDONA  
PLANNING AND ZONING OFFICE

**PLANNING AND ZONING COMMISSION APPLICATION**

**READ THE FOLLOWING INSTRUCTIONS CAREFULLY  
BEFORE FILLING OUT YOUR APPLICATION – TYPE OR PRINT CLEARLY  
IN INK ONLY.**

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given, write in the letters "N/A" for "Not Applicable".

**A RESUME MAY BE SUBMITTED, HOWEVER, YOU MUST COMPLETE ALL  
INFORMATION REQUESTED ON THE APPLICATION.**

Resume Attached: Yes  No

All information submitted in this application is public information and subject to disclosure in response to a public records request.

APPLICANT'S NAME: William A. Spring

MAILING ADDRESS: [Redacted]  
(Street or P.O. Box) (City) (State) (Zip)

HOME ADDRESS: [Redacted]  
(Street or P.O. Box) (City) (State) (Zip)

PHONE: Home: [Redacted] Work: [Redacted] Cellular: [Redacted]

EMAIL: [Redacted]

Are there any days you will not be available for an interview?  
Wednesday / FRIDAY MORNING

Sedona residency is a requirement to serve on the Planning and Zoning Commission. Do you live within the incorporated boundaries of the City of Sedona? Yes  No

If so, for how many years? 18

Have you previously been appointed by the City of Sedona to any position or commission/board other than the one for which you are currently applying?

Yes  No  If so, for which board/commission and for what length of term?  
2022 City Budget Committee - 3 mos.

In answering the following questions, if more space is required, please attach a separate sheet of paper.

A Qualifications – Please indicate your qualifications, experiences, employment history, etc. that you feel are relevant and qualify you for this appointment.

- 1) licensed attorney
- 2) Taught Real Estate and Contract Law
- 3) Regional Bank Board member, President/DIRECTOR Bank Real Estate subsidiary Responsible for 5000 units multi-family, 2 million sq ft commercial and industrial properties, \$10 million portfolio of real estate

B What skills do you believe you possess that would enable you to help to achieve consensus on issues?

PREVIOUS CURRENT MEMBER OF BANK BOARD / SECURITY BANK  
SAT ON MULTIPLE CORPORATE BOARDS  
BOARD MEMBER - CITY OF TULSON ARTS DISTRICT  
BOARD member - multiple HOAS in Idaho Wisc and  
AZ. - current board member - Cedar Ridge HOA,  
Developer - Alta Vista Senior residence - Prescott AZ

What are your perceptions of the duties, responsibilities, and role of the Planning and Zoning Commission?

Developer multiple Golden Corral restaurants

To facilitate the orderly <sup>planning and</sup> development of property in Sedona in accord with our master plan.

What experience and special skills would you bring that would demonstrate an understanding of the potential impacts, both positive and negative, of land development, i.e., environment, aesthetics, economics, transportation, storm-water/drainage, parking, etc.?

Reference all of A + B above.

What do you believe are the major land use and/or planning issues facing the Planning and Zoning Commission and the City at this time?

Issues related to quality of life for our residents as inter-related to the issues created by expanding tourism and traffic.

What do you hope to accomplish as a Planning and Zoning Commission member?

Help Sedona stay a quality experience for its residents balanced with orderly development in accord with city codes.

If appointed to the Planning and Zoning Commission, are you willing to serve the full term of the appointment?

Yes

Have you read the Sedona Community Plan, Land Development Code, or the Design Review Manual?

Parts of it but not in entirety.

Explain the differences between the Sedona Community Plan, the Land Development Code, and the Design Review Manual.

Community Plan - overall guidance for the use of city property and furthering of residents quality of life  
Land Dev Code - conformance of land development to zoning and development restrictions  
Design Review - actual architectural and design and esthetic guidelines and codes.

As a Planning and Zoning Commissioner, how will you make your decisions about a proposal or planning issue?

Balancing the interests of residents with those of the developer or project sponsor.

If you are appointed as a Planning and Zoning Commissioner and you are faced with a proposal that is supported by the Community Plan and applicable zoning codes, but you have reservations or do not personally support the proposal, what would you do?

Hard to answer. That is a facts and circumstances issue. Obviously, if I did not support a proposal I would not vote for it.

**Thank you for your interest in serving on the Planning and Zoning Commission. Please return your completed application to the City Clerk's office located at 102 Roadrunner Drive, Sedona Arizona. If you have questions about the application and selection process the City Clerk's office is glad to assist you, please call 282-3113. For questions about the Planning and Zoning Commission, please contact the Community Development Department at 282-1154.**



**CITY COUNCIL  
AGENDA BILL**

**AB 2890  
November 22, 2022  
Appointments**

**Agenda Item:** 4c  
**Proposed Action & Subject:** Discussion/possible action regarding the appointment and reappointment of Historic Preservation Commissioners.

<b>Department</b>	City Clerk
<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. Applications

City Attorney Approval	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	\$ 0
City Manager's Recommendation	N/A	<b>Amount Budgeted</b>	\$ 0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** On September 30, 2020 the Historic Preservation Commission advertised seeking applicants to fill two (2) open seats on the Commission with an application deadline of October 22, 2020. The deadline was extended, and another open seat was added in the November 4, 2020 press release due to a resignation. The deadline was extended again on December 3, 2020, and a public notice went out on January 6, 2021, with the deadline changed to “remain open until filled”. Three seats remained vacant.

In mid-January 2021 Bob Huggins and Allyson Holmes were interviewed and reappointed, leaving one seat remaining open. Another application was received in May 2021, but after an interview the Selection Committee determined that the applicant did not have enough ties to Sedona to satisfy the requirements for a member that does not reside in Sedona, so the single vacancy was posted again on July 2, 2021. Please note that there may be two non-resident members at the discretion of council.

There was a resignation in October 2021, and then in November 2021 a third vacancy was created as a result of the expiration of another current member’s term. Incumbents Kurt Gehlbach and Steve Segner were reappointed in March 2022 and in April, another resignation was received, leaving two vacancies.

Currently there are 3 vacancies. The resignation also leaves no Vice Chair. By the end of November there will be a total of 5 vacancies when additional terms expire. Although the Historic Preservation Commission continues to advertise seeking applicants, no additional applications have been received.

The Selection Committee, made up of Mayor Sandy Moriarty, Vice Mayor Scott Jablow, and Chair Brynn Burkee Unger, received an application from Nate Meyers and a staff request to waive the interview on October 27, 2022. Two weeks later, on November 7, 2022, Mayor Sandy Moriarty and Vice Mayor Scott Jablow received applications from Brynn Burkee Under and John 'Jack' Fiene seeking reappointment, along with a request from staff to waive the interviews. After reviewing the applications, the Selection Committee unanimously recommended the appointment of Nate Meyer to a seat on the Historic Preservation Commission. This term begins immediately and expires November 30, 2024 or until a successor is appointed, whichever is later. A majority of the Selection Committee, Mayor Sandy Moriarty and Vice Mayor Scott Jablow also recommended the reappointment of Brynn Burkee Unger and John 'Jack' Fiene to seats on the Historic Preservation Commission. These terms begin December 1, 2022 and expire November 30, 2025 or until a successor is appointed, whichever is later.

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

**Alternative(s):** Council may request that the vacancies remain open.

## **MOTION**

**I move to:** appoint Nate Meyer to the Historic Preservation Commission with a term beginning immediately and ending November 30, 2024 or until a successor is appointed, whichever is later, and reappoint Brynn Burkee Unger and John 'Jack' Fiene to the Historic Preservation Commission with a term beginning December 1, 2022 and ending November 30, 2025 or until a successor is appointed, whichever is later.

**Historic Preservation Commission  
Application**



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
(928) 282-3113 • Fax: (928) 204-7105

CITY OF SEDONA  
CITY CLERK'S OFFICE

**Please read the following instructions carefully before filling out your application.  
TYPE OR PRINT CLEARLY IN INK ONLY.**

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given, write in the letters "N/A" for "Not Applicable".

A resume may be included with your application; however, you must complete all information requested on this application. Resume attached?  Yes  No

Name: \_\_\_\_\_ Nate Meyers

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Cellular Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Are there any days you are not be available for an interview? \_\_\_\_\_

Are you a resident of the City of Sedona?  Yes  No

If yes, how many years? 2 mos

Have you previously been appointed by the City of Sedona to any position or served on any commission, board, committee or citizen engagement working groups other than the Historic Preservation Commission?  Yes  No

If so, what group and for what length of time? \_\_\_\_\_

The Historic Preservation Commission is a voluntary body made up of seven citizens appointed by City Council. The Historic Preservation Commission was established by Sedona City Council to promote the protection, enhancement and perpetuation of properties and areas of historic, cultural, archaeological, and aesthetic significance.

Typically, the Historic Preservation Commission meets the second Monday of the month at 4:00 p.m., in the Vultee Conference Room at City Hall, 102 Roadrunner, Building #106, Sedona.

In answering the following questions, if more space is required, please attach a separate sheet of paper.



**Historic Preservation Commission  
Application**



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
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1. Background experience and knowledge.

In 1998, the Arizona State Historic Preservation Office (SHPO) designated the City of Sedona as a Certified Local Government. To satisfy the City's Certified Local Government (CLG) Agreement with the SHPO, it is preferable that all Historic Preservation Commission members have experience or knowledge in at least one of the following areas: history, architectural history, architecture, historic interiors, historic architecture, planning, archaeology, historic archaeology, real estate, historic preservation law, or other historic preservation related field.

**Which categories do you have experience and/or knowledge, check all that apply:**

- Archaeologist/Archaeology
- Architect/Architecture/Architectural History
- Historian/History
- Real Estate
- Building Construction
- Historic Preservation Law
- Conservation/Preservation
- Land Use Planning
- Other related field (please explain) \_\_\_\_\_

2. Please explain your related experience or knowledge.

I have nearly 20 years of experience working in history museums in Arizona. My undergraduate degree is in History and my masters degree is in Museum Anthropology. I have experience with archaeology in coursework as well as working with archaeological collections in storage repositories. During my time working in history museums I have supported several NRHP nominations. I worked for many years in a building listed on the NRHP, and worked with AZ SHPO on renovations of that building. A large portion of my career has been spent as a collection curator, where preservation and research were foundational to my work.

3. What are your perceptions of the duties, responsibilities and role of the Historic Preservation Commission?

The HPC exists to designate buildings and sites in Sedona with important or noteworthy histories attached to them; to advise Council on matters of historic preservation; and to share the heritage of our built environment with the residents of Sedona



**4. What do you hope to accomplish as a Commission/Board member?**

I see my role as that of any other commissioner, except that I may be able to provide additional historical context or background to a discussion and marshal the resources of the Sedona Heritage Museum in support of the work of the HPC

**5. How much time are you willing to devote to this position if you are appointed?**

I see my role as a commissioner overlapping in significant ways with my work at the Museum. In that sense it is hard to put a number on it, since some of my Museum work will also double as work for the Commission. I will attend every regular and special meeting, as well as participate in any site visits

**6. What is your understanding of the Sedona Community Plan pertaining to Historic Preservation?**

The mere fact that the Community Plan has a section dedicated to Historic Preservation speaks volumes about how the City and community view the importance of historic preservation. Indeed, Sedona is unique among many Arizona cities in my experience in embracing its historic structures and working to preserve them. Historic preservation here, especially, is important to help all of the out of town visitors understand the heritage of our unique community, and help our residents find a deeper connection with the place they call home. In that way historic preservation aids in building a sense of community, a sense of place, and increases the quality of life for our residents.

**7. What is your understanding of the Land Development Code's ordinance pertaining to Historic Preservation?**

I think it is very forward thinking of the City of Sedona to include Historic Preservation in the Land Development Codes. The ordinance lays out the powers of the HPC, the various levels and types of designations, and importantly speaks to what happens when a property needs to be de-certified, which is an unfortunate but not unheard of circumstance. The fact that HPC has a voice in development is fantastic for our city's built heritage and saving our city's unique history.



8. If not currently a member of the Historic Preservation Commission, have you attended any Historic Preservation Commission meetings, and if so how many?

9. What do you perceive are the top three issues facing the Historic Preservation Commission? Please consider both long and short-term issues.

- Sustainability of historic structures
- Maintenance
- Public awareness

10. Are there any projects that you are personally interested in as a Historic Preservation Commission member?

My time as a commissioner would be dedicated to building a strong relationship between HPC and the Museum. In supporting the work of one another we can elevate the work of both. By having the Museum's Executive Director on the commission we can ensure a strong working relationship between HPC and the Museum.

11. What is your understanding of a Certified Local Government (CLG) and how do you feel it relates to the Historic Preservation Commission?

I would love to have participated in the CLG Zoom meeting held on 10/27/2022 to learn more about the program. But from what I know of it the City and Commission should be eligible for grant funds to support preservation efforts in Sedona. I would be very interested in finding out what projects HPC sees on the horizon which would be grant eligible and want to help secure that funding in any way that I can.

## Historic Preservation Commission Application



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
(928) 282-3113 • Fax: (928) 204-7105

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Additional information. If you would like to explain or elaborate on the experiences or professional qualifications you have checked, please use this space:

I have a passion for museums, for history, for old buildings. I have been fortunate to be able to turn that passion into a career, and I look forward to bringing that passion and my experience to the Sedona HPC.

To learn more about the Historic Preservation Commission's particular responsibilities, contact Cynthia Lovely, Senior Planner, Sedona Community Development Department at 928-203-5035 or email [CLovely@SedonaAz.gov](mailto:CLovely@SedonaAz.gov).

Please return your completed application to the City Clerk's Office at Sedona City Hall located at 102 Roadrunner Drive, Sedona, AZ 86336. For more information about the application, interview, and selection process, please call (928) 282-3113.

Thank you for your interest in serving on Sedona's Historic Preservation Commission.

Nate Meyers

## **Professional Experience**

Executive Director, Sedona Heritage Museum, 2022 - present

Lead Consultant and Owner, South Mountain Consulting, 2014 - Present

Collection Coordinator and Curator of Collections, Chandler Museum, 2008 - 2022

Administrative and Exhibition Intern, Arizona Historical Society, 2008

Museum Assistant, Chandler Historical Society, 2005 - 2008

## **Associations, Boards, and Committees**

American Association for State and Local History Small Museum Committee  
Committee Member (2012 - 2021)  
Blog Coordinator (2013 - 2016)

Museum Association of Arizona  
Governance Committee (2018 - present)  
Immediate Past President (2016 - 2018)  
President (2014 - 2016)  
Secretary (2013 - 2014)  
Professional Development Director (2012 - 2013)  
MAA Annual Conference Planning Committee Member (2013 - present)  
MAA Strategic Planning Committee (2010-2011)

American Alliance of Museums  
2018 Annual Meeting Host Committee (2015 - 2018)

Western Museums Association  
2016 Annual Conference Host Committee (2014 - 2016)

Mesa Historical Museum Collection Committee  
Committee Chair (2012 - 2017)  
Committee Member (2011 - 2017)

Greater Phoenix Emerging Museum Professionals  
President (2010 - 2012)  
Co-Founder (2010)

## **Professional Presentations**

American Association for State and Local History 2021 Annual Conference - "A Tale of Two Cities Revisited: Museums Built as Community Centers, Not Monuments to the Past"

American Association for State and Local History 2018 Annual Conference - "A Tale of Two Cities: Building Museums That Are Community Centers, Not Monuments to the Past"

American Alliance of Museums 2018 Annual Meeting - "Onsite Insight: The New Chandler Museum"

Museum Association of Arizona 2018 Spring Symposium - "Choosing the Right Collection Database for Your Institution"

Museum Association of Arizona 2017 Spring Symposium - "First Person Perspective: The Importance of First Person Voices in Exhibitions"

Western Museums Association 2016 Annual Conference - "Using a Wiki to Revolutionize Your Museum"

Museum Association of Arizona 2014 Annual Conference - "Putting Collections Online: ChandlerpediA"

Southwest Oral History Association 2014 Annual Conference - "Walking in a Wiki Wonderland – Using Wikis to Create Online Communities"

American Association for State and Local History 2013 Annual Conference - "Small Museums, Big Impact!"

Museum Association of Arizona 2013 Annual Conference - "Publishing Your Museum"  
Arizona Archives Summit 2013 - "Documenting Under-documented Communities Through Oral History"

Museum Association of Arizona 2012 Annual Conference/Arizona Centennial Conference - "ChandlerpediA - Using Wikis to Engage New Audiences"

Museum Association of Arizona 2012 Annual Conference/Arizona Centennial Conference - "Re-interpreting Dr. Chandler"

Museum Association of Arizona 2012 Annual Conference/Arizona Centennial Conference - "Greater Phoenix Emerging Museum Professionals - Engaging the Next Generation of Museum Professionals"

Arizona Historical Advisory Committee 6th Annual Arizona Centennial Workshop 2009 - "The Best of Technology Meets Museums and Community: Worldwide Examples"

Museum Association of Arizona 2008 Annual Conference - "A Guide to Resolving Old Loans in Arizona Museums"

## **Education**

MA Museum Anthropology, Arizona State University, May 2009

BA History, Music Performance, SUNY College at Geneseo, May 2004

RECEIVED

Re-applied to Commission  
AUG 16 2016

CITY OF SEDONA  
CITY CLERK'S OFFICE



# APPLICATION for COMMISSIONS and BOARDS

Received  
SEP 28 2010  
CITY OF SEDONA  
CITY CLERK'S OFFICE

RECEIVED  
NOV 02 2022

Please read the following instructions carefully before filling out your application - type or print clearly in ink only.

CITY OF SEDONA  
CITY CLERK'S OFFICE

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given write in the letters "NA" for "Not Applicable".

re-applied

A RESUME MAY BE SUBMITTED, HOWEVER, YOU MUST COMPLETE ALL INFORMATION REQUESTED ON THE APPLICATION

RECEIVED

SEP 09 2019

Resume Attached: Yes ( ) No ( )

CITY OF SEDONA  
CITY CLERK'S OFFICE  
Re-Applied

POSITION APPLIED FOR: HISTORIC PRESERVATION COMMISSION

APPLICANT'S NAME: BRYNN BURKEE UNGER

ADDRESS: [Redacted]  
(Street or P.O. Box) (City) (State) (Zip)

PHONE: Home: [Redacted] Work: [Redacted] Message Phone: [Redacted]

E-MAIL ADDRESS: [Redacted]

Are you a resident of the City of Sedona? Yes ( ) No  How many years? \_\_\_\_\_

Have you previously been appointed to any position by the City of Sedona?  
Yes  No ( ) If so, what and for what length of term? HPC SERVED 2 3 YEAR TERMS

In answering the following questions, if more space is required, please attach a separate sheet of paper.

BACKGROUND INFORMATION WHICH YOU FEEL QUALIFIES YOU FOR THE APPOINTMENT:  
(This should include education, employment history, community service, special interest and skills, personal philosophy.)

1) I HAVE SERVED ON THE COMMISSION FOR 6 YEARS - THE LAST 2 AS CHAIR

2) I HAVE BEEN INVOLVED IN HISTORIC PRESERVATION AS AN ASID DESIGNER (I AM AN ASSOCIATE MEMBER OF ASID)

3) I FEEL PRESERVATION OF A BUILDING IS THE BEST WAY TO ACHIEVE A "GREEN" RESULT - SAVING BUILDINGS RATHER THAN ADDING TO THE WASTE IN OUR LANDFILL.

What are your perceptions of the duties, responsibilities and role of the Commission for which you are applying?

THE PRESERVATION OF OUR HISTORIC BUILDINGS, SITES, NEIGHBORHOODS. EDUCATING THE PUBLIC - LETTING THEM KNOW THAT WE HAVE A HISTORY AND THAT WE MUST SAVE THE BUILDINGS AND SITES THAT REFLECT THAT HISTORY FOR FUTURE GENERATIONS.

What do you feel are the major issues facing this Commission?

WHAT WE WILL ALWAYS FACE AS A COMMISSION - THE PUBLIC PERCEPTION THAT SEDONA IS SO NEW THAT THERE IS NO PAST TO SAVE.



Application  
Page 3

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What do you hope to accomplish as a Commission member?

TO CONTINUE TO PRESERVE PROPERTIES WE  
CURRENTLY RECOGNIZE AND WORK TO DISCOVER  
THOSE WE DO NOT CURRENTLY LIST. TO OPEN  
UP THE POSSIBILITY OF ADDING LANDSCAPES  
TO OUR LIST OF HISTORIC PLACES

If appointed to this Commission, are you willing to service the full term of the appointment?

YES

Have you read the Community Plan or attended any meetings of the Commission, for which you are applying?

YES

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## **Cherise Fullbright**

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**From:** Susan Irvine  
**Sent:** Monday, September 9, 2019 9:06 AM  
**To:** Warren Campbell; Cherise Fullbright  
**Subject:** RE: HPC Terms Expiring

Thanks Warren!

Susan

**From:** Warren Campbell <WCampbell@sedonaaz.gov>  
**Sent:** Monday, September 9, 2019 9:05 AM  
**To:** Cherise Fullbright <CFullbright@sedonaaz.gov>; Susan Irvine <SIrvine@sedonaaz.gov>  
**Subject:** Fw: HPC Terms Expiring

Brynn has decided to put herself up for another term.

---

**From:** Brynn Unger <[REDACTED]>  
**Sent:** Friday, September 6, 2019 11:14 AM  
**To:** Warren Campbell <WCampbell@sedonaaz.gov>  
**Subject:** Re: HPC Terms Expiring

Warren-

I am battling a bit with this, but I will re-up for another term and work to pass this on. I want to make sure that someone is there to take over, and I have the time to do this now, but don't know what things will be like in the future.

Let me know what you need.

Brynn

On Wed, Aug 28, 2019 at 9:49 AM Warren Campbell <WCampbell@sedonaaz.gov> wrote:

Brynn, Jack, and Derek,

I am writing to inform you that your HPC terms expire in October. Can each of you please let me know if you plan to seek reappointment. I will need to post a notice to fill vacancies soon and it will help me determine how hard I will have to beat the bush to find replacements or if all members want to return.

Thanks

Warren

Sedona City Hall is open for business Monday through Thursday from 7 a.m. to 6 p.m. and closed on Fridays. The Wastewater system maintenance remain on a Monday through Friday, 8 a.m. to 5 p.m. schedule. Police and maintenance services are not impacted.

--  
Brynn Burkee Unger

[REDACTED]  
Phone: [REDACTED] Fax: [REDACTED]  
Allora Brene/ Design Studios of Sedona  
Allied Member ASID

## Cherise Fullbright

---

**From:** Brynn Unger <[REDACTED]>  
**Sent:** Wednesday, November 2, 2022 2:07 PM  
**To:** Cherise Fullbright  
**Subject:** Re: HPC Term Expiring  
**Attachments:** image001.png

I am interested in reapplying.  
Brynn

On Wed, Nov 2, 2022, 1:06 PM Cherise Fullbright <[CFullbright@sedonaaz.gov](mailto:CFullbright@sedonaaz.gov)> wrote:

Good afternoon,

Please note that your terms on the Historic Preservation Commission expire November 30, 2022. If you are interested in reapplying, please let me know and I can pull your old applications. If you have any questions, please let me know.

Thanks,



Cherise Fullbright  
Deputy City Clerk

City Clerk's Office  
102 Roadrunner Drive  
Sedona, AZ 86336-3710

[cfullbright@sedonaaz.gov](mailto:cfullbright@sedonaaz.gov)

(928) 203-5032

*City business hours are Mon-Thurs 7 a.m.-6 p.m.*

*Public safety 24/7*

***City Staff is working modified hours and City  
Hall is open to the public from 7:30 a.m. to 5:00  
p.m., Monday - Thursday.***

**Historic Preservation Commission  
Application**



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
(928) 282-3113 • Fax: (928) 204-7105

**Please read the following instructions carefully before filling out your application.  
TYPE OR PRINT CLEARLY IN INK ONLY.**

All requested information must be furnished. If an item does not apply to you, or if there is no information to be given, write in the letters "N/A" for "Not Applicable".

A resume may be included with your application; however, you must complete all information requested on this application. Resume attached?  Yes  No

Name: JOHN F. "JACK" FIENE

Mailing Address: [REDACTED]

Phone: [REDACTED]

Cellular Phone: [REDACTED]

Email Address: [REDACTED]

Are there any days you are not be available for an interview? No

Are you a resident of the City of Sedona?  Yes  No  
If yes, how many years? 3; owned 7

Have you previously been appointed by the City of Sedona to any position or served on any commission, board, committee or citizen engagement working groups other than the Historic Preservation Commission?  Yes  No

If so, what group and for what length of time?

The Historic Preservation Commission is a voluntary body made up of seven citizens appointed by City Council. The Historic Preservation Commission was established by Sedona City Council to promote the protection, enhancement and perpetuation of properties and areas of historic, cultural, archaeological, and aesthetic significance.

Typically, the Historic Preservation Commission meets the second Monday of the month at 4:00 p.m., in the Vultee Conference Room at City Hall, 102 Roadrunner, Building #106, Sedona.

In answering the following questions, if more space is required, please attach a separate sheet of paper.

**RECEIVED**  
NOV 03 2022

**RECEIVED**  
SEP 03 2019

**RECEIVED**  
SEP 12 2016

CITY OF SEDONA  
CITY CLERK'S OFFICE

re-applied

CITY OF SEDONA

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re-applied

CITY OF SEDONA

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**Historic Preservation Commission  
Application**



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
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1. Background experience and knowledge.

In 1998, the Arizona State Historic Preservation Office (SHPO) designated the City of Sedona as a Certified Local Government. To satisfy the City's Certified Local Government (CLG) Agreement with the SHPO, it is preferable that all Historic Preservation Commission members have experience or knowledge in at least one of the following areas: history, architectural history, architecture, historic interiors, historic architecture, planning, archaeology, historic archaeology, real estate, historic preservation law, or other historic preservation related field.

**Which categories do you have experience and/or knowledge, check all that apply:**

- Archaeologist/Archaeology
- Architect/Architecture/Architectural History
- Historian/History
- Real Estate
- Building Construction
- Historic Preservation Law
- Conservation/Preservation
- Land Use Planning
- Other related field (please explain) \_\_\_\_\_

2. Please explain your related experience or knowledge.

I have attached a list of historically significant sites for which I have provided site reconnaissance, consulting, valuation, and/or evaluation. I also have development experience, working with the Frank Lloyd Wright Foundation Architects at Taliesin West.

3. What are your perceptions of the duties, responsibilities and role of the Historic Preservation Commission?

The Historic Preservation Commission (HPC) was established by the City Council during the late 1990s. Its task is to maintain a preservation plan, review applications for Historic Landmark or Historic District status, maintain a property register, and evaluate the suitability of the properties under review for historical significance and/or compatibility with City Historic Landmarks. I understand that there are currently 23 designated Landmarks.

**Historic Preservation Commission  
Application**



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
(928) 282-3113 • Fax: (928) 204-7105

4. What do you hope to accomplish as a Commission/Board member?
- a. To provide a more nationwide purview on historically significant property types and uses.
  - b. To provide input related to feasibility and potential economic impact of an applicant property.
  - c. To immerse myself into Sedona history in order to make a most meaningful contribution, and to contribute to my own personal growth and identity with the community.

5. How much time are you willing to devote to this position if you are appointed?
- At this point, I am 100% retired from my former business (Interwest Consulting Group, Inc.). I will devote as much time as is required for each task or project.

6. What is your understanding of the Sedona Community Plan pertaining to Historic Preservation?
- The HPC is incorporated into the Land Development Code, which is one of four major components of the Community Plan. The Historic Preservation Ordinance is administered pursuant to recommendations set forth in the Sedona Community Plan. (See Section 1502 of the Plan.)

7. What is your understanding of the Land Development Code's ordinance pertaining to Historic Preservation?
- The Historic Preservation Ordinance is Article 15 of the Land Development Code.

**Historic Preservation Commission  
Application**



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
(928) 282-3113 • Fax: (928) 204-7105

8. If not currently a member of the Historic Preservation Commission, have you attended any Historic Preservation Commission meetings, and if so how many?

I have not, and have noted that the September meeting has been canceled.

9. If currently a member of the Historic Preservation Commission, how many terms have you served on this Commission? Why are you reapplying?

N/A

10. What do you perceive are the top three issues facing the Historic Preservation Commission? Please consider both long and short-term issues.

Many issues coincide with the general community concerns: transportation - the impact of traffic flow upon existing landmarks and the possibility of saving properties in the way; financial feasibility - the cost-benefit of rescuing vulnerable properties; long-term vision - what will Sedona look like in 25 or 50 years (when Enchantment will be an historic property!).

11. Are there any projects that you are personally interested in as a Historic Preservation Commission member?

The site reconnaissance and reporting on the existing landmarks are well done; site surveys and research are always interesting to me. At this time, I am not aware of any current projects, but would be willing to discuss at the City's convenience.

12. What is your understanding of a Certified Local Government (CLG) and how do you feel it relates to the Historic Preservation Commission?

This terrific program creates a flow of communication between local, state, and federal agencies that focuses on vulnerable properties that lack the funding necessary for protection. The certification process is essentially a contractual agreement enabling the local historical preservation body. For Sedona, many of the duties and responsibilities of the HPC are derived from the tenets of the CLG program.



## Historic Preservation Commission Application



**City Of Sedona City Clerk's Office**  
102 Roadrunner Drive Sedona, AZ 86336  
(928) 282-3113 • Fax: (928) 204-7105

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Additional information. If you would like to explain or elaborate on the experiences or professional qualifications you have checked, please use this space:

Please refer to the attachments, and feel free to call and/or email me.

To learn more about the Historic Preservation Commission's particular responsibilities, contact Audree Juhlin, Director, Sedona Community Development Department at 928-204-7107 or email [ajuhlin@sedonaaz.gov](mailto:ajuhlin@sedonaaz.gov).

Please return your completed application to the City Clerk's Office at Sedona City Hall located at 102 Roadrunner Drive, Sedona, AZ 86336. For more information about the application, interview, and selection process, please call (928) 282-3113.

Thank you for your interest in serving on Sedona's Historic Preservation Commission.

**SITE RECONNAISSANCE, CONSULTATION, VALUATION AND/OR EVALUATION  
OF HISTORICALLY SIGNIFICANT PROPERTIES BY JOHN F. FIENE**

Arizona

Heard Building - 112 North Central Avenue, Phoenix

Completed 1920; was the tallest building in Phoenix until 1924; on U.S. National Register of Historic Places.

Professional Building - 10 East Monroe Street, Phoenix

Completed 1932; one of the best examples of Art Deco architecture in Phoenix.

Fort Lowell Comisaraio - Tucson

Completed ±1890 as the Quartermaster's Commissary & Storehouse, it was converted to an apartment building in the late 1940s. The New Mexican Pueblo design was maintained; the cellar was backfilled with some of the adobe rubble from the site.

Ray Carlson House - 1123 West Palo Verde Drive, Phoenix

Designed by Frank Lloyd Wright, the architect also oversaw the construction. Completed in 1954, the structure had been heavily damaged by termites, and was structurally renovated during the 1980s. There was a considerable amount of Wright-design furniture in the house.

Pearl Hart Homestead - Dripping Springs, Gila County

Residence constructed of mortared field stone and river rock ca. 1898; at least one addition for areas served by utilities. Pearl Hart committed the last stage coach (Globe to Florence) robbery in AZ in 1899, and was released from the Yuma Territorial Prison in 1902.

Old Verde Canal - Taliesin West, Scottsdale

Envisioned to provide water above the Salt and Gila River canals, the 1889 plan for the Verde Storage Irrigation System spanned the entire Valley from the White Tanks to the McDowells. In 1893, the Old Verde Canal abruptly ended within the Taliesin West site. This unconnected portion of the system is in the National Register of Historic Places as of 1977 and as a National Landmark as of 1984.

Indiana

Anthony Wayne Building - 203 East Berry, Fort Wayne

15-story Mid-Century (1962) office building; poured-in-place reinforced concrete framing; evaluation of mixed-use condominium conversion.

Main Post Office - 200 East 8<sup>th</sup> Street, Rochester

Built in 1925, the one-story red brick building is an excellent example of Neo-Classical architecture. It has been nominated multiple times for inclusion on the U.S. National Register of Historic Places, but the USPS has blocked all efforts, knowing that it would sell the property for an alternative commercial use. It is not ADA compliant and is not to building code. It eventually sold for redevelopment as an office building.

**Shambaugh House - 3332 Sanibel Street, Fort Wayne**

Designed and supervised by architect John Randal McDonald, the structure is clearly Usonian ranch-style. Although McDonald was not a protégé of Frank Lloyd Wright, the house reflects the efficiencies for plumbing, heating, and special orientation of a Wright house.

**Bendix Headquarters Building - North Bendix Drive, South Bend**

Built during the late 1920s, the cast concrete façade and interior accents give an Art Deco twist to an industrial office building. It is currently utilized by Bosch Corporation for administration, R&D, and quality evaluation.

**Studebaker Test Track - Bendix Woods, New Carlisle**

This may be the oldest automotive test track in the United States. The main track was constructed by Studebaker during the 1920s, and is highly-banked asphalt capable of speeds up to 150 mph. Again, the Art Deco influences in the office building and the original garages are unmistakable. There are a variety of other courses on the site (water hazards, rough surfaces, etc.) that have been added since to test vehicular systems.

**Lafayette Central School - 11015 Lafayette Center Road, Roanoke**

1914 Territorial masonry main building, stucco over masonry w/tile parapet caps, the building was constructed to accommodate all 12 grades. It included a gymnasium with hardwood floors and a wood stage. Buildings added were brick w/gable roofs. The property was for sale by Southwest Allen County Schools and acquired by a church.

**St. Peter's School - 611 East DeWald, Fort Wayne**

1906 cast masonry and brick two-story Catholic school with gymnasium equipped with a Bishop's Box for the local clergy, proposed to be redeveloped to senior living units. The senior complex is now known as Meeting House at St. Peter's.

**World War I Quartermasters Warehouse - Jeffersonville**

Just after war was declared by the United States, the Army constructed a large complex along the Ohio River on Jeffersonville Federal Lands. These are massive double-bonded brick structures with heavy wood posts and beams. Other than upgrading electrical service, the remaining buildings are as usable as they were when constructed in 1918.

**General Electric Complex - 2000 Broadway, Fort Wayne**

Originally established as Jenny Electric, GE acquired the company in 1893; some of the buildings remain on the campus. Most of the multi-story structures were constructed between the World Wars. Most of the architecture is loft industrial. Upon total abandonment by GE in 2012, the property has been continually under study for redevelopment contingent upon historiography. Environmental issues abound.

**Pullman Car Company 1435 West 165<sup>th</sup> Street Hammond**

Constructed in 1906 as the Steel Standard Car Company, significant features include bonded brick arched columns and lightweight steel superstructure to accommodate a 160-foot free-span needed to turn the railroad cars during

manufacture. Also, a brick vault was constructed for the boiler house, holding its own weight. The Champ Carry (astronaut) Research Center was added in 1966.

## Ohio

### International Harvester Old Headquarters & Stamping Plant - Springfield

Constructed in 1873 as a farm implement manufacturing plant, the process started on the fourth floor, and assembly continued downward, with the finished product on the ground floor. Double-bonded brick surrounded post and beam interior framing. Joists, decks and covers are hardwood. Most of this original manufacturing building has been converted to office space. The stamping plant was constructed on a solid limestone bluff in about 1910, with the assembly facility following in 1918 to manufacture military vehicles for the war effort.

## Utah

### David Eccles Building - 385 24<sup>th</sup> Street, Ogden

A poured-in-place reinforced concrete structure with cast concrete and brick curtain walls, this 1913 office building is said to reflect the elements of the Prairie and Renaissance Revival styles of architecture. It was the tallest building in Ogden until 1924, and the only one with an elevator until about that time. It is on the U.S. National Register of Historic Places, and has been converted to a hotel and restaurant.

## QUALIFICATIONS OF JOHN F. FIENE, MAI, SRA

Arizona Certified General Real Estate Appraiser #30103  
Indiana Certified General Appraiser #CG49900336

- Office  
- Mobile

### PROFESSIONAL EXPERIENCE

Thirty-seven years of active real estate appraising/consulting

Interwest Consulting Group, Inc., Phoenix, AZ/Fort Wayne, IN/Sedona, AZ: 7/94 to present

Kleinman & Briefer, Phoenix, AZ: 5/93 to 7/94

Willis & Associates, Phoenix, AZ: 1/92 to 5/93

Vermilya & Wolverson, Scottsdale, AZ: 8/89 to 1/92

Mountain West Research-Southwest, Phoenix, AZ: 3/87 to 8/89

Jack V. Lee Realty, Phoenix, AZ: 8/78 to 3/87

Types of properties appraised: Commercial, Industrial, Special Purpose, Vacant Land, Residential and Recreational Use Properties

Geographic areas of experience include Arizona, California, Colorado, Hawaii, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Nevada, Ohio, Oregon, Pennsylvania, Texas, Utah, Washington and Wisconsin.

Qualified as an expert witness in various Superior Courts in the States of Arizona and Indiana, US District Court for the Central District of California, US Bankruptcy Court for the District of Arizona and before various boards of tax appeals and tax commissions throughout the U.S.

Past approved instructor - Arizona State University and for the Arizona Dept. of Real Estate; property tax faculty for Professional Education Systems, Inc. (1991-1994), the Institute of Property Taxation (1992) and the International Association of Assessing Officers (1995, 1997).

### PROFESSIONAL DESIGNATION/MEMBERSHIPS

Member of the Appraisal Institute (MAI #8948). "I, John F. Fiene, MAI, SRA, SRPA, have completed the requirements under the continuing education of the Appraisal Institute. This mandatory status has been achieved through December 31, 2016."

Senior Real Property Appraiser, Appraisal Institute, issued 1990

Senior Residential Appraiser, Appraisal Institute, issued 1986

National Association of Independent Fee Appraisers (Now inactive):

IFAC Counselor Designation, Certificate #161, issued 1987

IFAS Senior Designation, Certificate #1127, issued 1982

IFA Member Designation, Certificate #3123, issued 1980

### FORMAL EDUCATION

Bachelor of Arts (1969 with Honors), Southern Illinois University

Master of Arts (1972), Arizona State University

## Qualifications of John F. Fiene (continued)

### APPRAISAL TRAINING

Courses sponsored by the American Institute of Real Estate Appraisers:

1987	Course 1B-A and 1B-B	Capitalization Theory and Techniques
	Course 2-3	Standards of Professional Practice
1988	Course 2-1	Case Studies in Real Estate Valuation
	Course 2-2	Valuation Analysis and Report Writing
1994	Course 410	Uniform Standards of Professional Practice
1996	Course 420	Standards of Professional Practice, Part B
1998	Course 430	Standards of Professional Practice, Part C

Courses sponsored by the Society of Real Estate Appraisers:

1979	Course 101	Introduction to Appraising Real Property
1983	Course 102	Applied Residential Property Valuation
1986	Course 201	Principles of Income Property Appraising
	Course 202	Applied Income Property Valuation

Courses sponsored by the International Association of Assessing Officers:

1981	Course 1	Fundamentals of Real Estate Appraisal
1982	Course 2	Income Approach to Valuation
	Course 5	Personal Property Valuation
2011	Course 300	Fundamentals of Mass Appraisal
2012	Course 400	Assessment Administration

Recent Continuing Education:

2006	Seminar	IN Dept. Local Finance – Abatements, Investment Credit and Enterprise Zone Deductions
	Seminar	AI – What Clients Would Like Their Appraisers to Know
	Course	IN 110 – Sales Comparison Approach
	Course	IN 130 – Sales Ratio Analysis
	Course	IN Dept. Local Finance – Income Approach: A Detailed Examination
	Seminar	RECP – USPAP Update
	Seminar	RECP – Indiana Appraisal License Law Update
	Course	NAIFA – Investment Analysis Using Computer Assisted Software
2007	Seminar	AI – Office Building Valuation: A Contemporary Perspective
2008	Seminar	IN Dept. Local Finance – Personal Property Update
	Seminar	AI – Appraisal Challenges: Declining Markets & Sales Concessions
	Seminar	Columbia Institute – USPAP Update, Course 101
	Seminar	AI – Partial Interest Valuation – Divided
	Course	IN 240 – Indiana Real Estate Law I
	Course	IN 241 – Indiana Real estate Law II
2009	Course	AI 330 GRE, Apartment Appraisal: Concepts and Applications
	Course	IN 122 - Condominiums
	Course	IN 213 – Neighborhood Analysis
	Course	IN 251 – Cadastral Mapping
	Course	AI – 2010-2011 National USPAP Update

## Qualifications of John F. Fiene (continued)

2010	Course	AI R40052 – Michigan Rules
	Course	IN 469 – Personal & Real Property Tax Abatements
	Course	IN 141 – Sales Disclosures
	Course	AI 1332 – Evaluating Commercial Construction
2011	Course	AI 420 - Business Practices and Ethics
	Course	AI 430BDM – Appraisal Curriculum Overview (General)
	Course	CE 1000 – USPAP Update 2012/13
2012	Seminar	AI – Loss Prevention for Real Estate Appraisers
2013	Course	IN 462 – Personal Property
	Course	RG2020 – Supervisory Appraiser Training
	Course	AI – 2014-2015 National USPAP Update
2014	Seminar	AI – Marketability Studies: The Six-Step Process
2015	Course	AASC 1015-1431- 2016-2017 National USPAP Update
2016	Seminar	AASC – Market Analysis & Comparable Sales Adjustments

## OTHER ORGANIZATIONS

Arizona Appraisers Coalition (AACO)

Arizona Archaeological Society, Verde Valley Chapter

Arizona Association of Real Estate Appraisers

The Appraisal Foundation

- Elected to the Board of Trustees as an At-Large Trustee, with term commencing on January 1, 1993; re-elected for two three-year terms expiring December 31, 1999
- Appointed to the Board of Trustees by NAIFA to serve through December 31, 2000
- Elected to Assistant Treasurer of The Appraisal Foundation for 1998
- Elected to Treasurer of The Appraisal Foundation for 1999
- Publications Committee (Secretary 1993-1994) (Chairman 1995-1997 & 2000)
- Admissions Committee (1994-1996) (Chairman 1998)
- Executive Committee (1995-2000)
- Finance Committee (1998-2000) (Chairman 1999)
- Appraisal Standards & Qualifications Board Nominating Committee (2000)

Phoenix City Club

Frank Lloyd Wright Foundation as Friend of Taliesin

Westlaw Round Table Group

## ADDITIONAL CERTIFICATION

Arizona Real Estate Salesman License, June 15, 1980

Basic Real Property Appraiser, Arizona Department of Revenue, December 15, 1981

Intermediate Real Property Appraiser, Arizona Department of Revenue, April 16, 1982

Level I Certified Indiana Assessor-Appraiser, IN State Bd. of Tax Commissioners, December 7, 1999

Level II Certified Indiana Assessor-Appraiser, IN State Bd. of Tax Commissioners, December 28, 1999

Certified Tax Representative, IN Dept. of Local Government Finance, May 20, 2003

Level III Certified Indiana Assessor-Appraiser, IN Dept. of Local Govt. Finance, September 4, 2012

## **Cherise Fullbright**

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**From:** Warren Campbell  
**Sent:** Tuesday, September 3, 2019 8:03 AM  
**To:** Cherise Fullbright; Susan Irvine  
**Subject:** Fw: HPC Terms Expiring

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**From:** Jack Fiene <[REDACTED]>  
**Sent:** Wednesday, August 28, 2019 12:10 PM  
**To:** Warren Campbell <WCampbell@sedonaaz.gov>  
**Subject:** RE: HPC Terms Expiring

Warren:

I am seeking reappointment. What do you need from me?

*John F. "Jack" Fiene*

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**From:** Warren Campbell [mailto:WCampbell@sedonaaz.gov]  
**Sent:** Wednesday, August 28, 2019 9:50 AM  
**To:** Brynn Unger; Jack Fiene; Derek Pfaff  
**Subject:** HPC Terms Expiring

Brynn, Jack, and Derek,

I am writing to inform you that your HPC terms expire in October. Can each of you please let me know if you plan to seek reappointment. I will need to post a notice to fill vacancies soon and it will help me determine how hard I will have to beat the bush to find replacements or if all members want to return.

Thanks

Warren

Sedona City Hall is open for business Monday through Thursday from 7 a.m. to 6 p.m. and closed on Fridays. The Wastewater system maintenance remain on a Monday through Friday, 8 a.m. to 5 p.m. schedule. Police and maintenance services are not impacted.



## Cherise Fullbright

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**From:** John Fiene [REDACTED] >  
**Sent:** Wednesday, November 2, 2022 6:24 PM  
**To:** Cherise Fullbright  
**Subject:** Re: HPC Term Expiring

Please throw my hat into the ring again!

Thanks,  
Jack Fiene

On Wed, Nov 2, 2022 at 1:06 PM Cherise Fullbright <[CFullbright@sedonaaz.gov](mailto:CFullbright@sedonaaz.gov)> wrote:

Good afternoon,

Please note that your terms on the Historic Preservation Commission expire November 30, 2022. If you are interested in reapplying, please let me know and I can pull your old applications. If you have any questions, please let me know.

Thanks,



Cherise Fullbright  
Deputy City Clerk

City Clerk's Office  
102 Roadrunner Drive  
Sedona, AZ 86336-3710

[cfullbright@sedonaaz.gov](mailto:cfullbright@sedonaaz.gov)

(928) 203-5032

*City business hours are Mon-Thurs 7 a.m.-6 p.m.*

*Public safety 24/7*

***City Staff is working modified hours and City Hall is open to the public from 7:30 a.m. to 5:00 p.m., Monday - Thursday.***



**CITY COUNCIL  
AGENDA BILL**

**AB 2893  
November 22, 2022  
Regular Business**

**Agenda Item: 8a**

**Proposed Action & Subject:** Discussion/possible action regarding the adoption of a Resolution approving the sale and execution and delivery of an Excise Tax Revenue Obligation, Second Series 2022, in an amount not to exceed \$10.2 million; approving the form and authorizing the execution and delivery of necessary agreements, instruments and documents; delegating authority to determine certain matters with respect to the foregoing and declaring an emergency.

<b>Department</b>	Financial Services
<b>Time to Present</b>	15 minutes
<b>Total Time for Item</b>	45 minutes
<b>Other Council Meetings</b>	January 6, 2022 Council Retreat January 25, 2022 Long-Range Forecast
<b>Exhibits</b>	A. Resolution B. Fifth Purchase Agreement C. Fifth Trust Agreement D. Placement Agent Agreement

<b>City Attorney Approval</b>	Reviewed 11/16/22 KWC	<b>Expenditure Required</b>	
		\$	Estimated bond issuance costs \$200,000 or less
<b>City Manager's Recommendation</b>	Approve the Resolution for the issuance of an excise tax revenue obligation, which approves and authorizes execution of the Purchase Agreement, Trust Agreement, Placement Agent Agreement, and other documents necessary to complete the financing.	\$	Average annual debt service over 15 years of approx. \$910,000-\$925,000, possible rate of 4.21%-4.46% (in negotiations)
		<b>Amount Budgeted</b>	
		\$	1,000,000
		Account No. (Description)	10-5255-15-69xx (FY23 debt service payments for Second Series 2022)
	Finance Approval	<input checked="" type="checkbox"/>	

## SUMMARY STATEMENT

### Background:

The proposed Resolution approves issuance of an Excise Tax Revenue Obligation, Second Series 2022 (the "Obligation"), in an amount not to exceed \$10.2 million, the proceeds of which will be used to finance the acquisition of certain real property in the City.

In conjunction with approving the issuance of the Obligation, the Resolution approves and authorizes, if necessary, the execution of the following documents:

- Fifth Purchase Agreement
- Fifth Trust Agreement and
- Placement Agent Agreement.

The Obligation will constitute all of the interests in purchase payments (the "Payments") to be made by the City under a **Fifth Purchase Agreement**, to be dated as of December 1, 2022, by and between a trustee bank, as seller (the "Trustee"), and the City, as purchaser. The property which will be the subject of the Purchase Agreement (which will be City-owned property) will be conveyed to the City by the Trustee for the Payments, all pursuant to the Purchase Agreement.

The Obligation will be executed by the Trustee, in its separate capacity as Trustee, pursuant to a **Fifth Trust Agreement**, to be dated as of December 1, 2022, between the City and the Trustee. Under the Trust Agreement, the right to receive the Payments will be assigned to the Trustee. The property which is the subject of the Purchase Agreement does not constitute security for the payment of the Obligation.

To secure the payment of the Payments, the City will pledge the Excise Taxes (defined below) thereto, and the Payments will be secured by a pledge of and first lien on the Excise Taxes on a parity with (i) the City's lease payment obligations pursuant to a City Lease, dated as of August 1, 1998, between the City and Sedona Wastewater Municipal Property Corporation, as amended, relating to the Excise Tax Revenue Bonds, Series 1998, (ii) the City's installment payment obligations pursuant to a Second Purchase Agreement, dated as of December 1, 2015, between the City and U.S. Bank National Association, relating to the City's Excise Tax Revenue Refunding Obligation, Second Series 2015, (iii) the City's installment payment obligations pursuant to a Third Purchase Agreement, dated as of August 1, 2021, between the City and U.S. Bank National Association, relating to the City's Excise Tax Revenue Refunding Obligation, Series 2021-2, (iv) the City's installment payment obligations pursuant to a Fourth Purchase Agreement, dated as of March 1, 2022, between the City and UMB Bank, n.a., relating to the City's Excise Tax Revenue Obligations, Series 2022 (such remaining outstanding Series 1998 Bonds, Second Series 2015 Obligation, Series 2021-2 Obligation and Series 2022 Obligations, the "Existing Parity Obligations"), and (v) "Additional Parity Obligations" that may be hereafter issued on a parity therewith and with the Obligation.

"Excise Taxes" means all excise taxes, transaction privilege (sales, license and use) taxes, vehicle license fees, plan review deposit fees, building permit fees, conditional use permit fees, development review fees, franchise fees, fines and forfeitures which the City now collects and which it may collect in the future, together with the City's portion of any excise taxes, transaction privilege (sales and use) taxes and income taxes imposed and collected by the State, or any political subdivision thereof, or any other governmental unity or agency, and returned, allocated or apportioned to the City, EXCEPT (i) any such taxes, fees, fines and forfeitures which the City may enact in the future which must be used or expended by the City for specific purposes, and (ii) any such taxes which, by State law, rule or regulation must be expended for specific purposes, such as motor vehicle fuel taxes.

The City will agree in the Purchase Agreement that the Excise Taxes will be maintained so that the amount of all such Excise Taxes received for the next preceding fiscal year shall be equal to at least 1.50 times the total of payments payable under the Existing Parity Obligations, the Obligation, and any Additional Parity Obligations. If such receipts of Excise Taxes for any such preceding fiscal year shall not equal 1.50 times such payment requirements, the City will, to the extent permitted by law, either impose new excise, transaction privilege and franchise taxes or will increase the rates for such taxes currently imposed in order that the current receipts of Excise Taxes will be sufficient to meet all current payment requirements.

The City will also agree in the Purchase Agreement that it will not further encumber the Excise Taxes on a basis equal to the lien and pledge provided for in the Purchase Agreement unless the Excise Taxes collected in the preceding fiscal year shall have amounted to at least 1.50 times the highest combined interest and principal payment requirements for any succeeding fiscal year for all Existing Parity Obligations, the Obligation and any Additional Parity Obligations then outstanding and any Additional Parity Obligations proposed.

Stifel, Nicolaus & Company, Incorporated (“Stifel”), serving in the capacity of placement agent, will place the Obligation (within the parameters set forth in the resolution) with an investor pursuant to a **Placement Agent Agreement**, to be dated the date of placement of the Obligation, by and between the City and the Stifel.

In order to take advantage of this financing opportunity on a timely basis, it is required that the proposed Resolution be passed as an emergency measure. Per A.R.S. §19-142(B), “An emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it should become immediately operative, and unless it is approved by the affirmative vote of three-fourths of all the members elected to the city or town council, taken by ayes and noes, and also approved by the mayor.”

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

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

**Alternative(s):** Cash fund the land acquisition and delay other projects if cash flows are not adequate.

## **MOTION**

**I move to:** approve Resolution 2022-\_\_\_, approving the sale, execution, and delivery of an excise tax revenue obligation evidencing all the interests of the owner thereof in a purchase agreement from the City; approving the form and authorizing the execution and delivery of such purchase agreement and other necessary agreements for such sale; delegating authority to designate certain terms thereof; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by the resolution and declaring an emergency.

**RESOLUTION NO. 2022-\_\_**

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIFTH PURCHASE AGREEMENT, A FIFTH TRUST AGREEMENT, A PLACEMENT AGENT AGREEMENT AND OTHER NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS; APPROVING THE SALE AND EXECUTION AND DELIVERY OF NOT TO EXCEED \$10,200,000 PRINCIPAL AMOUNT OF AN EXCISE TAX REVENUE OBLIGATION, SECOND SERIES 2022, EVIDENCING ALL THE INTERESTS OF THE OWNER THEREOF IN SUCH PURCHASE AGREEMENT; DELEGATING AUTHORITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY.**

WHEREAS, the Mayor and Council of the City of Sedona, Arizona (the "City"), have determined that it will be beneficial to its citizens to finance the costs of acquiring certain real property in the City (the "Project"); and

WHEREAS, in order to finance the costs of the Project, the Mayor and Council of the City hereby deem it necessary and desirable to provide for the sale and execution and delivery of an Excise Tax Revenue Obligation, Second Series 2022, evidencing the interest of the owner thereof in purchase payments to be made by the City to a trustee bank to be determined as provided herein, as trustee (the "Trustee" and such Obligation, the "Obligation") provided for by this Resolution pursuant to the Fifth Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligation established as provided herein (the "Trust Agreement"), between the Trustee and the City, such purchase payments to be made pursuant to the Fifth Purchase Agreement, to be dated as of the first day of the month of the dated date of the Obligation established as provided herein (the "Purchase Agreement"), between the City and the Trustee, in its separate capacity as "Seller"; and

WHEREAS, Stifel, Nicolaus & Company, Incorporated (the "Placement Agent") will submit a proposal to place the Obligation pursuant to a Placement Agent Agreement, to be dated the date of placement of the Obligation (the "Placement Contract"), by and between the City and the Placement Agent, the Placement Agent not acting as a municipal advisor as defined in the "Registration of Municipal Advisors" rule promulgated by the United States Securities and Exchange Commission, and the Obligation to be placed by the Placement Agent pursuant to the Strategic Alliance of Volume Expenditures (SAVE) Cooperative Response Proposal #C-005-1718; and

WHEREAS, there have been presented to the Mayor and Council of the City at the meeting of the Mayor and Council of the City at which this Resolution is being adopted the proposed forms of: (1) the Purchase Agreement; (2) the Trust Agreement; and (3) the Placement Contract;

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

**Section 1.**

(a) The execution and delivery of the Obligation by the Trustee pursuant to the Trust Agreement is hereby approved.

(b) The Mayor, the Manager and the Director of Finance of the City or the designees of any of them (collectively, the "Authorized Representatives") are hereby authorized to determine on behalf of the City: (1) the entity to serve as the Trustee; (2) the date the Obligation is to be placed by the Placement Agent; (3) the aggregate principal amount of the Obligation which is to be executed and delivered (but not to exceed the principal amount of \$10,200,000); (4) the date the Obligation is to be dated; (5) the dates on which interest on the Obligation is to be payable and the interest rate per annum the Obligation is to bear (but, except in the case of default or an event of taxability, not greater than five percent (5%)); (6) the date the Obligation is to mature (but not later than a final maturity in 2042), the principal amount to mature on such date and the provisions for redemption thereof in advance of such date; and (7) the terms upon which the Obligation is to be sold (including determinations of price and placement agent compensation); provided, however, that such determinations must result in a yield for federal income tax purposes of not to exceed five percent (5%) with respect to the Obligation (except in the case of default or an event of taxability).

(c) The form and other terms of the Obligation, including the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement and are hereby approved.

**Section 2.** The Placement Contract is hereby approved, and the Mayor or any other member of the Council of the City is hereby authorized and directed, for and in the name and on behalf of the City, to execute, and the Clerk of the City to attest and deliver to the Placement Agent, the Placement Contract, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3.** The form, terms and provisions of the Purchase Agreement and the Trust Agreement, in substantially the forms of such documents (including the Obligation and other exhibits thereto) presented at the meeting of the Mayor and Council of the City at which this Resolution is being adopted, are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by the Mayor or, in the absence thereof, Vice Mayor, the execution of each such document being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor, and the Clerk are hereby authorized and directed, for and on behalf of the City, to execute and deliver and attest, where applicable, or approve the Purchase Agreement and the Trust Agreement and to take all action to carry out and comply with the terms of such documents.

**Section 4.** The Mayor and Council of the City hereby request that the Trustee (including in its capacity as Seller) take any and all action necessary in connection with the execution and delivery of the Purchase Agreement and the Trust Agreement and the sale and execution and delivery of the Obligation and further authorizes and directs the Trustee to enter into such agreements as may be reasonable for the administration of the trusts so held by it.

**Section 5.** The covenants and agreements contained in the Purchase Agreement as to the pledge of and the lien on the Excise Taxes (as defined in the Purchase Agreement) and the restriction on the issuance of further parity obligations secured by the Excise Taxes are approved and confirmed.

**Section 6.** After the Obligation is delivered by the Trustee to the purchaser thereof upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Obligation and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

**Section 7.** The Authorized Representatives and the other officers of the City, on behalf of the City, are each hereby authorized and directed, without further order of the Mayor and Council of the City, to do all such things and to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the City, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated by this Resolution.

**Section 8.** All actions of the officers and agents of the City which conform to the purposes and intent of this Resolution and which further the sale and execution and delivery of the Obligation as contemplated by this Resolution, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved.

**Section 9.** If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

**Section 10.** The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, particularly to immediately sell the Obligation to secure the best, available economic terms therefor, and an emergency is hereby declared to exist, and this Resolution will be in full force and effect from and after its passage by the Mayor and Council of the City and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 22nd day of November 2022.

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Mayor

ATTEST:

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JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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Kurt W. Christianson, City Attorney



## CERTIFICATION

I hereby certify that the foregoing Resolution No. 2022-..... was duly passed and adopted by the Mayor and Council of the City of Sedona, Arizona, at a regular meeting held on November 22, 2022, that the vote thereon was ..... yes, ..... nay, that the Mayor and ..... Councilmembers were present thereat and that such meeting was called and held pursuant to law.

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JoAnne Cook, CMC, City Clerk

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**FIFTH PURCHASE AGREEMENT**

by and between

\_\_\_\_\_,  
as Seller

and

**THE CITY OF SEDONA, ARIZONA,**  
as Buyer

Dated as of December 1, 2022

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**EXHIBIT - PAYMENT SCHEDULE**

## FIFTH PURCHASE AGREEMENT

**THIS FIFTH PURCHASE AGREEMENT**, dated as of December 1, 2022 (this “Agreement”), by and between **THE CITY OF SEDONA, ARIZONA**, a municipal corporation and a political subdivision under the laws of the State of Arizona (“City”), and \_\_\_\_\_, a national banking association (“Seller”), in its capacity as trustee (“Trustee”) under the Fifth Trust Agreement, dated as of even date herewith (the “Trust Agreement”), by and between Trustee and City,

### WITNESSETH:

**WHEREAS**, in order to refinance certain outstanding obligations and to finance the costs of construction of certain improvements to the wastewater system of City, the Sedona Wastewater Municipal Property Corporation (the “MPC”) issued its Excise Tax Revenue Bonds, Series 1998, consisting of \$34,730,000 principal amount of current interest bonds (the “Series 1998 Current Interest Bonds”) and \$6,305,000 initial principal amount of capital appreciation bonds (together with the Series 1998 Current Interest Bonds, the “Series 1998 Bonds”); and

**WHEREAS**, the Series 1998 Bonds are payable from rental payments to be made by City pursuant to the provisions of a City Lease, dated as of August 1, 1998, as amended by a First Amendment to City Lease, dated as of November 1, 2000 (as so amended, the “City Lease”), by and between City and the MPC, and the obligation to make such rental payments under the City Lease is secured by a pledge of the Excise Taxes (as that term is hereinafter defined); and

**WHEREAS**, Section 3.3 of the City Lease provides as follows:

(a) The City hereby pledges for the payment of the rental payments under Section 1.3(a) hereof, all Excise Taxes. The City intends that this pledge shall be a first lien upon such amounts of said Excise Taxes (except as described in (h) below), as will be sufficient to make the rental payments pursuant to Section 1.3(a) hereof each month, and the City agrees and covenants to make said rental payments from such Excise Taxes, except to the extent that it chooses to make such payments from other funds pursuant to Section 3.2 above.

(b) For purposes of this the City Lease, “Excise Taxes” means all excise taxes, transaction privilege (sales, license and use) taxes, vehicle license fees, plan review deposit fees, building permit fees, conditional use permit fees, development review fees, franchise fees, fines and forfeitures which the City now collects and which it may collect in the future, together with the City’s portion of any excise taxes, transaction privilege (sales and use) taxes and income taxes imposed and collected by the State, or any political subdivision thereof, or any other governmental unit or agency, and returned, allocated or apportioned to the City, EXCEPT (i) any such taxes, fees, fines and forfeitures which the City may enact in the future which must be used or expended by the City for specific purposes, and (ii) any such taxes which, by State law, rule or regulation must be expended for specific purposes, such as motor vehicle fuel taxes.

and Section 3.5 of the City Lease provides as follows:

The City, for itself, its successors and assigns, covenants and agrees with the registered owners and holders of the Corporation's Series 1998 Bonds to be issued under the Indenture, so long as any of said Series 1998 Bonds remain outstanding and the principal and interest on the Series 1998 Bonds shall be unpaid or unprovided for, it will not further encumber the Excise Taxes pledged under Section 3.3 hereof on a basis prior and paramount to the lien and pledge provided for under Section 3.3 hereof and that it will not further encumber the Excise Taxes pledged under Section 3.3 hereof on a basis equal to the lien and pledge provided for in Section 3.3 hereof unless the Excise Taxes collected in the preceding fiscal year shall have amounted to at least one and fifty hundredths (1.50) times the highest combined interest and principal payment requirements for any succeeding fiscal year for all Series 1998 Bonds, Prior Obligations, any parity or additional parity bonds or other obligations secured by a parity pledge of the Excise Taxes then outstanding and any parity or additional parity bonds or other obligations so proposed to be secured by a parity pledge of the Excise Taxes.

; and **WHEREAS**, City, in order to finance the costs to refinance certain other outstanding obligations, entered into a Lease Agreement, dated as of January 1, 2002 (the "2002 Lease"), with National Bank of Arizona, as lessor, and a Trust Agreement, dated as of January 1, 2002 (the "2002 Trust Agreement"), with such lessor and National Bank of Arizona, as trustee (the "2002 Trustee") and caused the 2002 Trustee, pursuant to the 2002 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2002 (the "2002 Obligations"), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2002 Lease, such lease payments under the 2002 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, further, City, in order to finance the costs to refinance certain other outstanding obligations, entered into a Lease Agreement, dated as of July 1, 2004 (the "First 2004 Lease"), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of July 1, 2004 (the "First 2004 Trust Agreement"), with such lessor and U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the "2004 Trustee") and caused the 2004 Trustee, pursuant to the First 2004 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2004, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the First 2004 Lease, such lease payments under the First 2004 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance a portion of the Series 1998 Bonds remaining outstanding, entered into a Second 2004 Lease Agreement, dated as of October 1, 2004 (the "Second 2004 Lease"), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Second 2004 Trust Agreement, dated as of October 1, 2004 (the "Second 2004 Trust Agreement"), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the Second 2004 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Second Series 2004 (the "Second 2004 Obligations"), evidencing proportionate

interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the Second 2004 Lease, such lease payments under the Second 2004 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance another portion of the Series 1998 Bonds remaining outstanding, entered into a Lease Agreement, dated as of May 1, 2005 (the “2005 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of May 1, 2005 (the “2005 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2005 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2005 (the “2005 Obligations”), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2005 Lease, such lease payments under the 2005 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs of certain projects, entered into a First Purchase Agreement, dated as of November 1, 2007 (the “2007 Purchase Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as seller, and a Trust Agreement, dated as of November 1, 2007 (the “2007 Trust Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the “2007 Trustee”), and caused the 2007 Trustee, pursuant to the 2007 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Obligations, Series 2007 (the “2007 Obligations”), evidencing proportionate interests of owners thereof in purchase payments and prepayments to be made by City pursuant to the 2007 Purchase Agreement, such purchase payments under the 2007 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance another portion of the Series 1998 Bonds remaining outstanding, entered into a Lease Agreement, dated as of February 1, 2012 (the “2012 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of February 1, 2012 (the “2012 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2012 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2012 (the “2012 Obligations”), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2012 Lease, such lease payments under the 2012 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance all Second 2004 Obligations remaining outstanding, entered into a Lease Agreement, dated as of May 1, 2014 (the “2014 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of May 1, 2014 (the “2014 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2014 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2014, evidencing proportionate

interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2014 Lease, such lease payments under the 2014 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance all 2005 Obligations remaining outstanding, entered into a Lease Agreement, dated as of June 1, 2015 (the “2015 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of June 1, 2015 (the “2015 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2015 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2015, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by City pursuant to the 2015 Lease, such lease payments under the 2015 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance a portion of the 2007 Obligations remaining outstanding, entered into a Second Purchase Agreement, dated as of December 1, 2015 (the “Second Series 2015 Purchase Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as seller, and a Second Trust Agreement, dated as of December 1, 2015 (the “Second Series 2015 Trust Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the “2015 Trustee”), and caused the 2015 Trustee, pursuant to the Second Series 2015 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Second Series 2015 (the “Second Series 2015 Obligation”), evidencing all the interests of the owner thereof in purchase payments and prepayments to be made by City pursuant to the Second Series 2015 Purchase Agreement, such purchase payments under the Second Series 2015 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs to refinance the 2012 Obligations remaining outstanding, entered into a Third Purchase Agreement, dated as of August 1, 2021 (the “Series 2021 Purchase Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as seller, and a Third Trust Agreement, dated as of August 1, 2021 (the “Series 2021 Trust Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the “2021 Trustee”), and caused the 2021 Trustee, pursuant to the Series 2021 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Taxable Series 2021-1 (the “Taxable 2021 Obligation”), and further caused the 2021 Trustee, pursuant to the 2021 Trust Agreement and in connection with the tender and exchange of the Taxable 2021 Obligation in accordance with the terms of the 2021 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Series 2021-2 (the “Series 2021 Obligation”), evidencing all the interests of the owner thereof in purchase payments and prepayments to be made by City pursuant to the Series 2021 Purchase Agreement, such purchase payments under the Series 2021 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, City, in order to finance the costs of street and transportation improvements and parking garage projects in and for the City, entered into a Fourth Purchase Agreement, dated as of March 1, 2022 (the “Series 2022 Purchase Agreement”), with UMB Bank, n.a., as seller, and a Fourth Trust Agreement, dated as of March 1, 2022 (the “Series 2022 Trust Agreement”), with UMB Bank, n.a., as trustee (the “2022 Trustee”), and caused the 2022 Trustee, pursuant to the Series 2022 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Obligations, Series 2022 (the “Series 2022 Obligations”), evidencing proportionate interests of the owners thereof in purchase payments and prepayments to be made by City pursuant to the Series 2022 Purchase Agreement, such purchase payments under the Series 2022 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, City has now determined that it will be beneficial for its citizens to finance the costs of acquiring certain real property in the City (collectively, the “Project”); and

**WHEREAS**, City is a political subdivision duly organized and validly existing under the laws of the State (as such term and all other terms not otherwise defined herein are defined in the Trust Agreement); the Constitution and the laws of the State authorize City to enter into this Agreement and to enter into the agreements and transactions contemplated by, and to carry out its obligations under, said agreements; City has duly authorized and executed all of the aforesaid agreements; this Agreement is a lawful, valid and binding obligation of City, enforceable against City in accordance with its terms, and has been duly authorized, executed and delivered by City; all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; the Payments will be paid when due out of funds which are legally available for such purposes; and neither the execution and delivery of this Agreement or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which City is now a party or by which City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of City; and

**WHEREAS**, Seller has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to the execution and delivery hereof;

NOW THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:

**Section 1. Term and Payments.**

(a) For the amounts payable pursuant hereto (including the Payments), Seller hereby sells and conveys to City, without warranty, and City hereby purchases from Seller, the Project. (In order to evidence such sale, Seller has executed and delivered to City a bill of sale on the date of original execution and delivery of the Obligation.) City shall be entitled to sole and exclusive possession of the Project.



(b) To provide the funds necessary for Seller to facilitate the financing of the Project, Seller, in its capacity as Trustee, shall execute and deliver the Obligation. (Seller shall have no further obligation to provide funds for the Project.)

(c) As the purchase price for the Project, City shall make the payments to Seller at the address specified pursuant to Section 19 hereof (or such other address as Seller may designate in writing) on the fifth Business Day immediately preceding the dates and in the amounts set forth in the payment schedule attached hereto and made a part hereof as the Exhibit hereto (the "Payments"). The obligation of City to make the Payments shall be limited to amounts from all Excise Taxes. City shall receive a credit against amounts due equal to any amounts held in the Payment Fund and available for such purpose. If the balance available in the Payment Fund after a Payment is insufficient to make the next required payments of principal and interest due on the Obligation on the next date for payment thereof, City shall pay any such deficiency in sufficient time to prevent default in the payment of principal or interest on the Obligation falling due on such date. City shall also pay to Trustee its fees and expenses in accordance with the provisions of the Trust Agreement and to the United States of America any amounts required by Section 14(c). This Agreement shall be deemed and construed to be a "*net purchase agreement*," and the Payments shall be an absolute net return to Seller, free and clear of any expenses or charges whatsoever, except as otherwise specifically provided herein.

(d) The obligations of City to make the Payments from the sources described herein and to comply with the other provisions hereof shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, abatement, counterclaim, or recoupment arising out of any breach by Seller of any obligation to City or otherwise, or out of indebtedness or liability at any time owing to City by Seller. Until such time as all of the Payments shall have been fully paid or provided for, City (i) shall not suspend or discontinue the Payments, (ii) shall comply with the other provisions hereof, and (iii) shall not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure of Seller or any other person to complete the Project, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by *eminent domain* of title to or temporary use of any or all of the Project, commercial frustration of purpose or abandonment of the Project by City, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of Seller to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement. Nothing contained in this Section shall be construed to release Seller from the performance of any of the agreements on its part herein or in the Trust Agreement contained and in the event Seller shall fail to perform any such agreements on its part, City may institute such action against Seller as City may deem necessary to compel performance so long as such action does not abrogate the obligations of City contained in the first sentence of this paragraph (d).

(e) This Agreement shall not terminate so long as any payments are due and owing pursuant to the Obligation. Subject to Section 9, upon full payment or provision for payment and in consideration of the timely payment of all of the Payments and provided that City has performed all the covenants and agreements required by City to be performed, this Agreement shall cease and expire. Upon the expiration of this Agreement as provided in this

Section, City shall cause Trustee to release any interest which Trustee may have in the Project or the revenues thereof from the lien of the Trust Agreement.

(f) Any of the Payments due on a day which is not a Business Day may be made on the next Business Day and will be deemed to have been made on the date due.

**Section 2. Pledge; Limited Obligations.**

(a) City hereby pledges for the payment of the Payments under Section 1(c) hereof all Excise Taxes. (*Notwithstanding the provision in the City Lease with regard to Excise Taxes that, as of the date thereof, the transaction privilege (sales, license and use) tax collected by City is 3.5%, 3.0% of which has not been enacted for use or expenditure by City for specific purposes, retroactive to the date of the City Lease and for purposes hereof, the whole 3.5% will be treated as not having been enacted for use or expenditure by the City for specific purposes*].) City intends that this pledge shall be a first lien upon such amounts of said Excise Taxes as will be sufficient to make the Payments pursuant to Section 1(c) hereof. (City shall, unless made from its other funds as permitted by law and as determined from time to time by City, first make all of the Payments accruing under Section 1(c) hereof out of the Excise Taxes and thereafter may use the remaining Excise Taxes for any other lawful purpose, but only to the extent that, taking into account the reasonably anticipated receipts of the Excise Taxes, such Excise Taxes will not be reduced to such a level that City will be unable to make the next of the Payments under Section 1(c) hereof. City shall continue to deposit all Excise Taxes received by it in the “Excise Tax Revenue Fund” established pursuant to the City Lease, and City shall maintain the Excise Tax Revenue Fund throughout the life of this Agreement for the purpose of paying the Payments and all other payments due and owing under this Agreement and the City Lease. City shall transfer a sufficient amount of its Excise Taxes from the Excise Tax Revenue Fund to pay all amounts due and owing under Section 1(c) hereof in a timely manner, and after such transfer, the remaining Excise Taxes in the Excise Tax Revenue Fund may be used by City for any lawful purpose. City shall maintain the integrity of the segregated Excise Tax Revenue Fund by (i) charging a responsible person in its employ with the duty of segregating its Excise Taxes and depositing them in the Excise Tax Revenue Fund, and (ii) faithfully making all Payments in accordance with the terms of this Agreement.

(b) City shall remit to Trustee from the Excise Taxes all amounts due under this Agreement in the amounts and at the times and for the purposes as required herein. The obligation of City to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, is limited to payment from the Excise Taxes and shall in no circumstances constitute a general obligation or a pledge of the full faith and credit of City, the State or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any *ad valorem* property taxes.

**Section 3. Surplus and Deficiency of Revenues from Excise Taxes.** If at any time the moneys in the funds held for payment of amounts due under this Agreement or the Trust Agreement are not sufficient to make the deposits and transfers required, any such deficiency shall be made up from the first moneys thereafter received and available for such transfers under the terms of this Agreement and, with respect to payment from the Excise Taxes, *pro rata*, as applicable, with amounts due with respect to obligations on a parity herewith with respect

thereto, and the transfer of any such sum or sums to said fund as may be necessary to make up any such deficiency shall be in addition to the then-current transfers required to be made pursuant hereto.

**Section 4. Use of Other Funds at the Option of City.** As indicated in Section 2, City may, at the sole option of City, make payments due pursuant to Section 1 from its other funds as permitted by law and as City shall determine from time to time, but Seller acknowledges that it has no claim hereunder to such other funds. The Payments shall not be payable out of any *ad valorem* property taxes imposed by City or from bonds or other obligations, the payment of which City's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by City according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State.

**Section 5. Additional Parity Lien Obligations.** So long as the Obligation remains outstanding and the principal and interest on the Obligation shall be unpaid or unprovided for, City will not further encumber the Excise Taxes pledged under Section 2(a) hereof on a basis prior and paramount to the lien and pledge provided for under Section 2(a) hereof and will not further encumber the Excise Taxes pledged under Section 2(a) hereof on a basis equal to the lien and pledge provided for in Section 2(a) hereof unless the Excise Taxes collected in the preceding fiscal year shall have amounted to at least one and fifty hundredths (1.50) times the highest combined interest and principal payment requirements for any succeeding fiscal year for the Series 1998 Bonds, the Second Series 2015 Obligation, the Series 2021 Obligation, the Series 2022 Obligations, the Obligation, any parity or additional parity bonds or other obligations secured by a parity pledge of the Excise Taxes then outstanding and any parity or additional parity bonds or other obligations so proposed to be secured by a parity pledge of the Excise Taxes.

**Section 6. City Control over Revenue Collection.** The Excise Taxes will be maintained so that the amount of all such Excise Taxes received for the next preceding fiscal year shall be equal to at least one and fifty hundredths (1.50) times the total of the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2022 Purchase Agreement and rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes in any current fiscal year. City further covenants and agrees that if such receipts of Excise Taxes for any such preceding fiscal year shall not equal one and fifty hundredths (1.50) times the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2022 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes in any current fiscal year, or if at any time it appears that the current receipts of Excise Taxes will not be

sufficient to meet the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2022 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes, it will, to the extent permitted by law, either impose new excise, transaction privilege and franchise taxes or will increase the rates for such taxes currently imposed in order that (1) the current receipts of Excise Taxes will be sufficient to meet all current requirements for the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2022 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes, and (2) the current year's receipts of such Excise Taxes will be reasonably calculated to attain the level as required above for the succeeding fiscal year's requirements for the Payments payable under Section 1(c) hereof, installment purchase payments payable under Section 1(c) of the Second Series 2015 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2021 Purchase Agreement, installment purchase payments payable under Section 1(c) of the Series 2022 Purchase Agreement, rental payments payable under Section 1.3(a) of the City Lease and the combined interest and principal requirements for all parity or additional parity bonds or other obligations outstanding which are secured by a parity pledge of the Excise Taxes.

**Section 7. Certain Matters with Respect to Project.**

(a) Except with respect to its power and authority to enter into this Agreement and to perform its covenants hereunder, Seller has made and makes no representation or warranty, express or implied, and assumes no obligation with respect to the title, merchantability, condition, quality or fitness of the Project for any particular purpose or the conformity of the Project to any plans, specifications, construction contract, purchase order, model or sample, or as to their design, construction, delivery, installation, construction oversight and operation or their suitability for use by City after completion. All such risks shall be borne by City without in any way excusing City from its obligations under this Agreement, and Seller shall not be liable to City for any damages on account of such risks. Except with respect to any acts by Seller which constitute negligence or willful misconduct on the part of the Seller and are not undertaken at the request of City or with the prior approval of City, City waives all claims against Seller growing out of the acquisition, construction, installation or otherwise of the Project. Seller shall have no liability to City for any failure of any contractor to perform any contract or other undertaking with respect to the Project in any respect. Seller shall have no obligation to obtain or insure compliance with any required permits or approval procedures with respect to the Project. In the event of any defect in any item of the Project or other claim with respect to the Project, recourse of City shall be against the contractors, manufacturers, suppliers, etc. of the Project and, where applicable, the person selling the property to Seller, and not against Seller. For such purpose, Seller hereby assigns and transfers to City the right, title and interest of Seller in and to all

representations, warranties, guarantees and service agreements relating to the Project made or entered into by Seller and by any contractor, manufacturers, suppliers, etc. of the Project. Seller further designates City as its attorney-in-fact granting to City the right to initiate and take all actions necessary to enforce any and all construction contracts and all such warranties and service agreements. Seller is entering into this Agreement solely as Trustee, shall not be personally liable hereunder and shall be afforded the same rights, protections, immunities and indemnities acting hereunder as afforded to it as Trustee under the Trust Agreement. Notwithstanding anything to the contrary herein, at no time shall the Seller be listed in the chain of title to the Project.

(b) City has the power to enter into this Agreement; this Agreement is a lawful, valid and binding obligation of City, enforceable against City in accordance with its terms, and has been duly authorized, executed and delivered by City; all required procedures for execution and performance hereof, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner and all Payments hereunder will be paid when due out of funds which are legally available for such purposes.

(c) The Project complies with all applicable environmental laws, rules and regulations (including, without limitation, all federal, state and local laws) and with Title III of the Americans with Disabilities Act and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation and commercial facilities if and to the extent such Act and regulations apply to the Project.

**Section 8. Providing for Payment.** City may provide for the payment of any of the Payments in any one or more of the following ways:

(a) by paying such Payment as provided herein as and when the same becomes due and payable at its scheduled due date pursuant to Section 1 hereof or on a date on which it can be prepaid;

(b) by depositing with a Depository Trustee, in trust for such purposes, money which, together with the amounts then on deposit with Trustee and available for such Payment is fully sufficient to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid; or

(c) by depositing with a Depository Trustee, in trust for such purpose, any Government Obligations which are noncallable, in such amount as shall be certified to Seller and City, by a national firm of certified public accountants acceptable to City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit with Seller and available for such Payment, to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid.

Upon any partial payment of a Payment resulting in a redemption of the Obligation, each installment of interest which shall thereafter be payable as a part of the subsequent Payments shall be reduced, taking into account the interest rate on the portion of the Obligation remaining outstanding after the partial payment or redemption of the Obligation from the proceeds of such

payment so that the interest remaining payable as a part of the subsequent Payments shall be sufficient to pay the interest on the portion of the Obligation remaining outstanding when due.

**Section 9. Continuation of Agreement.** The obligations of City under this Agreement, including, without limitation, its obligation to pay the Payments, shall survive any action brought as provided in the next Section, and City shall continue to pay the Payments and perform all other obligations provided in this Agreement; provided, however, that City shall be credited with any amount received by Trustee pursuant to actions brought under the next Section.

**Section 10. Default; Remedies Upon Default.**

(a) (i) Upon (A) failure by City to pay any of the Payments at the time specified herein, (B) failure by City to pay any other payment required to be paid hereunder at the time specified herein, and the continuation of such failure for a period of five (5) days after notification thereof by Trustee, (C) failure by City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clauses (A) and (B) of this Section 10(a)(i), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to City by Trustee or the Owner; provided, however, if the failure stated in the notice can be corrected, but not within the applicable period, Trustee and the Owner shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by City within the applicable period and diligently pursued until the default is corrected, or (D) the filing by City of a voluntary petition in bankruptcy, or failure by City promptly to lift any execution, garnishment or attachment, or adjudication of City as a bankrupt, or assignment by City for the benefit of creditors, or the entry by City into an agreement of composition with creditors, or the petition applicable to City in any proceedings instituted under the provisions of the United States Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted, then

(ii) subject to the limitations of the Trust Agreement, Seller may enforce this Agreement by appropriate action to collect amounts due or to become due under Section 1(c) hereof (including the making and collection of sufficient revenues and the segregation of the Excise Taxes and the proper application thereof) or to cause City to perform its obligations hereunder, in which event City shall be liable for all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by Seller. Upon the bringing of a suit to collect such amounts, Seller may request enforcement of the pledge and foreclosure of the lien set forth in Section 2 hereof, in which event Trustee, as a matter of right, without notice and without giving any bond or surety to City or anyone claiming on behalf of City, may have a receiver appointed of the Excise Taxes which are so pledged for the payment of such amounts, with such powers as the court making such appointment shall confer, and City does hereby irrevocably consent to such appointment.

No remedy herein conferred upon or reserved to Seller is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, 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 Seller to exercise any remedy reserved to it by this Section, it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Such rights and remedies as are given to Seller pursuant to this Section have been assigned by Seller to Trustee under the Trust Agreement, to which assignment City hereby consents. Such rights and remedies shall be exercised by Trustee and the Owner as provided in the Trust Agreement.

(b) Seller shall in no event be in default in the performance of any of its obligations hereunder unless and until Seller shall have failed to perform such obligation within 30 days or such additional time as is reasonably required to correct any such default after notice by City properly specifying wherein Seller has failed to perform any such obligation. No default by Seller shall relieve City of its obligations to make the various payments herein required, so long as the Obligation remains outstanding; however, City may exercise any other remedy available at law or in equity to require Seller to remedy such default so long as such remedy does not interfere with or endanger the payments required to be made to Trustee under the Trust Agreement.

#### **Section 11. Assignment.**

(a) Except as otherwise provided herein, City shall not assign, transfer, pledge or hypothecate or otherwise dispose of this Agreement or any interest therein.

(b) Subject to the terms of the Trust Agreement, Seller sells, pledges, assigns, transfers and encumbers all and every part of its right, title and interest in and to this Agreement and all payments of any kind due or which become due to Seller hereunder to Trustee; provided, however, that such transfer or assignment shall not impair the Obligation, Trustee shall be bound by the terms hereof and all related agreements executed by Seller in connection herewith and shall execute such nondisturbance and acceptance instruments as shall reasonably be required to evidence the same as hereinafter provided, and shall become and be deemed to be the seller hereunder and have all of the rights, powers, privileges and remedies, and be subject to all of the covenants and agreements, of Seller hereunder for all purposes of this Agreement, except that City agrees and acknowledges that Trustee made no representation or warranty, and therefore will assume no obligation, with respect to the title, merchantability, condition, quality or fitness of the Project for any particular purpose or for the enforcement of any warranties or service agreement made or assigned and City shall have no right to abate, reduce, withhold or offset against any payments due hereunder on account of any claims for misrepresentations or breach of warranty or service agreements or any claims for sums due City from any predecessor(s) in interest of Seller. City attorns to and recognizes Trustee as the owner of all right, title and interest in, to and under this Agreement and the payments thereafter due and payable pursuant to

this Agreement and as seller pursuant to this Agreement. City shall execute and deliver to Trustee such certificates or other instruments in such forms as may reasonably be required by Trustee and to which City can truthfully attest, including but not limited to a separate acknowledgment of assignment and attornment certificate in the customary form as to the right, title and interest of Trustee in, to and under this Agreement and the payments thereafter due and payable pursuant to this Agreement.

**Section 12. City Appointed Agent for Seller.** Seller hereby irrevocably appoints City as its sole and exclusive agent to act for and on behalf of Seller in refinancing the costs of the Refinanced Project which have not been paid to date. As such agent, City shall have full authority to do all things necessary to accomplish such purpose. Seller shall not be liable, responsible or accountable for the acts of City as its agent hereunder, and City hereby assumes all responsibility for the performance of such duties.

**Section 13. Federal Law Provisions.**

(a) (i) As described in further detail in the Tax Certificate, no direction for the making of any investment or other use of the proceeds of the Obligation or of the Project shall be made, permitted to be made or omitted from being made which would cause the Obligation to be an “arbitrage bond” as that term is defined in section 148 (or any successor provision thereto) of the Code or a “private activity bond” as that term is defined in section 141 (or any successor provision thereto) of the Code, and the requirements of such sections and related regulations of the Code shall be complied with throughout the term of the Obligation. (Particularly, City shall be the owner of the Project for federal income tax purposes. City shall not enter into any management or service contract with any entity other than a governmental entity for the operation of any portion of the Project unless the management or service contract complies with the requirements of such authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion thereof.) Also, the payment of principal and interest with respect to the Obligation shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Obligation, or amounts treated as proceeds of the Obligation, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds may be so invested for an initial temporary period until needed for the purpose for which the Obligation is being executed and delivered, may be so used in making investments in a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury. In consideration of the purchase and acceptance of the Obligation by the owner from time to time thereof and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, City shall, and the appropriate officials of City are hereby directed, to take all action required to retain such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(ii) (A) City shall take all necessary and desirable steps, as determined by the Mayor and Council of City, to comply with the requirements hereunder in order to ensure that the Interest Portion is excluded from gross income for



federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event City receives a Bond Counsel's Opinion (as such term is defined in the next Section) that either compliance with such requirement is not required to maintain the exclusion from gross income of the Interest Portion or compliance with some other requirement will meet the requirements of the Code. In the event City receives such a Bond Counsel's Opinion, the parties agree to amend this Agreement to conform to the requirements set forth in such opinion.

(B) If for any reason any requirement hereunder is not complied with, City shall take all necessary and desirable steps, as determined by City, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and City shall pay any required interest or penalty under hereinafter described Regulations section 1.148-3(h) with respect to the Code.

(iii) Written procedures have been established for City to ensure that all nonqualified obligations are remediated according to the requirements under the Code and related Regulations and to monitor the requirements of section 148 of the Code relating to arbitrage, with which City will comply.

(iv) The procedures required by any arbitrage rebate provision or separate agreement executed in connection with the execution and delivery of the Obligation (initially, those in the next Section) shall be complied with for so long as compliance is necessary pursuant to the Code.

(b) Trustee has no duty or obligations under this Section 13 and has no duty to monitor compliance by City with this Section 13.

**Section 14. Rebate Provisions.**

(a) Terms not otherwise defined in Subsection (b) hereof shall have the meanings given to them in the Tax Certificate.

(b) The following terms shall have the following meanings:

Bond Counsel's Opinion shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by City.

Bond Year shall mean each one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of execution and delivery of the Obligation and shall end on the date selected by City, provided that the first Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last Obligation.

Bond Yield is as indicated in the Tax Certificate. Bond Yield shall be recomputed if required by Regulations section 1.148-4(b)(4) or 4(h)(3). Bond Yield shall mean the discount rate that produces a present value equal to the Issue Price of all unconditionally

payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Obligation as determined under Regulations section 1.148-4(b). The present value of all such payments shall be computed as of the date of execution and delivery of the Obligation and using semiannual compounding on the basis of a 360-day year.

Code shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

Gross Proceeds shall mean:

(i) any amounts actually or constructively received by City from the sale of the Obligation but excluding amounts used to pay accrued interest on the Obligation within one year of the date of execution and delivery of the Obligation;

(ii) transferred proceeds of the Obligation under Regulations section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii); and

(iv) replacement proceeds of the Obligation within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Obligation, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Obligation in the event City or Trustee encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4). Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Trust Agreement.

Investment Property shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

Issue Price is as indicated in the Tax Certificate and shall be determined as provided in Regulations section 1.148-1(b).

Nonpurpose Investment shall mean any Investment Property acquired with Gross Proceeds and which is not acquired to carry out the governmental purposes of the Obligation.

Obligation Payment shall mean any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement shall mean at any time the excess of the future value of all Receipts over the future value of all Obligation Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and

Obligation Payments in accordance with Regulations section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under section 148(f)(4) of the Code or Regulations section 1.148-7.

Receipt shall mean any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations shall mean the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

(c) Within 60 days after the end of each Bond Year, unless an exception to the requirement to do is properly established, City shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(1) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the Obligation (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with respect to the Obligation (determined as of the last day of such Bond Year); and

(2) not later than 60 days after the retirement of the last Obligation, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last Obligation).

Each payment required to be made under this Section shall be filed on or before the date such payment is due, with the Internal Revenue Service at the appropriate location and with required forms and other materials, currently by addressing it to IRS Service Center, Ogden, Utah 84201, and accompanying it with IRS Form 8038-T.

(d) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(e) For purposes of Subsection (d), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(1) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(2) Except as provided in Subsection (f) or (g), a Nonpurpose Investment that is not of a type traded on an established securities market, within the

meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(3) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(f) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(1) the yield on reasonably comparable direct obligations of the United States; and

(2) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(g) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(1) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with City or any other person (whether or not in connection with the Obligation), and that the bid is not being submitted solely as a courtesy to City or any other person for purposes of satisfying the requirements in the Regulations that City receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Obligation.

(2) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(3) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Obligation (e.g., a lead underwriter within 15 days of the issue date of the Obligation or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If City uses an agent to conduct the bidding, the agent may not bid.

(4) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(5) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(7) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(8) City retains until three years after the last outstanding Obligation is retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by City and a copy of the provider's certification described in (7) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviate from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(h) Such experts and consultants shall be employed by City to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with section 148(f) of the Code with respect to the Obligation. Trustee has no duties or obligations under this Section 14 and no duty to monitor compliance by City with this Section 14.

**Section 15. Quiet Possession; City's Easement to Seller.** City, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Agreement, peaceably and quietly, have, hold and enjoy the Project, without suit, trouble or hindrance from Seller. City hereby grants and conveys to Seller, and all persons claiming by, through or under Seller, including its successors and assigns under the Trust Agreement and the Owner for whom it acts, a nonexclusive easement upon, in and to the Project for the purpose of permitting the Project to be maintained upon the premises.

**Section 16. Covenant as to Conflict of Interest; Other Statutory Restrictions.**

(a) To the extent applicable by provision of law, Seller acknowledges that this Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, the provisions of which are incorporated herein and which provides that City may within three (3) years after its execution cancel any contract (including this Agreement) without penalty or further obligation made by City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the "e-verify" requirements under Section 23-214(A), Arizona Revised Statutes. The breach by Seller of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of Seller by City. City retains the legal right to randomly inspect the papers and records of Seller to ensure that Seller is complying with the above-mentioned warranty. Seller shall keep such papers and records open for random inspection during normal business hours by City. Seller shall cooperate with the random inspections by City including granting City entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, Trustee 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 City determines that Trustee's certification above is false or that it has breached such agreement, City may impose remedies as provided by law.

(d) Pursuant to Section 35-394, Arizona Revised Statutes, as amended, Trustee hereby certifies it does not currently, and for the duration of this Agreement shall not use: (i) the forced labor of ethnic Uyghurs in the People's Republic of China, (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. The foregoing certification is made to the best knowledge of Trustee without any current independent investigation or without any future independent investigation for the duration of this Agreement.

If Trustee becomes aware during the duration of this Agreement that it is not in compliance with such certification, Trustee shall take such actions as provided by law, including providing the required notice to City. If City determines that Trustee is not in compliance with the foregoing certification and has not taken remedial action, City shall terminate Trustee's role as Trustee hereunder pursuant to Article VIII of the Trust Agreement.

**Section 17. Seller's Limited Authority.** Notwithstanding any other terms or provisions of this Agreement, the interest of Seller in the Project, if any, is solely in its capacity as Trustee for the purpose of facilitating the financing of the Project, and Seller shall not have the power, authority or obligation to assume any responsibility for the overall management or maintenance of the Project, including, without limitation, any day-to-day decision-making or operational aspects of the Project.

**Section 18. Seller as Trustee.** Seller is acting hereunder in its capacity as Trustee under the Trust Agreement and the term "Seller", when used herein, shall mean Trustee as defined in the Trust Agreement.

**Section 19. Notices; Mailing Addresses.** All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for which the same is intended or certified, as follows:

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Corporate Trust Services

If to City: City of Sedona, Arizona  
102 Roadrunner Drive  
Sedona, Arizona 86336  
Attention: City Manager

**Section 20. Miscellaneous.**

(a) No covenant or obligation herein to be performed by City may be waived except by the written consent of Seller, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Seller from invoking such remedy at any later time prior to the cure by City of the condition giving rise to such remedy.

(b) This Agreement shall be construed and governed in accordance with the laws of the State in effect from time to time.

(c) The recitals set forth at the beginning of this Agreement are incorporated in this Agreement by this reference. This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, supplemented,

altered or changed in any respect except by a written document signed by both Seller and City, subject to the restrictions with regard thereto provided by the Trust Agreement.

(d) Any term or provision of this Agreement found to be prohibited by law or unenforceable or which would cause this Agreement to be invalid, prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, causing the remainder of this Agreement to be invalid, prohibited by law or unenforceable.

(e) Seller hereunder shall have the right at any time or times, by notice to City, to designate or appoint any person or entity to act as agent or trustee for Seller for any purposes hereunder.

(f) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(g) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives, as the case may be. Any person or entity acquiring any interest in or to the right, title or interest of Seller herein shall be and have the rights of a third-party beneficiary hereunder.

(h) This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

[Signature page follows.]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of December 2022.

**Seller:**

\_\_\_\_\_, as Trustee

By .....  
Authorized Representative

**City:**

**CITY OF SEDONA, ARIZONA, a municipal corporation and political subdivision under the laws of the State of Arizona**

By .....  
Mayor

**ATTEST:**

.....  
City Clerk

**EXHIBIT**

**PAYMENT SCHEDULE**

Payment Date	Principal	Interest	Total Payment
01/01/20__			
07/01/20__			

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**Total**

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**FIFTH TRUST AGREEMENT**

by and between

\_\_\_\_\_,  
as Trustee

and

**THE CITY OF SEDONA, ARIZONA**

Dated as of December 1, 2022

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## FIFTH TRUST AGREEMENT

**THIS FIFTH TRUST AGREEMENT**, dated as of December 1, 2022 (together with any duly authorized, executed and delivered supplement thereto, this “Trust Agreement” or “Agreement”), by and between \_\_\_\_\_, a national banking association, as trustee, or any successor thereto acting as trustee pursuant to this Trust Agreement (the “Trustee”), and in its capacity as “Seller” pursuant to the Fifth Purchase Agreement, dated as of December 1, 2022 (together with any duly authorized, executed and delivered amendment thereto, the “Purchase Agreement”) by and between the hereinafter defined City and the Trustee, as “Seller”, and **THE CITY OF SEDONA, ARIZONA**, a municipal corporation organized under the laws of the State of Arizona (the “City”);

### WITNESSETH:

**WHEREAS**, in order to refinance certain outstanding obligations and to finance the costs of construction of certain improvements to the wastewater system of the City, the Sedona Wastewater Municipal Property Corporation (the “MPC”) issued its Excise Tax Revenue Bonds, Series 1998, consisting of \$34,730,000 principal amount of current interest bonds (the “Series 1998 Current Interest Bonds”) and \$6,305,000 initial principal amount of capital appreciation bonds (together with the Series 1998 Current Interest Bonds, the “Series 1998 Bonds”); and

**WHEREAS**, the Series 1998 Bonds are payable from rental payments to be made by the City pursuant to the provisions of a City Lease, dated as of August 1, 1998, as amended by a First Amendment to City Lease, dated as of November 1, 2000 (as so amended, the “City Lease”), by and between the City and the MPC, and the obligation to make such rental payments under the City Lease is secured by a pledge of the Excise Taxes (as that term is hereinafter defined); and

**WHEREAS**, Section 3.3 of the City Lease provides as follows:

(a) The City hereby pledges for the payment of the rental payments under Section 1.3(a) hereof, all Excise Taxes. The City intends that this pledge shall be a first lien upon such amounts of said Excise Taxes (except as described in (h) below), as will be sufficient to make the rental payments pursuant to Section 1.3(a) hereof each month, and the City agrees and covenants to make said rental payments from such Excise Taxes, except to the extent that it chooses to make such payments from other funds pursuant to Section 3.2 above.

(b) For purposes of this the City Lease, “Excise Taxes” means all excise taxes, transaction privilege (sales, license and use) taxes, vehicle license fees, plan review deposit fees, building permit fees, conditional use permit fees, development review fees, franchise fees, fines and forfeitures which the City now collects and which it may collect in the future, together with the City’s portion of any excise taxes, transaction privilege (sales and use) taxes and income taxes imposed and collected by the State, or any political subdivision thereof, or any other governmental unit or agency, and returned, allocated or apportioned to the City, EXCEPT (i) any such taxes, fees, fines and

forfeitures which the City may enact in the future which must be used or expended by the City for specific purposes, and (ii) any such taxes which, by State law, rule or regulation must be expended for specific purposes, such as motor vehicle fuel taxes.

and Section 3.5 of the City Lease provides as follows:

The City, for itself, its successors and assigns, covenants and agrees with the registered owners and holders of the Corporation's Series 1998 Bonds to be issued under the Indenture, so long as any of said Series 1998 Bonds remain outstanding and the principal and interest on the Series 1998 Bonds shall be unpaid or unprovided for, it will not further encumber the Excise Taxes pledged under Section 3.3 hereof on a basis prior and paramount to the lien and pledge provided for under Section 3.3 hereof and that it will not further encumber the Excise Taxes pledged under Section 3.3 hereof on a basis equal to the lien and pledge provided for in Section 3.3 hereof unless the Excise Taxes collected in the preceding fiscal year shall have amounted to at least one and fifty hundredths (1.50) times the highest combined interest and principal payment requirements for any succeeding fiscal year for all Series 1998 Bonds, Prior Obligations, any parity or additional parity bonds or other obligations secured by a parity pledge of the Excise Taxes then outstanding and any parity or additional parity bonds or other obligations so proposed to be secured by a parity pledge of the Excise Taxes.

; and **WHEREAS**, the City, in order to finance the costs to refinance certain other outstanding obligations, entered into a Lease Agreement, dated as of January 1, 2002 (the "2002 Lease"), with National Bank of Arizona, as lessor, and a Trust Agreement, dated as of January 1, 2002 (the "2002 Trust Agreement"), with such lessor and National Bank of Arizona, as trustee (the "2002 Trustee") and caused the 2002 Trustee, pursuant to the 2002 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2002 (the "2002 Obligations"), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by the City pursuant to the 2002 Lease, such lease payments under the 2002 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, further, the City, in order to finance the costs to refinance certain other outstanding obligations, entered into a Lease Agreement, dated as of July 1, 2004 (the "First 2004 Lease"), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of July 1, 2004 (the "First 2004 Trust Agreement"), with such lessor and U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the "2004 Trustee") and caused the 2004 Trustee, pursuant to the First 2004 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2004, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by the City pursuant to the First 2004 Lease, such lease payments under the First 2004 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs to refinance a portion of the Series 1998 Bonds remaining outstanding, entered into a Second 2004 Lease



Agreement, dated as of October 1, 2004 (the “Second 2004 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Second 2004 Trust Agreement, dated as of October 1, 2004 (the “Second 2004 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the Second 2004 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Second Series 2004 (the “Second 2004 Obligations”), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by the City pursuant to the Second 2004 Lease, such lease payments under the Second 2004 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs to refinance another portion of the Series 1998 Bonds remaining outstanding, entered into a Lease Agreement, dated as of May 1, 2005 (the “2005 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of May 1, 2005 (the “2005 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2005 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2005 (the “2005 Obligations”), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by the City pursuant to the 2005 Lease, such lease payments under the 2005 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs of certain projects, entered into a First Purchase Agreement, dated as of November 1, 2007 (the “2007 Purchase Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as seller, and a Trust Agreement, dated as of November 1, 2007 (the “2007 Trust Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the “2007 Trustee”), and caused the 2007 Trustee, pursuant to the 2007 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Obligations, Series 2007 (the “2007 Obligations”), evidencing proportionate interests of owners thereof in purchase payments and prepayments to be made by the City pursuant to the 2007 Purchase Agreement, such purchase payments under the 2007 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs to refinance another portion of the Series 1998 Bonds remaining outstanding, entered into a Lease Agreement, dated as of February 1, 2012 (the “2012 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of February 1, 2012 (the “2012 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2012 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2012 (the “2012 Obligations”), evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by the City pursuant to the 2012 Lease, such lease payments under the 2012 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs to refinance all Second 2004 Obligations remaining outstanding, entered into a Lease Agreement, dated as of May 1, 2014 (the “2014 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of May 1, 2014 (the “2014 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2014 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2014, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by the City pursuant to the 2014 Lease, such lease payments under the 2014 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs to refinance all 2005 Obligations remaining outstanding, entered into a Lease Agreement, dated as of June 1, 2015 (the “2015 Lease”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as lessor, and a Trust Agreement, dated as of June 1, 2015 (the “2015 Trust Agreement”), with such lessor and the 2004 Trustee and caused the 2004 Trustee, pursuant to the 2015 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligations, Series 2015, evidencing proportionate interests of the owners thereof in lease payments and prepayments to be made by the City pursuant to the 2015 Lease, such lease payments under the 2015 Lease being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs to refinance a portion of the 2007 Obligations remaining outstanding, entered into a Second Purchase Agreement, dated as of December 1, 2015 (the “Second Series 2015 Purchase Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as seller, and a Second Trust Agreement, dated as of December 1, 2015 (the “Second Series 2015 Trust Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the “2015 Trustee”), and caused the 2015 Trustee, pursuant to the Second Series 2015 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Second Series 2015 (the “Second Series 2015 Obligation”), evidencing all the interests of the owner thereof in purchase payments and prepayments to be made by the City pursuant to the Second Series 2015 Purchase Agreement, such purchase payments under the Second Series 2015 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs to refinance the 2012 Obligations remaining outstanding, entered into a Third Purchase Agreement, dated as of August 1, 2021 (the “Series 2021 Purchase Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as seller, and a Third Trust Agreement, dated as of August 1, 2021 (the “Series 2021 Trust Agreement”), with U.S. Bank Trust Company, National Association (successor in interest to U.S. Bank National Association), as trustee (the “2021 Trustee”), and caused the 2021 Trustee, pursuant to the Series 2021 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Taxable Series 2021-1 (the “Taxable 2021 Obligation”), and further caused the 2021 Trustee, pursuant to the 2021 Trust Agreement and in connection with the

tender and exchange of the Taxable 2021 Obligation in accordance with the terms of the 2021 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Refunding Obligation, Series 2021-2 (the “Series 2021 Obligation”), evidencing all the interests of the owner thereof in purchase payments and prepayments to be made by the City pursuant to the Series 2021 Purchase Agreement, such purchase payments under the Series 2021 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, then further, the City, in order to finance the costs of street and transportation improvements and parking garage projects in and for the City, entered into a Fourth Purchase Agreement, dated as of March 1, 2022 (the “Series 2022 Purchase Agreement”), with UMB Bank, n.a., as seller, and a Fourth Trust Agreement, dated as of March 1, 2022 (the “Series 2022 Trust Agreement”), with UMB Bank, n.a., as trustee (the “2022 Trustee”), and caused the 2022 Trustee, pursuant to the Series 2022 Trust Agreement, to execute and deliver the City of Sedona, Arizona Excise Tax Revenue Obligations, Series 2022 (the “Series 2022 Obligations”), evidencing proportionate interests of the owners thereof in purchase payments and prepayments to be made by the City pursuant to the Series 2022 Purchase Agreement, such purchase payments under the Series 2022 Purchase Agreement being secured by a pledge of the Excise Taxes on a parity as described hereinabove; and

**WHEREAS**, the City has now determined that it will be beneficial for its citizens to finance the costs of acquiring certain real property in the City (collectively, the “Project”); and

**WHEREAS**, for the purpose of financing the Project, the City has heretofore agreed to make purchase payments to the Trustee, and the Trustee has agreed to provide for acquisition of the Project pursuant to the Purchase Agreement, the payment of which shall be limited to amounts from the Excise Taxes; and

**WHEREAS**, the City and the Trustee will enter into this Trust Agreement to facilitate the administration of the financing of the Project; and

**WHEREAS**, for the purpose of obtaining money to be deposited with the Trustee to finance the Project, the Trustee will execute and deliver the Excise Tax Revenue Obligation, Series 2022 (the “Obligation”), evidencing a one hundred percent (100%) ownership interest in the Purchase Agreement and the Payments made by the City under the Purchase Agreement, in exchange for the moneys required herein to be deposited for the Project; and

**WHEREAS**, the City, pursuant to the Purchase Agreement, irrevocably pledges on a first lien basis for the payment of the Payments all Excise Taxes as the Excise Taxes collected in the preceding fiscal year have amounted to at least one and fifty hundredths (1.50) times the highest combined interest and principal payment requirements for any succeeding fiscal year for the Series 1998 Bonds, the Second Series 2015 Obligation, the Series 2021 Obligation, the Series 2022 Obligations and the Obligation; and

**WHEREAS**, the City is a political subdivision duly organized and validly existing under the laws of the State; the Constitution and the laws of the State authorize the City to enter into this Agreement and to enter into the agreements and transactions contemplated by,

and to carry out its obligations under, said agreements; the City has duly authorized and executed all of the aforesaid agreements; this Agreement is a lawful, valid and binding obligation of the City, enforceable against the City in accordance with its terms, and has been duly authorized, executed and delivered by the City; all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; the Payments will be paid when due out of funds which are legally available for such purposes; and neither the execution and delivery of this Agreement or the Purchase Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City; and

**WHEREAS**, the Trustee has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to authorize the execution and delivery hereof; and

**NOW, THEREFORE**, in consideration for the Obligation executed and delivered under this Trust Agreement, the acceptance by the Trustee of the trusts created herein and the purchase and acceptance of the Obligation by the Owner, and to secure the payment of principal thereof and interest thereon (to the extent provided herein), the rights of the Owner and the performance and the observance of the covenants and conditions contained in the Obligation, the Purchase Agreement and herein, the Trustee hereby declares an irrevocable trust and acknowledges its acceptance of all right, title and interest in and to the following described trust estate, which shall be administered by the Trustee according to the provisions of this Trust Agreement and for the benefit of the Owner:

A. All right, title and interest of Seller in, under and pursuant to the Purchase Agreement, the Payments and any other amounts payable by the City under the Purchase Agreement and the present and continuing right to (i) make claim for, collect or cause to be collected, receive or cause to be received all such revenues, receipts and other sums of money payable or receivable thereunder, (ii) bring actions and proceedings thereunder or for the enforcement of such rights, and (iii) do any and all other things which the Seller is or may become entitled to do thereunder;

B. Amounts on deposit from time to time in the funds created pursuant hereto, subject to the provisions of this Trust Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

C. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Obligation, by Seller or by anyone on its behalf or with its written consent, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof,

**TO HAVE AND TO HOLD**, all and singular, the trust estate, including all additional property which by the terms hereof has or may become subject to the encumbrance of this Trust Agreement, unto the Trustee and its successors and assigns, forever, subject, however, to the rights of the City, its successors and assigns, under the Purchase Agreement;

**IN TRUST**, however, for the benefit and security of the Owner; and conditioned, however, that if the City shall well and truly pay or cause to be paid fully and promptly when due all indebtedness, liabilities, obligations and sums at any time secured hereby, including interest and attorneys' fees, and shall promptly, faithfully and strictly keep, perform and observe or cause to be kept, performed and observed all of its covenants, warranties and agreements contained herein, this Trust Agreement shall be and become void and of no further force and effect; otherwise, the same shall remain in full force and effect, and upon the trust and subject to the covenants and conditions hereinafter set forth. For such purposes, the City and the Trustee hereby agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1. Definitions.** In addition to the terms defined in the Recitals hereto and unless the context otherwise requires, the terms defined in this Section 1.1 shall, for all purposes of this Trust Agreement, have the meanings herein specified.

**“Acquisition Fund”** means the fund of that name created pursuant to Article III hereof.

**“Authorized Officers”** means any City Representative and those officers of the City listed in an incumbency certificate with the authority to provide Instructions and containing specimen signatures of such authorized officers, which incumbency certificate shall be amended by the City, whenever a person is to be added or deleted from the listing.

**“Business Day”** means any day of the week other than a Saturday, Sunday or a day which shall be in the State a legal holiday or a day on which the Trustee is authorized or obligated by law or executive order to close.

**“Certificate of Completion”** means the notice of completion, filed with the Trustee by a City Representative, stating that the Project has been substantially completed.

**“City Representative”** means the Manager or any other person authorized by the Manager or the City Council of the City to act on behalf of the City with respect to this Agreement.

**“Closing Date”** means December \_\_, 2022.

**“Code”** means the Internal Revenue Code of 1986, as amended. References to the Code and Sections thereof include applicable regulations and temporary regulations thereunder and any successor provisions to those Sections, regulations or temporary regulations

and any applicable regulations or temporary regulations issued pursuant to the Internal Revenue Code of 1954.

“**Completion Date**” means the date on which the Certificate of Completion is filed with the Trustee by a City Representative.

“**Contractor**” means any contractor under a Construction Contract and any successor or assigns permitted.

“**Construction Contract**” means, collectively, any contracts between City and a Contractor, for the acquisition, construction or installation of any portion of the Project.

“**Costs of Issuance Fund**” means the fund of that name created pursuant to Article III hereof.

“**Defaulted Interest**” has the meaning provided in Section 2.10(b).

“**Delivery Costs**” means all items of expense directly or indirectly payable by or reimbursable to the City or the Trustee relating to the execution, sale and delivery of the Purchase Agreement, this Trust Agreement and the Obligation, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Obligation and charges and fees in connection with the foregoing.

“**Depository Trustee**” means any bank or trust company, which may include the Trustee, designated by the City, with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or State of Arizona authority.

“**Designated Office**” means the office designated as such by the Trustee in writing to the City.

“**Electronic Means**” means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

“**Electronically**” means with respect to notice, one transmitted through a time-sharing terminal, computer network or facsimile machine, if operative as between any two parties, or if not operative, by telephone (promptly confirmed in writing).

“**Event of Default**” means an event of default under the Purchase Agreement as provided in Section 10 thereof.

“**Government Obligations**” means direct general obligations of, or obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed

by, the United States of America (including, without limitation, the interest portion of obligations issued by the Resolution Funding Corporation in book entry form and stripped by request to the Federal Reserve Bank of New York), including Government Obligations which have been stripped of their unmatured interest coupons and interest coupons stripped from Government Obligations, provided any stripped Government Obligations have been stripped by the applicable United States governmental agency.

“**Independent Counsel**” means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the City or the Trustee.

“**Instructions**” means instructions, including funds transfer instructions given pursuant to this Agreement and delivered using Electronic Means.

“**Interest Payment Date**” means each January 1 and July 1, commencing July 1, 2023, while principal represented by any Obligation is outstanding; provided that, if any such day is not a Business Day, any payment due on such date may be made on the next Business Day, without additional interest and with the same force and effect as if made on the specified date for such payment.

“**Interest Portion**” means the amounts of each of the Payments in the column in the Payment Schedule attached to the Purchase Agreement designated “Interest,” denominated as and comprising interest pursuant to the Purchase Agreement and received by the Owner.

“**Market Value**” means the indicated bid value of the investment or investments to be valued as shown in The Wall Street Journal or any publication having general acceptance as a source of valuation of the same or similar types of securities or any securities pricing service available to or used by the Trustee and generally accepted as a source of valuation.

“**Notification**” shall have the meaning provided in Section 11.3.

“**Owner**” or any similar term, when used with respect to an Obligation means \_\_\_\_\_, or the entities provided in Section 2.8.

“**Payment Fund**” means the fund of that name established and held by the Trustee pursuant to Article V hereof.

“**Payment Request Form**” means the form set forth in Exhibit B which is attached hereto and made a part hereof.

“**Payments**” means all payments required to be paid by the City on any date pursuant to Section 1 of the Purchase Agreement and as set forth in the Exhibit to the Purchase Agreement.

“**Permitted Investments**” means any investment permitted by Section 35-323, Arizona Revised Statutes, or any other investment permitted by applicable law.

“**Project Costs**” means, with respect to the Project, all architectural, engineering, soils, survey, archaeology, demolition, construction management fees, development fees, contingencies and other related costs of acquiring and constructing the Project and all costs payable to a Contractor under a Construction Contract, or incurred by the Trustee or the City with respect to the transaction to which this Trust Agreement pertains.

“**Regular Record Date**” means, for the Obligation, the close of business on the fifteenth day of the month preceding each Interest Payment Date.

“**Reimbursement Request Form**” means the form set forth in Exhibit C which is attached hereto and made a part hereof.

“**Responsible Officer**” means, when used with respect to the Trustee, any vice president, associate or any other officer of the Trustee within the office of the Trustee designated in Section 13.3 hereof (the “Corporate Trust Office”) (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Agreement.

“**Special Record Date**” has the meaning provided in Section 2.10(d).

“**State**” means the State of Arizona.

“**Tax Certificate**” means the Certificate Relating To Federal Tax Matters delivered by the City at the time of original execution and delivery of the Obligation.

“**Vendor**” means any supplier of items for inclusion in the Project who is to be paid from amounts held in the Acquisition Fund.

Words importing persons include firms, associations and corporations, and the singular and plural forms of words shall be deemed interchangeable wherever appropriate.

## ARTICLE II SPECIAL REVENUE OBLIGATION

**Section 2.1. Authorization of the Obligation.** The Trustee is hereby authorized and directed to execute and deliver to the Owner, the Obligation in the form of a single, fully registered, physically certificated Obligation, registered in the name of the Owner in the principal amount of \$\_\_\_\_,000, evidencing a one hundred percent (100%) ownership interest in the Purchase Agreement and the Payments. In no event shall the Obligation be deemed a liability, debt or obligation of the Trustee.

**Section 2.2. Date; Interest Accrual.** The Obligation shall be dated the Closing Date, and interest with respect thereto shall be payable from such date or from the most recent Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Obligation.



**Section 2.3. Maturity and Interest Rate.** The Obligation shall mature on July 1, 20\_\_, and interest with respect thereto shall be computed at the rate of \_\_\_\_ percent (\_\_\_%) per annum.

**Section 2.4. Interest on Obligation.** Interest on the Obligation shall be payable semiannually on January 1 and July 1 of each year commencing July 1, 2023, to and including the date of maturity or prior redemption of the Obligation. Except for the initial period, said interest shall represent the portion of the Payments designated as interest and coming due during the six-month period preceding each Interest Payment Date with respect to the Obligation. The proportionate share of the portion of the Payments designated as interest with respect to any Obligation shall be computed by multiplying the portion of Payments designated as principal with respect to such Obligation by the rate of interest applicable to such Obligation (on the basis of a 360-day year of twelve 30-day months), except that the first portion of the Payments designated as interest shall be for interest from the Closing Date to July 1, 2023.

**Section 2.5. Form.** The Obligation shall be in the form of one fully registered, physically certificated Obligation registered in the name of the Owner. The Obligation shall be substantially in the form set forth in Exhibit A hereto. The Obligation shall not be rated by any rating agency or rating service, registered with any securities depository or be assigned a CUSIP number.

**Section 2.6. Execution.** The Obligation shall be executed by and in the name of the Trustee by the manual signature of an authorized representative of the Trustee. If any representative whose signature appears on the Obligation ceases to be such representative before the Closing Date, such signature shall nevertheless be as effective as if the representative had remained in office until the Closing Date. The Obligation may be executed on behalf of the Trustee by such person as at the actual date of the execution of the Obligation shall be the proper authorized representative of the Trustee although at the nominal date of the Obligation such person shall not have been such authorized representative of the Trustee. The Obligation shall not be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Agreement unless and until executed and delivered by the Trustee. The execution by the Trustee of the Obligation shall be conclusive evidence that the Obligation has been duly authorized and delivered hereunder and is entitled to the security and benefit of this Agreement.

**Section 2.7. [Reserved to Preserve Section Numbering].**

**Section 2.8. Transfer and Exchange.**

(a) The Obligation may, in accordance with its terms, be transferred upon the registration books for the Obligation required to be kept pursuant to the provisions of Section 2.12 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Obligation for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed; provided, that the transferee represents to the Trustee in writing that: (i) it has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment in the Obligation; (ii) it understands that neither this Trust Agreement nor the Obligation will be registered pursuant to the Securities Act of 1933, as amended; (iii) it is (A) an affiliate of

\_\_\_\_\_, or (B) a “Bank” as defined in Section 3(a)(2) of the Securities Act of 1933, as amended; and (iv) its present intention is to acquire such interest (A) for its own account, or (B) for resale in a transaction exempt from registration under the Securities Act of 1933, as amended; *provided, however*, that there shall be only be one outstanding Obligation at any time. The foregoing transfer restriction shall be set forth by reference on the face of each Obligation. Whenever the Obligation shall be surrendered for transfer, the Trustee shall execute and deliver a new Obligation in fully registered, physically certificated form for the payment amount then remaining unpaid with respect to such Obligation. The Trustee shall have no duty or obligation to determine whether or not any transferee meets the requirements set forth herein and shall be fully protected in relying on the representations of such transferee in accordance herewith.

(b) The Obligation may be exchanged at the Corporate Trust Office for a like aggregate principal amount of Obligation. In connection with any such exchange or transfer of an Obligation, the Owner requesting such exchange or transfer shall, as a condition precedent to the exercise of the privilege of making such exchange or transfer, remit to the Trustee an amount sufficient to pay any tax or other governmental charge required to be paid, other than one imposed by the City (which will not be payable by the Trustee), or any fee or expense of the Trustee or the City with respect to such exchange or transfer.

(c) The Trustee may, but shall not be obligated to, exchange or register the transfer of an Obligation (i) if principal represented by the Obligation is to be redeemed, or (ii) during a period of fifteen (15) days preceding the giving of a notice of redemption. Any notice of redemption which has been given to the transferor shall be binding on the transferee and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the duly registered Obligation.

**Section 2.9. Obligation Mutilated, Lost, Destroyed or Stolen.** If the Obligation shall become mutilated, the Trustee, at the expense of the Owner of said Obligation, shall execute and deliver a new Obligation for the remaining unpaid principal amount in exchange and substitution for the Obligation so mutilated, but only upon surrender to the Trustee of the Obligation so mutilated. Any mutilated Obligation so surrendered to the Trustee shall be cancelled by it and redelivered to, or upon the order of, the Owner of such Obligation. If any Obligation shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and, if an indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Owner of such Obligation, shall execute and deliver a new Obligation for the remaining unpaid principal amount as the Trustee shall determine in lieu of and in substitution for the Obligation so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each new Obligation delivered under this Section and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section. Any Obligation issued under the provisions of this Section in lieu of any Obligation alleged to be lost, destroyed or stolen shall be entitled to the benefits of this Agreement. The Trustee shall not be required to treat both the original Obligation and any replacement Obligation as being outstanding for the purpose of determining the principal amount of Obligation which may be executed and delivered hereunder, but both the original and replacement Obligation shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Obligation for an Obligation which

has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such Obligation upon receipt of the aforementioned indemnity.

**Section 2.10. Payment.**

(a) The principal (except the final payment thereof whether because of maturity or redemption) and interest due with respect to the Obligation (except that due upon such final payment) shall be payable without surrender in lawful money of the United States of America by wire transfer as instructed by the Owner by written request of the Trustee at least twenty (20) days before the Interest Payment Date specifying the account address. The final payment of principal of the Obligation plus accrued interest to the date of payment thereof shall be paid in lawful money of the United States of America upon surrender when due at the Corporate Trust Office.

(b) Any interest represented by the Obligation which is payable on, but is not punctually paid or duly provided for on, any Interest Payment Date (“Defaulted Interest”) shall forthwith cease to be payable to the Owner on the relevant Regular Record Date solely by virtue of such Owner having been such Owner. Such Defaulted Interest shall thereupon be paid, together with interest thereon at the same rate per annum as such Defaulted Interest, by the Trustee (out of funds provided to it by the City) to the Owner at the close of business on a special record date for the payment of such portion of Defaulted Interest as may then be paid from the sources herein provided (the “Special Record Date”). When the Trustee has funds available to pay the Defaulted Interest and interest thereon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest and interest thereon which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment by the Trustee. The Trustee shall promptly cause notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor to be mailed, first class postage prepaid, to the Owner not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest and interest thereon shall be paid to the Owner on such Special Record Date.

(c) In the event the Obligation is not presented for final payment thereof (whether because of maturity or redemption), if moneys sufficient to pay the principal and interest related to the Obligation have been deposited pursuant hereto for such payment, all liability to the Owner thereof for the payment thereof will forthwith cease and be completely discharged, and thereupon it will be the duty of the Trustee to hold such moneys as provided herein, without liability for interest thereon, for the benefit of the Owner, who will thereafter be restricted exclusively to such moneys, for any claim of whatever nature on his part hereunder or on, or with respect to, the Obligation. The obligation of the Trustee to hold such funds shall continue for two years and six months (subject to applicable escheat laws) following the date on which such interest or principal payment became due, whether at the maturity date or otherwise, at which time the Trustee shall surrender such unclaimed funds so held to the City, whereupon any claim of whatever nature by the Owner of such Obligation arising under such Obligation shall be made upon the City.

**Section 2.11. Execution of Documents and Proof of Ownership.**

(a) Any request, direction, consent, revocation of consent or other instrument in writing required or permitted by this Agreement to be signed or executed by the Owner may be in any number of concurrent instruments of similar tenor, and may be signed or executed by the Owner in person or by its attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Obligation. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of the Obligation shall be sufficient for any purpose of this Agreement (except as otherwise herein provided), if made in the following manner: (i) the fact and date of the execution by any Owner or the attorney or agent thereof of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of his authority; or (ii) the fact of the ownership of the Obligation by any person and the amount, the maturity and the number of the Obligation and the date of his holding the same be proved on the registration books maintained pursuant to Section 2.12 hereof.

(b) Nothing contained in this Article II shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of the Obligation shall bind every future Owner of the Obligation in respect of anything done or suffered to be done by the Trustee in pursuance of such request or consent.

**Section 2.12. Obligation Register.** The Trustee will keep or cause to be kept, at the Designated Office, sufficient books for the registration and transfer of the Obligation which shall at all times during regular business hours on any Business Day be open to inspection by the City and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the Obligation as hereinbefore provided.

**ARTICLE III  
APPLICATION OF PROCEEDS RECEIVED BY  
TRUSTEE; ACQUISITION FUND; COSTS OF ISSUANCE FUND**

**Section 3.1. Application of Proceeds.** \$\_\_\_\_\_ of the proceeds received by the Trustee from the sale of the Obligation shall forthwith be set aside by the Trustee in the Costs of Issuance Fund and the balance of such proceeds (\$\_\_\_\_\_) shall forthwith be set aside by the Trustee in the Acquisition Fund.

**Section 3.2. Establishment and Application of Acquisition Fund.**

(a) The Trustee shall establish a special trust fund designated as the “City of Sedona Acquisition Fund (Second Series 2022)” (herein referred to as the “Acquisition Fund”), shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided in this Agreement.

(b) Pursuant to the Purchase Agreement and subject to the terms and conditions thereof, the City has irrevocably been appointed as the sole and exclusive agent to act for and on behalf of the Trustee in the construction or acquisition of the Project. Except as provided in (c) below, moneys in the Acquisition Fund shall be expended only for Project Costs. It is understood and agreed that the Trustee shall have no responsibility or liability for the performance of the City under this Agreement, the Purchase Agreement, and any other documents executed in connection herewith or therewith.

(c) (1) The amount in the Acquisition Fund shall be applied to the payment of the Project Costs, as hereinafter provided, upon receipt of a duly executed Payment Request Form (on which the Trustee is entitled conclusively rely) in substantially the form attached hereto as Exhibit B, certified to by the City Representative. The Trustee shall remit to the payee designated in the Payment Request Form, the amount requested to be paid in such Payment Request Form within three (3) Business Days following submission of such Payment Request Form. Notwithstanding the foregoing, the Trustee shall apply moneys on deposit in the Acquisition Fund to reimburse the City for any Project Costs incurred or advanced by the City within three (3) Business Days of receipt of a duly executed Reimbursement Request Form in substantially the form attached hereto as Exhibit C, certified to by the City Representative. The Trustee has no duty or obligation to confirm that such disbursements constitute Project Costs.

(2) Project Costs will be paid directly to the Contractor, the Vendor or the payee named in the Payment Request Form unless the City Representative in such Payment Request Form requests payment to be made to the Contractor, the Vendor or payee and another party jointly, in which case such cost shall be paid jointly.

(3) Should any shortfall or deficiency occur in the Acquisition Fund, the City shall pay such amounts to the Trustee.

(4) Amounts in the Acquisition Fund shall be used to pay principal and interest on the Obligation if insufficient funds are otherwise available to make such payments when due.

(5) On the Completion Date, all remaining moneys in the Acquisition Fund shall be transferred to the Payment Fund and applied by the Trustee to the Payments due from the City on the next succeeding Interest Payment Date, and the Acquisition Fund shall be closed.

(6) Any amount remaining in the Acquisition Fund upon the occurrence of an Event of Default of which a Responsible Officer of the Trustee has actual knowledge shall not be disbursed as provided in this Section, but shall be immediately transferred to the Payment Fund and used in accordance with Section 12.3.

**Section 3.3. Establishment and Application of Costs of Issuance Fund.**

(a) The Trustee shall establish a special trust fund designated as the “City of Sedona Costs of Issuance Fund (Second Series 2022)” (herein referred to as the “Costs of Issuance Fund”), shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided in this Agreement.

(b) Amounts in the Costs of Issuance Fund shall be disbursed for Delivery Costs. Disbursements from the Costs of Issuance Fund shall be made by the Trustee upon receipt of a requisition for disbursement on which the Trustee is entitled to conclusively rely, executed or approved in writing by the City Representative. Each such certificate shall set forth the amounts to be disbursed for payment, or reimbursement of previous payments, of Delivery Costs and the person or persons to whom said amounts are to be disbursed. The Trustee has no duty or obligation to confirm that such disbursements constitute Delivery Costs.

(c) On the earlier of March 1, 2023, or when all Delivery Costs associated with the Obligation have been paid (as shown by a certificate of a City Representative delivered to the Trustee), the Trustee shall transfer any amounts remaining in the Costs of Issuance Fund to the Payment Fund and the Costs of Issuance Fund shall be closed.

**ARTICLE IV  
REDEMPTION OF OBLIGATION**

**Section 4.1. Redemption Provisions.**

(a) Principal represented by the Obligation is subject to optional redemption from prepayments made by the City pursuant to Section 8 of the Purchase Agreement, in whole or in part on any date, at a price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, but without premium. The City shall, at least forty-five (45) days prior to an optional redemption date (unless a shorter notice period is acceptable to the Trustee), notify the Trustee of such redemption date and the principal amount of the Obligation to be redeemed on such date.

(b) Principal represented by the Obligation shall be redeemed on July 1 of the years indicated and in the amounts indicated at a price equal to the amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year Redeemed</u>	<u>Principal Amount Redeemed</u>
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A remaining principal amount of \$\_\_\_\_,000 of the Obligation shall be paid on July 1, 20\_\_.

(c) Whenever the Obligation is purchased, redeemed (other than pursuant to mandatory redemption) or delivered by the City to the Trustee for cancellation, the principal amount of the Obligation represented thereby so retired shall satisfy and be credited against the mandatory redemption requirements for the Obligation for such years as the City may direct in writing

**Section 4.2.** **[Reserved to Preserve Section Numbering].**

**Section 4.3.** **Notice of Redemption; Effect.**

(a) The Trustee shall cause notice of any optional redemption hereunder to be transmitted by Electronic Means to the Owner. Such notice shall (1) be sent no more than 60 nor less than 30 calendar days prior to the redemption date, (2) specify with respect to the Obligation the redemption date and the redemption price, (3) set forth the name, address and telephone number of the person from whom information pertaining to the redemption may be obtained, and (4) state that on the redemption date the Obligation will be payable at the Corporate Trust Office and that from that date interest will cease to accrue.

(b) If at the time of giving of notice of the optional redemption of principal represented by the Obligation, there has not been deposited with the Trustee or a Depository Trustee moneys or Government Obligations sufficient to redeem the Obligation or the portion thereof to be redeemed and the requirements of (d) below are not satisfied, then such notice shall state that the redemption is conditional upon the deposit of moneys or Government Obligations sufficient for the redemption with the Trustee or a Depository Trustee and satisfaction of such requirements not later than the opening of business on the redemption date, and such notice will be of no effect and such Obligation shall not be redeemed unless such moneys or Government Obligations are so deposited and such requirements in (d) below are met.

(c) Notice having been provided in the manner provided in (b) above, the Obligation shall become due and payable on the redemption date and shall be paid at the redemption price, plus accrued interest to the redemption date.

(d) If the moneys or Government Obligations for the redemption of the Obligation to be redeemed, together with interest accrued thereon to the redemption date, is held by the Trustee or a Depository Trustee on the redemption date, so as to be available therefor on that date, then from and after the redemption date such principal thereof to be redeemed shall cease to bear interest and no longer shall be considered to be outstanding hereunder. If those moneys shall not be so available on the redemption date, such principal shall continue to bear interest, until paid, at the same rate as they would have borne otherwise.

**Section 4.4.** **Partial Redemption of Obligation.** Upon surrender of the Obligation, the principal portion of which has been optionally redeemed in part only, the Trustee shall execute and deliver to the Owner thereof, at the expense of the City, a new Obligation equal in aggregate payment amount to the unpaid portion of the Obligation surrendered and the City shall provide the Trustee within thirty (30) days of such optional redemption a recomputed Exhibit to be attached to the Purchase Agreement.

**ARTICLE V  
PAYMENTS; PAYMENT FUND**

**Section 5.1. Trustee’s Rights in Purchase Agreement.** The Trustee holds in trust hereunder all of its rights and duties in the Purchase Agreement, including but not limited to all of the rights to receive and collect all of the Payments and all other amounts required to be deposited in the Payment Fund pursuant to the Purchase Agreement or pursuant hereto. All of the Payments and such other amounts to which the Seller may at any time be entitled shall be paid directly to the Trustee in trust, and all of the Payments collected or received by the Trustee shall be held by the Trustee in trust hereunder in the Payment Fund for the benefit of the Owner.

**Section 5.2. Establishment of Payment Fund.** The Trustee shall establish a special trust fund designated as the “City of Sedona Payment Fund (Second Series 2022)” (herein referred to as the “Payment Fund”). All moneys at any time deposited by the Trustee in the Payment Fund shall be held by the Trustee in trust for the benefit of the Owner. So long as the Obligation is outstanding, the City shall have no beneficial right or interest in the Payment Fund or the moneys deposited therein, except only as provided in this Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

**Section 5.3. Payments by City; Deposits.** Subject to the limitations pursuant to the Purchase Agreement with respect to the Excise Taxes, the City shall be required to make the Payments, taking into account any funds on deposit in the Payment Fund as a credit towards any Payment then due. The Trustee, not less than ten (10) Business Days prior to each Interest Payment Date, shall notify the City of the amount required to be paid after taking into account earnings on investments which will be transferred to the Payment Fund in accordance herewith, on or before such Interest Payment Date for both principal and interest with respect to the Obligation. All amounts received by the Trustee as the Payments pursuant to the Purchase Agreement shall be deposited in the Payment Fund.

**Section 5.4. Application of Moneys.** All amounts in the Payment Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and interest and redemption premiums, if any, with respect to the Obligation as the same shall become due and payable, in accordance with the provisions of Articles II and IV hereof.

**Section 5.5. Transfers of Investment Earnings to Payment Fund.** Except as otherwise directed in writing by the City, the Trustee shall, on or before the next Interest Payment Date occurring on July 1, transfer any income or profit on the investment of moneys in the funds hereunder to the Payment Fund.

**Section 5.6. Surplus.** Any surplus remaining in any of the funds created hereunder, after redemption and payment or provision for redemption and payment of the Obligation, including accrued interest and redemption premium, if any, and payment of any applicable fees, expenses or indemnities to the Trustee, or provision for such redemption and payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the City.



**ARTICLE VI**  
**[RESERVED TO PRESERVE SECTION NUMBERING]**

**ARTICLE VII**  
**MONEYS IN FUNDS; INVESTMENT; CERTAIN TAX COVENANTS**

**Section 7.1.** **Held in Trust.** The moneys and investments held by the Trustee under this Agreement are irrevocably held in trust for the benefit of the Owner and for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Agreement and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the City or the Owner.

**Section 7.2.** **Investments Authorized.** Upon written order of the City Representative, moneys held by the Trustee hereunder shall be invested and reinvested by the Trustee, to the maximum extent practicable in Permitted Investments. The City Representative shall direct such investment in specific Permitted Investments. The City Representative shall be solely responsible for ascertaining that all proposed investments and reinvestments are Permitted 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 Trustee for the reinvestment of any maturing investment. Such investments, if registrable, shall be registered in the name of the Trustee and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment. Absent written direction of the City, the Trustee shall hold such moneys held under this Trust Agreement uninvested in cash, without liability for interest. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories. The Trustee shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of such Permitted Investments, including at the time of reinvestment of earnings thereof. In no event shall the Trustee be liable for the selection of investments. The Trustee may conclusively rely upon such written direction from the City Representative as to both the suitability and legality of the directed investments and the Trustee shall have no obligation to confirm that any such directed investment constitutes a Permitted Investment. The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the City specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur. The Trustee may elect, but shall not be obligated, to credit the funds and accounts held by it with moneys representing income or principal payments due on, or sales proceeds due in respect of, Permitted Investments in such funds and accounts, or to credit to Permitted Investments intended to be purchased with such moneys, in each case before actually receiving the requisite moneys from the payment source, or to otherwise advance funds for account transactions. The City acknowledges that the legal obligation to pay the purchase price of any Permitted Investments arises immediately at the time of the purchase. Notwithstanding anything else in this Trust Agreement, (i) any such crediting of funds or assets shall be provisional in nature, and the

Trustee shall be authorized to reverse any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Trust Agreement shall constitute a waiver of any of Trustee's rights as a securities intermediary under Uniform Commercial Code Section 9-206.

**Section 7.3. Accounting.** The Trustee shall furnish to the City, not less than semiannually, an accounting (which may be in the form of its customary statement) of all investments made by the Trustee. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 7.2 hereof.

**Section 7.4. Allocation of Earnings.** Any income, profit or loss on such investments shall be deposited in or charged to the respective funds from which such investments were made, and any interest on any deposit of funds shall be deposited in the fund from which such deposit was made, except as otherwise provided herein, and shall be transferred in accordance with Section 5.5. Unless otherwise directed in writing by the City Representative, any such income, profit or interest shall be transferred in accordance with Section 5.5.

**Section 7.5. Valuation and Disposition of Investments.** For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued at Market Value. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment. In determining the Market Value of Permitted Investments, the Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

**Section 7.6. Limitation of Investment Yield.** In the event the City (while it is directing investments) is of the opinion that it is necessary to restrict or limit the yield on the investment of any amounts paid to or held by the Trustee hereunder in order to avoid the Obligation being considered an "arbitrage bond" within the meaning of Section 148 of the Code, the City Representative may issue to the Trustee a written certificate to such effect (along with appropriate instructions), in which event the Trustee will take such action as is instructed so to restrict or limit the yield on such investment in accordance with the specific instructions contained in such certificate.

**Section 7.7. Other Tax Covenants.** In consideration of the acceptance and execution of the Purchase Agreement by the Trustee and the purchase by the Owner, from time to time, and in consideration of retaining the exclusion of interest income from gross income on the Purchase Agreement and the Obligation for federal income tax purposes, the City shall, from time to time, neither take nor fail to take any action, which action or failure to act is within its power and authority and would result in interest income on the Purchase Agreement or the Obligation to become subject to inclusion in gross income for federal income tax purposes under either laws existing on the date of execution of the Purchase Agreement or such laws as they may be modified or amended or tax laws later adopted. The City shall comply with such

requirement(s) and will take any such action(s) as are necessary to prevent interest income on the Purchase Agreement or the Obligation from becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by special counsel; to pay to the United States of America any required amounts representing rebates of arbitrage profits relating to the Purchase Agreement or the Obligation; filing forms, statements and supporting documents as may be required under the federal tax laws; limiting the term of and yield on investments made with moneys relating to this Agreement; and limiting the use of the proceeds of the Obligation and property financed thereby.

## **ARTICLE VIII THE TRUSTEE**

**Section 8.1. Appointment of Trustee.** The City hereby authorizes and directs the Trustee to, and the Trustee shall, execute and deliver the Purchase Agreement, as Seller, and receive all moneys required to be deposited with the Trustee hereunder and shall allocate, use and apply the same as provided in this Agreement. The City shall maintain as the Trustee a bank or trust company with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000), and subject to supervision or examination by federal or State authority, so long as the Obligation is outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section 8.1 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

**Section 8.2. Liability of Trustee; Standard of Care.** Except with respect to its authority and power generally and authorization to execute this Trust Agreement, the recitals of facts, covenants and agreements herein, in the Purchase Agreement and in the Obligation shall be taken as statements, covenants and agreements of the City, and the Trustee assumes no responsibility for the correctness of the same, or makes any representations as to the validity hereof or sufficiency of this Agreement, the Purchase Agreement or of the Obligation or shall incur any responsibility in respect hereof or thereof, other than in connection with the duties or obligations herein or in the Obligation assigned to or imposed upon them, respectively. Prior to the occurrence of an Event of Default, or after the timely cure of an Event of Default, the Trustee shall perform only such duties as are specifically set forth in this Trust Agreement and no implied obligations or covenants should be read into this Agreement against the Trustee. After the occurrence, and during the continuance, of an Event of Default, the Trustee shall exercise such of the rights and powers vested in it, and use the same degree of care and skill in such exercise, as a prudent person would exercise under the circumstances in the conduct of his or her affairs.

**Section 8.3. Merger or Consolidation.** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to

which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 8.1 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

**Section 8.4. Protection and Rights of the Trustee.** (a) The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificates, statements, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to take any action at the Owner's request unless the Obligation shall be deposited with the Trustee and satisfactory evidence of the ownership of the Obligation shall be furnished to the Trustee. The Trustee may consult with counsel with regard to legal questions, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

(b) Whenever in the administration of its duties under this Agreement, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of the City Representative and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

(c) [Reserved].

(d) The recitals, statements and representations by the City contained in this Agreement or in the Obligation shall be taken and construed as made by and on the part of the City and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

(e) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under this Agreement or for anything whatever in connection with the funds and accounts established hereunder, except only for its own willful misconduct or negligence.

(f) No provision in this Trust Agreement shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability (including, without limitation, any

and all environmental liability) in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(g) The Trustee shall not be accountable for the use or application by the City or any other party of any funds, including proceeds of the Obligation, which the Trustee has released in accordance with the terms of this Trust Agreement.

(h) The Trustee makes no representation or warranty, express or implied, as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Project. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Purchase Agreement or this Trust Agreement for the existence, furnishing or use of the Project.

(i) Notwithstanding any provision in this Trust Agreement or the Purchase Agreement to the contrary, the Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default, except an Event of Default under Section 10(a)(i)(A) of the Purchase Agreement, unless a Responsible Officer of the Trustee has actual notice thereof or is specifically notified in writing of such default by the City or the Owner.

(j) The Trustee shall have the right to accept and act upon Instructions delivered using Electronic Means. If the City elects to give the Trustee Instructions using Electronic Means, and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

(k) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term “force majeure” means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics, pandemics, quarantine restrictions, acts of civil or military authority or governmental action or other similar occurrences. In acting or omitting to act pursuant to the Purchase Agreement or any other documents executed in connection herewith or therewith, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Trust Agreement, including, but not limited to, this Article VIII.

(l) The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the execution and delivery of the Obligation.

(m) The permissive right of the Trustee to do things enumerated in this Agreement shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct. The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the Project.

(n) Before taking any action under this Agreement relating to an Event of Default or in connection with its duties under this Agreement other than making payments of principal and interest on the Obligation as the become due or otherwise exercising any rights at the request or direction of the Owner, the Trustee may require that a indemnity satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including, but not limited to, any liability arising directly or indirectly under any federal, state or local statute, rule, law or ordinance related to the protection of the environment or hazardous substances and except liability which is adjudicated, to have resulted from its negligence or willful misconduct in connection with any action so taken.

(o) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

(p) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owner relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement.

**Section 8.5. Compensation of Trustee.** The City shall from time to time, pursuant to a fee schedule as agreed upon between the City and the Trustee (which fee schedule may be amended in writing), pay to the Trustee reasonable compensation for its services, including its fees, costs and expenses after an Event of Default and shall reimburse the Trustee for all its advances and expenditures, including but not limited to advances to, and reasonable fees and expenses of, independent appraisers, accountants, consultants, counsel, agents and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties hereunder. When the Trustee incurs expenses or renders services after the occurrence

of an Event of Default, such expenses, costs and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 8.6.**     **Removal of Trustee.** (a) The City (but only if no Event of Default has occurred and is continuing) or the Owner, at any time upon thirty (30) days' prior written notice and for any reason, may remove the Trustee and any successor thereto, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or State authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or the requirements of any supervising or examining authority above referred to, then, for the purposes of this Section, the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) The Trustee may at any time resign by giving written notice to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor trustee by an instrument in writing; provided, however, that in the event that the City does not appoint a successor trustee within thirty (30) days following receipt of such notice of resignation, or the giving of notice of removal, the retiring Trustee may petition the appropriate court having jurisdiction to appoint a successor trustee. Any resignation or removal of the Trustee and appointment of a successor trustee shall become effective upon acceptance of appointment by the successor trustee. The Trustee and the City shall execute any documents reasonably required to effect the transfer of rights and obligations of the Trustee to the successor trustee subject, however, to the terms and conditions herein set forth, including, without limitation, the right of the predecessor Trustee to be paid and reimbursed in full for its reasonable charges and expenses (including reasonable fees and expenses of its counsel) and the indemnification under Sections 8.4 and 11.3 hereof. Upon such acceptance, the successor trustee shall mail notice thereof to the Owner at its address set forth on the registration books for the Obligation maintained pursuant to Section 2.12 hereof.

**Section 8.7.**     **Appointment of Agent.** The Trustee may appoint an agent or agents to exercise any of the powers, rights or remedies granted to the Trustee under this Trust Agreement and to hold title to property or to take any other action which may be desirable or necessary.

**Section 8.8.**     **Commingling.** The Trustee may commingle any of the funds held by it pursuant to this Trust Agreement in a separate fund or funds for investment purposes only; provided, however, that all funds or accounts held by the Trustee hereunder shall be accounted for separately notwithstanding such commingling by the Trustee.

**Section 8.9.**     **Records.** The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the City, or any of its agents, at any time, upon reasonable prior notice, during regular business hours. The Trustee shall provide the City Representative with semiannual reports of funds transactions and balances.

**ARTICLE IX**  
**MODIFICATION OR AMENDMENT OF AGREEMENTS**

**Section 9.1. Amendments Permitted.** (a) This Agreement and the rights and obligations of the Owner and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement which shall become effective when the written consent of the Owner shall have been filed with the Trustee. No such modification or amendment shall (1) extend or have the effect of extending the fixed maturity of the Obligation or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the redemption thereof, without the express written consent of the Owner, or (2) modify any of the rights or obligations of the Trustee without its written assent thereto. Any such supplemental or amending agreement shall become effective as provided in Section 9.2 hereof.

(b) This Agreement and the rights and obligations of the Owner and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement, without the consent of the Owner, but only (1) to provide for additions or modifications to the Project, (2) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the Trustee (for its own behalf) or the City, (3) to secure additional revenues or provide additional security or reserves for payment of the Obligation, (4) to comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder, (5) to provide for the appointment of a successor trustee pursuant to the terms hereof, (6) to preserve the exclusion of the interest on the Obligation from gross income for purposes of federal or State income taxes and to preserve the power of the City to continue to issue or incur bonds or other obligations the interest on which is likewise exempt from federal and State income taxes, (7) to cure, correct or supplement any ambiguous or defective provision contained herein or therein, (8) to facilitate the issuance or incurrence of additional parity obligations, or (9) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which shall not materially, adversely affect the interests of the Owner as evidenced by an opinion of counsel delivered by the City to the Trustee. Any such supplemental or amending agreement shall become effective upon execution and delivery by the parties hereto or thereto as the case may be. The Trustee shall be entitled to receive and may rely upon an opinion of counsel as conclusive evidence that any such supplemental or amending agreement is authorized or permitted under this Trust Agreement (and, if applicable, the Purchase Agreement), and complies with this Section or Section 9.2.

**Section 9.2. Procedure for Amendment With Written Consent of Obligation Owner.** (a) This Agreement and the Purchase Agreement may be amended by supplemental or amending agreement as provided in this Section in the event the consent of the Owner is required pursuant to Section 9.1 hereof. A copy of such supplemental or amending agreement, together with a request to the Owner for its consent thereto, shall be mailed by the Trustee to the Owner at the address thereof as set forth on the registration books for the Obligation maintained pursuant to Section 2.12 hereof.



(b) Such supplemental or amending agreement shall not become effective unless there shall be filed with the Trustee the written consent of the Owner and a notice shall have been mailed as hereinafter in this Section provided. The consent of the Owner shall be effective only if accompanied by proof of ownership of the Obligation, which proof shall be such as is permitted by Section 2.11 hereof. Any such consent shall be binding upon the Owner giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

(c) After the Owner shall have filed its consent to such supplemental or amending agreement, the Trustee shall mail a notice to the Owner in the manner hereinbefore provided in this Section for the mailing of such supplemental or amending agreement of the notice of adoption thereof, stating in substance that such supplemental or amending agreement has been consented to by the Owner and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental or amending agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental or amending agreement shall be deemed conclusively binding upon the parties hereto and the Owner at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty (60) day period.

**Section 9.3.** **[Reserved to Preserve Section Numbering].**

**Section 9.4.** **Effect of Supplemental Agreement.** From and after the time any supplemental or amending agreement becomes effective pursuant to this Article IX, this Agreement or the Purchase Agreement, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and the Owner, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental or amending agreement shall be deemed to be part of the terms and conditions of this Agreement or the Purchase Agreement, as the case may be, for any and all purposes.

**Section 9.5.** **Endorsement or Replacement of Obligations Delivered After Amendments.** The Trustee may determine that an Obligation delivered after the effective date of any action taken as provided in this Article shall bear a notation, by endorsement or otherwise, in form approved by the Trustee, as to such action. In that case, upon demand of the Owner at such effective date and presentation of his Obligation for the purpose at the office of the Trustee, a suitable notation shall be made on such Obligation. The Trustee may determine that the delivery of a substitute Obligation, so modified as in the opinion of the Trustee is necessary to conform to such Owner's action, which substitute Obligation shall thereupon be prepared, executed and delivered. In that case, upon demand of the Owner, such substitute Obligation shall be exchanged at the Designated Office of the Trustee, without cost to the Owner, for an Obligation of the same character then outstanding, upon surrender of the Owner's Obligation.

**Section 9.6. Amendatory Endorsement of Obligations.** The provisions of this Article shall not prevent the Owner from accepting any amendment or supplement, provided that proper notation thereof is made on the Obligation.

## **ARTICLE X COVENANTS, NOTICES**

**Section 10.1. Compliance With and Enforcement of Purchase Agreement.** The City shall perform all obligations and duties imposed on it under the Purchase Agreement and shall not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be an Event of Default. The City, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting any such action will deliver the same, or a copy thereof, to the Trustee.

**Section 10.2. Observance of Laws and Regulations.** The City shall well and truly keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States of America, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the City, including its right to exist and carry on business as a political subdivision, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

**Section 10.3. Recordation and Filing.** The City shall file this Agreement (or a memorandum thereof or a financing statement with respect thereto), and all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee, the Trustee having no obligation to make such requirements), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee and the Owner.

**Section 10.4. Further Assurances.** The Trustee (at the reasonable request, and at the expense, of the City) and the City shall make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and the Purchase Agreement and for the better assuring and confirming unto the Owner the rights and benefits provided herein.

**Section 10.5. Notification to the City of Failure to Make Payments.** The Trustee shall notify the City of any failure by the City to make any Payment or other payment required under the Purchase Agreement to be made to the Trustee, in writing and within one (1) Business Day of any such failure. Such notice shall not be a prerequisite for the occurrence of an Event of Default.

**Section 10.6. Business Days.** Except as otherwise required herein, if this Agreement or the Purchase Agreement requires any party to act on a specific day and such day is

not a Business Day, such party need not perform such act until the next succeeding Business Day, and such act shall be deemed to have been performed on the day required.

## **ARTICLE XI LIMITATION OF LIABILITY**

**Section 11.1. Limited Liability of the City.** Except for the payment of the Payments from the Excise Taxes when due in accordance with the Purchase Agreement and the performance of the other covenants and agreements of the City contained in the Purchase Agreement and herein, the City shall have no pecuniary obligation or liability to any of the other parties or to the Owner with respect to this Agreement or the terms, execution, delivery or transfer of the Obligation or the distribution of Payments to the Owner by the Trustee.

**Section 11.2. No Liability of the City for Trustee Performance.** The City shall have no obligation or liability to any of the other parties or to the Owner with respect to the performance by the Trustee of any duty imposed upon it under this Agreement.

**Section 11.3. Indemnification of the Trustee.** (a) To the extent permitted by law, the City shall indemnify and save the Trustee and its officers, directors, agents and employees, harmless for, from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of: (i) the use, maintenance, condition or management of, or from any work or thing done on, the Project or the sites of the Project or any portion thereof or interest therein by the City; (ii) any breach or default on the part of the City in the performance of any of its obligations under this Agreement and any other agreement made and entered into for purposes of the Project or any interest therein; (iii) any act of negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Project; (iv) any act of negligence of any assignee of, or purchaser from, the City or of any of its or their agents, contractors, servants, employees or licensees with respect to the Project; (v) the construction or acquisition of the Project or any interest therein; (vi) the actions of any other party, including but not limited to the operation or use of the Project or the sites of the Project or interest therein by the City; (vii) the ownership of the Project or the sites of the Project or interest therein; or (viii) the exercise and performance by the Trustee of its powers and duties hereunder, under the Purchase Agreement or in connection with any document or transaction contemplated herewith or therewith, including the costs and expenses of defending itself against any claim of liability arising under this Trust Agreement. No indemnification will be made under this Section or elsewhere in this Agreement for willful misconduct or negligence of the party seeking indemnification under this Agreement. As security for the payment of amounts under Section 8.5 and this Section 11.3, the Trustee shall be secured under this Agreement by a lien prior to the Obligation. The obligations of the City hereunder for indemnification under this Section shall remain valid and binding notwithstanding, and shall survive, the maturity and payment or redemption of the Obligation or resignation or removal of the Trustee or the termination of this Agreement.

(b) Promptly after determining that any event or condition which requires or may require indemnification by the City hereunder exists or may exist, or after receipt of notice of the commencement of any action in respect of which indemnity may be sought hereunder,

shall notify the City in writing of such circumstances or action (the “Notification”). Failure to give such notification shall not affect the right of the Trustee to receive the indemnification provided for herewith. Upon giving of the Notification, the Trustee shall cooperate fully with the City in order that the City may defend, compromise or settle any such matters or actions which may result in payment by the City hereunder. The City shall give the Trustee notice of its election within fifteen (15) days after receiving the Notification whether the City, at its sole cost and expense, shall represent and defend the Trustee in any claim or action which may result in a request for indemnification hereunder. If the City timely gives the notice that it will represent and defend the Trustee thereafter, the Trustee shall not settle or compromise or otherwise interfere with the defense or undertakings of the City hereunder; provided, however, the Trustee may retain its own counsel and still be indemnified against the cost of employing counsel and all other expenses despite an assumption of the defense by the City if the Trustee believes in good faith that there are defenses available to it which are not available to the City or which are adverse to or in conflict with those available to the City and which the Trustee believes in good faith cannot be effectively asserted by common counsel. The City shall not settle or compromise any claim or action against the Trustee without the written approval of the Trustee, except to the extent that the City shall pay all losses and the Trustee shall be fully released from such claim or action. If the City either fails to timely give its notice or notifies the Trustee that the City will not represent and defend the Trustee, the Trustee may defend, settle, compromise or admit liability as it shall determine in the reasonable exercise of its discretion, at the expense of the City. In the event the City is required to and does indemnify the Trustee as herein provided, the rights of the City shall be subrogated to the rights of the Trustee to recover such losses or damages from any other person or entity.

**Section 11.4. Opinion of Counsel.** Before being required to take any action, the Trustee may require an opinion of Independent Counsel acceptable to the Trustee, which opinion shall be made available to the other parties hereto upon request, which counsel may be counsel to any of the parties hereto, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, the Trustee shall be absolutely protected in relying thereon.

## **ARTICLE XII EVENTS OF DEFAULT AND REMEDIES OF OWNER**

**Section 12.1. Seller’s Rights Held in Trust.** As provided herein, the Trustee holds in trust hereunder all of the Seller’s rights in and to the Purchase Agreement, including without limitation all of the Seller’s rights to exercise such rights and remedies conferred on the Seller pursuant to the Purchase Agreement as may be necessary or convenient to enforce payment of the Payments and any other amounts required to be deposited in the Payment Fund and enforcement of the pledge of the Excise Taxes for the payment of the Obligation.

**Section 12.2. Remedies Upon Default; No Acceleration.** Upon an Event of Default and if such event has not been cured as provided in the Purchase Agreement, the Trustee may take whatever action at law or in equity, including the remedy of specific performance, may appear necessary or desirable to collect the Payments and any other amounts payable by the City hereunder or under the Purchase Agreement, then due (but not the Payments and other such

amounts accruing), or to enforce performance and observance of any pledge, obligation, agreement, or covenant of the City under this Trust Agreement or the Purchase Agreement as provided in the Purchase Agreement. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of the Owner any plan of reorganization, arrangement, adjustment, or composition affecting the Obligation or the rights of the Owner, or to authorize the Trustee to vote in respect of the claim of the Owner in any such proceeding without the approval of the Owner so affected. Neither the Trustee nor the Owner shall have any right under any circumstances to accelerate the payment dates of the Obligation or otherwise declare any of the Payments not then past due or in default to be immediately due and payable.

**Section 12.3. Application of Funds.** (a) Subject to Subsection (b), amounts held by the Trustee hereunder and proceeds from the exercise of any remedies hereunder or under the Purchase Agreement after payment or reimbursement of the reasonable fees, costs and expenses of the Trustee in connection therewith, including reasonable attorneys' fees and expenses and the creation of a reasonable reserve for anticipated fees, costs and expenses, shall be applied as follows:

**First:** To the payment to the persons entitled thereto of all installments of interest then due on Obligation in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the persons entitled thereto, without any discrimination or preference; and

**Second:** To the payment to the persons entitled thereto of the unpaid principal installments of any Obligation which shall have become due, whether at maturity or because of selection for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full the Obligation due on any date, then to the payment thereof ratably, according to the amounts of principal installments due on such date, to the persons entitled thereto, without any discrimination or preference; and

(b) Whenever moneys are to be applied pursuant to this section, the Trustee shall fix the date (which shall be the first of a month unless the Trustee shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal paid on such date shall cease to accrue. The Trustee shall give or cause to be given notice of such payment, by first-class mail, to the Owner at least eight (8) days before such date. The Trustee shall not be required to make payment to the Owner of any Obligation until such Obligation shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid. Any surplus thereof shall be paid to the City as directed by the City Representative.

**Section 12.4. Institution of Legal Proceedings.** If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Owner, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Owner by a suit in equity or action at law for the specific performance of any covenant or agreement contained herein.

**Section 12.5. Non-waiver.** Except as otherwise provided in this Article, the Owner has the right to institute suit to enforce and collect the Payments as provided in the Purchase Agreement. No delay or omission of the Trustee or of the Owner to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article to the Trustee or the Owner may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Owner.

**Section 12.6. Power of Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owner, it shall have full power, in the exercise of its discretion for the best interests of the Owner, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, without the consent of the Owner.

**Section 12.7. Limitation on Obligation Owner's Right to Sue.** The Owner shall not have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Agreement, unless (i) the Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (ii) the Owner shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (iii) the Owner shall have tendered to the Trustee indemnity satisfactory to it against the costs, expenses, and liabilities to be incurred in compliance with such request and (iv) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee. Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by the Owner of any remedy hereunder.

### **ARTICLE XIII MISCELLANEOUS**

**Section 13.1. Defeasance.** (a) If and when the Obligation or portion thereof shall be paid and discharged in any one or more of the following ways:

(i) by paying or causing to be paid the principal of and interest and redemption premium, if any, with respect to such Obligation, as and when the same become due and payable;

(ii) by depositing with a Depository Trustee, in trust for such purpose, at or before maturity, money which, together with the amounts then on deposit in the Payment Fund is fully sufficient to pay or cause to be paid the Obligation, including all principal, interest and redemption premium, if any; or

(iii) by depositing with a Depository Trustee, in trust for such purpose, any Government Obligations which are noncallable in such amount as shall be certified to the Trustee and the City in a certificate or report by a national firm of certified public accountants acceptable to the City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit in the Payment Fund together with the interest to accrue thereon, to pay and discharge or cause to be paid and discharged the Obligation (including all principal, interest and redemption premium, if any) at their respective maturity or prior redemption dates, which deposit may be made in accordance with the provisions of Section 8 of the Purchase Agreement;

notwithstanding that the Obligation shall not have been surrendered for payment, all obligations of the Trustee and the City with respect to the Obligation shall cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, from funds deposited pursuant to subsections (ii) or (iii) of this Section and paid to the Trustee by the Depository Trustee, to the Owner all sums due with respect thereto, and in the event of deposits pursuant to subsections (ii) or (iii), the Obligation shall continue to represent direct and proportionate interests of the Owner thereof in such funds.

(b) Any funds held by the Trustee, at the time of one of the events described in subsection (a) of this Section, which are not required for the payment to be made to Owner or for the payment of any other amounts due and payable by the City hereunder or under the Purchase Agreement, shall be paid over to the City.

(c) Any Obligation or portion thereof may be paid and discharged as provided in this Section; provided however, that if the Obligation or portion thereof is to be redeemed, notice of such redemption shall have been given in accordance with the provisions hereof or the City shall have submitted to the Trustee instructions expressed to be irrevocable as to the date upon which such Obligation or portion thereof is to be redeemed and as to the giving of notice of such redemption; and provided further, that if the Obligation or portion thereof will not mature within sixty (60) days of the deposit referred to in subsections (ii) or (iii) of subsection (a) of this Section, the Trustee shall give notice of such deposit by first class mail to the Owner.

(d) No Obligation may be provided for as provided in this Section if, as a result thereof, or of any other action in connection with which the provisions for payment of such Obligation is made, the interest payable on any Obligation is thereby made includable in gross income for federal income tax purposes. The Trustee, the Depository Trustee, and the City may rely upon an opinion of Independent Counsel which is nationally recognized bond counsel to the effect that the provisions of this subsection will not be breached by so providing for the payment of the Obligation.

**Section 13.2. Records.** The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Agreement, which shall be available for inspection by the City and the Owner, or the agent of any of them, upon reasonable prior notice, at any time during regular business hours.

**Section 13.3. Notices.** All written notices to be given under this Agreement shall be given by mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective upon deposit in the United States mail, postage prepaid or, in the case of personal delivery, upon delivery to the address set forth below:

If to the City:                   City of Sedona, Arizona  
  102 Roadrunner Drive  
  Sedona, Arizona 86336  
  Attention: City Manager

If to the Trustee:               \_\_\_\_\_

  \_\_\_\_\_

  \_\_\_\_\_

  Attention: Corporate Trust Services

**Section 13.4. Incorporation of State Statutes.** (a) Section 38-511, Arizona Revised Statutes, as amended, provides that the City may, within three years after its execution, cancel any contract (including this Agreement), without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract (including in the case of this Agreement, the Trustee) in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In addition, the City may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City from any other party to the contract arising as a result of the contract.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, the Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes. The breach by the Trustee of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of the Trustee by the City. The City retains the legal right to randomly inspect the papers and records of the Trustee to ensure that the Trustee is complying with the above-mentioned warranty. The Trustee shall keep such papers and records open for random inspection during normal business hours by the City. The Trustee shall cooperate with the random inspections by the City including granting the City entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, the Trustee 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 the City determines that the Trustee’s certification above is false or that it has breached such agreement, the City may impose remedies as provided by law.



(d) Pursuant to Section 35-394, Arizona Revised Statutes, the Trustee hereby certifies it does not currently, and for the duration of this Trust Agreement shall not use: (i) the forced labor of ethnic Uyghurs in the People's Republic of China, (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. The foregoing certification is made to the best knowledge of the Trustee without any current independent investigation or without any future independent investigation for the duration of this Trust Agreement. If the Trustee becomes aware during the duration of this Trust Agreement that it is not in compliance with such certification, the Trustee shall take such actions as provided by law, including providing the required notice to the City. If the City determines that the Trustee is not in compliance with the foregoing certification and has not taken remedial action, the City shall terminate the Trustee's role as the Trustee hereunder pursuant to Article VIII.

**Section 13.5. Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State.

**Section 13.6. Binding Effect and Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Agreement either the City or the Trustee is named or referred to, such reference shall be deemed to include successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 13.7. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

**Section 13.8. Destruction of Cancelled Obligations.** Whenever in this Agreement provision is made for the surrender to or cancellation by the Trustee and the delivery to the City of the Obligation, the Trustee may destroy the Obligation and, upon the City's request, deliver a certificate of such destruction to the City.

**Section 13.9. Headings.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to "Articles", "Sections", and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; and the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

**Section 13.10. Parties Interested Herein.** Nothing in this Trust Agreement or the Obligation, expressed or implied, is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Trustee and the Owner, any legal or equitable right, remedy or claim under or by reason of this Trust Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, provisions and agreements in this

Trust Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee and the Owner.

**Section 13.11. Waiver of Notice.** Whenever in this Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 13.12. Severability of Invalid Provisions.** In case any one or more of the provisions contained in this Agreement or in the Obligation shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Obligation pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

[Signature page follows.]

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

\_\_\_\_\_, **as Trustee**

By .....  
Authorized Representative

**THE CITY OF SEDONA, ARIZONA**

By .....  
Mayor

**ATTEST:**

.....  
City Clerk

**EXHIBIT A-1**

(Form of Obligation)

Number: .....

Principal Amount: .....

**THIS OBLIGATION IS SUBJECT TO RESTRICTIONS  
ON TRANSFER PROVIDED IN SECTION 2.8(a) OF  
THE HEREIN DESCRIBED TRUST AGREEMENT**

**EXCISE TAX REVENUE OBLIGATION, SERIES 2022**

Evidencing a Proportionate Interest of the Owner  
Hereof in Purchase Price Payments to be Made by

**THE CITY OF SEDONA, ARIZONA**

to

\_\_\_\_\_,  
as Trustee

Interest Rate:

Maturity Date:

Dated Date:

\_\_\_\_%

July 1, 20\_\_

December \_\_, 2022

REGISTERED OWNER: .....

PRINCIPAL AMOUNT: ..... DOLLARS

**THIS IS TO CERTIFY THAT** the registered owner identified above, or registered assigns, as the registered owner of this Excise Tax Revenue Obligation, Series 2022 (this “Obligation”) is the owner of all of the interests in the right to receive certain “Payments” under and defined in that certain Fifth Purchase Agreement, dated as of December 1, 2022 (the “Purchase Agreement”), by and between \_\_\_\_\_ (the “Trustee”), and the City of Sedona, Arizona, a municipal corporation and a political subdivision existing under the laws of the State of Arizona (the “City”), which Payments and other rights and interests under the Purchase Agreement are held by the Trustee in trust under that certain Fifth Trust Agreement, dated as of December 1, 2022 (the “Trust Agreement”), by and between the City and the Trustee. The Trustee maintains a corporate trust office for payment and transfer of this Obligation (the “Designated Office”).

The registered owner of this Obligation is entitled to receive, subject to the terms of the Purchase Agreement, on the maturity date set forth above, the principal amount set forth above and to receive semiannually on January 1 and July 1 of each year commencing July 1, 2023 (the “Interest Payment Dates”), until payment in full of said portion of principal or redemption prior thereto, the portion of the Payments designated as interest coming due during the period commencing on the last date on which interest was paid and ending on the day prior to the Interest Payment Date or, if no interest has been paid, from the Dated Date specified above. Said

interest is the result of the multiplication of said principal by the interest rate per annum set forth above. Interest shall be calculated on the basis of a 360-day year composed of twelve (12) months of thirty (30) days each.

Principal and interest represented by this Obligation are payable in lawful money of the United States of America as provided in the Trust Agreement, except that the final payment of principal and interest, when due, will be paid upon surrender of this Obligation at the Designated Office.

The Trustee has no obligation or liability to the registered owner of the Obligation for the payment of interest or principal pertaining to the Obligation. The Trustee's sole obligations are to administer, for the benefit of the registered owner of the Obligation, the various funds and accounts established pursuant to the Trust Agreement.

This Obligation has been executed and delivered by the Trustee pursuant to the terms of the Trust Agreement. The City is authorized to enter into the Purchase Agreement and the Trust Agreement under the laws of the State of Arizona and by a resolution of the Mayor and Council of the City adopted on November 22, 2022. Reference is hereby made to the Purchase Agreement and the Trust Agreement (copies of which are on file at the Designated Office) for further definitions, a description of the terms on which this Obligation is delivered, the rights thereunder of the registered owner of this Obligation, the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Purchase Agreement (including with respect to certain obligations secured and to be secured on a parity with the security for the Payments and to certain limitations on such security), to all of the provisions of which Purchase Agreement and Trust Agreement the registered owner of this Obligation, by acceptance hereof, assents and agrees. (The recitals, statements, covenants and representations made in this Obligation shall be taken and construed as made by and on the part of the City, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.)

The Obligation is payable from payments to be made by the City pursuant to the Purchase Agreement. To secure the Payments required to be paid by the City pursuant to the provisions of the Purchase Agreement (and any obligations issued or which could be issued on a parity with the requirement to make payments from such amounts as provided in the Purchase Agreement), the City has pledged for the payment of the Payments all excise taxes, transaction privilege (sales, license and use) taxes, vehicle license fees, plan review deposit fees, building permit fees, conditional use permit fees, development review fees, franchise fees, fines and forfeitures which the City now collects and which it may collect in the future, together with the City's portion of any excise taxes, transaction privilege (sales and use) taxes and income taxes imposed and collected by the State of Arizona, or any political subdivision thereof, or any other governmental unit or agency, and returned, allocated or apportioned to the City, EXCEPT (i) any such taxes, fees, fines and forfeitures which the City has enacted or may enact in the future which must be used or expended by the City for specific purposes, and (ii) any such taxes which, by State law, rule or regulation must be expended for specific purposes, such as motor vehicle fuel taxes.

*The obligation of the City to make the Payments does not represent or constitute a general obligation of the City for which the City is obligated to levy or pledge any form of taxation nor does the obligation to make the Payments under the Purchase Agreement constitute an indebtedness of the City, the State of Arizona or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction or otherwise.*

Neither the Trustee nor the registered owner of this Obligation shall have any right under any circumstances to accelerate the maturity of the Obligation or otherwise declare any of the Payments not then past due or in default to be immediately due and payable. (The Obligation represents an interest in a limited obligation of the City (as described herein), and no Council member, officer or agent, as such, past, present or future, of the City shall be personally liable for the payment thereof.)

For further definitions, a more complete statement of the income and revenues from which, and conditions under which, this Obligation is payable, the conditions under which additional obligations have been and may be authorized and issued on a parity herewith, a statement of the terms under which the Trust Agreement or the Purchase Agreement may be modified or supplemented and a statement of the general covenants and provisions pursuant to which this Obligation is issued, reference is made to the Trust Agreement and the Purchase Agreement.

This Obligation is executed and delivered only in fully registered, physically certificated form and shall not be transferable or exchangeable, except as provided in the Trust Agreement.

This Obligation is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the Designated Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Obligation. Upon such transfer a new Obligation for the principal amount remaining payable at maturity will be delivered to the transferee in exchange therefor. The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Obligation shall be overdue, and the City and the Trustee shall not be affected by any notice to the contrary.

The Trustee may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or governmental charges required by law in connection with the exchange or transfer.

The Trustee may, but shall not be obligated to, exchange or register the transfer of this Obligation (i) if this Obligation has been selected for redemption, in whole or in part, or (ii) during a period of fifteen (15) days preceding the giving of a notice of redemption. If this Obligation is transferred after having been selected for redemption, any notice of redemption which has been given to the transferor shall be binding on the transferee, and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the duly registered Obligation.

The registered owner of this Obligation shall have no right to enforce the provisions of the Trust Agreement or the Purchase Agreement or to institute any action to enforce the

covenants thereof, or to take any action with respect to a default thereunder or hereunder, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Trust Agreement.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement and the Purchase Agreement may be amended by the parties thereto with the written consent of the Owner of this Obligation, and may be amended without such consent under certain circumstances but in no event such that the interests of the Owner of this Obligation are adversely affected, provided that no such amendment shall impair the right of the Owner to receive in any case the Owner's proportionate share of any Payment thereof in accordance with this Obligation.

Principal represented by this Obligation is subject to optional redemption in such order and from such principal amounts payable as may be selected by the City, in whole or in part on any date, at a price equal to the principal amount to be redeemed, together with accrued interest to the date fixed for redemption but without premium.

Principal represented by this Obligation shall be redeemed on July 1 of the years indicated and in the principal amounts indicated at a price equal to the amount thereof plus interest accrued to the date of redemption, but without premium:

Year Redeemed	Principal Amount Redeemed
---------------	---------------------------

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A remaining principal amount of \$\_\_\_\_,000 of this Obligation shall be paid on July 1, 20\_\_.

Whenever this Obligation is purchased, redeemed (other than pursuant to mandatory redemption) or delivered by the City to the Trustee for cancellation, the principal amount so retired shall satisfy and be credited against the mandatory redemption requirements for this Obligation for such years as the City may direct.

The Trustee shall give notice of any optional redemption of this Obligation as provided above no more than 60 nor less than 30 calendar days prior to the redemption date to the registered owner at its address shown on the registration books maintained by the Trustee. A certificate of the Trustee shall conclusively establish the mailing of any such notice for all purposes.

If at the time of mailing of the notice of redemption there has not been deposited with the Trustee moneys or eligible securities sufficient to redeem this Obligation and other requirements set forth in the Trust Agreement are not met, such notice shall state that it is conditional, subject to the deposit of moneys sufficient for the redemption and satisfaction of such conditions. If the principal of this Obligation is subject to redemption and if on the redemption date moneys for the

redemption thereof are held by the Trustee and those other conditions are met, thereafter such principal to be redeemed shall cease to bear interest, and shall cease to be secured by, and shall not be deemed to be outstanding under, the Trust Agreement. The failure to receive any notice of redemption, or any defect in such notice in respect of this Obligation, shall not affect the validity of redemption of this Obligation.

It is hereby certified, recited and declared that all conditions, acts and things required by the Constitution and laws of the State of Arizona to happen, to be done, to exist and to be performed precedent to and in the execution and delivery of this Obligation have happened, have been done, do exist and have been performed in regular and due form and time as required by law.

This Obligation shall not be entitled to any security or benefit under the Trust Agreement until executed by the Trustee.

IN WITNESS WHEREOF, this Obligation has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

Date of Execution: .....

\_\_\_\_\_, as Trustee

By.....  
Authorized Representative



The following abbreviations, when used in the inscription on the face of this Obligation, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -	as tenants in common	UNIF GIFT/TRANS MIN ACT
TEN ENT -	as tenants by the entireties	.....Custodian.....
JT TEN -	as joint tenants with right of survivorship and not as tenants in common	(Cust) (Minor)
		under Uniform Gifts/Transfers to Minors Act
		.....

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

Insert Social Security or Other Identifying Number of Transferee

.....  
.....

.....  
(Please Print or Typewrite Name and Address of Transferee)

the within certificate and all rights thereunder, and hereby irrevocably constitutes and appoints

....., attorney to transfer the within certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated .....

.....  
Note: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within registered certificate in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

.....  
The signature(s) should be guaranteed by an eligible guarantor institution pursuant to Securities and Exchange Commission Rule 17Ad-15

**EXHIBIT B**

**Payment Request Form**

Application No. ....

The Trustee is hereby requested to pay from the “Acquisition Fund” established by the Fifth Trust Agreement, dated as of December 1, 2022 (the “Trust Agreement”), between the City of Sedona, Arizona (the “City”) and \_\_\_\_\_, as trustee (the “Trustee”) to the person or corporation designated below as “Payee,” the sum set forth below such designation, in payment of the Project Costs (as such term is and other undefined terms used herein are defined in the Trust Agreement) described below. The amount shown below is due and payable under a purchase order or contract with respect to the Project Costs described below and has not formed the basis of any prior request for payment.

Payee: .....

Address: .....

Amount: .....

Description of Project Costs or portion thereof authorized to be paid to the Payee:

.....  
.....  
.....  
.....  
.....  
.....  
.....

The City acknowledges that it has received and inspected each item of the Project described above and has found each item of the Project so described to be in good condition, in conformity with the City’s specifications and satisfactory for the City’s purposes and in accordance with the applicable purchase order or contract and the plans for the Project. Notwithstanding anything herein to the contrary, the City shall not be deemed to have waived or released the Payee from any liability or obligation to the City in the event the City’s acknowledgment herein is discovered to be inaccurate in any respect as to any item of the Project described above.

With respect to this requested disbursement, the City (i) certifies it has reviewed any wire instructions set forth herein to confirm such wire instructions are accurate, and (ii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with its instructions herein (unless such losses are caused by the negligence or willful misconduct of the Trustee).

By execution of this Payment Request Form, the City requests and approves the payment of the amount stated above to Payee set forth above.

DATED: ....., 20.....

.....  
City Representative

Please forward payment to Payee at the following address:

.....  
.....  
.....

**EXHIBIT C**

**Reimbursement Request Form**

Application No. ....

The Trustee is hereby requested to pay from the "Acquisition Fund" established by the Fifth Trust Agreement, dated as of December 1, 2022 (the "Trust Agreement"), between the City of Sedona, Arizona (the "City"), and \_\_\_\_\_, as trustee (the "Trustee"), to the City, the sum set forth below as reimbursement of (all/a portion) of the Project Costs (as such term and all other undefined terms used herein are defined in the Trust Agreement) described below. The amount shown below was paid by the City as Project Costs and has not formed the basis of any prior request for payment.

The City acknowledges that it has received and has inspected each item of the Project to which the foregoing relates and has found each item of the Project so described to be in good condition, in conformity with the City's specifications and satisfactory for the City's purposes. Notwithstanding anything herein to the contrary, the City shall not be deemed to have waived or released any entity named on the attached documentation, from any liability or obligation to the City in the event the City's acknowledgment herein is discovered to be inaccurate in any respect as to any item of the Project described below.

With respect to this requested disbursement, the City (i) certifies it has reviewed any wire instructions set forth herein to confirm such wire instructions are accurate, and (ii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with its instructions herein (unless such losses are caused by the negligence or willful misconduct of the Trustee).

Amount: .....

Description of Project Costs or portion thereof for which reimbursement is hereby requested:

.....  
.....  
.....

DATED: ....., 20.....

.....  
City Representative

Dated Received: ....., 20.....

PLACEMENT AGENT AGREEMENT

\_\_\_\_\_, 2022

City of Sedona, Arizona  
102 Roadrunner Drive  
Sedona, Arizona 86336

Re: City of Sedona, Arizona Excise Tax Revenue Obligation, Second Series 2022

The City of Sedona, Arizona (the “Issuer”) proposes to cause the execution and delivery in a private placement of the above-referenced obligation of the Issuer (the “Obligation”), the Obligation to be executed and delivered for the purposes described in the hereinafter defined Resolution, and to pay costs incurred in connection with the execution and delivery of the Obligation. The Obligation is authorized to be executed and delivered pursuant to Resolution No. 2022-\_\_\_\_ of the Mayor and Council of the Issuer (the “Council”) adopted on November 22, 2022 (the “Resolution”).

This Placement Agent Agreement (this “Agreement”) confirms the agreement between the Issuer and Stifel, Nicolaus & Company, Incorporated (the “Placement Agent”) as follows:

1. Engagement. The Issuer hereby engages the Placement Agent as its exclusive agent to assist the Issuer in placing the Obligation on a best efforts basis with one or more purchasers, each a “qualified institutional buyer” as defined in Rule 144A under the Securities Act of 1933 (the “Securities Act”) or an “accredited investor,” as defined in Rule 501(a)(1), (2), (3), or (7) under the Securities Act, as represented by each purchaser in an executed Investor Letter in the form attached as Exhibit C hereto (the “Purchaser,” or the “Purchasers”), on a private placement basis (the “Placement”). Sale and delivery of the Obligation by the Issuer and purchase by the Purchasers will occur on the day of closing (“Closing Date”). The Issuer acknowledges and agrees that the Placement Agent’s engagement hereunder is not an agreement by the Placement Agent or any of its affiliates to underwrite or purchase the Obligation or otherwise provide any financing to the Issuer. The Placement Agent hereby accepts this engagement upon the terms and conditions set forth in this Agreement.
2. Fees and Expenses.
  - (a) For its services under this Agreement, the Issuer agrees to pay the Placement Agent:
    - (1) a placement fee for its services under this Agreement of \$\_\_\_\_\_, payable on the Closing Date; and

- (2) as reimbursement, the reasonable expenses incurred by the Placement Agent in preparing to market and marketing the Obligation, including, but not limited to, travel and printing and distribution of the Placement Materials (as defined herein), whether or not a closing occurs, upon the earlier of receipt of an invoice or on the Closing Date; provided that the Placement Agent shall be under no obligation to pay any expenses incident to this Agreement.
- (b) In the event the Issuer terminates this Agreement and within twelve (12) months thereafter sells the Obligation to an investor identified by the Placement Agent to the Issuer prior to such termination, the amounts payable under (a)(2) above shall be immediately due and payable by the Issuer.

3. Disclosure and Due Diligence.

- (a) The Issuer has furnished the Placement Agent with the form of the Resolution, the Purchase Agreement (as defined in the Resolution) and the Trust Agreement (as defined in the Resolution) (together with all supplements, modifications, and additions thereto prior to the Closing Date, the “Placement Materials”). The Issuer acknowledges and agrees that it has, with the assistance of the Placement Agent, prepared and is solely responsible for the completeness, truth, and accuracy of the Placement Materials and that the Placement Agent and each Purchaser may rely upon, as complete, true, and accurate, the Placement Materials and all information provided by the Issuer to the Placement Agent for use in connection with the Placement and that the Placement Agent does not assume any responsibility therefor.
- (b) Prior to the Closing Date, the Issuer will make available to each Purchaser and the Placement Agent such documents and other information which the Purchaser or the Placement Agent reasonably deems appropriate with respect to the transaction contemplated hereby, will provide access to its officers, directors, employees, accountants, counsel and other representatives, and will provide each Purchaser and the Placement Agent the opportunity to ask questions and receive answers from knowledgeable individuals, including Greenberg Traurig, LLP, special counsel to the Issuer (“Special Counsel”) (whose opinion each shall receive and upon which they may rely) concerning the Issuer, the Obligation, and the security therefor; it being understood that the Purchasers and the Placement Agent will rely solely upon such information supplied by the Issuer and its representatives without assuming any responsibility for independent investigation or verification thereof.

- (c) In the event that the Placement Agent is unable to complete “due diligence” in order to form a reasonable basis for recommending the Obligation to Purchasers either (1) because of the Issuer’s failure to comply with paragraph (a) or (b) of this paragraph or (2) because the Placement Agent uncovers “red flags” about the Issuer that cause the Placement Agent to be not satisfied that the Placement Agent can in good faith recommend the Obligation to Purchasers, the Placement Agent may terminate this Agreement without further obligation on the part of the Placement Agent to proceed with the Placement and without any obligation on the part of the Placement Agent to reimburse to the Issuer any monies advanced by the Issuer to the Placement Agent.

4. Representations, Warranties, and Agreements of the Issuer. As of the date of this Agreement, unless otherwise stated, the undersigned, on behalf of the Issuer, but not individually, represents, warrants, and agrees with the Placement Agent that:

- (a) The Issuer is duly organized and validly existing under the laws of the State of Arizona (the “State”) with the power to adopt the Resolution, perform the agreements on its part contained therein and in the agreements approved thereby and cause the execution and delivery of the Obligation.
- (b) The Issuer will not cause or permit any action to be taken in the placement of the Obligation in violation of the requirements for exemption from registration or qualification of the Obligation under all federal and applicable state securities laws and regulations.
- (c) The Issuer has complied materially, and in all respects on the Closing Date will be in material compliance, with all of the provisions of applicable law of the State.
- (d) The Issuer: (1) has duly authorized and approved the execution and delivery of this Agreement, the Purchase Agreement and the Trust Agreement (collectively, the “Documents”); (2) will have duly adopted the Resolution prior to the Closing Date; (3) will duly authorize and approve the Placement Materials and the delivery thereof to prospective Purchasers; and (4) will duly authorize and approve the execution and delivery of all financing or operative documents, including the Obligation and the Documents, relating to the execution and delivery and security for the Obligation, as such documents are amended and supplemented to the Closing Date, including but not limited to any trust indenture, loan agreement, or security instrument (collectively, the “Financing Documents”), and the performance of its obligations and the consummation by it of all other transactions contemplated thereby.

- (e) On the Closing Date, the Financing Documents will have been duly authorized, executed, and delivered by the Issuer, and, assuming due authorization, execution and delivery by the other parties thereto, as applicable, constitute legal, valid and binding agreements of the Issuer enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if sought and by the limitations on legal remedies imposed on actions against the Issuer in the State.
- (f) The Issuer is not, and on the Closing Date will not be, in breach of or default under any applicable law or administrative regulation of the State or any department, division, agency or instrumentality thereof, or of the United States, or any applicable judgment or decree or any loan agreement, note, resolution, certificate, agreement or other instrument to which the Issuer is a party or is otherwise subject, which breach or default would materially and adversely affect the Issuer or its ability to perform its duties and obligations under the Financing Documents, and the execution and delivery of the Financing Documents, the adoption of the Resolution and the execution and delivery of the Financing Documents and the Obligation and compliance with the provisions of each will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or under any certificate, agreement or other instrument to which the Issuer is a party or is otherwise subject, which breach or default would materially and adversely affect the Issuer or its ability to perform its duties and obligations under the Financing Documents and the Obligation.
- (g) No action, suit, proceeding or investigation at law or in equity before or by any court, governmental agency, public board or body is, or on the Closing Date will be, pending or, to the knowledge of the Issuer, threatened: (i) in any way affecting the existence of the Issuer or the titles of the members of the Council to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution, sale or delivery of the Obligation or the levy, assessment or collection of taxes or collection or payment by the Issuer of any amounts pledged or to be pledged as security to pay the principal of and interest on Obligation, (iii) in any way contesting or affecting the validity or enforceability of, or the power or authority of the Issuer to execute and deliver, adopt or to enter into (as applicable), the Obligation, the Resolution or the Financing Documents, (iv) contesting in any way the completeness, truth, or accuracy of the Placement Materials, (v) except as disclosed in the Placement Materials, wherein an



unfavorable decision, ruling or finding would materially adversely affect the financial position or condition of the Issuer or would result in any material adverse change in the ability of the Issuer to pledge or apply the security or source of payment of, or to pay debt service on, the Obligation, or (vi) contesting the status of the interest on the Obligation as excludable from gross income for federal income tax purposes or as exempt from any applicable state tax, in each case as described in the Placement Materials.

(h) Regarding information provided by the Issuer to the Placement Agent:

(1) The Issuer will furnish the Placement Agent and the Purchaser with the Placement Materials. The Issuer represents and warrants that all information made available to the Placement Agent by the Issuer or contained in the Placement Materials, when provided will be, and will be at all times thereafter during the period of the engagement of the Placement Agent hereunder, complete, true, and accurate in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are made;

(2) except as otherwise indicated to the contrary in the Issuer's financial statements, all historical financial statements of the Issuer provided to the Placement Agent and each Purchaser has been prepared in accordance with generally accepted accounting principles and practices then in effect in the United States and will fairly present the financial condition and operations of the entities covered thereby in all material respects; and

(3) any forecasted financial or market information with respect to the Issuer or its market provided to the Placement Agent and each Purchaser by the Issuer has been or will be prepared in good faith with a reasonable basis for the assumptions and the conclusions reached therein.

(i) On the Closing Date, the Issuer will deliver or cause to be delivered to the Placement Agent:

(1) The opinion of Special Counsel, dated the Closing Date, relating to:

(i) the validity of the Obligation;

- (ii) exemption from registration and qualification under federal and state securities law; and
    - (iii) the tax-exempt status of the Obligation, together with a reliance letter from such counsel, dated the Closing Date and addressed to the Placement Agent, in the form attached to this Agreement as Exhibit A, or such other form as is acceptable to the Placement Agent;
  - (2) A certificate of the Issuer, dated the Closing Date, in the form attached to this Agreement as Exhibit B, stating:
    - (i) the representations and warranties of the Issuer contained in this Agreement are true and correct as if made on the Closing Date;
    - (ii) the Issuer has complied with and fully satisfied all of its agreements with and obligations to the Placement Agent under this Agreement; and
    - (iii) as of its date and the Closing Date, the information contained in the Placement Materials is complete, true, and accurate and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;
  - (3) An Investor Letter, in the form attached to this Agreement as Exhibit C, executed by each Purchaser and addressed to the Issuer and the Placement Agent; and
  - (4) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Placement Agent and Special Counsel may reasonably request to evidence compliance by the Issuer with legal requirements, the truth and accuracy, as of the Closing Date, of the representations of the Issuer, and the due performance or satisfaction by the Issuer at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer.
5. Termination. This Agreement may be terminated by either party upon ten (10) business days' prior written notice; provided that the provisions of Paragraph 2 and obligations thereunder shall not be affected by such termination.

6. Regulatory Disclosure. The Issuer acknowledges, in connection with the purchase and sale of the Obligation, the offering of the Obligation for sale and the discussions and negotiations relating to the terms of the Obligation pursuant to and as set forth in this Agreement, that:
- (a) the Placement Agent has acted at arm's length, is acting solely for its own account and is not agent of or advisor to (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), and owes no fiduciary duty to the Issuer or any other person,
  - (b) the Placement Agent's duties and obligations to the Issuer shall be limited to those contractual duties and obligations set forth in this Agreement,
  - (c) the Placement Agent may have interests that differ from those of the Issuer, and
  - (d) the Issuer has consulted its legal and financial advisors to the extent it deemed appropriate in connection with the offering and sale of the Obligation. The Issuer further acknowledges and agrees that it is responsible for making its judgment with respect to the offering and sale of the Obligation and the process leading thereto. The Issuer agrees that it will not claim that the Placement Agent acted as a Municipal Advisor to the Issuer or rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Issuer, in connection with the offering or sale of the Obligation or the process leading thereto.

The Placement Agent hereby further provides the Issuer with certain disclosures relating to Obligation, as required by the Municipal Securities Rulemaking Board (MSRB) Rule G-17 as set forth in MSRB Notice 2012-25 (May 7, 2012)<sup>1</sup>:

- (e) The Placement Agent intends to serve as a placement agent, and not as a financial advisor or municipal advisor in connection with the execution and delivery of the Obligation. As part of our services as the Placement Agent we may provide advice concerning the structure, timing, terms, and other similar matters concerning the execution and delivery of the Obligation.
- (f) Concerning our role as the Placement Agent:

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<sup>1</sup> Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (effective August 2, 2012).

- (i) Municipal Securities Rulemaking Board Rule G-17 requires us to deal fairly at all times with both municipal issuers and investors;
  - (ii) our primary role in this transaction is to facilitate the sale and purchase of your Obligation between you and one or more investors for which we will receive compensation;
  - (iii) unlike a municipal advisor, we do not have a fiduciary duty to you under the federal securities laws and are, therefore, not required by federal law to act in your best interests without regard to our own financial or other interests;
  - (iv) we have a duty to use our commercially reasonable efforts to arrange the purchase of the Obligation from you by investors at a fair and reasonable price, but must balance that duty with our duty to arrange the sale to investors at prices that are fair and reasonable; and
  - (v) we will review the Placement Materials for your Obligation in accordance with, and as part of, our responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction.
- (g) Concerning our compensation, we will be compensated pursuant to the terms set forth in Paragraph 2 of this Agreement. A portion of our compensation may be based in whole or in part upon the principal amount of the Obligation sold in the Placement. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest because the Placement Agent may have an incentive to recommend to you a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

7. Survival of Certain Representations and Agreements. The respective agreements, covenants, representations, warranties and other statements of the Issuer and its officers set forth in or made pursuant to this Agreement shall survive delivery of and payment for the Obligation and shall remain in full force and effect, regardless of any investigation, or statements as to the results thereof, made by or on behalf of the Placement Agent.

8. Notices. Any notice or other communication to be given to the Issuer under this Agreement may be given by delivering the same in writing to the Issuer at its address set forth above. Any notice or other communication to be given to the Placement Agent under this Agreement may be given by delivering the same in writing to Stifel, Nicolaus & Company Incorporated,

2801 East Camelback Road, Suite 300, Phoenix, Arizona 85016, Attention: B. Mark Reader, Managing Director.

9. No Boycott of Israel. By entering into this Agreement, the Placement Agent certifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, are not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of goods or services from the State of Israel, companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or persons or entities doing business in the State of Israel. The Placement Agent understands that “boycott” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations, but does not include an action made for ordinary business purposes.
10. No Assignment. This Agreement has been made by the Issuer and the Placement Agent, and no person, other than the foregoing, shall acquire or have any right under or by virtue of this Agreement.
11. Applicable Law. This Agreement shall be interpreted, governed and enforced in accordance with the laws of the State.
12. Effectiveness. This Agreement shall become effective upon its execution by duly authorized officials of all parties hereto and shall be valid and enforceable from and after the time of such execution.
13. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
14. Counterparts. This Agreement may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which shall be an original and all of which shall constitute but one and the same instrument.
15. Cancellation of Contracts. As required by the provisions of Section 38-511, Arizona Revised Statutes, notice is hereby given that the State, its political subdivisions (including the Issuer) or any department or agency of either may, within three (3) years after its execution, cancel any contract (including this Agreement), without penalty or further obligation, made by the State, its political subdivisions or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, any time while the contract or any extension of the contract is in effect, an employee

or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time. The State, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract. This paragraph is not intended to expand or enlarge the rights of the Issuer hereunder except as required by Section 38-511, Arizona Revised Statutes. Each of the parties hereto hereby certifies that it is not presently aware of any violation of Section 38-511, Arizona Revised Statutes which would adversely affect the enforceability of this Agreement and covenants that it shall take no action which would result in a violation of Section 38-511, Arizona Revised Statutes.

[Signature page follows.]

Respectfully submitted,

**STIFEL, NICOLAUS & COMPANY, INCORPORATED**

.....  
B. Mark Reader, Managing Director

ACCEPTED this \_\_\_\_ day of \_\_\_\_\_ 2022.

**CITY OF SEDONA, ARIZONA**

By .....  
Mayor

ATTEST:

.....  
City Clerk

EXHIBIT A

FORM OF RELIANCE LETTER TO THE PLACEMENT AGENT

Stifel, Nicolaus & Company, Incorporated

[Date of Closing]

Re: City of Sedona, Arizona  
Excise Tax Revenue Obligation, Second Series 2022

Ladies and Gentlemen:

We have acted as special counsel to the City of Sedona, Arizona (the “Issuer”), in connection with the execution and delivery of the above-referenced Obligation (the “Obligation”).

Reference is hereby made to our opinion letter as special counsel addressed to the Issuer dated of even date herewith and delivered with respect to the Obligation. Please be advised that you are entitled to rely on said letter as if the same had been addressed to you.

This letter is furnished by us to you in our capacity as special counsel to the Issuer pursuant to Paragraph 4(i)(1) of the Placement Agent Agreement with respect to the Obligation, dated \_\_\_\_\_, 2022, between the Issuer and you. No attorney-client relationship has existed or exists between our firm and you or any other party in connection with the Obligation or by virtue of this letter. Our opinion may be relied upon only by the addressee hereof and may not be used or relied upon by any other person for any purpose whatsoever without, in each instance, our prior written consent.

Very truly yours,



EXHIBIT B

FORM OF ISSUER CLOSING CERTIFICATE

Pursuant to the Placement Agent Agreement, dated \_\_\_\_\_, 2022 (the Agreement”), between the City of Sedona, Arizona (the “Issuer”), and Stifel, Nicolaus & Company, Incorporated (the “Placement Agent”), as [title] of the Issuer duly authorized to execute this certificate on behalf of the Issuer, I hereby certify:

1. the representations and warranties of the Issuer contained in the Agreement are true and correct as if made on the date hereof;
2. the Issuer has complied with and fully satisfied all of its agreements with and obligations to the Placement Agent under this Agreement; and
3. as of its date and the date hereof, the information contained in the Placement Materials (as defined in the Agreement) is complete, true, and accurate and such information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

[Name] .....

[Title] .....

[Date] .....

EXHIBIT C

FORM OF INVESTOR LETTER

City of Sedona, Arizona

Stifel, Nicolaus & Company, Incorporated

Re: City of Sedona, Arizona Excise Tax Revenue Obligation, Second Series 2022

Ladies and Gentlemen:

The undersigned (the “Investor”) hereby acknowledges that it is purchasing the \$\_\_\_\_,000 aggregate principal amount City of Sedona, Arizona Excise Tax Revenue Obligation, Second Series 2022 (the “Obligation”), authorized to be executed and delivered pursuant to Resolution No. 2022-\_\_\_\_ (the “Resolution”) adopted by the Mayor and Council of the City of Sedona, Arizona (the “Issuer”) on November 22, 2022. The Obligation will be executed and delivered pursuant to the Third Trust Agreement, dated as of June 1, 2022 (the “Trust Agreement”), by and between the Issuer and \_\_\_\_\_, as trustee. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution, the Trust Agreement and the Placement Materials (as defined in the hereinafter defined Placement Agreement).

This letter is being provided pursuant to a Placement Agent Agreement, dated \_\_\_\_\_, 2022 (the “Placement Agreement”), between the Issuer and Stifel, Nicolaus & Company, Incorporated (the “Placement Agent”).

The Investor acknowledges that the proceeds of the Obligation will be used for the purposes described in the Resolution. The Obligation shall be payable from the sources described in the Trust Agreement.

In connection with the sale of the Obligation to the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has the authority and is duly authorized to purchase the Obligation and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with its purchase of the Obligation. The Investor (a) is a bank, any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities; and (b) has the present intent to hold the Obligation to maturity or earlier redemption or mandatory tender.
2. The Investor is (a) a “qualified institutional buyer” as that term is defined in Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), or (b)

an “accredited investor” as that term is defined in Rule 501(a)(1), (2), (3), or (7) under the Securities Act.

3. The Investor is not purchasing the Obligation for more than one account or with a view to distributing the Obligation.
4. The Investor understands that the Obligation is not, and is not intended to be, registered under the Securities Act and that such registration is not legally required as of the date hereof, and further understands that the Obligation (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating agency or a CUSIP identification number, and (d) will be delivered in a form that may not be readily marketable.
5. The Investor acknowledges that it has either been supplied with or been given access to information, including the Placement Materials, which it has requested from the Issuer and to which a reasonable investor would attach significance in making investment decisions, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals, including its own counsel, concerning the Issuer and the Obligation and the security therefor so that, as a reasonable investor, the Investor has been able to make a decision to purchase the Obligation. The Investor has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Obligation.
6. The Investor acknowledges that the obligations of the Issuer with respect to the Obligation are payable solely from the sources described in the Trust Agreement.
7. The Investor has made its own inquiry and analysis with respect to the Obligation and the security therefor, and other material factors affecting the security and payment of the Obligation. The Investor is aware that there are certain economic and regulatory variables and risks that could adversely affect the security for the Obligation. The Investor has reviewed the documents executed in conjunction with the execution and delivery of the Obligation, or summaries thereof, including, without limitation, the Resolution.
8. The Investor acknowledges and agrees that the Placement Agent and the Issuer take no responsibility for, and make no representation to the Investor, or any subsequent purchaser, with regard to, a sale, transfer or other disposition of the Obligation in violation of the provisions of the Trust Agreement, or any securities law or income tax law consequences thereof. The Investor also acknowledges that, with respect to the Issuer’s obligations and liabilities, the Investor is solely responsible for compliance with the sales restrictions on the Obligation in connection with any subsequent transfer of the Obligation made by the Investor.
9. The Investor agrees that it is bound by and will abide by the provisions of the Trust Agreement relating to transfer, the restrictions noted on the face of the Obligation

and this Investor Letter. The Investor also covenants to comply with all applicable federal and state securities laws, rules and regulations in connection with any resale or transfer of the Obligation by the Investor.

- 10. The Investor acknowledges that the sale of the Obligation to the Investor is made in reliance upon the certifications, representations, and warranties herein made to the addressees hereto.
- 11. The interpretation of the provisions hereof shall be governed and construed in accordance with State of Arizona law without regard to principles of conflicts of laws.
- 12. All representations of the Investor contained in this letter shall survive the execution and delivery of the Obligation to the Investor as representations of fact existing as of the date of execution and delivery of this Investor Letter.

Date: ....., 2022

Very truly yours,

Investor: .....

By:.....

Printed Name:.....

Title: .....



**CITY COUNCIL  
AGENDA BILL**

**AB 2894  
November 22, 2022  
Regular Business**

**Agenda Item: 8b**

**Proposed Action & Subject:** Discussion/possible action regarding the approval of a Resolution authorizing the City of Sedona to enter into a purchase agreement to acquire the Real Property located near Hwy 89-A and Cultural Park Drive, Sedona, AZ 86336 (APN# 408-47-004C, 004W, 005A, 007, 008, 009A, 009B and 408-11-176B).

<b>Department</b>	City Manager
<b>Time to Present</b>	5 minutes
<b>Total Time for Item</b>	15 minutes
<b>Other Council Meetings</b>	Jan 6, 2022 City Council Retreat and Priority Setting, Jan 11, 2022 Executive Session
<b>Exhibits</b>	A. Resolution B. Purchase Contract C. Legal Description/ALTA Survey

City Attorney Approval	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	
		\$	\$20,000,000
City Manager's Recommendation	Approve a Resolution authorizing the purchase of the Cultural Park property.	<b>Amount Budgeted</b>	
		\$	\$20,000,000
		Account No. (Description)	22-5320-89-6890 (Land/Easement Acquisition)
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** The properties located near Hwy 89-A and Cultural Park Drive, Sedona, AZ 86336 (APN# 408-47-004C, 004W, 005A, 007, 008, 009A, 009B and 408-11-176B) located within Yavapai County, Arizona, have been identified by the City of Sedona as having prospective use for public purpose.

The City has the legal authority to acquire property for public purposes in accordance with Arizona Revised Statutes A.R.S. § 9-241.

The total acreage of the eight parcels is approximately 41 acres, and the property zoned as Planned Development (PD). The City of Sedona has been in negotiations with the owner and has reached terms. The purchase price of \$20,000,000 has been agreed upon, along with a closing date of December 8, 2022. An appraisal was conducted by the City and the purchase price does not exceed the current appraised value of the property.

Adequate budget capacity is available in the capital improvement accounts to cover the cost of the land acquisition.

Additional costs are likely to be incurred in FY23 to fence the site and do temporary improvements to Cultural Park Place leading to the existing USFS trail system. Costs are estimated at \$200,000 for both items. The cost of fencing will exceed \$100,000 requiring Council approval of the expenditure at a future meeting.

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

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

**Alternative(s):**

## **MOTION**

**I move to:** approve Resolution 2022-\_\_ authorizing the Purchase Contract for the City of Sedona to purchase the property located near Hwy 89-A and Cultural Park Drive, Sedona, AZ 86336 (APN# 408-47-004C, 004W, 005A, 007, 008, 009A, 009B and 408-11-176B) located in Yavapai County, City of Sedona, Arizona, for the sum of \$20,000,000 and authorizing the Mayor to execute the documents required to complete the purchase.

**RESOLUTION NO. 2022-**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE REAL ESTATE PURCHASE AND SALE AGREEMENT.**

WHEREAS; the City has the legal authority to acquire property for public purposes in accordance with A.R.S. § 9-241, and the City Council and City Manager have determined that the public benefit will be served by acquiring these parcels; and

WHEREAS, the City Council has determined that the property located at near Hwy 89-A and Cultural Park Drive, Sedona, AZ 86336 (APN# 408-47-004C, 004W, 005A, 007, 008, 009A, 009B and 408-11-176B (the "Subject Parcel")), within Yavapai County, Arizona has viable uses for public purpose; and

WHEREAS, the City has negotiated with the owner of the Subject Parcel and arrived at a mutually agreeable purchase price of \$20,000,000.

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

Section 1. The City of Sedona, through its Mayor and Council, hereby approves the purchase of the Subject Parcel and authorizes and directs the City Manager to execute the Real Estate Purchase and Sale Agreement on behalf of the City of Sedona.

Section 2. That the Mayor and City Manager are authorized to approve and execute such other documents on behalf of the City of Sedona, Arizona necessary for the completion of the transactions.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 22nd day of November, 2022.

ATTEST:

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

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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

## REAL ESTATE PURCHASE AND SALE AGREEMENT

**SELLER:** Stewart Title and Trust of Phoenix  
As Trustee Trust No. 2399, and as Trustee Trust No. 2400  
Sole Beneficiary Sathcupa LLC Trust 2399  
Sole Beneficiary Hesper Properties LLC Trust 2400  
2390 E. Camelback, Ste. 210  
Phoenix, AZ 85016

**BUYER:** City of Sedona, an Arizona municipal corporation  
c/o City Clerk  
102 Roadrunner Dr.  
Sedona, Arizona 86336

**ESCROW AGENCY:** Yavapai Title Agency  
Anthony Selna, Escrow Officer  
1650 West State Route 89A, Suite A  
Sedona, Arizona 86336  
[anthony.selna@yavapaititle.com](mailto:anthony.selna@yavapaititle.com)

**PROPERTY:** Real Property located near Hwy 89-A and Cultural Park Drive, Sedona, AZ 86336 (APN# 408-47-004C, 004W, 005A, 007, 008, 009A, 009B and 408-11-176B) as more fully described in **Exhibit A** (the "Property").

This Real Estate Purchase and Sale Agreement ("Agreement") is made and entered into by and between the **City of Sedona**, an Arizona municipal corporation ("Buyer") and Stewart Title and Trust of Phoenix as Trustee Trust No. 2399, and as Trustee Trust No. 2400 with Sole Beneficiary Sathcupa LLC Trust 2399 and Sole Beneficiary Hesper Properties LLC Trust 2400 ("Seller"), upon the date signed below (the "Effective Date").

### RECITALS:

Whereas, Seller is the owner of the Property described above.

Whereas, Buyer desires to purchase the Property described above.

Whereas, Seller desires to sell the Property to Buyer and Buyer agrees to purchase the Property in accordance with the terms and conditions set forth herein for a public purpose.

### AGREEMENT:

Now, therefore in consideration of the mutual terms and conditions set forth herein, the parties agree as follows:



1. **Incorporation of Recitals.** The parties agree the Recitals set forth above are accurate and are hereby incorporated as part of this Agreement.

2. **Sale of Property.** Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller upon the terms and conditions set forth herein. Seller hereby irrevocably disclaims, waives and releases any and all claims against Buyer arising in connection with or related to this Agreement and any of the transactions contemplated by this Agreement, after close of Escrow.

3. **Purchase Price.** The Cash Paid Purchase Price for the Property shall be \$20,000,000.00 to be paid in full upon the Close of Escrow, \$19,000,000.00 cash to Sathcupa, and \$1,000,000.00 cash to Hespen, beneficiaries of Seller. Buyer and Seller recognize the Property may be worth more than the cash price, and Seller is willing to contribute the Fair Market Value of the Property in excess of the cash price to the City of Sedona under Internal Revenue Code Section 170. Buyer to cooperate with Seller once approval is completed executing IRC Form 8283 for Benefit of Seller Trust Beneficiaries.

4. **Escrow Agent and Real Estate Report.**

(a) Buyer and Seller agree to employ Yavapai Title Agency, Anthony Selna, Escrow Officer, 1650 West State Route 89A, Suite A, Sedona, AZ, 86336, as the Escrow Agent to handle the Escrow.

(b) Seller agrees to purchase a standard owner's title policy for the Property in the Escrow Agent's standard form and to pay the cost to record the Warranty Deed in favor of Buyer in the form of **Exhibit B**. Buyer shall pay for any extended form of title insurance coverage as determined and requested by Buyer.

(c) Immediately following the Effective Date, Seller shall instruct the Escrow Agent to deliver to Buyer, at Seller's expense, if any: (i) a preliminary title report for a standard coverage owner's policy of title insurance for the Property setting forth the current status of title ("Title Report");" consistent with Title Commitment attached hereto as Exhibit C; (ii) copies of all items appearing as exceptions to the title insurance coverage; and (iii) an estimate of the additional charges required by Escrow Agent to upgrade the title insurance coverage in an extended form.

(d) Seller agrees Buyer shall be entitled to object to any matters disclosed by the Title Report, by delivering written notice of objection (a "Title Objection Notice") to Seller and Escrow Agent no later than ten (10) business days from Buyer's receipt of the Title Report. Any Title Objection Notice delivered by Buyer shall specify in reasonable detail any matter to which Buyer objects (the "Title Objection(s)"). If Escrow Agent subsequently issues any amendment to the Title Report disclosing any additional title matters, changes in the legal description, or additional requirements of Buyer, or if any revision to a survey procured by Buyer discloses any additional matter(s) affecting the Property, then Buyer shall be entitled to object to any such newly discovered matter by delivering a Title Objection Notice to Seller and Escrow Agent on or before ten (10)

business days after Escrow Agent has delivered to Buyer the amendment to the Title Report and any Schedule B items, if applicable (or Buyer has received the revision to a survey). If Buyer fails to deliver a Title Objection Notice objecting to any matter set forth in the Title Report or any survey (or any subsequent amendment thereto) within the time period required under this Section 4(d), Buyer shall be deemed to have approved the matter as of the last day of that time period. All matters to which Buyer has not objected to are referred to in this Agreement as the "Permitted Exceptions."

(e) If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer on or before the date that is five (5) business days after Seller's receipt of the Title Objection Notice that either (i) the Title Objection(s) have been removed from the Title Report by Escrow Agent such that the Title Objection(s) no longer affects or encumbers the Property or any portion thereof, and in such event, the Closing shall go forward as provided for in this Agreement, or (ii) Seller irrevocably commits prior to Closing to cause Escrow Agent to remove objectionable items from the Title Report such that the Title Objection(s) no longer affect or encumber the Property or any portion thereof, and in such event, the Closing shall go forward as provided for in this Agreement, or (iii) Seller is unable or unwilling to have the Title Objection(s) removed. If Seller fails to provide such notice to Buyer within the time period required under this Section 4(e), it shall be deemed that Seller is unwilling to cure the Title Objection(s). If Seller timely notifies Buyer (or fails to notify Buyer within the time period) that it is unable or unwilling to have the Title Objection(s) removed or is otherwise unable or unwilling to cure the Title Objection(s) to Buyer's satisfaction, then Buyer, by delivering written notice to Seller no later than five (5) business days following Seller's notice to Buyer and Escrow Agent (or the date set as the deadline for Seller to deliver such notice to Buyer and Escrow Agent) in accordance with this Section 4(e), may elect either: (A) as Buyer's sole remedy hereunder, to terminate this Agreement and receive the entire sums deposited with the Escrow Agent (and any interest earned thereon) and thereafter the parties shall have no further rights or obligations under this Agreement except those rights which specifically survive termination; or (B) waive such objections and take title as it then is (subject to, and the Closing is expressly conditioned upon, removal of any other Title Objection(s) that Seller has agreed to cause to be removed from the Title Report and/or cured as provided hereinabove), in which event all title Objection(s) not removed from the Title Report and cured as provided above will thenceforth be deemed Permitted Exceptions; and this Agreement shall remain in full force and effect. The failure by Buyer to timely elect either clause (A) or (B) above shall be deemed Buyer's election to proceed with clause (A) above.

(f) Notwithstanding anything to the contrary contained in this Agreement, at or before the Close of Escrow, and without the need for Buyer to object to same in its Title Objection Notice, Seller shall remove all financing encumbrances; mechanics', materialmen's and supplier's liens; judgment liens; federal or state income or sales tax liens; and lis pendens on the Property without cost to Buyer. Seller may not allow additional liens or encumbrances to be placed upon the Property after the Effective Date. The Purchase Price proceeds shall first be applied by Escrow Agent to pay off any and all financing encumbrances or any of the foregoing liens before any remaining Purchase Price proceeds are released to Seller on the Closing.

(g) Buyer's obligation to purchase the Property, to pay the Purchase Price therefore, and otherwise to close the Escrow is subject to Title Insurer being unconditionally committed to issue at the Close of Escrow to Buyer, as the insured, a standard owner's title policy and any requested extended coverage owner's policy of title insurance for the Property (with no exception for mechanics' liens or similar encumbrances) in the amount of the Purchase Price, subject to only the Permitted Exceptions with such title endorsements as Buyer shall require (the "Title Policy"). Seller and Buyer shall each execute, acknowledge (if applicable), and/or deliver to Escrow Agent prior to the date of the Closing, any documents pertaining to Seller or Buyer, as applicable, or matters relating to the Property required by Escrow Agent as a condition to the issuance of the Title Policy.

(h) On, or before, the Close of Escrow, Seller and Buyer shall each pay to the Escrow Agent their respective standard closing costs and escrow fees for a commercial real estate transaction as determined by the Escrow Agent fees for its services. Buyer and Seller shall timely execute or provide any documentation required by the Escrow Agent to close the sale and purchase of the Property.

(i) This Agreement may be supplemented by the printed Escrow Instructions to which it is attached and shall be construed together with the Escrow Instructions as a single document; in the event of any inconsistency between any provision in this Agreement and provision in the Escrow Instructions, the provision in this Agreement shall prevail. Upon the execution of the Escrow Instructions and this Agreement by Seller and Buyer, the same shall constitute a binding contract between Seller and Buyer for the purchase and sale of the Property.

(j) Any improvements on the Property, are only of no value. Buyer and Seller recognize any improvements have no value, and are purchased as where is without any warranty from Seller whatsoever.

**5. Survey, Engineering, Inspection and Due Diligence.** Seller agrees that prior to the Closing, Buyer may conduct and complete any additional inspections or tests of the Property and conduct any other due diligence of the Property, without limitation, which Buyer determines is necessary for Buyer's intended use of the Property for industrial/commercial development (the "Inspection Period"). Buyer agrees to pay for any additional inspections, tests and due diligence of the Property Buyer desires to procure in its discretion. Buyer shall be responsible to restore the Property to its original condition upon the completion of any additional inspection, test, or other due diligence of the Property. If during the Inspection Period, Buyer determines in its sole discretion that any survey, inspection, test, or other due diligence of the Property is unacceptable for Buyer's intended use, Buyer may, upon written notice to Seller and the Escrow Agent, terminate this Agreement, but subject to the right to Seller's equal contribution for the payment of any surveys, engineering or related work previously agreed to by the parties completed as of such date as to the Property.

**6. Close of Escrow.** Buyer and Seller agree to the Close of Escrow upon Buyer's completion of inspection set forth in Section 5 ("Closing" or "Close of Escrow"), in any event, not later than December 15, 2022.

**7. Seller's Representations.** Seller represents the following to Buyer:

(a) Except from Buyer, Seller has not received notice of any pending condemnation or similar proceeding affecting the Property, or any portion thereof, and Seller, to the best of its knowledge, is not aware of any threatened condemnation or similar proceedings affecting the Property, or any portion thereof.

(b) To the best of Seller's actual knowledge, 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, ordinance or regulation including, without limitation, any relating to environmental conditions, in, at, on, under or about the Property including, but not limited to, soil and ground water conditions and that neither Seller nor, to the best of Seller's actual knowledge, any third party has used, generated, manufactured stored or disposed in, at, on, under or about the Property or transported to or from the Property any hazardous waste, toxic substances or related materials except in accordance with applicable law; and, to the best of Seller's actual knowledge, there is not now nor has there even been on or in the Property underground storage tanks or surface impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electric transformers or other equipment.

(c) There are no attachments, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy pending against Seller.

(d) Seller 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 under the mechanics' and materialman's lien laws of the State of Arizona.

(e) Seller has not received any notifications from any governmental authority having jurisdiction over the Property requiring any work to be done on the Property or alleging any violation of law with respect to the Property.

(f) Seller has no actual knowledge of any claims, administrative actions or lawsuits pending or threatened against the Property, other than from the Buyer.

(g) Seller has no actual knowledge of any parties in adverse possession of the Property or of any prescriptive rights or unrecorded easements upon or across the Property, or any portion thereof.

(h) Seller represents that to the best of its actual knowledge, any documents, information and records provided by Seller to Buyer in connection with the transaction contemplated herein contain true and accurate information.

(i) Seller is not required to obtain the approval or consent of any other person or entity to execute this Agreement or to perform Seller's obligations under this Agreement.

**8. Buyer's Representations.** Buyer represents the following to Seller:

- (a) Buyer has full authority to execute this Agreement.
- (b) Buyer is not aware of any adverse actions against Buyer that would limit or impair Buyer's right to perform its obligations under this Agreement or upon the Close of Escrow.
- (c) Buyer is able to conduct and has conducted its own due diligence for the purchase of the Property, and accepts the Property "as is" without any warranties, except as insured by the title insurance company and provided in the Warranty Deed.

**9. Survival of Representations.** The representations of Seller and Buyer as set forth in Sections 7 and 8 shall survive the Close of Escrow and shall not merge with the Warranty Deed or Easement.

**10. Real Estate Brokerage.** Buyer and Seller affirm neither party has contracted with, retained or otherwise employed a real estate broker relative to this Agreement, except Russ Lyons Realty representing Seller. Buyer and Seller agree if any real estate broker asserts or claims the payment of a real estate commission or fees relative to this Agreement the party who contracted with such broker shall be responsible for the payment of such commission or fees and shall forever defend, indemnify, and hold harmless the other party from such claim.

**11. Title.** Seller agrees to transfer the title to the Property to Buyer upon the Close of Escrow in a form substantially similar to those in **Exhibit B**, without any exceptions or encumbrances, subject only to the usual printed exceptions and exclusions contained in such title insurance policies, to the matters shown on the Title Report or any Amended Title Report approved in writing or waived by Buyer. At Seller's expense, Escrow Agent shall cause a third party title guarantee also insuring Beneficiaries of the Stewart Title Trusts regarding the use of the Warranty Deed, from Stewart Title and Trust, or other mutually acceptable title insurer.

**12. Taxes and Assessments.** All real and personal property taxes and any assessments against the Property shall remain the responsibility of the Seller prior to Close of Escrow.

**13. Closing Documents.**

- (a) Seller's Closing Documents. By the Close of Escrow, Seller shall

deposit with the Escrow Agent the following documents for delivery to Buyer at the Close of Escrow, each of which shall have been duly executed and, where appropriate, acknowledged:

- i. Warranty Deed for the Property substantially in the form attached in **Exhibit B**;
- ii. An Affidavit of Value for the Property as required by law; (unless exempt)
- iii. The standard owner's title policy required;
- iii. The Non-Foreign Affidavit as required;
- iv. Appropriate evidence of due authorization and proper formation of Seller, as applicable;
- v. Such other documents as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

(b) Buyer's Closing Documents. On, or before, the Close of Escrow, Buyer shall deposit with the Escrow Agent the following documents for delivery to Seller at the Close of Escrow, each of which shall have been duly executed and, where appropriate, acknowledged:

- i. An Affidavit of Value for the Property as required by law; (unless exempt)
- ii. The Non-Foreign Affidavit as required;
- iii. Appropriate evidence of due authorization and proper formation of Buyer;
- iv. Such additional extended coverage and endorsements as requested by Buyer, at Buyer's expense; and
- v. Such documents and monies as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

**14. Possession; No Assumption of Seller's Liabilities.** Upon Close of Escrow, Seller shall deliver possession of the Property to Buyer. Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume, agree to pay, or indemnify Seller or any other person against any liability, obligation, or expense of Seller.

**15. Default by Seller.** All provisions of this Agreement are hereby deemed to be material. Buyer shall have all rights and remedies available to it under Arizona law. Should Seller breach any of the provisions under this Agreement, Buyer shall immediately be entitled to the return of all amounts it paid pursuant to the Agreement, to terminate the Agreement, and to damages and to specific performance by Seller. Should Seller breach any provision of this Agreement, the terms of this Agreement shall not in any way be

construed as a waiver of Buyer's rights, as a municipal corporation, to obtain the Property by condemnation or eminent domain should Seller fail to perform their obligations.

**16. Default by Buyer.** All provisions of this Agreement are deemed to be material. The parties agree that Seller's remedies for Buyer's breach of this Agreement shall be such rights and remedies available to them under Arizona law. The breaching party shall be responsible to pay all escrow costs and fees related to this Agreement. The prevailing party shall be entitled to an award of all costs and attorneys' fees incurred should legal action be necessary by either party to enforce the terms of this Agreement.

**17. Notices.**

(a) Notices shall be in writing and shall be given by personal or air courier service delivery to a responsible person, by telephone facsimile, by email, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid. Notices shall be delivered or addressed to Seller and Buyer at the following or at such other address as a party may designate to the other in writing:

Seller:

Stewart Title & Trust, Trustee of Trust No. 2399 and 2400  
Stewart Title and Trust of Phoenix  
2390 E. Camelback, Ste. 210  
Phoenix, AZ 85016  
602-462-8000  
Sathcupa, LLC and Hespen Properties, LLC  
35 S.4<sup>th</sup> Street  
Custer, South Dakota, 57730

With a copy to:

Michael Mongini, Attorney  
Hufford, Horstman, Mongini, Parnell & Tucker, PC  
125 E. Elm Ave. | Flagstaff, AZ 86001  
928-226-0000

Buyer:

City of Sedona  
c/o City Attorney  
102 Roadrunner Dr.  
Sedona, Arizona 86336

With a copy to:

Yavapai Title Agency  
Anthony Selna, Escrow Officer  
1650 West State Route 89 A, Suite A  
Sedona, Arizona 86336  
[anthony.selna@yavapaititle.com](mailto:anthony.selna@yavapaititle.com)

928-282-4141  
Mobile 928-592-7800

The date notice is deemed to have been given, received and become effective shall be the date on which the notice is delivered, if notice is given by personal or air courier service delivery or by telephone facsimile, or two (2) days following the date of deposit in the mail, if the notice is sent through the United States mail; and

(b) Copies of all notices shall also be given to Escrow Agent by regular mail.

**18. Further Documentation.** Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

**19. Governing Law.** Seller and Buyer agree this Agreement shall be interpreted under the laws of the State of Arizona and not elsewhere.

**20. Attorneys' Fees.** If either party commences an action to enforce any term or condition of this Agreement, the prevailing party to such action shall be entitled to recover a reasonable additional sum as and for its attorneys' fees and costs, said sum to be fixed by a court of competent jurisdiction.

**21. Jurisdiction; Venue; Waiver of Jury Trial.** Any action to enforce or interpret any provision of this Agreement shall be commenced and completed in the Superior Court of the State of Arizona in and for the County of Coconino and not elsewhere. Each party specifically submits itself to the jurisdiction of said Court and waives any objection to venue. 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.

**22. Ambiguity.** This Agreement was drafted by the City with the assistance of their attorneys. Neither the City nor its attorneys have rendered legal or other advice to Seller regarding sale of the subject property or the specific terms of this Purchase Agreement. Seller is aware of its right to obtain independent professional and/or legal assistance with this Agreement and, upon signing of the Agreement, represents that they have taken all steps they deem necessary (including, but not limited to, seeking the advice of professionals and/or attorneys) to assist them with this transaction. Consequently, the ambiguity in this Agreement shall not be construed against either party.

**23. Conflict of Interest.** Seller recognizes that Buyer is a political subdivision of the State of Arizona. Pursuant to A.R.S. § 38-511, Buyer may cancel this Agreement within three (3) years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of Buyer is, at any time while the Agreement or any extension



thereof is in effect, an employee or agent of Seller in any capacity or a consultant to Seller with respect to the subject matter of this Agreement. Notice of any such cancellation shall be given by Buyer to Seller with respect to the subject matter of this Agreement. Notice of any such cancellation shall be given by Buyer to Seller pursuant to the terms of A.R.S. § 38-511. Should cancellation occur under this provision, Seller shall return to Buyer all moneys paid by Buyer under this Agreement. Additionally, Seller shall be responsible for payment of all escrow fees. Buyer shall convey back the Property to Seller.

**24. Waiver.** The waiver by any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

**25. Time is of the Essence.** Time is of the essence of this Agreement and each provision hereof.

**26. Entire Agreement.** This document constitutes the entire agreement between the parties and may not be amended or otherwise modified except by the express written agreement of the parties.

**27. Drafts Not an Offer.** The submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties will not be legally bound in any manner with respect to a purchase and sale of the Property unless and until each of Seller and Buyer have duly executed this Agreement and the Parties have delivered that fully executed Agreement to Escrow Agent.

**28. Counterpart and Facsimile Signatures.** This Agreement may be executed in any number of counterparts all of which shall be deemed to constitute one and the same instrument, and each of which shall be deemed an original hereof. Signatures transmitted by facsimile shall be deemed to be originals.

**29. Assignability; Binding on Heirs.** Neither Seller nor Buyer may assign any of its rights or obligations under this Agreement without the other party's advance written consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**30. Risk of Loss.** Except as otherwise provided in this Agreement, all risk of loss related to ownership and possession of the Property, including liability to third persons, shall be the responsibility of the Seller until the title and possession of the Property passes to the Buyer at Close of Escrow. Seller shall indemnify and hold Buyer harmless for all such loss, damage, liability, fees, or costs of any kind whatsoever, except those caused by the Buyer. This indemnity shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date last set forth below.

**SELLER:**

Stewart Title and Trust of Phoenix  
as Trustee, Trust No. 2399

Stewart Title and Trust of Phoenix  
as Trustee Trust No. 2400

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

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

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

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

Sole Beneficiary Trust No. 2399  
Sathcupa LLC

Sole Beneficiary Trust No. 2400  
Hespen Properties LLC

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

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

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

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

**BUYER:**

City of Sedona

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

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

**ATTEST:**

By: \_\_\_\_\_  
JoAnne Cook, City Clerk

**APPROVED AS TO FORM:**

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

**EXHIBIT "A"**

**Property Legal Description**

[See following pages.]

**EXHIBIT “B”**

**Warranty Deed**

[See following pages.]

**EXHIBIT “C”**

**Title Commitment**

[See following pages.]





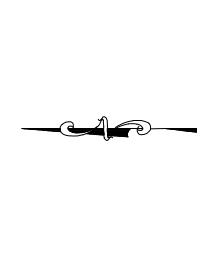






ALTNAPS LAND TITLE SURVEY  
 APN NOS. 408-47-004C, 408-47-004V,  
 408-47-005A, 408-47-007, 408-47-008,  
 408-47-009A, 407-47-009B, 408-11-176B

DATE	08/20/21
CHECKED BY	MHR
DRAWN BY	BMB
TITLE	ALTNAPS LAND TITLE SURVEY
SHEET NO.	4 of 4
PROJECT NO.	1147



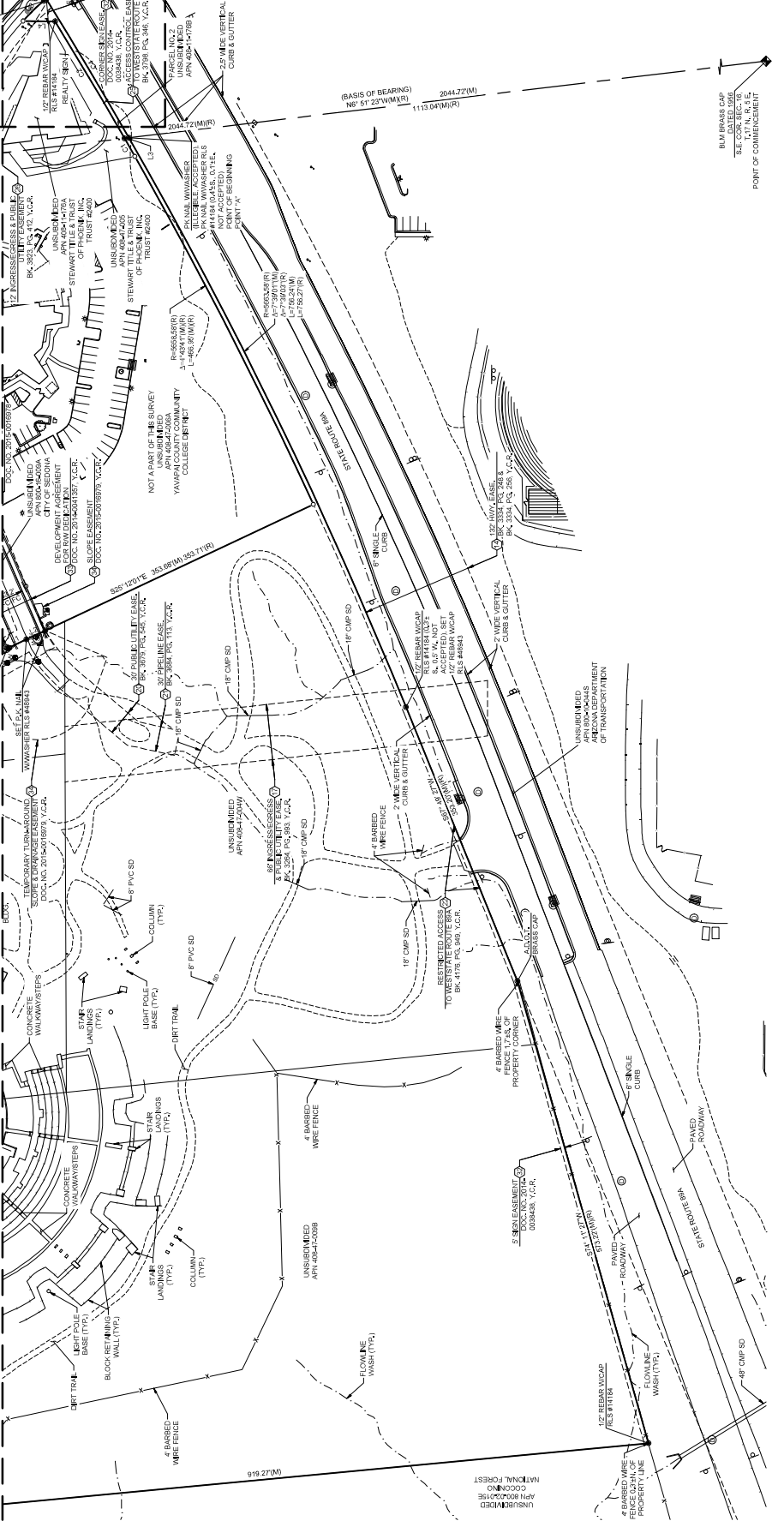
Line #	Direction	Length
L1	S20° 12' 07" E (MIR)	25.07 (MIR)
L2	S20° 12' 07" E (MIR)	25.07 (MIR)
L3	N00° 51' 23" W (MIR)	5.43 (R)
L4	N00° 27' 51" E (MIR)	36.27 (MIR)
L5	S44° 42' 25" E (MIR)	3.81 (M)
L6	S44° 42' 25" E (MIR)	5.81 (R)

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	24.75 (M)	5553.98 (M)	007° 15' 03" (M)	N87° 19' 44" E (M)	24.77 (M)
C2	162.25 (M)	5553.98 (M)	007° 15' 03" (M)	N87° 19' 44" E (M)	162.20 (M)
C3	34.22 (MIR)	5553.98 (M)	007° 15' 03" (M)	N87° 19' 44" E (MIR)	34.20 (MIR)
C4	193.20 (M)	5553.98 (M)	007° 15' 03" (M)	N87° 19' 44" E (M)	193.27 (M)

SEE DETAIL SHEET 2 - THIS AREA

MATCHLINE SEE SHEET 3 - THIS AREA



- SURVEY LEGEND**
- ◆ SECTION CORNER
  - FOUND 1/2 REBAR W TAG RLS #2224
  - FOUND 1/2 REBAR W CAP RLS #24406
  - OTHER MONUMENT AS NOTED
  - NOTHING FOUND / NOTHING SET
  - TREE
  - MAILBOX
  - POST
  - BOLLARD
- SECTION LINE**
- CENTERLINE
  - BOUNDARY LINE - MEASURED
  - BOUNDARY LINE - OTHER
  - BOUNDARY - TIES
  - EASEMENT LINE
  - ELECTRIC (OVERHEAD)
  - CURB/GUTTER / SIDEWALK / VALLEY GUTTER
  - CONCRETE
  - FENCE (BARB WIRE)
  - BUILDINGS
  - PAVEMENT
  - BIRT ROAD/DRAIL
  - WALL
  - RETAINING WALL
- OTHER**
- (R) RECORD
  - (M) MEASURED
  - (MIR) YAVAPAI COUNTY RECORDS
  - (V) V.C.P.R.
  - (M) RIGHT OF WAY
  - (P) PUBLIC UTILITY EASEMENT
  - (S) SIGN - SINGLE POST
  - (D) SIGN - DOUBLE POST
- INFRASTRUCTURE**
- 12" REBAR W/ TAG RLS #2224
  - 12" REBAR W/ CAP RLS #24406
  - 12" REBAR W/ OTHER MONUMENT
  - 12" REBAR W/ NOTHING SET
  - TREE
  - MAILBOX
  - POST
  - BOLLARD
  - CENTERLINE
  - BOUNDARY LINE - MEASURED
  - BOUNDARY LINE - OTHER
  - BOUNDARY - TIES
  - EASEMENT LINE
  - ELECTRIC (OVERHEAD)
  - CURB/GUTTER / SIDEWALK / VALLEY GUTTER
  - CONCRETE
  - FENCE (BARB WIRE)
  - BUILDINGS
  - PAVEMENT
  - BIRT ROAD/DRAIL
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  - (R) RECORD
  - (M) MEASURED
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  - (M) RIGHT OF WAY
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  - 12" REBAR W/ TAG RLS #2224
  - 12" REBAR W/ CAP RLS #24406
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  - (R) RECORD
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  - (MIR) YAVAPAI COUNTY RECORDS
  - (V) V.C.P.R.
  - (M) RIGHT OF WAY
  - (P) PUBLIC UTILITY EASEMENT
  - (S) SIGN - SINGLE POST
  - (D) SIGN - DOUBLE POST



**CITY COUNCIL  
AGENDA BILL**

**AB 2850  
November 22, 2022  
Regular Business**

**Agenda Item:** 8c  
**Proposed Action & Subject:** Public hearing/discussion/possible action regarding adoption of a Resolution and Ordinance updating the City of Sedona’s Consolidated Fee Schedule.

<b>Department</b>	City Clerk
<b>Time to Present</b>	5 minutes
<b>Total Time for Item</b>	15 minutes
<b>Other Council Meetings</b>	12-13-11, 11-27-12, 12-10-13, 11-25-14, 06-23-15, 11-24-15, 08-09-16, 11-22-16, 11-28-17, 04-24-18, 11-27-18, 11-26-19, 11-24-20, 11-23-21
<b>Exhibits</b>	A. Proposed Changes to Consolidated Fee Schedule B. Proposed Short Term Rental Fee Rational C. Proposed Finance Lien Filing Fee Rational D. Resolution E. Ordinance

City Attorney Approval	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	
		\$	0
City Manager’s Recommendation	Approve the Resolution and Ordinance to adopt the updated consolidated fee schedule.	<b>Amount Budgeted</b>	
		\$	0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** On December 13, 2011, the City Council adopted Ordinance No. 2011-13. This ordinance set forth procedures governing the adoption and updating of a consolidated fee schedule. Per this ordinance, all City departments are required to review the consolidated fee schedule annually and recommend proposed changes to the schedule. Proposed changes are to contain an explanation for the need for the newly proposed fees and identify any fees that may be mandated by law and any requests for deletions or increases. The City Manager shall then place on the regular agenda of the City Council at least annually an action item and public hearing on the fee schedule.

Publication on the City’s internet site of proposed fee changes shall take place at least 60 days prior to adoption of any new fees or increases. The proposed changes to the consolidated fee schedule have been published on the City’s website since September 20, 2022. The proposed

revisions to the consolidated fee schedule are set forth in the resolution submitted with this agenda bill. These revisions include the following:

**City Manager’s Office**

- a) Short-Term Rental Permit Fee
  - The proposed fee is \$200 per application for one unit
  - Rationale: The rate is based on 100% cost recovery of direct and indirect costs, see Exh. B.

**Community Development**

- a) See Community Development in Exh A.

**City Finance Department**

- b) Finance Lien Financing Fee
  - The proposed fee is \$65 (from \$50)
  - Rationale: The rate is based on 100% cost recovery of direct and indirect costs, see Exh. C.

**Public Works Engineering Services**

- b) Grading Plan Reviews Increase 10% Engineering News Record (ENR) Inflation for 2021 & 2022
- c) Right of Way (ROW) Utility Permit for Outdoor Dining Agreements Increase 10% ENR Inflation for 2021 & 2022. \$1.10 per Sq Ft
- d) Rationale: 10% ENR Inflation for 2021 & 2022. See Public Works Engineering Services in Exh A.

**City Wastewater Department**

- e) Wastewater Capacity Fees
  - Rationale: Water Supply Fixture Units Calculation based on the Economics Research Network (ERN) rate increase of 7.99% for calendar year 2023. See Wastewater Fee Description (per units) in Exh A.

If adopted, the proposed changes will take effect on January 1, 2023.

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

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

**Alternative(s):** The Council can decline to adopt the proposed changes to the Consolidated Fee Schedule and the schedule would remain unchanged.

**MOTION**

**I move to:** approve Resolution No. 2022-\_\_\_, creating a public record entitled “2022 Amendments to the Sedona Consolidated Fee Schedule.”

**(After First Reading)**

**I move to:** adopt Ordinance No. 2022-\_\_\_, adopting proposed changes to the Consolidated Fee Schedule.

## CONSOLIDATED FEE SCHEDULE PROPOSED CHANGES (BY DEPT.)

<b>CITY CLERK'S OFFICE</b>			
Fee Description	Current Base Fee	Additions, Limits, & Notes	Proposed Fee or Increase and Report/Data
Arguments for Initiative/Referendum	\$250 deposit	City Code 2.85.060 D.3f adopted 2-03-06 & 4-12-2011.	Sedona City Code 2.85.060 D.3f. To offset a portion of the proportionate costs of the paper and printing of pamphlet. Refund generated if costs of paper and printing are less than the amount of deposits received.

<b>CITY MANAGER'S OFFICE</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Short-Term Rental Permit Fee	\$0	Per application for one unit	\$200 – 100% cost recovery of direct and indirect costs, see separate report

<b>COMMUNITY DEVELOPMENT</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
\$1.00 to \$500.00	\$30.00		Remove line and add to next line. There is no reason for this line if added to the following.
\$501.00 to \$2,000	\$30.00 for the first \$500.00 plus \$2.75 for each additional \$1,000 or fraction thereof, to and including \$2,000		<ol style="list-style-type: none"> <li>1) Change "Total Valuation" to "\$1.00 to \$2,000. This eliminates the need for the line above.</li> <li>2) Change "\$30.00" to "\$50.00" as the minimum permit fee, as indicated on Page 19 below is \$50.00.</li> </ol>
Temporary Sign Permit retrieval	First offense: \$25 per sign, Second offense: \$50 per sign Third offense: \$100 per sign		Adopted by Resolution 2017-29 and have not been incorporated into the Consolidated Fee Schedule.
<b>Art in Private Development Base Fee</b>	\$0.5377	Per gross square foot of development	Increased by Western Region CPI - \$0.5880
Uptown Parking In Lieu Fee	\$35,000 per parking space, increased January 1 of each year based on National Construction Cost Index		Ordinance 2020-05 and Resolution 2020-17. Increase by National Construction Cost Index - \$37,797

<b>FINANCE</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Lien Filing Fee	\$50 (added to the amount of the lien)		\$65 –100% cost recovery of direct costs – see separate report
Deposit for Utility Services	\$250		\$185 – reduced to improve affordability
Septic Tank Pumping and Repair under Cluster System Septic Pumping and Replacement Agreement	Septic Tank Pumping Reimbursement \$0.40 per gallon.  Reimburse for septic tank replacement or repair up to \$3,000	Reimburse for pump of septic tank based on billing by septage hauler at the rate of \$0.40 per gallon. Reimbursement for pumping shall not include costs related to locating or repair.  Reimbursement for repair/replacement shall be limited to \$3,000. Location costs for the septic tank are not reimbursable. Excessive repair costs will be denied.	Increase reimbursement rate to a maximum of \$0.46 per gallon. Based on a review of current sewer hauler pump fees to determine average rate for reimbursement.

<b>MAGISTRATE COURT</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Default Fee	Not to exceed \$50	Default fee applies to civil traffic and local code violations	NA
Compact Disc Recording	\$17 per disc	Amount set by A.R.S 22-404 and subject to change	NA
Research	\$17 per case, plus copy charge	Amount set by A.R.S 22-404 and subject to change	NA
Certified Copies	\$17 per case, plus copy charge	Amount set by A.R.S 22-404 and subject to change	NA
Copies	\$0.50 per page	Amount set by A.R.S 22-404 and subject to change	NA



<b>PUBLIC WORKS/ENGINEERING SERVICES</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Grading Permit			Grading Permits: 10% inflationary increase from January 2020-January 2022 per ENR
<ul style="list-style-type: none"> <li>• 0 – 50 CY</li> </ul>	\$10		\$11
<ul style="list-style-type: none"> <li>• 51 – 100 CY</li> </ul>	\$19		\$21
<ul style="list-style-type: none"> <li>• 101 – 1,000 CY</li> </ul>	\$37 for the first 100 CY	Plus \$19 for each additional 100 CY or fraction thereof	\$41 for the first 100CY, Plus \$21 for each additional 100CY or fraction thereof
<ul style="list-style-type: none"> <li>• 1,001 – 10,000 CY</li> </ul>	\$208 for the first 1,000 CY	Plus \$19 for each additional 1,000 CY or fraction thereof	\$229 for the first 1,000 CY, Plus \$21 for each additional 1000 CY or fraction thereof
<ul style="list-style-type: none"> <li>• 10,001 – 100,000 CY</li> </ul>	\$379 for the first 10,000 CY	Plus \$21 for each additional 10,000 CY or fraction thereof	\$417 for the first 10,000CY, Plus \$23 for each additional 10,000CY or fraction thereof
<ul style="list-style-type: none"> <li>• 100,001 – 200,000 CY</li> </ul>	\$589 for the first 100,000 CY	Plus \$21 for each additional 10,000 CY or fraction thereof	\$648 for the first 100,000 CY, Plus \$23 for each additional 10,000 CY or fraction thereof
<ul style="list-style-type: none"> <li>• 200,000 CY +</li> </ul>	\$799 for the first 200,000 CY	Plus \$26 for each additional 10,000 CY or fraction thereof	\$879 for the first 200,000 CY, Plus \$29 for each additional 10,000 CY or fraction thereof

<b>PUBLIC WORKS/ENGINEERING SERVICES</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Grading Plan Review			Grading Plan Reviews: 10% inflationary increase from January 2020-January 2022 per ENR
• 0 – 100 CY	\$11		\$12
• 101 – 1,000 CY	\$39		\$43
• 1,001 – 10,000 CY	\$54		\$59
• 10,001 – 100,000 CY	\$59 for the first 10,000 CY	Plus \$11 for each additional 10,000 cubic yards or fraction thereof	\$65 for the first 10,000 CY, Plus \$12 for each additional 10,000 CY or fraction thereof
• 100,001 – 200,000 CY	\$158 for the first 100,000 CY	Plus \$7 for each additional 10,000 cubic yards or fraction thereof	\$174 for the first 100,000 CY, Plus \$8 for each additional 10,000 CY or fraction thereof
• 200,000 CY +	\$228 for the first 200,000 CY	Plus \$4 for each additional 10,000 cubic yards or fraction thereof	\$251 for the first 200,000 CY, Plus \$4 for each additional 10,000 CY or fraction thereof
• Additional Meetings	\$73 per hour – 1 hour minimum		\$80 per hour – 1 hr minimum
• Additional Plan Review	\$55 per hour – 1 hour minimum		\$61 per hr – 1 hr minimum
• Inspection Outside Business Hours	\$65 per hour – 2 hour minimum		\$72 per hour – 2 hour minimum
• Re-Inspection	\$73 per hour – 1 hour minimum		\$80 per hour – 1 hour minimum
• Inspection Where No Fee Indicated	\$55 per hour – 1 hour minimum		\$61 per hour – 1 hour minimum

<b>PUBLIC WORKS/ENGINEERING SERVICES</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Right of Way (ROW) Utility Permit			
<ul style="list-style-type: none"> <li>Outdoor Dining Agreement</li> </ul>	\$1.00 per square foot per month for outdoor dining space within the ROW		Increase 10% ENR Inflation for 2021 & 2022. \$1.10 per Sq Ft

<b>WASTEWATER</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Wastewater Capacity Fees:			
<ul style="list-style-type: none"> <li>0 – 8 WSFUs*</li> </ul>	\$ 4,088.00	*Water Supply Fixture Units Calculation based on the Economics Research Network (ERN) rate increase of 7.99% for calendar year 2023. ( $\$4,088.00 \times 7.99\% = \$326.63 + \$4,088. = \$4,414.63$ ) and rounded to the nearest dollar amount.	\$ 4,415.00
<ul style="list-style-type: none"> <li>8.1 – 17 WSFUs</li> </ul>	\$10,461.00	Calculation based on the Economics Research Network (ERN) rate increase of 7.99% for calendar year 2023. ( $\$10,461.00 \times 7.99\% = \$839.83 + \$10,461 = \$11,296.83$ ) and rounded to the nearest dollar amount.	\$11,297.00
<ul style="list-style-type: none"> <li>17.1 – 29 WSFUs</li> </ul>	\$18,565.00	Calculation based on the Economics Research Network (ERN) rate increase of 7.99% for calendar year 2023. ( $\$18,565.00 \times 7.99\% = \$1,483.34 + \$18,565.00 = \$20,048.34$ ) and rounded to the nearest dollar amount.	\$20,048.00

<b>WASTEWATER</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
<ul style="list-style-type: none"> <li>29.1 – 42 WSFUs</li> </ul>	\$27,835.00	Calculation based on the Economics Research Network (ERN) rate increase of 7.99% for calendar year 2023. ( $\$27,835.00 \times 7.99\% = \$2,224.01 + \$27,835 = \$20,048.34$ ) and rounded to the nearest dollar amount.	\$30,059.00
<ul style="list-style-type: none"> <li>42.1 – 55 WSFUs</li> </ul>	\$37,326.00	Calculation based on the Economics Research Network (ERN) rate increase of 7.99% for calendar year 2023. ( $\$37,326.00 \times 7.99\% = \$2,982.34 + \$37,326.00 = \$40,308.34$ ) and rounded to the nearest dollar amount.	\$40,308.00
<ul style="list-style-type: none"> <li>&gt; 55 WSFUs (per WSFU)</li> </ul>	\$730.01	This fee is for each WSFU, or portion thereof, over 55 and is added to the fee for 55 WSFUs. For example, 60 WSFUs would be calculated as follows: $\$37,326 + (5 \times \$730.01) = \$40,976.05$ .	\$788.34
<b>Reclaimed Water Fees:</b>			
<ul style="list-style-type: none"> <li>Agricultural Use</li> <li>Billing Unit = 1,000 gallons</li> </ul>	\$1.50	Minimum of 100,000 gallons per year required.	\$0.15
<ul style="list-style-type: none"> <li>All other uses</li> <li>Billing Unit = 1,000 gallons</li> </ul>	\$1.50		\$1.50

## Service Fee Summary Calculation

<b>Service Fee:</b>	Short-Term Rental Permit
<b>Proposed Effective Date:</b>	1/1/2023
<b>Units:</b>	Permit

TOTAL ANNUAL COST OF SERVICE	
Cost Type	Annual Cost of Service
Personnel	\$ 87,710
Ongoing Supplies & Services	\$ 71,850
One-Time Supplies & Services	\$ 890
Indirect Cost Allocations	\$ 36,051
<b>Total Annual Cost of Service</b>	<b>\$ 196,501</b>

PER UNIT FEE	
Description	Amount
Total Annual Cost of Service	\$ 196,501
Number of Permits	975
<b>100% Cost Recovery Fee</b>	<b>\$ 202.00</b>
<b>PROPOSED FEE</b>	<b>\$ 200.00</b>

**Service Fee Detail Calculations**

**Service Fee:** Short-Term Rental Permit  
**Proposed Effective Date:** 1/1/2023

PERSONNEL COSTS				
Title	Activities Included	Hourly Wage+ERE Budgeted	Time per Permit (in hours)	Annual Cost of Service
Short-Term Rental Specialist	Review of permit applications including delinquencies and outstanding complaints/citation: Processing and approval of permit applications Generating and issuing permit	\$ 42.17	2.13	\$ 87,710.00
<b>Personnel Total</b>				<b>\$ 87,710.00</b>

ONGOING SUPPLIES & SERVICES COSTS				
Program	Description	Annual Amount	% Applicable	Annual Cost of Service
STR Monitoring/Administration	Budgeted office supplies, postage, travel/training	\$ 2,850.00	100%	\$ 2,850.00
IT Direct Costs	Budgeted STR registration/monitoring software	\$ 40,000.00	100%	\$ 40,000.00
IT Direct Costs	Unbudgeted STR licensing software	\$ 29,000.00	100%	\$ 29,000.00
<b>Ongoing Supplies &amp; Services Total</b>				<b>\$ 71,850.00</b>

ONE-TIME SUPPLIES & SERVICES COSTS				
Program	Description	Annual Amount Amortized over Life	% Applicable	Annual Cost of Service
STR Monitoring/Administration	Budgeted furniture for new position	\$ 890.00	100%	\$ 890.00
<b>One-Time Supplies &amp; Services Total</b>				<b>\$ 890.00</b>

INDIRECT COST ALLOCATIONS				
Program	Description	Annual Amount	% Applicable	Annual Cost of Service
STR Monitoring/Administration	Budgeted CMO Administration support	\$ 5,180.00	100%	\$ 5,180.00
STR Monitoring/Administration	Budgeted Human Resources support	\$ 3,010.00	100%	\$ 3,010.00
STR Monitoring/Administration	Budgeted Financial Services support	\$ 4,400.00	100%	\$ 4,400.00
STR Monitoring/Administration	Budgeted IT support (less direct charges)	\$ 4,410.00	100%	\$ 4,410.00
STR Monitoring/Administration	Budgeted General Services support including liability insurance	\$ 1,350.00	100%	\$ 1,350.00
STR Monitoring/Administration	Budgeted Facilities Maintenance support	\$ 4,180.00	100%	\$ 4,180.00
STR Monitoring/Administration	Unbudgeted Legal Services support	\$ 13,521.00	100%	\$ 13,521.00
<b>Indirect Cost Allocations Total</b>				<b>\$ 36,051.00</b>

Fee: Lien Filing Fee

SUMMARY

			Current	Proposed
Personnel	23.47	Fee	\$50.00	\$65.00
Program Overhead	-	Cost Recovery w/Indirect	65%	84%
City Central Services Overhead	12.09	Costs		
Certified Mailing	7.82	Cost Recovery - Direct Costs	77%	100%
Lien Filing Costs	34.00	only		
<b>TOTAL</b>	<b>\$ 77.37</b>			

Personnel Costs	Hours	Wage + ERE Rate	Total
<b>Finance Department</b>			
Revenue Supervisor	0.5	46.94	23.47
<b>TOTAL</b>			<b>\$ 23.47</b>

City Central Services Overhead (Indirect Costs)	% of Personnel Budget		Total
Internal Charges	137,110	51%	\$ 12.09



**ORDINANCE NO. 2022-\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, ADOPTING AMENDMENTS TO THE SEDONA CONSOLIDATED FEE  
SCHEDULE.**

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

Section 1: Adoption of Consolidated Fee Schedule

That document made a public record by Resolution 2022-\_\_ and entitled "2022 Amendments to the Sedona Consolidated Fee Schedule" is hereby incorporated and approved and all amendments to the Consolidated Fee Schedule set forth therein will become effective on January 1, 2023, or when as so indicated in the schedule.

Section 2: Repeal

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

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona,  
Arizona, this 22<sup>nd</sup> day of November, 2022.

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

ATTEST:

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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

**RESOLUTION NO. 2022-\_\_**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, ESTABLISHING AS A PUBLIC RECORD PROPOSED AMENDMENTS TO  
THE CONSOLIDATED FEE SCHEDULE.**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA that the terms set forth in that document attached hereto as Exhibit A and entitled "2022 Amendments to the Sedona Consolidated Fee Schedule" constitute a public record to be incorporated by reference into Ordinance No. 2022-\_\_.

At least one (1) paper copy and one (1) electronic copy of this public record shall be kept in the office of the City Clerk for public use and inspection.

PASSED AND ADOPTED this 22<sup>nd</sup> day of November, 2022, by the Mayor and Council of the City of Sedona, Arizona.

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

ATTEST:

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
<b>Community Plan Amendment</b>			
<ul style="list-style-type: none"> <li>• Base Fee, Major Amendment</li>   <li>• Base Fee, Minor Amendment</li> </ul>	<p>\$5,000.00</p> <p>\$3,500.00</p>	<p>Plus the proportionate share of legal notice costs</p>	<p><u>Includes two rounds of review by staff (initial review and one re-review). Additional reviews shall be charged an hourly rate of \$50/hour.</u></p> <p><u>Rationale: This is the same "fee" used in the building permit section for reviews after the first recheck. This has come up as applicants have been submitting incomplete applications or returning projects without all the comments addressed. In talking with Public Works about this, we thought that it may be appropriate to clarify that the fees that are being charged do not include endless reviews, hoping that this would lead to better submittals and more timely processing of permits, as this may push our applicants to submit more complete plans the first time around and ensure they are addressing all outstanding comments when they resubmit.</u></p>

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
			<u>The total hourly cost to the jurisdiction, including supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved results in a range between \$40-\$70/hour with an average of \$56/hour. The rate has been lowered to \$50/hour.</u>
<b>Zone Change</b>		Includes one work session and one public hearing with the Planning and Zoning Commission and one public hearing with the City Council.	<u>Includes two rounds of review by staff (initial review and one re-review). Additional reviews shall be charged an hourly rate of \$50/hour.</u>  <u>Rationale: This is the same "fee" used in the building permit section for reviews after the first recheck. This has come up as applicants have been submitting incomplete applications or returning projects without all the comments addressed. In talking with Public Works about this, we thought that it may be appropriate to clarify that the fees that are being charged do not include endless reviews, hoping that</u>

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
			<p><u>this would lead to better submittals and more timely processing of permits, as this may push our applicants to submit more complete plans the first time around and ensure they are addressing all outstanding comments when they resubmit.</u></p> <p><u>The total hourly cost to the jurisdiction, including supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved results in a range between \$40-\$70/hour with an average of \$56/hour. The rate has been lowered to \$50/hour.</u></p>
<ul style="list-style-type: none"> <li>• Base Fee, Commercial/Mixed Use/Community Facility</li> <li>• Base Fee, Residential/Open Space</li> <li>• Additional Charges               <ul style="list-style-type: none"> <li>• Projects Over Two (2) Acres</li> </ul> </li> </ul>	<p>\$5,000.00</p> <p>\$2,500.00</p> <p>\$200.00</p>	Per additional acre or portion thereof	

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			<b>Proposed Fee or Increase and Report/Data</b>
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	
<b>Subdivision</b>		Includes two public hearings with the Planning and Zoning Commission (conceptual and preliminary plat), one public hearing with the City Council (preliminary plat), and an administrative approval by the City Council (final plat).	<p><u>Includes two rounds of review by staff (initial review and one re-review). Additional reviews shall be charged an hourly rate of \$50/hour.</u></p> <p><u>Rationale: This is the same "fee" used in the building permit section for reviews after the first recheck. This has come up as applicants have been submitting incomplete applications or returning projects without all the comments addressed. In talking with Public Works about this, we thought that it may be appropriate to clarify that the fees that are being charged do not include endless reviews, hoping that this would lead to better submittals and more timely processing of permits, as this may push our applicants to submit more complete plans the first time around and ensure they are addressing all outstanding comments when they resubmit.</u></p> <p><u>The total hourly cost to the</u></p>

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
			<u>jurisdiction, including supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved results in a range between \$40-\$70/hour with an average of \$56/hour. The rate has been lowered to \$50/hour.</u>
<ul style="list-style-type: none"> <li>• New Subdivision/Major Amendment to Existing Subdivision Base Fee</li> <li>• Additional Charges               <ul style="list-style-type: none"> <li>• Subdivisions Over Ten (10) Lots</li> </ul> </li> <li>• Minor Plat Amendments               <ul style="list-style-type: none"> <li>• Three (3) or Fewer Lots</li> <li>• Four (4) or More Lots</li> </ul> </li> <li>• Land Division/Lot Line Adjustment</li> <li>• Land Combination</li> </ul>	<p>\$4,000.00</p> <p>\$250.00</p> <p>\$500.00</p> <p>\$1,500.00</p> <p>\$300.00</p> <p>\$200.00</p>	Per additional lot	
<b>Development Review</b>		Includes one work session and one public hearing with the Planning and Zoning Commission. If a project has elements that are captured by multiple categories below,	<u>Includes two rounds of review by staff (initial review and one re-review). Additional reviews shall be charged an hourly rate of \$50/hour.</u> <u>Rationale: This is the same</u>

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
		<p>the additional charges from each category are added to the base fee. For example, a mixed-use project with 15,000 square feet of commercial, 20,000 square feet of lodging and 20 multi-family units would pay a fee of \$18,300 (\$2,500 base fee + \$15,000 for square footage exceeding base + \$800 for the 8 units above the base).</p>	<p><u>"fee" used in the building permit section for reviews after the first recheck. This has come up as applicants have been submitting incomplete applications or returning projects without all the comments addressed. In talking with Public Works about this, we thought that it may be appropriate to clarify that the fees that are being charged do not include endless reviews, hoping that this would lead to better submittals and more timely processing of permits, as this may push our applicants to submit more complete plans the first time around and ensure they are addressing all outstanding comments when they resubmit.</u></p> <p><u>The total hourly cost to the jurisdiction, including supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved results in a range between \$40-</u></p>



**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
			<u>\$70/hour with an average of \$56/hour. The rate has been lowered to \$50/hour.</u>
<ul style="list-style-type: none"> <li>• Base Fee</li> <li>• Additional Charges               <ul style="list-style-type: none"> <li>• Commercial/Lodging Projects Over 5,000 Square Feet</li> <li>• Group Dwellings and/or multi-family projects over 12 units</li> </ul> </li> </ul>	<p style="text-align: right;">\$2,500.00</p> <p style="text-align: right;">\$500.00</p> <p style="text-align: right;">\$100.00</p>	<p>Per additional 1,000 square feet or portion thereof</p> <p>Per additional unit</p>	
<b>Conditional Use Permit</b>		Includes one public hearing with the Planning and Zoning Commission.	<u>Includes two rounds of review by staff (initial review and one re-review). Additional reviews shall be charged an hourly rate of \$50/hour.</u>  <u>Rationale: This is the same "fee" used in the building permit section for reviews after the first recheck. This has come up as applicants have been submitting incomplete applications or returning projects without all the comments addressed. In talking with Public Works about this, we thought that it may be appropriate to clarify</u>

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
			<p><u>that the fees that are being charged do not include endless reviews, hoping that this would lead to better submittals and more timely processing of permits, as this may push our applicants to submit more complete plans the first time around and ensure they are addressing all outstanding comments when they resubmit.</u></p> <p><u>The total hourly cost to the jurisdiction, including supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved results in a range between \$40-\$70/hour with an average of \$56/hour. The rate has been lowered to \$50/hour.</u></p>
<ul style="list-style-type: none"> <li>Base Fee</li> </ul>	\$2,000.00		
<b>Written Interpretation of the Land Development Code</b>			
<ul style="list-style-type: none"> <li>Base Fee</li> </ul>	\$350.00		<p><u>\$350.00 for Residential</u>  <u>\$700.00 for Commercial</u>  <u>Rationale: When we originally</u></p>

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>COMMUNITY DEVELOPMENT</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
			<p><u>discussed director's interpretations, it was generally for more standards questions, such as what setbacks are, whether certain uses are allowed on properties, etc. What we have seen is that many entities wanting to buy commercial properties are asking for research into property history, what was approved in the past, what is permitted now, etc. This involves more research and more time than was contemplated in the current fee. While the residential interpretations are roughly what we had anticipated timewise, the commercial interpretations are taking more time and justify a higher fee. Proposed fee for commercial is double what the residential fee is, based on the amount of time they have been taking to prepare.</u></p>

**EXHIBIT A**  
**2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b>PARKS AND RECREATION</b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
<b>Posse Grounds Hub (4,522 SF)</b>			
<a href="#">Classes, Workshops, Rehearsals – Arts (dance, music, theater, visual arts)</a>			<a href="#">Clarification of use type</a>
Renter Providing Free to Participants or Donations Only			
<ul style="list-style-type: none"> <li>Non-profit/Individual</li> </ul>	\$10 per hour \$100 refundable deposit \$50 refundable per key deposit		
<ul style="list-style-type: none"> <li>Profit/Business</li> </ul>	\$15 per hour \$100 refundable deposit \$50 refundable per key deposit		
Renter Charging Cost to Participants or Required Donations			
<ul style="list-style-type: none"> <li>Non-profit/Individual</li> </ul>	\$18 per hour \$100 refundable deposit \$50 refundable per key deposit		
<ul style="list-style-type: none"> <li>Profit/Business</li> </ul>	\$23 per hour \$100 refundable deposit \$50 refundable per key deposit		
<a href="#">Performance – Arts (dance, music, theater, visual arts)</a>		10% discount on up-front payments on a series (4 or more) of the same category of event	<a href="#">Clarification of use type</a>

**EXHIBIT A  
2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>PARKS AND RECREATION</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Free to Spectators or Donations Only			
<ul style="list-style-type: none"> <li>Non-profit/Individual</li> </ul>	\$17.50 per hour; \$210 per day \$200 refundable deposit \$50 refundable key deposit		
<ul style="list-style-type: none"> <li>Profit/Business</li> </ul>	\$26.25 per hour; \$315 per day \$200 refundable deposit \$50 refundable key deposit		
Renter Charging Cost to Spectators			
<ul style="list-style-type: none"> <li>Non-profit/Individual</li> </ul>	\$31.50 per hour; \$378 per day \$200 refundable deposit \$50 refundable key deposit		
<ul style="list-style-type: none"> <li>Profit/Business</li> </ul>	\$40.25 per hour; \$483 per day \$200 refundable deposit \$50 refundable key deposit		
<u>Hourly – Non-Arts</u>			<u>This is a new category for non-arts use and fees are equivalent to existing Performance-Arts fees.</u>
<ul style="list-style-type: none"> <li><u>Non-profit/Private parties/Organizations</u></li> </ul>	<u>\$17.50 per hour</u> <u>\$100 Refundable Deposit</u> <u>\$50 per key - Refundable Deposit</u>		
<ul style="list-style-type: none"> <li><u>Profit/Business</u></li> </ul>	<u>\$26.25 per hour</u> <u>\$100 Refundable Deposit</u> <u>\$50 per key - Refundable Deposit</u>		

**EXHIBIT A**  
**2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>PARKS AND RECREATION</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
<a href="#"><u>Events Rental Fee – Non-Arts</u></a>			<a href="#"><u>This is a new category for non-arts use. Fees are consistent with the Events Rental Fees for the Pavilion and Recreation Room, based on extended use of space and the impact on facility and staff resources.</u></a>
<ul style="list-style-type: none"> <li>• <a href="#"><u>Non-profit</u></a></li> </ul>	<a href="#"><u>\$250 Day Rental (up to 7 hours), \$300 Extended Hours (over 7 hours)</u></a> <a href="#"><u>\$300 Refundable Deposit</u></a> <a href="#"><u>\$50 per key - Refundable Deposit</u></a>		
<ul style="list-style-type: none"> <li>• <a href="#"><u>Private parties/organizations or Profit/Business</u></a></li> </ul>	<a href="#"><u>\$370 Day Rental (up to 7 hours), \$445 Extended Hours (over 7 hours)</u></a> <a href="#"><u>\$300 Refundable Deposit</u></a> <a href="#"><u>\$50 per key - Refundable Deposit</u></a>		

**EXHIBIT A**  
**2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>PUBLIC WORKS/ENGINEERING SERVICES</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
Grading Permit			<u>The rationale for the following increases is based on an approximate 2% inflation factor from January 2020 to January 2021 in the "Construction Cost Index" from Engineering News Record. Additional detailed information can be found here.</u>
• 51 – 100 CY	\$19		<u>\$19.50</u>
• 101 – 1,000 CY	\$37 for the first 100 CY	Plus \$19 for each additional 100 CY or fraction thereof	<u>\$38 for the first 100 CY, Plus \$19.50 for each additional 100 CY or fraction thereof</u>
• 1,001 – 10,000 CY	\$208 for the first 1,000 CY	Plus \$19 for each additional 1,000 CY or fraction thereof	<u>\$213.50 for the first 1,000 CY, Plus \$19.50 for each additional 1000 CY or fraction thereof</u>
• 10,001 – 100,000 CY	\$379 for the first 10,000 CY	Plus \$21 for each additional 10,000 CY or fraction thereof	<u>\$389 for the first 10,000 CY, Plus \$23.50 for each additional 10,000 CY or fraction thereof</u>
• 100,001 – 200,000 CY	\$589 for the first 100,000 CY	Plus \$21 for each additional 10,000 CY or fraction thereof	<u>\$600.5 for the first 100,000 CY, Plus \$21.5 for each additional 10,000 CY or fraction thereof</u>
• 200,000 CY +	\$799 for the first 200,000 CY	Plus \$26 for each additional 10,000 CY or fraction thereof	<u>\$815.5 for the first 200,000 CY, Plus \$26 for each additional 10,000 CY or fraction thereof</u>
Grading Plan Review			

**EXHIBIT A**  
**2021 AMENDMENTS TO THE SEDONA CONSOLIDATED FEE SCHEDULE**

<b><u>PUBLIC WORKS/ENGINEERING SERVICES</u></b>			
<b>Fee Description</b>	<b>Current Base Fee</b>	<b>Additions, Limits, &amp; Notes</b>	<b>Proposed Fee or Increase and Report/Data</b>
• 101 – 1,000 CY	\$39		<u>\$40</u>
• 1,001 – 10,000 CY	\$54		<u>\$55</u>
• 10,001 – 100,000 CY	\$59 for the first 10,000 CY	Plus \$11 for each additional 10,000 cubic yards or fraction thereof	<u>\$60 for the first 10,000 CY, Plus \$11.20 for each additional 10,000 CY or fraction thereof</u>
• 100,001 – 200,000 CY	\$158 for the first 100,000 CY	Plus \$7 for each additional 10,000 cubic yards or fraction thereof	<u>\$160.80 for the first 100,000 CY, Plus \$7.20 for each additional 10,000 CY or fraction thereof</u>
• 200,000 CY +	\$228 for the first 200,000 CY	Plus \$4 for each additional 10,000 cubic yards or fraction thereof	<u>\$232.80 for the first 200,000 CY, Plus \$4 for each additional 10,000 CY or fraction thereof</u>
• Additional Meetings	\$73 per hour – 1 hour minimum		<u>\$75 per hour – 1 hour minimum</u>
• Additional Plan Review	\$55 per hour – 1 hour minimum		<u>\$56 per hour – 1 hour minimum</u>
• Inspection Outside Business Hours	\$65 per hour – 2 hour minimum		<u>\$66 per hour – 2 hour minimum</u>
• Re-Inspection	\$73 per hour – 1 hour minimum		<u>\$75 per hour – 1 hour minimum</u>
• Inspection Where No Fee Indicated	\$55 per hour – 1 hour minimum		<u>\$56 – 1 hour minimum</u>





**CITY COUNCIL  
AGENDA BILL**

**AB 2887  
November 22, 2022  
Regular Business**

**Agenda Item:** 8d  
**Proposed Action & Subject:** Discussion/possible action regarding an Ordinance revising the Sedona City Code, Chapter 5.05.030 Section B, related to special event business licensing.

<b>Department</b>	City Clerk
<b>Time to Present</b>	5 Minutes
<b>Total Time for Item</b>	10 Minutes
<b>Other Council Meetings</b>	N/A
<b>Exhibits</b>	A. Ordinance B. Amendments to 5.05.030B

<b>City Attorney Approval</b>	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	
		\$ 0	
<b>City Manager's Recommendation</b>	Adopt the ordinance revising City Code Chapter 5.05.030B, related to special event business licensing.	<b>Amount Budgeted</b>	
		\$ 0	
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** The City of Sedona issues Special Event/Temporary business licenses for various special events held within the city limits as required under Sedona City Code (SCC 5.05.020A). Although some seasons are busier than others, special events take place year-round in Sedona. Each event brings in vendors, sometimes hundreds in a weekend, and the Sedona City Code states “it is unlawful for any vendor to operate without first having procured a current business license from the city.”

When the Clerk’s Office took over business licensing in November 2019, there was one dedicated staff member trained to process applications and issue business licenses. Currently Sedona City Code Chapter 5.05.030B states that “*The temporary business license is valid for seven days from the date of issuance.*” Most special events are planned many months in advance, but many vendors continue to wait until the last minute to request temporary business licenses. As a result, the City Clerk’s Office is often inundated with applications and issuing licenses most Wednesdays and Thursdays before an event takes place.

Currently these licenses are valid for seven days from the date of issuance, meaning staff must issue the license within the same week of the event. The proposed revisions would allow staff additional time to process and issue special event business licenses by requiring vendors

to submit applications in advance; no later than 5:00 p.m. three business days prior to the special event, and by making licenses valid for the dates listed on the issued license, not-to-exceed seven days.

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

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

**Alternative(s):** 1. Do not approve the revision of City Code Section 5.05.030B  
2. Suggest different language for the revision of City Code Section 5.05.030B

## **MOTION**

**(After First Reading)**

**I move to:** adopt Ordinance 2022-\_\_\_, revising City Code Chapter 5.05.030B, related to special event business licensing.

**ORDINANCE NO. 2022-\_\_**

**AN ORDINANCE OF THE CITY OF SEDONA, ARIZONA, AMENDING CITY CODE CHAPTER 5.05 (BUSINESS LICENSING) BY AMENDING SUBSECTION 5.05.030.B.; PROVIDING FOR PENALTIES, A SAVINGS CLAUSE, AND FOR REPEAL OF CONFLICTING ORDINANCES.**

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

Section 1. Amendment of Sedona City Code Chapter 5.05 (Business Licensing); Penalties

That the Code of the City of Sedona, Arizona, is hereby amended by amending Subsection 5.05.030.B. (Issuance of business license), to read as follows:

B. *Special Event Business License.* Application for a temporary special event business license shall be made to the city no later than 5:00 p.m. three business days prior to the special event on forms made available by the city. Every application shall be accompanied by the nonrefundable temporary business license fee as listed in the city fee schedule. The temporary business license is valid for the dates listed on the issued license, not to exceed seven days. Failure to timely apply for a temporary special event business license shall result in a denial.

Section 2. Savings Clause

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

Section 3. Repeal

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

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 22<sup>nd</sup> day of November, 2022.

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

ATTEST:

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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

### **5.05.030 Issuance of business license.**

A. *Application and Fees.* Application for a business license shall be made to the city on forms made available by the city. Every application shall be accompanied by the nonrefundable business license fee, as listed in the city fee schedule for the first business and \$5.00 for each additional business owned and operated by the same person or entity in a single location. Separate licenses shall be obtained for each branch establishment or separate location of a business, and a business license shall be obtained for every business covered in this chapter.

B. *Special Event Business License.* Application for a temporary special event business license shall be made to the city [no later than 5:00pm three business days prior to the special event](#) on forms made available by the city. Every application shall be accompanied by the nonrefundable temporary business license fee as listed in the city fee schedule. The temporary business license is valid for [the dates listed on the issued license, not to exceed](#) seven days ~~from the date of issuance.~~ [Failure to timely apply for a temporary special event business license shall result in a denial.](#)

C. *Issuance.* Upon the filing of a complete application for a business license and the receipt of all required fees, the city shall prepare and issue a business license under this chapter for every business, stating the period of time covered; the name of the business; the name(s) of the person or entity owning or operating the business; and the location of the business establishment.

D. *Changes in Application Information.* The business shall contact the city with changes to any information on the business license application within 30 calendar days of the effective date of the change and shall pay an administrative fee of \$10.00 to effect the changes. Business licenses granted or issued by the city are not transferable or assignable to any other person or entity.

E. *Term and Renewal.* Business licenses shall be valid until January 1st of the year following the year of issuance, unless the license was suspended or revoked. The person or entity owning or operating the business shall renew the business license within 30 days of the expiration of the business license. Failure to renew within 30 days of the expiration of the business license shall result in the suspension of the business license. Every renewal shall be accompanied by the nonrefundable renewal fee as listed in the city fee schedule.

Following the start-up year, the business will be on an annual renewal cycle. The business license renewal will be due and payable on January 1st.

F. *State License Required under Arizona Revised Statutes.* If a business is engaging in an activity subject to state and/or local transaction privilege tax, the owner shall obtain the state and/or appropriate city transaction privilege tax license(s) based on Arizona Revised Statutes. [Code 2006 § 8-2-3. Ord. 2010-16 § 1, 10-26-2010; Res. 2010-30 Exh. A, 10-26-2010; Ord. 2011-12 § 1, 12-13-2011; Res. 2011-26 Exh. A, 12-13-2011; Ord. 2014-01 § 1, 1-14-2014; Res. 2014-01 Exh. A, 1-14-2014; Ord. 2015-12 § 1, 11-10-2015; Res. 2015-27 Exh. A, 11-10-2015; Ord. 2016-03, 5-24-2016; Res. 2016-19 Exh. A, 5-24-2016; Ord. 2018-10 § 1, 10-23-2018; Res. 2018-30 Exh. A, 10-23-2018].

**The Sedona City Code is current through Ordinance 2022-02, passed March 22, 2022.**

Disclaimer: The city clerk's office has the official version of the Sedona City Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.SedonaAZ.gov](http://www.SedonaAZ.gov)

[Code Publishing Company](#)



**CITY COUNCIL  
AGENDA BILL**

**AB 2897  
November 22, 2022  
Regular Business**

**Agenda Item: 8e**

**Proposed Action & Subject:** Discussion/possible action regarding approval of a grant agreement with the Arizona Department of Emergency Management in the amount of \$900,000 for the City of Sedona’s Emergency Operations Center project.

<b>Department</b>	Economic Development
<b>Time to Present</b>	10 minutes
<b>Total Time for Item</b>	30 minutes
<b>Other Council Meetings</b>	N/A
<b>Exhibits</b>	A. Grant Agreement between City of Sedona and DEMA B. Grant Guidance Memo

City Attorney Approval	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	
		\$	900,000 (grant funds)
City Manager’s Recommendation	Approve grant agreement with the Arizona Department of Emergency Management in the amount of \$900,000 for the City of Sedona’s Emergency Operations Center project	\$	1.3M (capital reserves/DIF)
		<b>Amount Budgeted</b>	
		\$	2.3M (total project)
		\$	900,000 (grant portion)
		Account No. (Description)	22/47-5510-89-6823 (PD Facility/EOC Remodel)
Finance Approval	<input checked="" type="checkbox"/>		

**SUMMARY STATEMENT**

**Background:**

In the summer of 2020, the City of Sedona submitted a request to Senator Mark Kelly’s office for \$1 million in Congressionally Directed Spending (CDS) funds for the Emergency Operations Center (EOC)/police station remodel and renovations project. In March 2022, CDS funding for the EOC project was passed by Congress and signed by the President as part of a larger appropriations package. The city was allocated \$900,000 in funds for the EOC project.

Since this time, the city has been working with Senator Kelly’s office and the Arizona Department of Emergency and Military Affairs’ (DEMA) grant process to acquire the funding.

To move forward, the city must enter into a grant agreement with DEMA which is attached as Exhibit A. The grant agreement specifies the \$900,000 grant award along with the city’s

required match of 25%. The total cost of the project will be over \$2.2 million with the city contributing over \$1.3 million towards the project. The city's match requirement will be met.

While the DEMA agreement specifies the start date of the agreement as September 1, 2022, and funds have already been expended for the project, staff requested guidance on expending CDS funds on pre-award expenses. Attached as Exhibit B is guidance from the Federal Emergency Management Agency released on October 22, 2022, that states that these funds can be used for pre-award costs dating back to October 21, 2021.

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

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

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

## **MOTION**

**I move to:** approve the grant agreement with Arizona Department of Emergency Management in the amount of \$900,000 for the City of Sedona's Emergency Operations Center project.

**SUBRECIPIENT AGREEMENT BETWEEN**

**CITY OF SEDONA**  
**AND**

**The Arizona Department of Emergency and Military Affairs**  
**FOR**

**Emergency Operations Center Grant Program – EMF-2022-EO-00003**

WHEREAS, A.R.S. § 41-4254 (6) charges the Arizona Department of Emergency and Military Affairs (DEMA) with the responsibility of administering funds.

THEREFORE, it is agreed that DEMA shall provide funding to City of Sedona (“Subrecipient”) under CFDA # 97.052 for services under the terms of this Grant Agreement.

**I. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to specify the rights and responsibilities of DEMA in administering the distribution of Emergency Operations Center Grant Program funds to Subrecipient, and to specify the rights and responsibilities of Subrecipient as the recipient of these funds.

**II. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS**

This Agreement shall become effective on **September 1, 2022** and shall terminate on **August 31, 2025**. The obligations of Subrecipient as described herein will survive termination of this agreement.

**III. DESCRIPTION OF SERVICES, SUPPLIES AND EQUIPMENT**

Subrecipient shall provide the services for DEMA and shall purchase the supplies and equipment for Subrecipient’s use in conjunction with this Agreement as set forth in writing Subrecipient’s grant application titled “Emergency Operations Center Grant Program”.

- a) The FY 2022 EOC Grant covers eligible costs from **September 1, 2022 through August 31, 2025**; and pre-award costs as approved by the Federal Emergency Management Agency (FEMA). The funds awarded in the grant agreement shall only be used to cover allowable costs that are incurred during the agreement period and pre-award costs as approved by FEMA. Grant agreement funds shall not be used for other purposes. Allowable costs are defined in the FY 2022 EOC Notice of Funding Opportunity (NOFO), a copy of which is attached.
- b) Finance & Administration- DEMA will serve as the primary fiscal agent for all FFY 2022 EOC funds.
  - i) The FY 2022 EOC program has a 25% cost match (cash or in-kind) requirement, as authorized by the *44 C.F.R § 361.4*. Federal funds cannot exceed 75% of eligible costs. Unless otherwise authorized by law, federal funds cannot be matched with other federal funds. All funds received by Subrecipient through DEMA under this Agreement are agreed to be federal matching funds; Subrecipient shall be solely responsible for providing the other 25% (cash or in-kind) in order to obtain these federal matching funds.
  - ii. The Federal Emergency Management Agency (FEMA) administers cost matching requirements in accordance with 2 CFR § 200.306. To meet



matching requirements, Subrecipient contributions must be reasonable, allowable, allocable, and necessary under the grant program and must comply with all federal requirements and regulations.

#### **IV. MANNER OF FINANCING**

DEMA shall:

a) Provide up to **\$900,000** to the Subrecipient for 75% of the costs associated with the services, supplies and equipment identified in the Subrecipients Work Plan. Subrecipient will provide the services required by this Agreement and acquire the supplies and equipment identified therein for its own use, unless a change is agreed to, as provided in part XII of this Agreement.

b) Payment made by DEMA to Subrecipient shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by DEMA, to be submitted by Subrecipient. Payments by DEMA to Subrecipient will be contingent upon DEMA receiving complete documentation as required by the grant for each expenditure from Subrecipient.

Payment may be contingent upon certification of the Subrecipient's financial management system in accordance with acceptable standards in OMB Circular A-110.

#### **V. FISCAL RESPONSIBILITY**

It is understood and agreed that all of the funds provided by DEMA to Subrecipient under this Agreement shall be used by Subrecipient only for items and services to be acquired by Subrecipient under this Agreement. For any funds received under this Agreement for which expenditure is disallowed by an audit exemption or otherwise by DEMA, the State, or Federal government, Subrecipient shall reimburse said funds directly to DEMA immediately. Notwithstanding the above, appropriations must be available pursuant to paragraph XVII at page 8.

#### **VI. FINANCIAL AUDIT/PROGRAMATIC MONITORING**

Subrecipient agrees to terms specified in A.R.S. § 35-214 and § 35-215.

a) If Subrecipient expends \$750,000 or more from all federal funding sources during the fiscal year, Subrecipient shall submit an organization-wide financial and compliance audit report per Subpart F of 2 C.F.R. Part 200. Failure to comply with any requirements imposed as a result of an audit will suspend the release of federal funds by DEMA to Subrecipient until Subrecipient is in compliance with all such requirements.

b) Subrecipient will be monitored periodically by DEMA, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this Agreement including but not limited to the review and analysis of financial, programmatic, equipment, performance and administrative issues relative to each program, and may

identify areas where technical assistance and other support may be needed. Subrecipient shall participate in and cooperate with all such monitoring by DEMA, and shall provide access to all personnel, documents, and other records as may be requested from time to time by DEMA. Subrecipient also shall comply with all requests of DEMA that DEMA deems necessary to assure the parties' compliance with their obligations under this Agreement.

**VII. APPLICABLE FEDERAL REGULATIONS**

Subrecipient must comply with the FY 2022 EOC NOFO, Office of Management and Budget (OMB) Circular's Code of Federal Regulations (CFR), and other Federal guidance including but not limited to:

- a. 2 CFR § 200.0-200.345 Uniform Administrative Requirements Subpart A-D, for Grants and Cooperative Agreements to State and Local Governments (formerly OMB Circular A-102)
- b. 2 CFR § 200.402-200.475 Subpart E – Cost Principles, Local & Indian Tribal Governments
- c. 2 CFR Part 200 Subpart E- §200.400-200.417 State and Local Governments; 2 CFR Part 220, Educational Institutions; 2 CFR Part 230, Non-Profit Organizations; Federal Acquisition Regulation Subpart 31.2, Contracts with Commercial Organizations.
- d. U.S. Department of Homeland Security Authorized Equipment List (AEL), at <https://www.fema.gov/authorized-equipment-list>
- e. 2 CFR Part 215, Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
- f. 28 CFR applicable to grants and cooperative agreements, including Part II, Applicability of Office of Management and Budget Circulars; Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence System Operating Policies; Part 42, Non-discrimination Equal Employment Opportunities Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Part 66, Uniform Administrative Requirements for Grants and Co-operative Agreements to State and Local Government;
- g. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, at

[http://www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2012](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2012).

Included within the above-mentioned guidance documents are provisions for the following:

### **Environmental Planning and Historic Preservation**

Subrecipient shall comply with all applicable Federal, State, and Local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Subrecipient shall not knowingly undertake any project having the potential to impact EHP resources without the prior approval of DEMA/FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings that are 50 years old or greater. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Procurement and construction activities shall not be initiated prior to the full environmental and historic preservation review.

### **Consultants/Trainers/Training Providers**

Billings for consultants/trainers/training providers must include at a minimum: a description of services; dates of services; number of hours for services performed; rate charged for services; and, the total cost of services performed. Consultant/trainer/training provider costs must be within the prevailing rates; must be obtained under consistent treatment with the procurement policies of Subrecipient and 2 CFR § 200.231, 200.326 & 200.323.

### **Contractors/Subcontractors**

Subrecipient may enter into written subcontract(s) for performance of certain of its functions under this Agreement in accordance with terms established in the OMB Circulars, Code of Federal Regulations, DHS Guidance/NOFO and DHS Program Guidance. Subrecipient agrees and understands that no subcontract that Subrecipient enters into with respect to performance under this Agreement shall in any way relieve Subrecipient of any responsibilities for performance of its duties. Subrecipient shall give DEMA immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against Subrecipient by any subcontractor or vendor which in the opinion of Subrecipient may result in litigation related in any way to the Agreement with DEMA.

### **Personnel and Travel Costs**

All funds expended for personnel, travel, lodging, and per diem must be consistent with the Subrecipient's policies and procedures and the State of Arizona Accounting Manual (SAAM); must be applied uniformly to both federally financed and other activities of the agency; and will be reimbursed at the most restrictive allowability and rate. At no time will Subrecipient's reimbursement(s) exceed the State rate established by the Arizona

### **Procurement**

Subrecipient shall comply with all its own procurement rules/policies, all Federal procurement rules/policies (including but not limited to those outlined in this section VII of this Agreement), and all Arizona State procurement code provisions and rules. The Federal intent is that all Funds are awarded competitively. Subrecipient shall not enter into a Noncompetitive (Sole or Single Source) procurement agreement, unless prior written approval is granted by DEMA.

### **Training and Exercise**

Subrecipient agrees that any funds used for training and exercise must be in compliance with the NOFO.

### **Nonsupplanting Agreement**

Subrecipient shall not use funds to supplant State or Local funds or other resources that would otherwise have been made available for this program/project. Further, if a position created by a grant is filled from within, the vacancy created by this action must be filled within thirty (30) days. If the vacancy is not filled within thirty (30) days, Subrecipient must stop charging the grant for the new position. Upon filling the vacancy, Subrecipient may resume charging for the grant position.

### **E-Verify**

Compliance requirements for A.R.S. § 41-4401—immigration laws and E-Verify requirement.

- a) Subrecipient warrants its compliance with all Federal immigration laws and regulations relating to its employees and to employees of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, including but not limited to A.R.S. § 23-214, Subsection A (That subsection reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program”).
- b) A breach of a warranty by Subrecipient regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and Subrecipient may be subject to penalties to be determined at DEMA’s discretion, up to and including termination of this Agreement.
- c) DEMA retains the legal right to inspect the papers of any Subrecipient employee who works on the Agreement, and those of any employee of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, to ensure that Subrecipient is complying with the warranty under paragraph (a) above.

### **Property Control**

Effective control and accountability must be maintained by Subrecipient for all equipment and supplies acquired by Subrecipient under this Agreement. Subrecipient must adequately safeguard all such property and must assure that it is used for authorized purposes as described in the NOFO, grant application, and Code of Federal Regulations

(CFRs). Subrecipient shall exercise caution in the use, maintenance, protection and preservation of such property.

- a) Equipment acquired by Subrecipient under this Agreement shall be used by Subrecipient in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by federal grant funds. Theft, destruction, or loss of property shall be reported to DEMA immediately.
- b) Nonexpendable Property is property which has a continuing use, is not consumed in use, is of a durable nature with an expected service life of one or more years, has an acquisition cost of \$300 (Three Hundred Dollars) or more, and does not become a fixture or lose its identity as a component of other equipment or plant.
- c) A Capital Asset is any personal or real property, or fixture that has an acquisition cost of \$5,000 (Five Thousand Dollars) or more per unit and a useful life of more than one year. If the Capital Asset current value is equal to or greater than \$5,000 at the end of life or required project activities is discontinued, Subrecipient must request and receive authorization from DEMA prior to disposition.
- d) A Property Control Form (if applicable) shall be maintained for the entire scope of the program or project for which property was acquired through the end of its useful life and/or disposition. All Nonexpendable Property and Capital Assets must be included on the Property Control Form. Subrecipient shall provide DEMA a copy of the Property Control Form with the final reimbursement request form, or no more than **ninety (90) calendar days** after the end of the Agreement. The Property Control Form shall be updated and a copy provided to DEMA no more than forty-five (45) calendar days after equipment disposition, if applicable.
- e) Upon submission of the final quarterly programmatic report Subrecipient must file with DEMA a copy of the Property Control Form. Subrecipient agrees to be subject to equipment monitoring and auditing by state or federal authorized representatives to verify information.
- f) A physical inventory of the Nonexpendable Property and Capital Assets must be taken and the results reconciled with the Property Control Form at least once every two years.  
(1) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated. (2) Adequate maintenance procedures must be developed to keep the property in good condition.

#### **VIII. DEBARMENT CERTIFICATION**

Subrecipient agrees to comply with the Federal Debarment and Suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" Attached as Exhibit VIII.

#### **IX. FUNDS MANAGEMENT**

Subrecipient must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with funds from other sources. Subrecipient must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits. Subrecipient must maintain adequate business

systems to comply with Federal requirements. The business systems that must be maintained are:

- Financial Management
- Procurement
- Personnel
- Property
- Travel

A system is adequate if it is 1) written; 2) consistently followed – it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds.

**X. REPORTING REQUIREMENTS**

Regular reports by Subrecipient shall include:

- g) Programmatic Reports- Subrecipient shall provide quarterly programmatic reports to DEMA within twenty-one (21) days of the last day of the quarter in which services are provided. Subrecipient shall use the table outline located in the NOFO Appendix B – Combined Master Schedule/Deliverable Table example to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by DEMA. If a project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by DEMA. Quarterly programmatic reports shall be submitted to DEMA until the entire scope of the Grant is completed. Upon request of DEMA, Subrecipient must provide to DEMA information necessary to meet any state or federal reporting requirements.
- a) Quarterly reports are due:
  - January 30** (period October 1 – December 31)
  - April 30** (period January 1-March 31)
  - July 30** (period April 1 - June 30)
  - October 30** (period July 1 - September 30)

- b) Financial Reimbursements

Subrecipient shall provide DEMA with quarterly requests for reimbursement.

Subrecipient shall submit to DEMA a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than **sixty (60) calendar days** after the end of the Agreement. Requests for reimbursement received by DEMA later than the sixty (60) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL.

DEMA requires that all requests for reimbursement are submitted via U.S. mail (United States Postal Service), FedEx, UPS, or another established private delivery service, in person or via any electronic means.

DEMA reserves the right to request and/or require any supporting documentation and/or information DEMA reasonably believes necessary in order to process reimbursements. Subrecipient shall promptly provide DEMA with all such documents

All reports shall be submitted by Subrecipient to the DEMA contact person as described in Part XXXVII, NOTICES, of this Agreement.

**XI. ASSIGNMENT AND DELEGATION**

Subrecipient may not assign any rights hereunder without the express, prior written consent of both parties.

**XII. AMENDMENTS**

Any change in this Agreement including but not limited to the Description of Services and budget described herein, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by and between the duly authorized representative of Subrecipient and DEMA.

Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of Subrecipient's compensation if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. Subrecipient expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

**XIII. AGREEMENT RENEWAL**

This Agreement shall not bind nor purport to bind DEMA for any contractual commitment in excess of the original Agreement period.

**XIV. RIGHT TO ASSURANCE**

If DEMA in good faith has reason to believe that Subrecipient does not intend to or is unable to perform or continue performing under this Agreement, DEMA may demand in writing that Subrecipient give a written assurance of intent to perform. If Subrecipient fails to provide written assurance within thirty (30) days, DEMA at its option may terminate this Agreement.

**XV. CANCELLATION FOR CONFLICT OF INTEREST**

The State of Arizona may, by written notice to the parties, immediately cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State or its subdivisions (unit of Local Government) is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to the Agreement receive written notice from the State of Arizona, unless the notice specifies a later time.

**XVI. THIRD PARTY ANTITRUST VIOLATIONS**

Subrecipient hereby assigns to the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Subrecipient toward fulfillment of this Agreement.

**XVII. AVAILABILITY OF FUNDS**

Continuation this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds necessary for performance by either party are not allocated and available for the continuance of this Agreement, either party may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to either party in the event this provision is exercised, and neither party shall be obligated or liable for any future payments or for any damages as a result of termination under this part XVII, including purchases and/or contracts entered into pursuant to performance under this Agreement.

**XVIII. FORCE MAJEURE**

If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

**XIX. PARTIAL INVALIDITY**

Any term or provision of this Agreement that is hereafter declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

**XX. ARBITRATION**

In the event of any dispute arising under this Agreement, written notice of the dispute must be provided to the other party within thirty (30) days of the events giving the rise to the dispute. In the event that the parties cannot resolve their dispute on an agreed-upon basis, either party may invoke arbitration through the American Arbitration Association (“AAA”), with the arbitrator to be selected pursuant to AAA rules and the arbitration to be conducted according to the applicable AAA rules, and with the costs of arbitration (including but not limited to the arbitrator’s fees, attorneys’ fees, and costs) to be allocated between the parties by the arbitrator. Both parties being sovereign entities, the parties agree that any litigation to enforce an arbitration award or for any other purpose shall be only in the U.S. District Court for the District of Arizona in Phoenix, Arizona as the proper forum for litigation between sovereign entities located in the State of Arizona. In the event that the parties becoming involved in litigation with each other for any reason in any other forum, both parties agree to have any claim(s) against the other resolved in arbitration on the terms set forth in this part XX.

**XXI. GOVERNING LAW AND CONTRACT INTERPRETATION**

- a) This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona, as is otherwise not in conflict with the remainder of the provisions herein.
- b) This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document.
- c) Either party’s failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.



**XXII. ENTIRE AGREEMENT**

This Agreement and its Exhibits constitute the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Part XII of this Agreement; provided; however, that DEMA shall have the right to immediately amend this Agreement so that it complies with any new legislation, laws, ordinances, or rules affecting this Agreement. Subrecipient agrees to comply with any such amendment within ten (10) business days of receipt of a fully executed amendment. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are hereby superseded or merged herein.

**XXIII. RESTRICTIONS ON LOBBYING**

Subrecipient shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of a State or Federal government.

**XXIV. LICENSING**

Subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

**XXV. NON-DISCRIMINATION**

Subrecipient shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. title 41, Chapter 9, Article 4 and Executive Order 2009-09.

**XXVI. SECTARIAN REQUESTS**

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

**XXVII. ADVERTISING AND PROMOTION OF AGREEMENT**

Subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the written approval of DEMA.

**XXVIII. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS**

Any television public service announcement that is produced or funded in whole or in part by Subrecipient shall include closed captioning of the verbal content of such announcement.

**XXIX. INDEMNIFICATION**

To the extent permitted by law, each party (as indemnitor) agrees to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as claims) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, and are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

**XXX. TERMINATION**

All parties reserve the right to terminate the Agreement for convenience. The party wishing to terminate this Agreement shall provide the other party with a written thirty (30) day advance notice of the termination and the reasons for it. Upon such termination, DEMA reserves the right to collect from Subrecipient all funds distributed by DEMA under this Agreement to Subrecipient.

**XXXI. CONTINUATION OF PERFORMANCE THROUGH TERMINATION**

Subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

**XXXII. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one agreement.

**XXXIII. AUTHORITY TO EXECUTE THIS AGREEMENT**

Each individual executing this Agreement on behalf of Subrecipient represents and warrants that he or she is duly authorized to execute this Agreement.

**XXXIV. SPECIAL CONDITIONS**

Subrecipient acknowledges that U.S. Department of Homeland Security and DEMA reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes:

1. The copyright in any work developed under an award to DEMA or this sub-award to Subrecipient; and
2. Any rights of copy right to which the Subrecipient purchases ownership with Federal support. Subrecipient shall consult with DEMA regarding the allocation of any patent rights that arise from, or are purchased with, this funding.

**XXXV. RECORD RETENTION**

Pursuant to A.R.S. §§ 35-214 and 35-215, the Parties shall retain all records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State of Arizona at reasonable times.

**XXXVI. NOTICES**

Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing be delivered in person or shall be sent to the respective parties at the following addresses:

Arizona Department of Emergency & Military Affairs  
Grant Administration Office  
5636 E. McDowell Rd  
Phoenix, AZ 85008

City of Sedona  
102 Roadrunner Drive  
Sedona, AZ 86336

Subrecipient shall address all programmatic questions and reimbursement notices relative to this Agreement to the appropriate DEMA staff contact:

**Programmatic Coordinator**

Darlene Quihuis, Assistant Director  
[darlene.quihuis@azdema.gov](mailto:darlene.quihuis@azdema.gov)  
602-464-6454

**Grants Coordinator (Fiscal)**

Maryanne Curfman, Grant Project Specialist  
[maryanne.curfman@azdema.gov](mailto:maryanne.curfman@azdema.gov)  
602-464-6348

**XXXVII. IN WITNESS WHEREOF**

The parties hereto agree to execute this Agreement.

**FOR AND BEHALF OF**  
City of Sedona

**FOR AND BEHALF OF**  
Arizona Division of Emergency Management

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_

\_\_\_\_\_  
**Name & Title**

**Allen Clark, Director**


\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**Grant Programs Directorate Information Bulletin**  
**No. 480**

**October 13, 2022**

**MEMORANDUM FOR:** All State Administrative Agency Heads  
All State Administrative Agency Points of Contact  
All State Homeland Security Directors  
All State Emergency Management Agency Directors  
Alutiiq Tribe of Old Harbor  
Fond du Lac Band of Lake Superior Chippewa

**FROM:** Pamela S. Williams   
Assistant Administrator  
Grant Programs Directorate  
Federal Emergency Management Agency

**SUBJECT:** **Fiscal Year 2022 Emergency Operations Center Grant Program:  
Pre-Award Cost Guidance**

**I. Purpose**

This Information Bulletin (IB) amends the Fiscal Year (FY) 2022 Emergency Operations Center Grant Program (EOCGP) Notice of Funding Opportunity (NOFO) to allow use of EOCGP funding for certain pre-award costs and provides guidance on the approval process.

**II. Applicability**

This IB is applicable to all FY 2022 EOCGP award recipients and subrecipients.

**III. Discussion**

The [FY 2022 EOCGP NOFO](#) does not address pre-award costs, which effectively means that pre-award costs are not allowed under the FY 2022 EOCGP. However, some EOCGP recipients and subrecipients recently asked whether exceptions could be made to allow for pre-award costs, prompting FEMA to reconsider their overall allowability.

FEMA has discretionary authority to allow pre-award costs. In general, pre-award costs can be allowed as long as they were incurred: (1) after the program authority has been enacted; and (2) after the appropriation becomes available. Because the period of availability for the current appropriation goes back to the beginning of the fiscal year, FEMA can allow pre-award costs dating as far back as the beginning of FY 2022 (i.e., Oct. 1, 2021).

Pre-award costs are only allowable to the extent provided in 2 C.F.R. 200.458, which requires (1) the costs to be of a type allowable if incurred after the date of the Federal award; and (2) written approval of the Federal awarding agency, among other factors. On this basis, FEMA is allowing pre-award costs under EOCGP, where they would be otherwise allowable under the [FY 2022 EOCGP NOFO](#), and with written approval from FEMA to the recipient. See instructions noted in Section IV – Guidance. In addition, please review the caveats regarding Environmental Planning and Historic Preservation (EHP) review, described below.

As a reminder, an EHP review is required for all federally-funded projects. Most EOCGP-funded projects that involve construction activities (including site prep and any ground disturbance activities) or modifications to existing buildings will require a full EHP review. Typically, and as noted in the [FY 2022 EOCGP NOFO](#), the EHP review process must be completed before the project may begin. In some limited circumstances, FEMA can conduct an after-the-fact (ATF) EHP review, which would retroactively provide approval for EHP-related activities, and would allow grant funds to pay for pre-award costs for these activities. However, an ATF review may find EHP compliance issues that cannot be remedied because construction or installation had already begun. Such situations may compel FEMA to decline to provide pre-award costs, and even revoke federal funding for those portions of the project that fail to meet the EHP compliance requirements.

#### **IV. Guidance**

FY 2022 EOCGP award recipients who wish to use their grant funds to cover pre-award costs must submit a request in writing to the applicable [FEMA Regional Office](#) that administers the award (recipients must submit the request on behalf of subrecipients). The written request must include the following information:

- FY 2022 EOCGP award number;
- A description of the pre-award costs for which approval is sought, including the dates that the costs were incurred (costs must be incurred on or after October 1, 2021), and;
- An updated budget that accounts for the requested pre-award costs.

Following review of the pre-award cost request, the [FEMA Regional Office](#) will issue a decision letter explaining the review results and detailing which, if any, pre-award costs are approved. If the pre-award costs involve construction and/or installation activities, the letter may also communicate conditional approval pending successful completion of the required ATF review. In such case, a hold will be placed on those funds until all ATF review conditions, and any other award conditions, are satisfied. Of note, some pre-award costs, such as allowable planning activities, may be approved without any conditions or holds, thus making the funding immediately available.

As explained in the section above, pre-award costs are only allowed to the extent they are otherwise allowable following award issuance. Therefore recipients and subrecipients should refer to the allowable cost guidance included in the [FY 2022 EOCGP NOFO](#) to gain an understanding of the pre-award costs that may be allowed. In addition, since the EHP requirements apply to all federally funded projects, regardless of pre- or post-award activities, recipients and subrecipients are encouraged to refer to the EHP guidance included in the NOFO and the [FEMA.gov EHP page](#), which includes documents regarding EHP responsibilities and

program requirements, implementation of the National Environmental Policy Act, and other EHP regulations and Executive Orders.

## **V. Questions**

For questions regarding the FY 2022 EOC Grant Program, please contact the appropriate [FEMA Regional Office](#) or FEMA GPD's Centralized Scheduling and Information Desk (CSID) at (800) 368-6498 or by e-mail at [askcsid@fema.dhs.gov](mailto:askcsid@fema.dhs.gov). CSID's hours are Monday through Friday, 9 a.m. – 5 p.m. ET.

NOTE: FY 2022 EOCGP subrecipients should direct their questions through the award recipient (i.e., the applicable State Administrative Agency).

## **VI. Review Date**

This IB will sunset upon closure of the FY 2022 EOCGP.



**CITY COUNCIL  
AGENDA BILL**

**AB 2837  
November 22, 2022  
Regular Business**

**Agenda Item: 8f**

**Proposed Action & Subject:** Discussion/possible action regarding approval of a Resolution and Ordinance amending Sedona City Code Chapter 5.25 Short Term Rental Regulation to include implementation of SB 1168.

<b>Department</b>	City Manager
<b>Time to Present</b>	15 Minutes
<b>Total Time for Item</b>	60 Minutes
<b>Other Council Meetings</b>	February 8, 2021, July 12, 2022
<b>Exhibits</b>	A. Proposed Changes to SCC Chapter 5.25 Short-Term Rental Regulation (Exhibit A to Resolution) B. Resolution C. Ordinance D. SB 1168

<b>City Attorney Approval</b>	Reviewed 11/15/22 KWC	<b>Expenditure Required</b>	\$ 196,501
<b>City Manager's Recommendation</b>	Approve SCC Chapter 5.25 Short-Term Rental Regulation as amended.	<b>Amount Budgeted</b>	\$ 153,980
		Account No. (Description)	10/60-5220/6220-58-xxxx (STR Monitoring & Administration Program)
		Finance Approval	<input checked="" type="checkbox"/>

**SUMMARY STATEMENT**

**Background:**

From 1995 until 2016, the City of Sedona, by ordinance, prohibited the rental of residential properties for less than thirty (30) days. In May 2016, the legislature passed, and the Governor signed SB 1350, which prohibited cities and towns from banning short-term rentals (STR). In response to concerns from cities and towns in the wake of SB 1350, the Governor signed HB 2672 in May 2019. HB 2672 imposed certain minimal restrictions on STR use. After further pursuit of additional regulatory authority by cities and towns in the 2022 legislative session, the legislature passed and the Governor signed SB 1168, which became effective on September 24, 2022. Although SB 1168 still prohibits cities and towns from banning or limiting STRs, the legislation does give cities and towns limited regulatory authority and permit fee authority (the complete language of SB 1168 is attached as **Exhibit D**).

At a city council meeting on July 12, 2022, Council directed staff to move forward with drafting an amendment to Sedona City Code Chapter 5.25 Short Term Rental Regulation to include the implementation of SB 1168. Council also directed staff to identify required new resources to implement the allowable changes and develop an implementation plan.

City staff worked with the Arizona League of Cities and Towns and other impacted cities and towns on a model ordinance. The language in the model ordinance is included in the amendments being proposed. These amendments will allow the city to implement SB 1168 while maintaining the current emergency contact registration requirement. Highlights of the proposed changes are as follows:

- Requires an annual STR permit prior to advertisement or use of a property for short term rental and allows for the city to charge a fee for each permit issued.
- Applications will require owner name and contact information as well as the name and contact information of any owner designee.
- Owners are still required to provide contact information for an emergency contact person with the city who can respond to emergencies at the STR in a timely manner.
- Proof of a valid transaction privilege tax license is required and acknowledgement by owner of an agreement to comply with all applicable laws, regulations, and ordinances, including compliance with neighbor notification, evidence of liability insurance and the requirement that the owner and each designee will not be a registered sex offender.
- Owners will be required to keep permit information updated and information shared on the application will be available as public information.
- Owners will be required to post notice on the property to include information regarding the location of any fire or life safety equipment and City of Sedona noise and waste disposal regulations, as well as outlining the prohibited uses of the property.
- The permit number issued by the city must be included on each advertisement for the short-term rental.
- Owners are required to provide written notice to all single-family residential properties adjacent to, directly across the street from and diagonally across the street of the STR.
- Owners are required to obtain property and liability insurance on the STR.
- Owners shall conduct a sex offender background check on each adult guest; provided, however, that this requirement may be satisfied by the owner providing evidence that the online lodging marketplace on which the short-term rental is booked conducted a sex offender background check of the booking guest.

The full amendments with the red line edits are attached as **Exhibit A: 2022 Proposed Amendments to SCC Chapter 5.25 Short-Term Rental Regulations**. The Resolution declaring the proposed amendments a public record is attached as **Exhibit B**, and the Ordinance adopting the changes is attached as **Exhibit C**.

### **Timeline**

The revisions to this ordinance will be effective January 15, 2023, with the STR permit requirement taking effect on February 15, 2023. The city has a contract with third party vendor, GovOS, which currently provides online tracking of Sedona's STR activity, maintains the emergency contact registration database and operates the STR complaints hotline. GovOS is adding functionality that will allow processing of permit applications, and an online payment portal for collection of permit fees. The upgrade process takes approximately eight weeks to set up and implement; the city may begin processing applications and issuing permits at the same time the revisions to the ordinance become effective.



## Permit Fees

SB 1168 allows cities to set a fee not to exceed the actual cost of issuing the permit or \$250, whichever is less. City staff recommends setting the fee at \$200 based on a calculation of costs associated with issuing the permit. These costs include staff time associated with reviewing and processing the permits within a 7-day period and costs associated with software upgrades, including the upgrade to GovOS.

The proposed \$200 fee was published in the City's Consolidated Fee Schedule in September 2022. The new Consolidated Fee Schedule is also scheduled to be adopted at the November 22, 2022 City Council Meeting. While staff does expect that the \$200 will cover the cost of initially issuing the permit, staff will continue to track expenses and will adjust, if necessary, in the future. Future adjustments may be done as part of the annual Consolidated Fee Schedule updates.

## Penalties

The city may impose civil penalties on STRs that fail to obtain a local permit:

- An STR that fails to apply for a local permit within 30 days of the permit or application process being made available must cease operations.
- The city may impose a civil penalty of up to \$1,000 per month against the owner if the owner or the owner's designee fails to apply for a regulatory permit within 30 days after receiving written notice of their failure to comply.

The city may issue civil penalties and/or suspend permits for violations:

- Up to \$500 or up to an amount equal to one nights rent for first verified violation
- Up to \$1,000 or up to an amount equal to two nights rent for second verified violation
- Up to \$3,500 or up to an amount equal to one nights rent for third verified violation

A permit may be suspended for a period up to 12 months for the following verified violations (associated with the property):

- o 3 verified violations in a 12-month period that pose serious threats to public health and safety (excluding violations that are related to aesthetic, vehicle parking, or solid waste disposal).
- o For the following violations, a city or town may initiate a process to suspend a permit after **one** violation:
  - If a felony offense was committed at the STR by the STR owner or their designee.
  - If a serious physical injury or wrongful death occurred at the STR resulting from the intentional or reckless conduct of the STR owner or their designee.
  - The owner or their designee intentionally or knowingly house a sex offender, allow offenses related to adult-oriented businesses, sexual offenses, or prostitution, or operating a sober living home at the property.

## Implementation

As of October 31, 2022, there are 1029 identified STRs within city limits and 951 registered ECR's (Sedona is at 92% compliance).

- The Short-Term Rental Specialist will continue to monitor reporting from the complaint hotline, routing applicable violations to Code Enforcement for review and possible citation, and watching for repeating patterns of violation.
- The emergency contact registration process has been integrated into the STR permitting process. The STR Specialist will review and process all permits/registrations and

continue to monitor the database for both compliance and to ensure that all owner/designee and emergency contact information remains correct.

- The STR Specialist will continue to work in partnership with Code Enforcement to provide evidence of non-compliance that could lead to citations and further enforcement actions consistent with amended city code requirements.
- The STR Specialist will continue to provide education and customer service to owners, property managers, residents, and the community, working to further compliance and understanding of the city's short term rental program.

While not an allowable expense under the permit fee calculation, it is likely additional Code Enforcement resources will be needed to enforce the various provisions of this new ordinance, including the requirement that all STRs have a valid and current permit as well as the other violations referenced above. The workload demand will be monitored in the coming months and if necessary, a decision package will be prepared to request additional resources during the FY24 budget process.

### **Budget**

The STR Monitoring & Administration Program was included in the FY23 budget; however, the increased costs for the licensing portion of the software were not budgeted. Sufficient budget capacity exists to cover the additional cost.

The remaining unbudgeted portion of the STR Monitoring & Administration Program is simply a reallocation of the indirect cost allocations for City Attorney support costs that were budgeted within the Administration Program for the City Manager's Office.

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

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

### **Alternative(s):**

#### **MOTION**

**I move to:** approve Resolution No. 2022-\_\_\_, establishing as a public record the proposed amendment to Sedona City Code Chapter 5.25 entitled "2022 Amendments to Sedona City Code Chapter 5.25 (Short-Term Rental Regulation)."

### **(After First Reading)**

**I move to:** adopt Ordinance No. 2022-\_\_\_, adopting amendments to the Sedona City Code Chapter 5.25 (Short-Term Rental Regulation) related to implementing SB 1168; providing for penalties, a savings clause, and repeal of any conflicting ordinances.

## Chapter 5.25 SHORT-TERM RENTAL REGULATION

Sections:

- 5.25.010** ~~Title~~**Purpose; Administration; Enforcement.**
- 5.25.020** ~~Findings and purpose~~**Definitions.**
- 5.25.030** ~~Definitions~~**Permit Required.**
- 5.25.040** **Emergency contact.**
- 5.25.050** **Use regulations.**
- 5.25.060** ~~Neighbor Notification Required.~~
- 5.25.070** ~~Advertisement Requirements.~~
- 5.25.080** ~~Posting on the Property Required.~~
- 5.25.090** ~~Insurance Required.~~
- 5.25.100** ~~Background Checks Required.~~
- 5.25.110** ~~Permit Suspension.~~
- 5.25.120** **Penalties.**
- 5.25.130** ~~Appeals.~~
- 5.25.140** ~~Judicial Relief~~

### **5.25.010** ~~Title~~**Purpose; Administration; Enforcement.**

~~This chapter shall be known as the city of Sedona short-term rental regulation chapter. A. The city of Sedona is committed to maintaining its small-town character, scenic beauty, and natural resources that are the foundation of its economic strength and quality of life. This Chapter is adopted to protect the public peace, health, safety, and welfare of the City's residents and visitors by enacting reasonable regulations of short-term rentals consistent with A.R.S. § 9-500.39 and to help mitigate harmful abuses associated with short-term rentals. Such reasonable regulations include requiring: (1) permitting of short-term rentals; (2) compliance with zoning, safety, and nuisance standards; (3) disclosure of contact information of the property owner or owner's designee responsible for responding to complaints, incidences, and emergencies associated with a short-term rental; (4) notification to neighboring properties that~~

a property will be used as a short-term rental; (5) prohibition of the use of short-term rentals for illegal and harmful purposes; and (6) implementation of an administrative process to suspend short-term rental permits and reasonable civil penalties for the misuse of short-term rentals.

B. It is the responsibility of the Short-Term Rental Specialist to administer the provisions of this Chapter, including the issuance, denial, and suspension of licenses. Pursuant to these responsibilities, the Short-Term Rental Specialist has the authority to create rules, regulations, and policies consistent with the purpose of this Chapter and to develop the necessary forms and database to implement this Chapter. The Sedona Police Department, Code Compliance, and any other City department, division, or official designated by the City Manager is authorized to enforce the provisions of this Chapter.

### **5.25.020 Findings and purpose Definitions.**

~~The city of Sedona is committed to maintaining its small-town character, scenic beauty, and natural resources that are the foundation of its economic strength and quality of life. (Sedona Community Plan, Section 9.2, Recommendations Goal 1.0.) The purpose of this chapter is to safeguard the public health and safety of the residents of Sedona and their visitors and guests while preserving the residential character of neighborhoods, minimizing nuisances, and providing equity with other residential and commercial uses. Therefore, in an attempt to further promote the aims and goals of the Sedona Community Plan, the city does hereby adopt the following provisions in an attempt to protect the public's health and safety in residential neighborhoods.—~~

The terms of this Chapter have the below meanings, whether or not the term is capitalized, unless the context requires otherwise. Words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The term "including" means "including but not limited to" or "including without limitation." The term "shall" means a requirement or mandate. All references to laws or regulations mean such laws and regulations as amended or replaced. Definitions set forth in this Section apply only to this Chapter and do not affect and are not to be applied to any other Sedona City Code.

“Advertisement” means any method of soliciting the use of property for short-term rental purposes.

“Applicant” means the owner or owner’s designee who applies with the city for a permit or renewal of a permit.

“City code” means the Sedona City Code and the Sedona Land Development Code.

“Days” shall mean calendar days unless stated otherwise.

“Emergency point of contact” means the owner or individual designated by the owner to: (i) serve as the local twenty-four (24) hour emergency point of contact for the short-term rental; and (ii) respond to complaints and emergencies relating to the short-term rental in a timely manner as required by this chapter.

“Guest” means a person who makes transient use of a Short-Term Rental. For the purposes of this chapter, any person who makes payment for the use of a Short-Term Rental, any person identified on the rental agreement for a Short-Term Rental, any person who sleeps or plans to sleep overnight in a Short-Term Rental, and any person present in a Short-Term Rental after 10:00 PM, are each presumed to be a guest of that Short-Term Rental.

“Neighbor notification” means the written notice provided by the owner to each single-family residential property adjacent to the short-term rental property, directly across from the short-term rental property, and diagonally across the street of the short-term rental property that includes the valid permit number issued by the city, the physical address of the short-term rental, and the name, address, and twenty-four (24) hour telephone number of the emergency point of contact.

“Nonresidential Use” means any use that is not permitted in a residential zoning district pursuant to the Sedona Land Development Code and any use for which an entrant or guest pays an entrance fee.

“Online lodging marketplace” has the same meaning prescribed in A.R.S. § 42-5076.

“Owner” means the owner of a short-term rental or, in the case of a short-term rental owned by a business entity, the natural persons legally authorized to execute contracts on behalf of that business entity.

“Owner’s designee” means an agent or representative of the owner, such as a landlord, statutory agent, or property manager, or other designee acting on behalf of the owner, who controls or otherwise regulates the occupancy or use of the short-term rental.

“Permit” or “short-term rental permit” means authorization from the city to operate a short-term rental as set forth in Section 5.25.030.

“Person” means an individual, public entity, firm, corporation, partnership, limited liability company, trust, association, or any other business entity or juridical person, whether operating on a for-profit or nonprofit basis.

“Short-term rental” or “vacation rental” means any individually or collectively owned single-family or one- to four-family house or dwelling unit, or any unit or group of units in a condominium or cooperative that is also a transient public lodging establishment or owner-occupied residential home offered for transient use if the accommodations are not classified for property taxation under A.R.S. § 42-12001. “Vacation rental” and “short-term rental” do not include a dwelling unit that is used for any nonresidential use, including for a special event that would otherwise require a permit or license pursuant to a city or town ordinance or a state law or rule or for a retail, restaurant, banquet space or other similar use.

“Special event” has the same meaning given to it in the Sedona Land Development Code.

“Timely manner” means (i) within one (1) hour of the initiation of contact with the emergency point of contact regarding a complaint, incident, or emergency associated with a short-term rental for which public safety personnel are dispatched; and (ii) within twenty-four (24) hours of the initiation of contact with the emergency point of contact regarding all other complaints, incidences, and emergencies associated with a short-term rental. “Initiation of contact” means the first actual contact or documented attempt to contact, such as leaving a voicemail or sending an email to the designated emergency point of contact.

“Transient” means any person who either at the person’s own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or any other basis for less than 30 consecutive days.

“Transaction privilege tax license” is the license issued by the State of Arizona pursuant to A.R.S., Title 42.

“Transient lodging” means the business of operating for occupancy by transients a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, and also including a space, lot, or slab that is occupied or intended or designed for occupancy by transients in a mobile home or trailer furnished by them for such occupancy. Transient lodging does not include those exceptions identified in A.R.S. § 42-5070(B).

“Verified violation” means a finding of guilt or civil responsibility for violating any state law or local ordinance relating to a purpose prescribed in A.R.S. Sections 9-500.39(B) or 9-500.39(K) that has been finally adjudicated.

### **5.25.030 Definitions Permit Required; Renewal.**

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

~~“Emergency point of contact” means the owner or owner’s designee who is located within 25 miles of the vacation rental, short-term rental, or transient lodging establishment and who is available 24 hours per day, seven days per week for the purpose of responding in person, telephonically, or by electronic mail to complaints, emergencies, or other incidents at the property in a timely manner.~~

~~“Transient” means any person who either at the person’s own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or any other basis for less than 30 consecutive days.~~

~~“Transient lodging” means the business of operating for occupancy by transients a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, and also including a space, lot, or slab that is occupied or intended or designed for occupancy by transients in a mobile home or trailer furnished by them for such occupancy. Transient lodging does not include those exceptions identified in A.R.S. § 42-5070(B).~~

~~“Vacation rental” or “short-term rental” means any individually or collectively owned single-family or one- to four-family house or dwelling unit or any unit or group of units in a~~

~~condominium, cooperative, or timeshare that is also a transient public lodging establishment or owner-occupied residential home offered for transient use if the accommodations are not classified for property taxation under A.R.S. § 42-12001. "Vacation rental" and "short-term rental" do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center, or another similar use.~~

~~A. Permit required. Effective on February 15, 2023, no person shall advertisement or operate a short-term rental in the city without a valid annual short-term rental permit issued by the city. Renting, or offering for rent, a short-term rental without complying with the permit requirement in this section is prohibited. In addition to any other penalty imposed pursuant to the city code, any property that operates as a short-term rental and fails to apply for short-term rental permit in accordance with this section, must cease operations immediately.~~

~~B. Permit applications. The owner or the owner's designee of a proposed short-term rental shall submit to the city a permit application on a form furnished by the city. The permit application shall be signed by the applicant and shall contain the following minimum information, which shall be made publicly available:~~

- ~~1. The physical address of the short-term rental.~~
- ~~2. The name and contact information of the owner (address, email address, and telephone number). If the property owner is an entity, the legal name of the entity and name and contact information (address, email address, and telephone number) of its statutory agent.~~
- ~~3. The name and contact information (address, email address, and telephone number) of the owner's designee, if any. The owner shall certify that the owner's designee is authorized to act upon the owner's behalf~~
- ~~4. The name and contact information (address, email address, and telephone number) of the emergency point of contact.~~
- ~~5. Proof of a valid transaction privilege tax license.~~
- ~~4.—6. Acknowledgment by the owner of an agreement to comply with all applicable laws, regulations, and ordinances, including compliance with neighbor notification, evidence of liability insurance, and the requirement that the owner and each designee shall not be a registered sex offender.~~



C. Permit fee. Every application, including any renewal application, for a short-term rental permit under this chapter shall be accompanied by a non-refundable fee prescribed in the city's then current consolidated fee schedule.

D. Permit Denial. The city may deny issuance of a new short-term rental permit or renewal permit for any of the following reasons:

1. Failure to provide the information required under subsection B;

2. Failure to pay the permit fee required under subsection C;

3. The applicant provides false information;

4. The owner or designee of the owner: (i) is a registered sex offender; (ii) has been convicted of any felony act that resulted in death or serious physical injury; or (iii) has been convicted of any felony use of a deadly weapon within five (5) years of submitting the application; or

5. At the time of application, the owner has a suspended permit for the same short-term rental or any of the following applies: (a) one violation at the short-term rental that resulted in or constituted any of the offenses described in Sec. 5.25.100.A.2.; or (b) three violations of this chapter at a short-term rental within a twelve (12) month period, not including an aesthetic, solid waste disposal or vehicle parking violation that is not also a serious threat to public health and safety.

E. Notice of denial; appeal. The city manager or designee shall give notice of the denial of an application to the applicant by emailing the notice to applicant at the email address listed on the application. The notice of the denial shall inform the applicant of the right to appeal the denial as provided for in SCC Section 5.25.130.

F. Maintaining Accurate Information; Violations. All applicants and persons holding permits issued pursuant to this chapter shall give prior written notice to the Short-Term Rental Specialist of any change in information submitted in connection with an application for a permit or renewal of a permit. The notice shall be provided to the Short-Term Rental Specialist within ten (10) days of the effective date of the change.

G. Term of Permit. All permits issued under this chapter shall be valid for a period of one (1) year from the date of their issuance unless suspended or revoked. It shall be unlawful for any

person to operate a short-term rental after the expiration date recorded upon the face of the permit.

H. Non-transferable. No permit shall be transferable either as to location or as to person.

I. If the owner has received notice of violation of this chapter, any law or regulation, including disciplinary action against the permit, the application for renewal shall include a copy of the notice or disciplinary action.

J. A Permit may not be renewed if there are causes for denial, suspension, revocation or other permitting sanctions as provided in this chapter.

K. Unless otherwise provided by law, the city may use any information obtained from a permit application for any lawful purpose including communicating information related to public health and safety, providing reminders regarding compliance with laws, and general city updates.

#### **5.25.040 Emergency contact.**

A. Before renting the property or offering the property for rent Prior to offering a short-term rental for rent or renting a short-term rental, the owner of any vacation rental, short-term rental, or transient lodging establishment shall provide the city with the name, address, e-mail address, and phone number of an emergency point of contact who is available 24 hours per day, seven days per week for the purpose of responding in a timely manner to any complaints, emergencies, or other incidents at the property. The owner shall notify the city, in writing, of all changes in the emergency contact information required by this section, not less than 10 days prior to the effective date of the change. The emergency point of contact shall be responsible to ensure that the occupants and guests of the property do not create unlawful noise disturbances, engage in disorderly conduct, or violate provisions of the Sedona City Code or any state law. Upon notification from the city that any occupant or guest of the property has created unlawful noise or disturbances, engaged in disorderly conduct, or committed violations of provisions of the Sedona City Code or any state law, the emergency point of contact shall respond in a timely and appropriate manner to prevent such conduct. The phrase "in a timely and appropriate manner" shall mean telephonic or in-person contact with the occupants of the property and the city or the city's designee within 60 minutes of a call for each incident.

~~The contact information for the emergency point of contact shall be posted in a prominent and visible location inside the short-term rental, vacation rental, or transient lodging establishment.~~

~~B. Emergency Responses; Violations. When requested by a police officer, the emergency point of contact must affirmatively respond to complaints in person, by telephone, or by email within 60 minutes of the initiation of contact and assist the police officer to resolve the complaint. Failure of the emergency point of contact to respond in a timely manner is a violation of this chapter and the owner shall be deemed responsible for such violation.~~

~~C. Non-emergency Responses; Violations. The emergency point of contact shall respond to all other complaints relating to the short-term rental in person, by telephone, by email within 24 hours of the initiation of contact and assist to resolve the complaint. Failure of the emergency point of contact to respond in a timely manner is a violation of this chapter and the owner shall be deemed responsible for such violation.~~

~~D. Maintaining Accurate Emergency Information. All applicants and persons holding permits issued pursuant to this chapter shall give prior written notice to the Short-Term Rental Specialist of any change to the contact information provided to the city for the emergency point of contact. The notice shall be provided to the Short-Term Rental Specialist within 10 days of the effective date of the change.~~

### **5.25.050 Use regulations.**

~~A. The Sedona Land Development Code district regulations shall be applied to a short-term rental, vacation rental, or transient lodging establishment in the same manner as other property classified under A.R.S. §§ [42-12003](#) and [42-12004](#) except as permitted by state law. The use of any short-term rental, vacation rental, or transient lodging establishment in any single-family residential district shall be limited to the uses identified in the Sedona Land Development Code for that particular zoning district. No vacation rental, short-term rental, or transient lodging establishment in any residential district shall be used for nonresidential uses, including for any special event that would require a permit or license pursuant to SCC [5.05.030\(B\)](#) or as a retail establishment, restaurant, banquet space, or any other similar use. The owner of any vacation rental, short-term rental, or transient lodging establishment shall be responsible to ensure that the property complies with all applicable fire, building, health and safety codes, and all other relevant state and local laws. No vacation rental, short-term rental,~~

~~or transient lodging establishment shall be rented or offered for rent without a current, valid transaction privilege tax license. The owner of any vacation rental, short-term rental, or transient lodging establishment shall list the transaction privilege tax license number on each advertisement offering the property for rent.~~

~~B. A short-term rental shall comply with federal, state, and local laws, including laws relating to public health and safety, sanitation, solid waste, hazardous waste, tax privilege licensing, property tax registration, traffic control, pollution control, noise, property maintenance, and nuisance abatement.~~

~~C. No person or entity shall operate a short-term rental in violation of this chapter or other law. In addition, the use of a short-term rental property for any of the following uses or purposes is strictly prohibited:~~

- ~~1. Any nonresidential use including operating a retail business, restaurant, event center, banquet hall or similar use or any other use prohibited by A.R.S. § 9-500.39 or the city code.~~
- ~~2. Holding a special event that requires a permit or license pursuant to city code or state law or rule.~~
- ~~3. Housing sex offenders.~~
- ~~4. Operating or maintaining a sober living home.~~
- ~~5. Selling or offering for sale, consideration, or entrance fee, liquor or illegal drugs.~~
- ~~6. Obscenity, operating an adult-oriented business, nude or topless dancing, or commercial display or production of pornography.~~
- ~~7. Any use that constitutes a substantial disturbance of the quiet enjoyment, and peace, health, safety or general welfare of private or public property through a nuisance party or unruly gathering, including, but not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, the service of alcohol to minors, fights, disturbances of the peace, litter, spirituous liquor served to, or in the possession of, or consumed by any minor, or where illegal drugs are in the possession of, or consumed by, any person.~~

D. A short-term rental lacking a valid transaction privilege tax license issued by the State of Arizona shall not be rented or offered for rent.

E. Health, Safety, and Sanitation. To protect the health, safety, and general welfare of all short-term rental occupants, short-term rentals must meet the minimum standards for habitable structures set forth in the city code. The city may require inspection if it has a reason for concern that the short-term rental may not be compliant with the city code.

F. The failure of any owner's designee to comply with this chapter shall not relieve the owner of liability under this chapter.

### **5.25.060 Neighbor Notification Required.**

A. Neighbor notification. Prior to offering a short-term rental for rent or renting a short-term rental, the owner or designee shall provide neighbor notification to each single-family residential property adjacent to the short-term rental property, directly across from the short-term rental property, and diagonally across the street of the short-term rental property. The neighbor notification shall be provided in writing by certified mail, return receipt requested or hand delivered in the form required by the city and shall include the following minimum information:

1. The short-term rental permit number issued by the city;
2. The short-term rental address; and
3. The name, physical address, email address, and twenty-four (24) hour telephone number of the emergency point of contact.

B. Additional neighbor notification required. Any change to the information provided under Subsection A shall require additional neighbor notification by the owner or designee within five (5) calendar days of each change. The additional notification shall be provided in the manner required by Section A.

C. Attestation. Prior to offering a short-term rental for rent, the owner or designee shall provide to the city an attestation of compliance with the neighbor notification required by this section that includes the address of each property notified and manner of notification.

### **5.25.070 Advertisement Requirements.**

A. Required Disclosure. To protect the peace, health, safety, and general welfare of the city's residents and visitors, the owner or owner's designee shall be responsible for displaying the permit number issued by the city on each advertisement for such short-term rental.

### **5.25.080 Posting on the Property Required.**

A. The following notice or other form provided by the Short-Term Rental Specialist, must be completed in 14-point or larger bold font, on a laminated or otherwise similarly shielded paper, and prominently displayed on conspicuous location within 10 feet of the primary entrance. The notice shall include information regarding the location of any fire or life safety equipment such as fire extinguishers, and the City of Sedona noise and waste disposal regulations.

#### NOTICE

USE OF THIS PROPERTY FOR ANY OF THE FOLLOWING PURPOSES IS PROHIBITED; VIOLATORS MAY BE SUBJECT TO SUBSTANTIAL PENALTIES:

1. Any nonresidential use including operating a retail business, restaurant, event center, banquet hall or similar use or any other use prohibited by A.R.S. § 9-500.39 or the city code.
2. Holding a special event that requires a permit or license pursuant to city code or state law or rule.
3. Housing sex offenders.
4. Operating or maintaining a sober living home.
5. Selling or offering for sale, consideration, or entrance fee, liquor or illegal drugs.
6. Obscenity, operating an adult-oriented business, nude or topless dancing, or commercial display or production of pornography.
7. Any use that constitutes a substantial disturbance of the quiet enjoyment, and peace, health, safety or general welfare of private or public property through a nuisance party or unruly gathering, including, but not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, the service of alcohol to minors, fights, disturbances of the peace, litter, spirituous liquor served to, or in the possession of, or consumed by any minor, or where illegal drugs are in the possession of, or consumed by, any person.

Your local emergency point of contact person's name is \_\_\_\_\_ and can be reached by phone 24 hours a day, seven days a week, at - - .

City of Sedona Short-Term Vacation Rental Permit # \_\_\_\_\_.

### **5.25.090 Insurance Required.**

A. Required insurance. The owner, owner's designee, or the online lodging marketplace platform shall maintain liability insurance appropriate to cover the short-term rental in the aggregate of at least \$500,000.

B. Proof of insurance. Proof of the required liability insurance coverage shall be provided to the city upon a request by the city within ten (10) calendar days of a request from the city.

### **5.25.100 Background Checks Required.**

A. No sex offender shall be permitted to rent or occupy the short-term rental. Owners who allow a sex offender at the short-term rental shall be found in violation of this section.

B. At least twenty-four (24) hours prior to a guest's check-in, the owner or owner's designee shall conduct a sex offender background check on each adult guest; provided, however, that this requirement may be satisfied by the owner providing evidence that the online lodging marketplace on which the short-term rental is booked conducted a sex offender background check of the booking guest. The owner shall demonstrate compliance with this requirement by retaining a full copy of each background check for a minimum of twelve (12) months after the booking date and providing the copy to the city upon a request.

C. The failure of an online lodging marketplace to conduct a background check shall not relieve the owner of liability under this Section.

### **5.25.110 Permit Suspensions.**

A. Permit suspensions. The Short-Term Rental Specialist shall suspend a short-term rental permit for up to twelve (12) months for any of the following reasons:

1. Three verified violations of this chapter within a twelve (12) month period, not including any such violation based on an aesthetic, solid waste disposal or vehicle parking violation that is not also a serious threat to public health and safety.

2. One verified violation that results in or constitutes any of the following:

(a) A felony offense committed at or in the vicinity of a short-term rental by the owner of the short-term rental or by the owner's designee;

(b) A serious physical injury or wrongful death at or related to a short-term rental resulting from the knowing, intentional or reckless conduct of the owner or the owner's designee;

(c) The owner or the owner's designee knowingly or intentionally housing a sex offender, allowing offenses related to adult-oriented businesses, sexual offenses, or prostitution, or operating or maintaining a sober living home; or

(d) The owner or the owner's designee knowingly or intentionally allowing the use of a short-term rental for a special event that would otherwise require a permit or license pursuant to the city code or a state law or rule or for a retail, restaurant, banquet space or other similar use.

B. Permit Suspension Process. The Short-Term Rental Specialist shall give written notice to the owner or owner's designee of the violation that may result in the suspension of the permit. The notice must include a description of the violation, the statutory or code reference, notification that a hearing may be requested within 15 days of service of notice, and a warning that failure to timely request a hearing in writing within 15 days may result in suspension of the short-term rental permit. The notice may be served on the owner or owner's designee per SCC Section 1.15.010.D.2.e. or by email. Service of the notice will be deemed complete upon posting of and mailing to the address of the short-term rental or emergency point of contact, email, or receipt of personal service on the owner or owner's designee.

D. Appeals. A decision to suspend a permit may be appealed by the owner as set forth in Section 5.25.130.

E. Reapplication after Denial or Revocation. No owner or owner's designee who has had a permit denied or revoked pursuant to this chapter may apply for another permit for 1 year after the decision or appeal affecting the applicant's permit has become final. The Short-



Term Rental Specialist may reduce in whole or in part the 1-year period, if the denial was based on a good faith failure to provide complete information provided that the applicant is now in compliance with this chapter and has paid all required fees and penalties.

## **5.25.060120 Penalties.**

A. Causing, permitting, facilitating, aiding, or abetting any violation of any provision of this chapter, or failure to comply with this chapter, is punishable as a misdemeanor, and shall also constitute a civil offense as set forth in may subject the owner of the short-term rental, vacation rental, or transient lodging establishment to civil penalties up to \$2,500 per violation under SCC 1.15.010. Any person who admits, or is found responsible, for a civil offense pursuant to this chapter shall be subject to a penalty in the minimum amount of \$500.

B. The remedies in this chapter are cumulative and the city may proceed under one or more such remedies.

C. Verified Violation Penalties. In addition to any other penalty imposed pursuant to the city code, and notwithstanding any other law, the city may impose a civil penalty of the following amounts against an owner if the owner or owner's designee causes, allows, facilitates, aides, or abets a verified violation of any provision of this chapter or fails to perform any act or duty required by this chapter, related to the same short-term rental property within the same twelve-month period:

1. Up to \$500 or up to an amount equal to one night's rent for the short-term rental as advertised, whichever is greater, for the first violation.
2. Up to \$1,000 or up to an amount equal to two nights' rent for the short-term rental as advertised, whichever is greater, for the second violation.
3. Up to \$3,500 or up to an amount equal to three nights' rent for the short-term rental as advertised, whichever is greater, for a third and any subsequent violation.

If multiple violations arise out of the same response to an incident at a short-term rental, those violations are considered one violation for the purpose of assessing civil penalties pursuant to this subsection.

C. In addition to any penalty imposed pursuant to this chapter, the city may impose a civil penalty of up to \$1,000 per month against the owner or owner's designee if the owner or owner's designee fails to apply for a short-term rental permit within 30 days of receiving written notice of such requirement. Representations or advertisements including online listings that reference the short-term rental property, house or dwelling unit location within the city is prima facie evidence that a short-term rental is operating in the city.

D. In addition to any other penalty pursuant to the City Code, an owner or owner's designee shall be subject to civil penalties of up to \$1,000 for every 30 days the owner or owner's designee fails to provide emergency point of contact information to the city as required per Section 5.25.40. Before imposing the initial civil penalty, the City shall provide 30 days' notice to the owner or owner's designee by emailing a notice of violation to the email address that was provided to the city.

E. A civil penalty assessed pursuant to this section shall be due within thirty (30) days of the initial notice sent to the owner or owner's designee. For purposes of this section, notice may be served on the owner or owner's designee per SCC Section 1.15.010.D.2.e. or by email. Service of the notice will be deemed complete upon posting of and mailing to the address of the short-term rental or emergency point of contact, email, or receipt of personal service on the owner or owner's designee.

F. The amount of the permit fee and any penalty imposed by the provisions of this chapter shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent permit fee and penalties.

### **5.25.130 Appeals.**

A. Any person aggrieved by any decision with respect to the denial of or a refusal to issue a short-term rental permit, or the suspension of a short-term rental permit may appeal the decision by filing a written notice of appeal requesting a hearing with the Short-Term Rental Specialist no later than fifteen (15) days from the date of the decision letter. The notice of appeal shall be on a form approved by the city.

B. This Section is not applicable to any penalty including fines imposed by a court or for actions brought pursuant to Section 5.25.140.

C. An appeal under this section does not operate as a stay of the permit suspension.

D. If the owner or owner's designee timely requests a hearing, the city shall schedule a hearing date before a civil hearing officer within 30 days of receipt of the request and give written notice to the owner or owner's designee of the scheduled date.

1. The hearing shall be held during regular city business hours.

2. All proceedings before the hearing officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The rules of evidence do not apply, except for statutory provisions relating to privileged communications, and the hearing officer may permit any evidence deemed relevant to the issues at hand to be admitted. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the hearing officer. The City is required to prove violations of this chapter by a preponderance of the evidence.

3. The hearing officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand.

4. The hearing may be continued one time by the hearing officer upon the written request of either party for good cause.

5. The owner and the city shall each be given an opportunity to present their respective cases. The city shall present its case first and each presentation may include: i. Sworn testimony; ii. Submission of evidence; iii. Presentation of witnesses; iv. Cross-examination; v. Opening and closing statements. The owner and city shall each be limited to two hours for testimony, presentation, cross-examination and statements unless the hearing officer, for good cause shown, extends the time.

6. The hearing officer shall render a written decision within 30 days of the close of the hearing.

7. If the owner or owner's designee fails to appear at the scheduled hearing, the hearing officer shall enter an order in favor of the city.

8. The hearing officer's order shall be mailed to the owner or owner's designee by certified, return receipt requested mail.

9. The hearing shall be recorded by an electronic recording device.

E. Any final suspension shall be for a period of one year, except that a hearing officer may reduce the suspension period to a period of six months upon a finding that the owner has

made reasonable attempts to prevent nuisance activities and violations from occurring at the short-term rental.

**5.25.140 Judicial Relief.**

A. Notwithstanding section 5.25.130, any attempted or completed felony act, arising from the occupancy or use of a short-term rental that results in a death, or actual or attempted serious physical injury, shall be grounds for judicial relief in the form of a suspension of the property's use as a short-term rental for a period that shall not exceed twelve (12) months.

B. The city attorney may initiate proceedings in the city court or other court of competent jurisdiction to enforce this section. The city has the burden of proving the attempted or completed felony act by a preponderance of the evidence.

**RESOLUTION NO. 2022-\_\_\_**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, ESTABLISHING AS A PUBLIC RECORD CHANGES TO SEDONA CITY  
CODE CHAPTER 5.25 (SHORT-TERM RENTAL REGULATION).**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA that the changes to Sedona City Code Chapter 5.25 (Short-Term Rental Regulation) as set forth in Exhibit A "*2022 Amendments To Sedona City Code Chapter 5.25 (Short-Term Rental Regulation)*" and attached hereto, constitutes a public record to be adopted by reference in Ordinance No. 2022-\_\_\_ pursuant to A.R.S. § 9-802.

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

APPROVED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 22<sup>nd</sup> day of November, 2022.

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

ATTEST:

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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

**ORDINANCE NO. 2022-**

**AN ORDINANCE OF THE CITY OF SEDONA, ARIZONA, ADOPTING AN AMENDMENT TO THE CITY CODE CHAPTER 5.25 (SHORT-TERM RENTAL REGULATION) CONCERNING REGULATING SHORT-TERM RENTALS; PROVIDING FOR PENALTIES, A SAVINGS CLAUSE, AND FOR REPEAL OF CONFLICTING ORDINANCES; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS local governments may regulate short term rentals except as limited by Arizona Revised Statutes (“A.R.S.”) § 9-500.39;

WHEREAS the City deems it necessary to adopt certain regulations regarding the use of property as a short-term rental to protect the health, safety, and welfare of the City residents and to preserve its housing stock, and maintain the quality and character of residential neighborhoods;

WHEREAS the City will require all vacation rentals to obtain and maintain a valid City Short-Term Rental Permit, pay permitting fees, provide an emergency point of contact to respond to compliance and emergencies in a timely manner, maintain insurance, provide neighbor notification, and disclose certain information about the vacation rental in each advertisement; and

WHEREAS the City deems it necessary to establish penalties and fines that apply to vacation rentals.

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

Section 1. Amendment of Chapter 5.25 (Short-Term Rental Regulation)

Chapter 5.25 (Short-Term Rental Regulation) of the City Code of the City of Sedona is hereby amended by incorporating by reference those changes set forth in that public record entitled “*2022 Amendments to Sedona City Code Chapter 5.25 (Short-Term Rental Regulation)*” and established as a public record by Resolution No. 2022-\_\_\_ as though said provisions are fully set forth herein.

Section 2. Penalties

A. Causing, permitting, facilitating, aiding, or abetting any violation of any provision of this ordinance, or failure to comply with this ordinance, is punishable as a misdemeanor, and shall also constitute a civil offense as set forth in SCC 1.15.010. Any person who admits, or is found responsible, for a civil offense pursuant to this ordinance shall be subject to a penalty in the minimum amount of \$500.

B. Verified Violation Penalties. In addition to any other penalty imposed pursuant to the city code, and notwithstanding any other law, the city may impose a civil penalty of the following amounts against an owner if the owner or owner’s designee causes, allows, facilitates, aides, or abets a verified violation of any provision of this ordinance or fails to perform any act or duty required by this chapter, related to the same short-term rental property within the same twelve-month period:

1. Up to \$500 or up to an amount equal to one night’s rent for the short-term rental as

advertised, whichever is greater, for the first violation.

2. Up to \$1,000 or up to an amount equal to two nights' rent for the short-term rental as advertised, whichever is greater, for the second violation.

3. Up to \$3,500 or up to an amount equal to three nights' rent for the short-term rental as advertised, whichever is greater, for a third and any subsequent violation.

If multiple violations arise out of the same response to an incident at a short-term rental, those violations are considered one violation for the purpose of assessing civil penalties pursuant to this subsection.

C. In addition to any penalty imposed pursuant to this ordinance, the city may impose a civil penalty of up to \$1,000 per month against the owner or owner's designee if the owner or owner's designee fails to apply for a short-term rental permit within 30 days of receiving written notice of such requirement. Representations or advertisements including online listings that reference the short-term rental property, house or dwelling unit location within the city is prima facie evidence that a short-term rental is operating in the city.

D. In addition to any other penalty pursuant to the City Code, an owner or owner's designee shall be subject to civil penalties of up to \$1,000 for every 30 days the owner or owner's designee fails to provide emergency point of contact information to the city as required per Section 5.25.40 of this ordinance. Before imposing the initial civil penalty, the City shall provide 30 days' notice to the owner or owner's designee by emailing a notice of violation to the email address that was provided to the city.

E. A civil penalty assessed pursuant to this ordinance shall be due within thirty (30) days of the initial notice sent to the owner or owner's designee. For purposes of this ordinance, notice may be served on the owner or owner's designee per SCC Section 1.15.010.D.2.e. or by email. Service of the notice will be deemed complete upon posting of and mailing to the address of the short-term rental or emergency point of contact, email, or receipt of personal service on the owner or owner's designee.

F. Permit Denial. The city may deny issuance of a new short-term rental permit or renewal permit for any of the following reasons:

1. Failure to provide the information required under subsection B;
2. Failure to pay the permit fee required under subsection C;
3. The applicant provides false information;
4. The owner or designee of the owner: (i) is a registered sex offender; (ii) has been convicted of any felony act that resulted in death or serious physical injury; or (iii) has been convicted of any felony use of a deadly weapon within five (5) years of submitting the application; or
5. At the time of application, the owner has a suspended permit for the same short-term rental or any of the following applies: (a) one violation at the short-term rental that resulted in or constituted any of the offenses described in Sec. 5.25.110.A.2.; or (b) three violations of this ordinance at a short-term rental within a twelve (12) month period, not including an aesthetic, solid waste disposal or vehicle parking violation that is not also a serious threat to public health and safety.

G. Permit suspensions. The Short-Term Rental Specialist shall suspend a short-term rental permit for up to twelve (12) months for any of the following reasons:

1. Three verified violations of this ordinance within a twelve (12) month period, not including any such violation based on an aesthetic, solid waste disposal or vehicle parking violation that is not also a serious threat to public health and safety.
2. One verified violation that results in or constitutes any of the following:
  - (a) A felony offense committed at or in the vicinity of a short-term rental by the owner of the short-term rental or by the owner's designee;
  - (b) A serious physical injury or wrongful death at or related to a short-term rental resulting from the knowing, intentional or reckless conduct of the owner or the

owner's designee;

(c) The owner or the owner's designee knowingly or intentionally housing a sex offender, allowing offenses related to adult-oriented businesses, sexual offenses, or prostitution, or operating or maintaining a sober living home; or

(d) The owner or the owner's designee knowingly or intentionally allowing the use of a short-term rental for a special event that would otherwise require a permit or license pursuant to the city code or a state law or rule or for a retail, restaurant, banquet space or other similar use.

H. Any attempted or completed felony act, arising from the occupancy or use of a short-term rental that results in a death, or actual or attempted serious physical injury, shall be grounds for judicial relief in the form of a suspension of the property's use as a short-term rental for a period that shall not exceed twelve (12) months.

Section 3. Savings Clause

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

Section 4. Repeal

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

Section 5. Effective Date

The effective date of this Ordinance shall be January 15, 2023.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 22<sup>nd</sup> day of November, 2022.

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

ATTEST:

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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



Senate Engrossed

vacation rentals; short-term rentals; enforcement

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

# SENATE BILL 1168

AN ACT

AMENDING SECTIONS 9-500.39 AND 11-269.17, ARIZONA REVISED STATUTES;  
REPEALING SECTION 42-1125.02, ARIZONA REVISED STATUTES; AMENDING SECTION  
42-5042, ARIZONA REVISED STATUTES; RELATING TO VACATION RENTALS AND  
SHORT-TERM RENTALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-500.39, Arizona Revised Statutes, is amended  
3 to read:

4 9-500.39. Limits on regulation of vacation rentals and  
5 short-term rentals; state preemption; civil  
6 penalties; transaction privilege tax license  
7 suspension; definitions

8 A. A city or town may not prohibit vacation rentals or short-term  
9 rentals.

10 B. A city or town may not restrict the use of or regulate vacation  
11 rentals or short-term rentals based on their classification, use or  
12 occupancy except as provided in this section. A city or town may regulate  
13 vacation rentals or short-term rentals ~~for the following purposes~~ AS  
14 FOLLOWS:

15 1. ~~Protecting~~ TO PROTECT the public's health and safety, including  
16 rules and regulations related to fire and building codes, health and  
17 sanitation, transportation or traffic control, solid or hazardous waste  
18 and pollution control, and designation of an emergency point of contact,  
19 if the city or town demonstrates that the rule or regulation is for the  
20 primary purpose of protecting the public's health and safety.

21 2. ~~Adopting~~ TO ADOPT and ~~enforcing residential use and zoning~~  
22 ENFORCE ordinances, including ordinances related to noise, protection of  
23 welfare, property maintenance and other nuisance issues, if the ordinance  
24 is applied in the same manner as other property classified under sections  
25 42-12003 and 42-12004.

26 3. ~~Limiting~~ TO LIMIT or ~~prohibiting~~ PROHIBIT the use of a vacation  
27 rental or short-term rental for the purposes of housing sex offenders,  
28 operating or maintaining a sober living home, selling illegal drugs,  
29 liquor control or pornography, obscenity, nude or topless dancing and  
30 other adult-oriented businesses.

31 4. ~~Requiring~~ TO REQUIRE the owner of a vacation rental or  
32 short-term rental to provide the city or town with contact information for  
33 the owner or the owner's designee who is responsible for responding to  
34 complaints in a timely manner in person, over the phone or by email at any  
35 time of day before offering for rent or renting the vacation rental or  
36 short-term rental. IN ADDITION TO ANY OTHER PENALTY PURSUANT TO THIS  
37 SECTION, THE CITY OR TOWN MAY IMPOSE A CIVIL PENALTY OF UP TO \$1,000  
38 AGAINST THE OWNER FOR EVERY THIRTY DAYS THE OWNER FAILS TO PROVIDE CONTACT  
39 INFORMATION AS PRESCRIBED BY THIS PARAGRAPH. THE CITY OR TOWN SHALL  
40 PROVIDE THIRTY DAYS' NOTICE TO THE OWNER BEFORE IMPOSING THE INITIAL CIVIL  
41 PENALTY.

42 5. TO REQUIRE THE OWNER OF A VACATION RENTAL OR SHORT-TERM RENTAL  
43 TO MAINTAIN LIABILITY INSURANCE APPROPRIATE TO COVER THE VACATION RENTAL  
44 OR SHORT-TERM RENTAL IN THE AGGREGATE OF AT LEAST \$500,000 OR TO ADVERTISE

1 AND OFFER EACH VACATION RENTAL OR SHORT-TERM RENTAL THROUGH AN ONLINE  
2 LODGING MARKETPLACE THAT PROVIDES EQUAL OR GREATER COVERAGE.

3 ~~C. Within thirty days after a verified violation, a city or town~~  
4 ~~shall notify the department of revenue and the owner of the vacation~~  
5 ~~rental or short-term rental of the verified violation of the city's or~~  
6 ~~town's applicable laws, regulations or ordinances and, if the owner of the~~  
7 ~~vacation rental or short-term rental received the verified violation,~~  
8 ~~whether the city or town imposed a civil penalty on the owner of the~~  
9 ~~vacation rental or short-term rental and the amount of the civil penalty,~~  
10 ~~if assessed. If multiple verified violations arise out of the same~~  
11 ~~response to an incident at a vacation rental or short-term rental, those~~  
12 ~~verified violations are considered one verified violation for the purpose~~  
13 ~~of assessing civil penalties pursuant to section 42-1125.02, subsection B.~~

14 C. NOTWITHSTANDING ANY OTHER LAW, A CITY OR TOWN MAY IMPOSE A CIVIL  
15 PENALTY OF THE FOLLOWING AMOUNTS AGAINST AN OWNER OF A VACATION RENTAL OR  
16 SHORT-TERM RENTAL IF THE OWNER RECEIVES ONE OR MORE VERIFIED VIOLATIONS  
17 RELATED TO THE SAME VACATION RENTAL OR SHORT-TERM RENTAL PROPERTY WITHIN  
18 THE SAME TWELVE-MONTH PERIOD:

19 1. \$500 OR UP TO AN AMOUNT EQUAL TO ONE NIGHT'S RENT FOR THE  
20 VACATION RENTAL OR SHORT-TERM RENTAL AS ADVERTISED ON AN ONLINE LODGING  
21 MARKETPLACE, WHICHEVER IS GREATER, FOR THE FIRST VERIFIED VIOLATION.

22 2. \$1,000 OR AN AMOUNT EQUAL TO TWO NIGHTS' RENT FOR THE VACATION  
23 RENTAL OR SHORT-TERM RENTAL AS ADVERTISED ON AN ONLINE LODGING  
24 MARKETPLACE, WHICHEVER IS GREATER, FOR THE SECOND VERIFIED VIOLATION.

25 3. \$3,500 OR AN AMOUNT EQUAL TO THREE NIGHTS' RENT FOR THE VACATION  
26 RENTAL OR SHORT-TERM RENTAL AS ADVERTISED ON AN ONLINE LODGING  
27 MARKETPLACE, WHICHEVER IS GREATER, FOR A THIRD AND ANY SUBSEQUENT VERIFIED  
28 VIOLATION.

29 D. THE DEPARTMENT OF REVENUE, AFTER NOTICE AND A HEARING AS  
30 PROVIDED IN SECTION 42-5005, SUBSECTION O, MAY SUSPEND FOR A PERIOD OF  
31 TWELVE MONTHS THE TRANSACTION PRIVILEGE TAX LICENSE OF THE OWNER OF A  
32 VACATION RENTAL OR SHORT-TERM RENTAL IF THE OWNER RECEIVES THREE VERIFIED  
33 VIOLATIONS RELATED TO THE SAME VACATION RENTAL OR SHORT-TERM RENTAL WITHIN  
34 THE SAME TWELVE-MONTH PERIOD.

35 E. IF MULTIPLE VERIFIED VIOLATIONS ARISE OUT OF THE SAME RESPONSE  
36 TO AN INCIDENT AT A VACATION RENTAL OR SHORT-TERM RENTAL, THOSE VERIFIED  
37 VIOLATIONS ARE CONSIDERED ONE VERIFIED VIOLATION FOR THE PURPOSE OF  
38 ASSESSING CIVIL PENALTIES PURSUANT TO THIS SECTION AND SUSPENDING THE  
39 OWNER'S TRANSACTION PRIVILEGE TAX LICENSE PURSUANT TO SECTION 42-5042.

40 ~~D.~~ F. If the owner of a vacation rental or short-term rental has  
41 provided contact information to a city or town pursuant to subsection B,  
42 paragraph 4 of this section and if the city or town issues a citation for  
43 a violation of the city's or town's applicable laws, regulations or  
44 ordinances or a state law that occurred on the owner's vacation rental or  
45 short-term rental property, the city or town shall make a reasonable

1 attempt to notify the owner or the owner's designee of the citation within  
2 seven business days after the citation is issued using the contact  
3 information provided pursuant to subsection B, paragraph 4 of this  
4 section. If the owner of a vacation rental or short-term rental has not  
5 provided contact information pursuant to subsection B, paragraph 4 of this  
6 section, the city or town is not required to provide such notice.

7 ~~F.~~ G. This section does not exempt an owner of a residential  
8 rental property, as defined in section 33-1901, from maintaining with the  
9 assessor of the county in which the property is located information  
10 required under title 33, chapter 17, article 1.

11 ~~F.~~ H. A vacation rental or short-term rental may not be used for  
12 nonresidential uses, including for a special event that would otherwise  
13 require a permit or license pursuant to a city or town ordinance or a  
14 state law or rule or for a retail, restaurant, banquet space or other  
15 similar use.

16 ~~G.~~ I. For the purposes of this section:

17 1. "ONLINE LODGING MARKETPLACE" HAS THE SAME MEANING PRESCRIBED IN  
18 SECTION 42-5076.

19 ~~I.~~ 2. "Transient" has the same meaning prescribed in section  
20 42-5070.

21 ~~E.~~ 3. "Vacation rental" or "short-term rental":

22 (a) Means any individually or collectively owned single-family or  
23 one-to-four-family house or dwelling unit or any unit or group of units in  
24 a condominium, ~~OR~~ cooperative ~~or timeshare~~, that is also a transient  
25 public lodging establishment or owner-occupied residential home offered  
26 for transient use if the accommodations are not classified for property  
27 taxation under section 42-12001. ~~Vacation rental and short-term rental do~~

28 (b) DOES not include a unit that is used for any nonresidential  
29 use, including retail, restaurant, banquet space, event center or another  
30 similar use.

31 ~~S.~~ 4. "Verified violation" means a finding of guilt or civil  
32 responsibility for violating any state law or local ordinance relating to  
33 a purpose prescribed in subsection B or ~~F~~ H of this section that has been  
34 finally adjudicated.

35 Sec. 2. Section 11-269.17, Arizona Revised Statutes, is amended to  
36 read:

37 11-269.17. Limits on regulation of vacation rentals and  
38 short-term rentals; state preemption; civil  
39 penalties; transaction privilege tax license  
40 suspension; definitions

41 A. A county may not prohibit vacation rentals or short-term  
42 rentals.

43 B. A county may not restrict the use of or regulate vacation  
44 rentals or short-term rentals based on their classification, use or  
45 occupancy except as provided in this section. A county may regulate

1 vacation rentals or short-term rentals ~~for the following purposes~~ AS  
2 FOLLOWS:

3 1. ~~Protecting~~ TO PROTECT the public's health and safety, including  
4 rules and regulations related to fire and building codes, health and  
5 sanitation, transportation or traffic control, solid or hazardous waste  
6 and pollution control, and designation of an emergency point of contact,  
7 if the county demonstrates that the rule or regulation is for the primary  
8 purpose of protecting the public's health and safety.

9 2. ~~Adopting~~ TO ADOPT and ~~enforcing residential use and zoning~~  
10 ENFORCE ordinances, including ordinances related to noise, protection of  
11 welfare, property maintenance and other nuisance issues, if the ordinance  
12 is applied in the same manner as other property classified under sections  
13 42-12003 and 42-12004.

14 3. ~~Limiting~~ TO LIMIT or ~~prohibiting~~ PROHIBIT the use of a vacation  
15 rental or short-term rental for the purposes of housing sex offenders,  
16 operating or maintaining a sober living home, selling illegal drugs,  
17 liquor control or pornography, obscenity, nude or topless dancing and  
18 other adult-oriented businesses.

19 4. ~~Requiring~~ TO REQUIRE the owner of a vacation rental or  
20 short-term rental to provide the county with contact information for the  
21 owner or the owner's designee who is responsible for responding to  
22 complaints in a timely manner in person, over the phone or by email at any  
23 time of day before offering for rent or renting the vacation rental or  
24 short-term rental. IN ADDITION TO ANY OTHER PENALTY PURSUANT TO THIS  
25 SECTION, THE COUNTY MAY IMPOSE A CIVIL PENALTY OF UP TO \$1,000 AGAINST THE  
26 OWNER FOR EVERY THIRTY DAYS THE OWNER FAILS TO PROVIDE CONTACT INFORMATION  
27 AS PRESCRIBED BY THIS PARAGRAPH. THE COUNTY SHALL PROVIDE THIRTY DAYS'  
28 NOTICE TO THE OWNER BEFORE IMPOSING THE INITIAL CIVIL PENALTY.

29 5. TO REQUIRE THE OWNER OF A VACATION RENTAL OR SHORT-TERM RENTAL  
30 TO MAINTAIN LIABILITY INSURANCE APPROPRIATE TO COVER THE VACATION RENTAL  
31 OR SHORT-TERM RENTAL IN THE AGGREGATE OF AT LEAST \$500,000 OR TO ADVERTISE  
32 AND OFFER EACH VACATION RENTAL OR SHORT-TERM RENTAL THROUGH AN ONLINE  
33 LODGING MARKETPLACE THAT PROVIDES EQUAL OR GREATER COVERAGE.

34 ~~C. Within thirty days after a verified violation, a county shall~~  
35 ~~notify the department of revenue and the owner of the vacation rental or~~  
36 ~~short-term rental of the verified violation of the county's applicable~~  
37 ~~laws, regulations or ordinances and, if the property owner received the~~  
38 ~~verified violation, whether the county imposed a civil penalty on the~~  
39 ~~owner of the vacation rental or short-term rental and the amount of the~~  
40 ~~civil penalty, if assessed. If multiple verified violations arise out of~~  
41 ~~the same response to an incident at a vacation rental or short-term~~  
42 ~~rental, those verified violations are considered one verified violation~~  
43 ~~for the purpose of assessing civil penalties pursuant to section~~  
44 ~~42-1125.02, subsection B.~~

1 C. NOTWITHSTANDING ANY OTHER LAW, A CITY OR TOWN MAY IMPOSE A CIVIL  
2 PENALTY OF THE FOLLOWING AMOUNTS AGAINST AN OWNER OF A VACATION RENTAL OR  
3 SHORT-TERM RENTAL IF THE OWNER RECEIVES ONE OR MORE VERIFIED VIOLATIONS  
4 RELATED TO THE SAME VACATION RENTAL OR SHORT-TERM RENTAL PROPERTY WITHIN  
5 THE SAME TWELVE-MONTH PERIOD:

6 1. \$500 OR UP TO AN AMOUNT EQUAL TO ONE NIGHT'S RENT FOR THE  
7 VACATION RENTAL OR SHORT-TERM RENTAL AS ADVERTISED ON AN ONLINE LODGING  
8 MARKETPLACE, WHICHEVER IS GREATER, FOR THE FIRST VERIFIED VIOLATION.

9 2. \$1,000 OR AN AMOUNT EQUAL TO TWO NIGHTS' RENT FOR THE VACATION  
10 RENTAL OR SHORT-TERM RENTAL AS ADVERTISED ON AN ONLINE LODGING  
11 MARKETPLACE, WHICHEVER IS GREATER, FOR THE SECOND VERIFIED VIOLATION.

12 3. \$3,500 OR AN AMOUNT EQUAL TO THREE NIGHTS' RENT FOR THE VACATION  
13 RENTAL OR SHORT-TERM RENTAL AS ADVERTISED ON AN ONLINE LODGING  
14 MARKETPLACE, WHICHEVER IS GREATER, FOR A THIRD AND ANY SUBSEQUENT VERIFIED  
15 VIOLATION.

16 D. THE DEPARTMENT OF REVENUE, AFTER NOTICE AND A HEARING AS  
17 PROVIDED IN SECTION 42-5005, SUBSECTION O, MAY SUSPEND FOR A PERIOD OF  
18 TWELVE MONTHS THE TRANSACTION PRIVILEGE TAX LICENSE OF THE OWNER OF A  
19 VACATION RENTAL OR SHORT-TERM RENTAL IF THE OWNER RECEIVES THREE VERIFIED  
20 VIOLATIONS RELATED TO THE SAME VACATION RENTAL OR SHORT-TERM RENTAL WITHIN  
21 THE SAME TWELVE-MONTH PERIOD.

22 E. IF MULTIPLE VERIFIED VIOLATIONS ARISE OUT OF THE SAME RESPONSE  
23 TO AN INCIDENT AT A VACATION RENTAL OR SHORT-TERM RENTAL, THOSE VERIFIED  
24 VIOLATIONS ARE CONSIDERED ONE VERIFIED VIOLATION FOR THE PURPOSE OF  
25 ASSESSING CIVIL PENALTIES PURSUANT TO THIS SECTION AND SUSPENDING THE  
26 OWNER'S TRANSACTION PRIVILEGE TAX LICENSE PURSUANT TO SECTION 42-5042.

27 ~~F.~~ F. If the owner of a vacation rental or short-term rental has  
28 provided contact information to a county pursuant to subsection B,  
29 paragraph 4 of this section and if the county issues a citation for a  
30 violation of the county's applicable laws, regulations or ordinances or a  
31 state law that occurred on the owner's vacation rental or short-term  
32 rental property, the county shall make a reasonable attempt to notify the  
33 owner or the owner's designee of the citation within seven business days  
34 after the citation is issued using the contact information provided  
35 pursuant to subsection B, paragraph 4 of this section. If the owner of a  
36 vacation rental or short-term rental has not provided contact information  
37 pursuant to subsection B, paragraph 4 of this section, the county is not  
38 required to provide such notice.

39 ~~F.~~ G. This section does not exempt an owner of a residential  
40 rental property, as defined in section 33-1901, from maintaining with the  
41 assessor of the county in which the property is located information  
42 required under title 33, chapter 17, article 1.

1 ~~F.~~ H. A vacation rental or short-term rental may not be used for  
2 nonresidential uses, including for a special event that would otherwise  
3 require a permit or license pursuant to a county ordinance or a state law  
4 or rule or for a retail, restaurant, banquet space or other similar use.

5 ~~G.~~ I. For the purposes of this section:

6 1. "ONLINE LODGING MARKETPLACE" HAS THE SAME MEANING PRESCRIBED IN  
7 SECTION 42-5076.

8 ~~F.~~ 2. "Transient" has the same meaning prescribed in section  
9 42-5070.

10 ~~E.~~ 3. "Vacation rental" or "short-term rental":

11 (a) Means any individually or collectively owned single-family or  
12 one-to-four-family house or dwelling unit or any unit or group of units in  
13 a condominium, ~~OR~~ cooperative ~~or timeshare~~, that is also a transient  
14 public lodging establishment or owner-occupied residential home offered  
15 for transient use if the accommodations are not classified for property  
16 taxation under section 42-12001. ~~Vacation rental and short-term rental do~~

17 (b) DOES not include a unit that is used for any nonresidential  
18 use, including retail, restaurant, banquet space, event center or another  
19 similar use.

20 ~~D.~~ 4. "Verified violation" means a finding of guilt or civil  
21 responsibility for violating any state law or local ordinance relating to  
22 a purpose prescribed in subsection B or ~~F.~~ H of this section that has been  
23 finally adjudicated.

24 Sec. 3. Repeal

25 Section 42-1125.02, Arizona Revised Statutes, is repealed.

26 Sec. 4. Section 42-5042, Arizona Revised Statutes, is amended to  
27 read:

28 42-5042. Online lodging operators; requirements; civil  
29 penalty; definitions

30 A. An online lodging operator may not offer for rent or rent a  
31 lodging accommodation without a current transaction privilege tax license.  
32 The online lodging operator shall list the transaction privilege tax  
33 license number on each advertisement for each lodging accommodation the  
34 online lodging operator maintains, including online lodging marketplace  
35 postings. AN ONLINE LODGING OPERATOR THAT FAILS TO COMPLY WITH THIS  
36 SUBSECTION SHALL PAY A CIVIL PENALTY OF \$250 FOR A FIRST OFFENSE AND  
37 \$1,000 FOR A SECOND OR ANY SUBSEQUENT OFFENSE.

38 B. THE DEPARTMENT OF REVENUE, AFTER NOTICE AND A HEARING AS  
39 PROVIDED IN SECTION 42-5005, SUBSECTION O, MAY SUSPEND FOR A PERIOD OF  
40 TWELVE MONTHS AFTER THE DATE OF THE SUSPENSION THE TRANSACTION PRIVILEGE  
41 TAX LICENSE OF THE ONLINE LODGING OWNER OF A VACATION RENTAL OR SHORT-TERM  
42 RENTAL IF THE ONLINE LODGING OPERATOR RECEIVES THREE VERIFIED VIOLATIONS  
43 RELATED TO THE SAME VACATION RENTAL OR SHORT-TERM RENTAL WITHIN THE SAME  
44 TWELVE-MONTH PERIOD PURSUANT TO SECTION 9-500.39 OR 11-269.17.

1           ~~B.~~ C. For the purposes of this section:

2           1. "Lodging accommodation" has the same meaning prescribed in  
3 section 42-5076.

4           2. "Online lodging marketplace" has the same meaning prescribed in  
5 section 42-5076.

6           3. "Online lodging operator" has the same meaning prescribed in  
7 section 42-5076 and includes an owner of a vacation rental or short-term  
8 rental, ~~as defined in section 9-500.39 or 11-269.17,~~ that is not offered  
9 through an online lodging marketplace.

10           4. "VACATION RENTAL" AND "SHORT-TERM RENTAL" HAVE THE SAME MEANINGS  
11 PRESCRIBED IN SECTION 9-500.39 OR 11-269.17.

12           5. "VERIFIED VIOLATION" HAS THE SAME MEANING PRESCRIBED IN SECTION  
13 9-500.39 OR 11-269.17.





**CITY COUNCIL  
AGENDA BILL**

**AB 2892  
November 22, 2022  
Regular Business**

**Agenda Item:** 8g  
**Proposed Action & Subject:** Discussion/possible action regarding an Ordinance amending City Code Section 2.15.050 to consider increasing the mayor's salary by \$100 per month and city councilor salaries by \$50 per month.

<b>Department</b>	City Clerk
<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. Benchmark salary data from League of AZ Cities and Towns B. Attorney General opinion on city councilor salaries C. Ordinance

		<b>Expenditure Required</b>
City Attorney Approval	Reviewed 11/15/22 KWC	\$ 3,100 (approx. incremental increase for FY23)
		\$ 5,250 (approx. annual incremental increase)
		<b>Amount Budgeted</b>
City Manager's Recommendation	N/A	\$ 0
		Account No. N/A (Description)
		Finance Approval <input type="checkbox"/>

**SUMMARY STATEMENT**

**Background:** Councilors Thompson and Lamkin have asked that the consideration of a proposed increase of Council salaries be placed on the final Council agenda for the current City Council. This item is being agendaized in response to that request. In 2004, Council salaries were set at \$650 per month for the Mayor and \$450 for Council members. (See Sedona City Code, Section 2.15.050.) In 2014 the salaries for each office were increased by \$50 per month. Councilors Thompson and Lamkin are proposing \$100 per month increase for the office of Mayor and a \$50 per month increase for the office of City Councilor.

Arizona law provides that the City Council may by ordinance prescribe a salary to be paid the mayor, councilmen and administrative board members for the performance of official duties

(A.R.S. § 9-232.01). However, Article 4, Part 2, Section 17 of the Arizona Constitution provides that the compensation of any public officer shall not be increased or diminished during his term of office. The Arizona Attorney General has interpreted these provisions and has concluded that a sitting council member can receive a salary increase at the beginning of a new term, and that if there are staggered terms, the increase would also apply to other council members in the middle of their term. (Arizona Attorney General Opinion: OP-I90-094).

While the salary increases are not budgeted for FY23, there is sufficient budget capacity to absorb the additional expenses of approximately \$3,100 for the remainder of FY23. The ongoing annual increase is approximately \$5,250.

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

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

**Alternative(s):**

**MOTION**

**(After First Reading)**

**I move to:** approve Ordinance No. 2022-\_\_\_, amending City Code Section 2.15.050 and increasing the mayor's salary by \$100 per month and city councilor salaries by \$50 per month.

**SUPERVISORY AND ADMINISTRATIVE POSITIONS**

CITY/TOWN	POPULATION (2020 Census)	COUNTY	MAYOR	COUNCIL
PHOENIX	1,608,139	MARICOPA	88,000	61,600
TUCSON	542,629	PIMA	41,995	24,002
MESA	504,258	MARICOPA	73,545	40,582
CHANDLER	275,987	MARICOPA	56,758	33,237
GILBERT	267,918	MARICOPA	43,631	21,012
GLENDALE	248,325	MARICOPA	48,000	34,000
SCOTTSDALE	241,361	MARICOPA	51,662	31,421
PEORIA	190,985	MARICOPA	36,277	24,185
TEMPE	180,587	MARICOPA	64,627	32,314
SURPRISE	143,148	MARICOPA	46,779	26,713
YUMA	95,548	YUMA	12,000	3,600
GOODYEAR	95,294	MARICOPA	30,000	12,000
BUCKEYE	91,502	MARICOPA	21,000	14,400
AVONDALE	89,334	MARICOPA	19,947	9,973
FLAGSTAFF	76,831	COCONINO	38,500	25,500
QUEEN CREEK	59,519	MARICOPA/PINAL	38,882	23,072
MARICOPA	58,125	PINAL	33,600	20,500
LAKE HAVASU CITY	57,144	MOHAVE	Did not participate	
CASA GRANDE	53,658	PINAL	16,624	9,234
MARANA	51,908	PIMA/PINAL	21,000	16,404
ORO VALLEY	47,070	PIMA	12,740	10,058
PRESCOTT VALLEY	46,785	YAVAPAI	12,600	8,400
PRESCOTT	45,827	YAVAPAI	9,000	6,000
SIERRA VISTA	45,308	COCHISE	12,000	9,000
BULLHEAD CITY	41,348	MOHAVE	12,000	9,000
APACHE JUNCTION	38,499	MARICOPA / PINAL	12,000	9,600
EL MIRAGE	35,805	MARICOPA	26,760	14,040
SAN LUIS	35,257	YUMA	19,392	9,965
SAHUARITA	34,134	PIMA	9,600	6,000
KINGMAN	32,689	MOHAVE	11,700	8,400
FLORENCE	26,785	PINAL	11,400	7,800
FOUNTAIN HILLS	23,820	MARICOPA	7,200	4,800
NOGALES	19,770	SANTA CRUZ	600	300
DOUGLAS	16,534	COCHISE	3,600	2,400
PAYSON	16,351	GILA	10,800	6,000
ELOY	15,635	PINAL	12,000	5,400
SOMERTON	14,197	YUMA	8,400	6,000
COOLIDGE	13,218	PINAL	7,200	4,800
CHINO VALLEY	13,020	YAVAPAI	6,000	3,600
PARADISE VALLEY	12,658	MARICOPA	0	0
CAMP VERDE	12,147	YAVAPAI	350	250
COTTONWOOD	12,029	YAVAPAI	9,000	6,000
SHOW LOW	11,732	NAVAJO	9,600	6,000
SAFFORD	10,129	GRAHAM	Did not participate	
SEDONA	9,684	YAVAPAI/COCONINO	8,400	6,000
WINSLOW	9,005	NAVAJO	4,800	2,400

Recently adopted councilors \$44,650 and Mayor \$54,340, and effective 2024 councilors \$63,800 and Mayor \$70,180

**SUPERVISORY AND ADMINISTRATIVE POSITIONS**

<b>CITY/TOWN</b>	<b>POPULATION (2020 Census)</b>	<b>COUNTY</b>	<b>MAYOR</b>	<b>COUNCIL</b>
WICKENBURG	7,474	MARICOPA/YAVAPAI	4,800	2,400
PAGE	7,440	COCONINO	9,600	7,200
GLOBE	7,249	GILA	6,000	3,600
TOLLESON	7,216	MARICOPA	21,000	14,400
YOUNGTOWN	7,056	MARICOPA	16,800	10,800
LITCHFIELD PARK	6,847	MARICOPA	Did not participate	
SNOWFLAKE	6,104	NAVAJO	4,800	2,400
BENSON	5,355	COCHISE	9,600	4,800
GUADALUPE	5,322	MARICOPA	8,400	8,400
THATCHER	5,231	GRAHAM	6,600	5,400
BISBEE	4,923	COCHISE	4,800	2,400
CAVE CREEK	4,892	MARICOPA		
HOLBROOK	4,858	NAVAJO	2,400	1,200
SOUTH TUCSON	4,613	PIMA	Did not participate	
CLARKDALE	4,424	YAVAPAI	4,800	2,400
EAGAR	4,395	APACHE	4,800	1,200
DEWEY-HUMBOLDT	4,326	YAVAPAI		
PINETOP-LAKESIDE	4,030	NAVAJO	12,350	6,500
TAYLOR	3,995	NAVAJO	4,800	2,400
CLIFTON	3,933	GREENLEE	3,600	2,400
CAREFREE	3,690	MARICOPA	0	0
PARKER	3,417	LA PAZ	Did not participate	
ST. JOHNS	3,417	APACHE	0	0
WILLCOX	3,213	COCHISE	4,800	2,400
WILLIAMS	3,202	COCONINO	10,800	9,600
PIMA	2,847	GRAHAM	3,600	1,800
STAR VALLEY	2,484	GILA	8,400	6,000
COLORADO CITY	2,478	MOHAVE	Did not participate	
QUARTZSITE	2,413	LA PAZ	10,800	7,500
SUPERIOR	2,407	PINAL	none	none
WELLTON	2,375	YUMA	4,200	3,000
GILA BEND	1,892	MARICOPA	Did not participate	
KEARNY	1,741	PINAL	0	0
SPRINGERVILLE	1,717	APACHE	Did not participate	3,000
HUACHUCA CITY	1,626	COCHISE	Did not participate	
MIAMI	1,541	GILA	1,200	1,000
FREDONIA	1,323	COCONINO	Did not participate	
TOMBSTONE	1,308	COCHISE	3,000	1,800
MAMMOTH	1,076	PINAL	0	0
PATAGONIA	804	SANTA CRUZ	600	1,200
DUNCAN	694	GREENLEE	1,200	600
TUSAYAN	603	COCONINO	Did not participate	
HAYDEN	512	GILA		
JEROME	464	YAVAPAI		
WINKELMAN	296	GILA/PINAL	Did not participate	

DID NOT PARTICIPATE IN SURVEY

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

October 22, 1990

The Honorable Bob Denny  
Arizona State Senator  
State Capitol - Senate Wing  
Phoenix, Arizona 85007

Re: I90-094 (R90-135)

Dear Senator Denny:

You asked whether article 4, part 2, section 17 of the Arizona Constitution permits a sitting member of a city council to receive a salary increase approved prior to the beginning of a new term.

Article 4, part 2, section 17 in relevant part provides:

nor shall the compensation of any public officer, other than a justice of the peace, be increased or diminished during his term of office; . . .

Accordingly, on its face, Article 4, part 2, section 17 permits a sitting city council member to receive a salary increase at the beginning of a new term.

Also, we conclude that city council members who are in the middle of their terms may receive an increase of salary if the following provisions of article 4, part 2, section 17 apply:

provided, however, that when any legislative increase or decrease in compensation of the members of any court or the clerk thereof, or of any board or commission composed of two or more officers or persons whose

respective terms of office are not coterminous, has heretofore or shall hereafter become effective as to any member or clerk of such court, or any member of such board or commission, it shall be effective from such date as to each thereof.

The Arizona Supreme Court has said that this constitutional provision added in 1930 was adopted "for the express purpose of insuring that all members of a court, board, or commission composed of more than one person, who were doing in substance, the same work, should at all times receive the same salaries." County of Maricopa v. Rodgers, 52 Ariz. 19, 25, 78 P.2d 989, 991-992 (1938). The provisions of article 4, part 2, section 17 have been applied to the acts of a city council. See Davis v. Hale, 96 Ariz. 219, 225, 393 P.2d 912, 916 (1964).

Therefore, we conclude that a city council member may receive a salary increase in the middle of the council member's term, provided the increase meets the conditions of article 4, part 2, section 17 of the Arizona Constitution, or at the beginning of a new term.

Very truly yours,



BOB CORBIN  
Attorney General

BC:AC:bl

**ORDINANCE NO. 2022-\_\_**

**AN ORDINANCE OF THE CITY OF SEDONA, ARIZONA, AMENDING CITY CODE CHAPTER 2.15 (COUNCIL) BY AMENDING SECTION 2.15.050 (COMPENSATION); PROVIDING FOR A SAVINGS CLAUSE AND FOR REPEAL OF CONFLICTING ORDINANCES.**

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

Section 1. Amendment of Sedona City Code Chapter 2.15 (Council)

That the Code of the City of Sedona, Arizona, is hereby amended by amending Section 2.15.050 (Compensation), to read as follows:

The mayor shall be paid compensation from the general funds of the city in an amount equal to \$800.00 per month during his term as mayor. Each council member shall be paid compensation from the general funds of the city in an amount equal to \$550.00 per month during the respective term of each such council member.

Section 2. Savings Clause

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

Section 3. Repeal

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

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 22<sup>nd</sup> day of November, 2022.

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

ATTEST:

\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

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