

AGENDA



4:30 P.M.

CITY COUNCIL MEETING

TUESDAY, MARCH 28, 2023

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

THE MEETING CAN BE VIEWED LIVE ON THE CITY'S WEBSITE AT 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 =

- Minutes - March 14, 2023 City Council Special Meeting - Executive Session.
- Minutes - March 14, 2023 City Council Regular Meeting.
- Minutes - March 15, 2023 City Council Special Meeting.
- AB 2925 Approval of a recommendation regarding an application for a Series 7 Beer and Wine Bar Liquor License for Sedona Beer Company located at 465 Jordan Road, Ste 1-7, Sedona, AZ (File# 229282).
- AB 2929 Approval of Resolutions authorizing the execution of Intergovernmental Agreements (IGA) between the City of Sedona and the Sedona-Oak Creek Unified School District No. 9 for: 1) Operation and Maintenance of the Sedona Community Swimming Pool and 2) Use of Facilities.

4. APPOINTMENTS - None.

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

- AB 2933 **Presentation/discussion** by Executive Director Marjorie Harris of the Sedona Community Center to provide an update to the City Council on the Community Center's activities, accomplishments, and general service provision to the community.
- AB 2920 **Discussion/possible action** regarding approving a Settlement Agreement with Tlaq Partners, LLC to acquire necessary right-of-way and to resolve other claims for the SR179 Pedestrian Crossing at Oak Creek.
- AB 2934 **Discussion/possible action** regarding the approval of a Resolution approving a Land Lease Option Agreement and a \$300,000 financial contribution in the form of a loan to The Villas on Shelby, LLC, for a Low-Income Housing Tax Credit (LIHTC) application at 2250 Shelby Drive.
- AB 2931 **Discussion/possible action** regarding proposed amendments to the Sedona City Council Rules of Procedures and Policies.
- AB 2861 **Discussion/possible direction/action** regarding proposed State legislation, short-term rental legislation and State budget and their potential impact on the City of Sedona.
- Reports/discussion** regarding Council assignments.

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.



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- a. **Discussion** regarding ideas for future meeting/agenda items.

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.

10. ADJOURNMENT

Posted: 03/23/2023

By: DJ

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. 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.

NOTICE TO PARENTS AND LEGAL GUARDIANS: Parents and legal guardians have the right to consent before the City of Sedona makes a video or voice recording of a minor child, pursuant to A.R.S. § 1-602(A)(9). The Sedona City Council meetings are recorded and may be viewed on the City of Sedona website. If you permit your child to attend/participate in a televised City Council meeting, a recording will be made. You may exercise your right not to consent by not allowing your child to attend/participate in the meeting.

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.

**Action Minutes
Special City Council Meeting
Sedona City Hall, Council Executive Chamber
102 Roadrunner Drive, Sedona, Arizona
Tuesday, March 14, 2023, 2:30 p.m.**

1. Call to Order

Mayor Jablow called the meeting to order at 2:30 p.m.

2. Roll Call

Council Present: Mayor Scott Jablow, Vice Mayor Holli Ploog, Councilor Melissa Dunn, Councilor Brian Fultz, Councilor Pete Furman, Councilor Kathy Kinsella. Councilor Jessica Williamson was excused absent.

Staff Present item: Magistrate Judge Paul Schlegel, Court Supervisor Brenda Schorr, Director of Financial Services Cherie White, City Manager Karen Osburn, City Attorney Kurt Christianson, and City Clerk JoAnne Cook.

Staff were dismissed prior to the Judge's evaluation portion of the meeting.

3. Special Business

Motion: Councilor Vice Mayor Ploog moved to enter into Executive Session at 2:31 p.m. Seconded by Councilor Fultz. Motion carried unanimously with six (6) in favor (Jablow, Ploog, Dunn, Fultz, Furman, and Kinsella) and zero (0) opposed.

Kurt Christianson gave the admonition.

Staff were dismissed prior to the Judge's evaluation portion of the meeting.

- a. Discussion and consideration of the judicial annual evaluation and other terms of employment of City Magistrate Paul Schlegel including expectations and goal setting. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(1).**

Questions and Comments from Council.

Reconvened in open session at 4:20 p.m.

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

4. Adjournment

Mayor Jablow adjourned the meeting at 4:20 p.m.

I certify that the above are the true and correct actions of the Special City Council Meeting held on March 14, 2023.

JoAnne Cook, CMC, City Clerk

Date

Action Minutes
Regular City Council Meeting
City Council Chambers, Sedona City Hall,
102 Roadrunner Drive, Sedona, Arizona
Tuesday, March 14, 2023, 4:30 p.m.

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

Mayor Jablow called the meeting to order at 4:31 p.m.

Council Present: Mayor Scott Jablow, Vice Mayor Holli Ploog, Councilor Melissa Dunn, Councilor Brian Fultz, Councilor Pete Furman, Councilor Kathy Kinsella, and Councilor Jessica Williamson.

Staff Present: City Manager Karen Osburn, Deputy City Manager Joanne Keene, Assistant City Manager/Director of Public Works Andy Dickey, City Attorney Kurt Christianson, Police Chief Foley, Associate Engineer Bob Welch, Executive Assistant to the City Manager Jill Adams, Public Relations Coordinator Kegn Moorcroft, and City Clerk JoAnne Cook.

2. City's Vision/Moment of Art

The City's Vision Statement was not played due to technical difficulties.

Joanne Keene introduced Legacy Artist Mariann Leahy for Women's History Month. Mariann shared a presentation that featured her work and talked about her paintings and ceramic art painting. Her art will be on display at City Hall January through April of 2024.

3. Consent Items

- a. **Minutes - February 28, 2023 City Council Special Meeting - Executive Session.**
- b. **Minutes - February 28, 2023 City Council Regular Meeting.**
- c. **Approval of National Vietnam War Day Proclamation, March 29, 2023.**
- d. **AB 2924 Approval of exchange of City remnant parcel for the Shelby Drive Roadway Improvements Project.**

Motion: Vice Mayor Ploog moved to approve consent items 3a-3d. Seconded by Councilor Furman. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed).

4. Appointments - None.

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

Mayor Jablow recognized Deputy City Clerk Cherise Fullbright for her outstanding work. Cherise's last day with the City is tomorrow.

Vice Mayor Ploog invited all to attend the St. Patrick's Day Parade on Saturday, March 18th at 10:30 a.m.; the Sedona Stumble 5K and 10K will be held on Saturday, April 1st; registration is open through March 1st; Celebration of Spring will be held on Saturday, April 8th from 9:00 a.m. to 1:00 p.m.; B.E.S.T Sports for Kids Spring session has been rescheduled to start on March 25th, registration is \$128 per registrant; Story Time in the Park is held on Wednesdays at 10:00 a.m.; Yappy Hour is held on Thursdays 9:00 a.m. – 10:00 a.m.; Open Gym is held on Tuesdays and Thursdays, 7:00 a.m. – 9:00 p.m. at the West Sedona School; Tennis lessons are offered on Mondays and Wednesdays at Posse Grounds Park.

6. Public Forum

Opened to public at 4:49 p.m.

John Martinez, Sedona, spoke regarding the Vietnam Traveling Memorial Wall that will be hosted in Camp Verde March 29 through April 2, 2023 and encouraged all to attend. The pinning ceremony will take place on Wednesday, March 29th, Native American veterans will be recognized on Saturday, April 1st.

Brought back to Council at 4:53 p.m.

7. Proclamations, Recognitions & Awards

a. Approval of National Vietnam Month, March 29, 2023

Mayor Jablow presented the proclamation to Ed Uzumeckis, Guy Lamunyon, and Shelia Stubler. Ed spoke about the establishment of the event in the Verde Valley. Sheila said Camp Verde is proud to host the event and the recognition of Native American veterans. She thanked Ed and all involved in planning of the event. Guy said there is a wonderful veterans history project at the Sedona Library, and Coffee with a Vet is held once a month.

b. Recognition of city of Sedona veterans volunteer Ed Uzumeckis

Mayor Jablow presented Ed with an award and thanked Ed for his 10 years of selfless service to over 2000 veterans. Ed thanked Council for the kind acknowledgment and expressed how honored he was to spearhead a voluntary program through the City where he had the opportunity to assist veterans with disability issues, illnesses caused by Agent Orange, and PTSD, get the benefits they deserve.

8. Regular Business

a. AB 2928 Discussion/presentation by Executive Director Judy Poe of the Sedona Public Library to provide an update to the City Council on library activities, accomplishments and general service provision to the community.

Presentation by Judy Poe.

Questions and comments from Council.

Presentation and discussion only, no action taken.

b. AB 2923 Discussion/possible action regarding a scope of services and Professional Services Agreement with Kimley-Horn and Associates in the amount of \$148,000 for an Uptown Parking Alternatives and Site Analysis.

Presentation by Andy Dickey and Bob Welch.

Questions and comments from Council.

Opened to the public at 5:56 p.m.

Mark TenBroek, Sedona, spoke in favor of the study and offered suggestions for consideration regarding community engagement and scope of work. Joseph Zani, Sedona, volunteered to participate on the working group voiced his concerns with the location on Forest Road, the size of the proposed work group, and scope of work.

Brought back to Council at 6:02 p.m.

Questions and comments from Council.

Motion: Vice Mayor Ploog moved to approve a professional services contract with Kimley-Horn Inc. for an Uptown Parking Alternatives Analysis and Site Selection study in the

amount of \$148,000. Seconded by Councilor Furman. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed).

Break at 6:30 p.m. Reconvened at 6:51 p.m.

- c. AB 2926 Discussion/possible action regarding a Resolution requesting that Sedona OHV Rental Companies launch a voluntary OHV Noise Reduction Initiative to identify and implement methods of reducing the noise generated by their rental vehicles.**

Presentation by Vice Mayor Ploog and Mayor Jablow.

Questions and comments from Council.

Opened to the public at 7:00 p.m.

The following spoke in favor of the resolution and encouraged Council to work collaboratively with business owners: Tim Angus, Sedona, Guy Lamunyon, Sedona.

The following spoke in favor of the resolution and voiced concerns with noise control: Craig Swanson, Sedona, Peggy Chaikin, Sedona, DeAnna Bindley, Sedona.

Carl Jackson, Sedona, spoke in favor of the resolution and suggested an electronic OHV permitting program.

Brought back to Council at 7:16 p.m.

Motion: Councilor Fultz moved to Resolution 2023-07 requesting that Sedona OHV Rental Companies launch a voluntary OHV Noise Reduction Initiative to identify and implement methods of reducing the noise generated by their rental vehicles. Seconded by Councilor Dunn. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed).

- d. AB 2861 Discussion/possible direction/action regarding proposed State legislation, short-term rental legislation and State budget and their potential impact on the City of Sedona.**

Presentation by Joanne Keene.

Questions and comments from Council.

By majority consensus, council agreed to support SB 1541 and oppose SB 2094.

- e. Reports/discussion regarding Council assignments – None.**

- f. Discussion regarding ideas for future meeting/agenda items**

Councilor Furman requested an item regarding the monthly sales tax data be added to an agenda quarterly. Councilor Fultz supported. This will be added to a future agenda for discussion.

Mayor Jablow requested the discussion regarding awarding a key to the city on a future agenda. The City Manager will agendaize this for further discussion at a future meeting.

Councilor Dunn requested the Arabella Spa item be brought back to Council for reconsideration at a future meeting. This will be added to a future agenda.

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 Jablow adjourned the meeting at 8:13 p.m. without objection.

I certify that the above are the true and correct actions of the Regular City Council Meeting held on March 14, 2023.

JoAnne Cook, CMC, City Clerk

Date

**Action Minutes
Special City Council Meeting
City Council Chambers, Sedona City Hall
102 Roadrunner Drive, Sedona, Arizona
Wednesday, March 15, 2023, 3:00 p.m.**

1. Call to Order

Mayor Jablow called the meeting to order at 3:01 p.m.

2. Roll Call

Roll Call: Mayor Scott Jablow, Vice Mayor Holli Ploog, Councilor Melissa Dunn, Councilor Brian Fultz, Councilor Pete Furman. Councilor Kathy Kinsella present via Microsoft Teams.

Councilor Jessica Williamson was absent and excused.

Staff in attendance: City Manager Karen Osburn, City Attorney Kurt Christianson, City Clerk JoAnne Cook, Deputy City Clerk Cherise Fullbright.

3. Special Business

- a. **AB 2922 Presentation/discussion and update from the Arizona Water Company regarding the local water distribution system, water availability and current and future planned water infrastructure projects.**

Presentation by Arizona Water Company Division Manager John Snickers, Arizona Water Company Vice President Andrew Haas, Arizona Water Company Water Resource Manager Terri Sue Rossi, and Karen Osburn.

Questions and comment from Council.

Mayor Jablow opened the floor to public comment at 5:00 p.m., but no comments were received and the item was brought back to Council.

Additional questions and comments from Council.

Presentation and discussion only.

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 Jablow adjourned the meeting at 5:10 p.m.

I certify that the above are the true and correct actions of the Special City Council Meeting held on March 15, 2023.

Cherise Fullbright, Deputy City Clerk

Date



**CITY COUNCIL
AGENDA BILL**

**AB 2925
March 28, 2023
Consent Items**

Agenda Item: 3d

Proposed Action & Subject: Approval of a recommendation regarding an application for a Series 7 Beer and Wine Bar Liquor License for Sedona Beer Company located at 465 Jordan Road, Ste 1-7, Sedona, AZ (File# 229282).

Department	City Clerk
Time to Present	N/A
Total Time for Item	
Other Council Meetings	N/A
Exhibits	Liquor License Application is available for review in the City Clerk's office.

City Attorney Approval	Reviewed 3/21/23 KWC	Expenditure Required	\$ 0
City Manager's Recommendation	Recommend approval of a new Series 7 Beer and Wine Bar Liquor License for Sedona Beer Company.	Amount Budgeted	\$ 0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

SUMMARY STATEMENT

Background: State liquor laws require Sedona's City Council to forward a recommendation for approval or denial of applications for liquor licenses.

The City received an application for a new Series 7 Beer and Wine Bar Liquor License for Sedona Beer Company located at 465 Jordan Road, Ste 1-7, Sedona, AZ (File# 229282). The application is available for review and inspection in the City Clerk's office or by email.

A Series 7 Liquor License (Beer and Wine Bar) is transferable from person to person and/or location to location within the same county and allows the holder both on- & off-sale retail privileges. This license allows a beer and wine bar retailer to sell and serve beer and wine (no other spirituous liquors), primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A retailer with off-sale ("To Go") privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. The Beer and Wine Bar (Series 7) liquor license may fill and sell "growlers".

Community Development, Finance, the Sedona Police Department (SPD), and Sedona Fire District (SFD) have conducted a review of the application. No objections regarding its approval were noted.

Community Plan Consistent: Yes - No - Not Applicable

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

Alternative(s): Recommend denial of a new Series 7 Beer and Wine Bar Liquor License for Sedona Beer Company located at 465 Jordan Road, Ste 1-7, Sedona, AZ (File# 229282). Reasons for a recommendation of denial would need to be specified.

MOTION

I move to: recommend approval of a new Series 7 Beer and Wine Bar Liquor License for Sedona Beer Company located at 465 Jordan Road, Ste 1-7, Sedona, AZ (File# 229282).



**CITY COUNCIL
AGENDA BILL**

**AB 2929
Date March 28, 2023
Agenda Consent**

Agenda Item: 3e

Proposed Action & Subject: Approval of Resolutions authorizing the execution of Intergovernmental Agreements (IGA) between the City of Sedona and the Sedona-Oak Creek Unified School District No. 9 for: 1) Operation and Maintenance of the Sedona Community Swimming Pool and 2) Use of Facilities.

Department Parks and Recreation

Time to Present N/A

Total Time for Item

Other Council Meetings March 26, 2019

- Exhibits**
- A. IGA – Operation and Maintenance of the Sedona Community Pool
 - B. Resolution - Sedona Community Pool
 - C. IGA – Use of Facilities
 - D. Resolution – Facilities

City Attorney Approval	Reviewed 3/21/23 KWC	Expenditure Required
		\$ 450,000 (estimated annual operating and maintenance costs partially covered by an estimated \$50,000 of annual revenues)
City Manager's Recommendation	Approve Resolutions authorizing the execution of IGAs between the City of Sedona and the Sedona-Oak Creek Unified School District for: Operation and Maintenance of the Sedona Community Pool and Use of Facilities.	Amount Budgeted
		\$ 450,000 (FY24 budget is in development; based on estimated annual operating and maintenance costs)
		Account No. 10-XXXX-25-XXXX (Description) (Aquatics Program accounts)
		Finance <input checked="" type="checkbox"/> Approval

SUMMARY STATEMENT

Background:

The city has had Intergovernmental Agreements with the Sedona-Oak Creek School District for the use of facilities and the operation and maintenance of the Sedona Community Pool. The IGA’s each have a term of 3 years; at which time each is up for review and renewal.

The current IGA’s expire on March 26, 2023. In 2022, a one-year extension was granted.

Notable changes to the Sedona Community Pool IGA:

1. Obligations of Sedona Oak Creek School District:
 - a. Section 1.g. The District is responsible to provide certified lifeguards during high school swim meets, relieving the city of the obligation.
 - b. Section 1.h. There is no fee for the District to use the pool.
 - c. Section 1.i. The District is responsible to reimburse the city for all costs related to remedy health code violations, such as broken glass, when the violations result from the District’s use of the facility.
2. 5-year term verses 3-year term.

Notable changes to the Facilities IGA:

1. 5-year term verses 3-year term.

The Sedona-Oak Creek School Board reviewed and approved the IGA’s on March 7, 2023.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): None

MOTION

I move to: approve Resolution No. 2023-__ authorizing the execution of Intergovernmental Agreement between the City of Sedona and the Sedona-Oak Creek Unified School District No. 9 for Operation and Maintenance of the Sedona Community Swimming Pool; and

approve Resolution No. 2023-__ authorizing the execution of Intergovernmental Agreement between the City of Sedona and the Sedona-Oak Creek Unified School District No. 9 for Use of Facilities.

**INTERGOVERNMENTAL AGREEMENT WITH THE
SEDONA-OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9
FOR OPERATION AND MAINTENANCE OF THE
SEDONA COMMUNITY SWIMMING POOL**

THIS AGREEMENT, made and entered into this 26th day of March, 2023, by and between the CITY OF SEDONA, Arizona, a municipal corporation of the State of Arizona, hereinafter called the "City," and the SEDONA-OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9, a political subdivision of the State of Arizona, hereinafter called the "District," as follows:

WHEREAS, the District owns the Sedona Community Swimming Pool ("Pool"), located at 570 Posse Ground Road near Posse Grounds Park within the City, and

WHEREAS, the parties wish to renew the Agreement and allow the City to continue to be responsible for the operation, control and maintenance of the Pool, under the following terms and conditions; and

WHEREAS, the parties are empowered to enter into this Agreement pursuant to A.R.S. § 11-952.

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

1. *Obligations of the District.* The District shall:
 - a. Allow use of the Pool for programs to be sponsored and programmed by the City through the Parks and Recreation Department.
 - b. Provide parking and patron access to the Pool. During non-school seasons, the District will remove any District vehicles from the parking spaces located near the entrance of the pool.
 - c. Promptly notify the City of any evidence of vandalism or mechanical malfunctioning of the Pool or surrounding facilities.
 - d. Promptly notify the City of any scheduled fire drills or emergency campus shut downs.
 - e. Promptly notify the City of construction projects, water shut-off or other District events which will affect the scheduling and use of the Pool or surrounding parking lots.
 - f. In the interest of safety, the District shall adhere to all rules and regulations as set forth by the City Parks and Recreation Department, rules posted at Pool, and Yavapai County Health Department. In addition, District is solely responsible for the supervision of and adherence of said

rules and policies by District personnel, volunteers, participants, coaches, parents, visitors or spectators during use of the Pool.

- g. School District personnel supervising practice times and programs must hold current certifications in Lifeguard, CPR/AED, and First Aid issued by any nationally recognized organization, such as the American Red Cross, StarGuard Elite, or Ellis & Associates. During events or programs that are open to the public, District is required to have two (2) individuals on deck with certifications in Lifeguard, CPR/AED, and First Aid issued by any nationally recognized organization, such as the American Red Cross, StarGuard Elite, or Ellis & Associates. District shall supply the names and proof of certification for individuals acting in this capacity to the City.
- h. The District shall use the Pool free of charge upon written approval from the City as available in coordination with the Parks and Recreation Department and rental events. During the high school swim season, the District will pay \$0.00 per hour for use of the Pool.
- i. On or before July 1 of each year that this Agreement is in effect, the parties shall develop a schedule for the District's use of the pool for the upcoming season, including swim team practice times. On or before August 15, the District shall provide their requested dates for swim meets/tournaments, 24 Hour Relay and other educational programs or events for which the District anticipates a need to use the pool. All proposed uses shall be subject to City review and approval.
- j. Manage the upkeep of grounds maintenance outside of the pool perimeter fence, with the exception of the landscaped front entrance into the pool, which will be the responsibility of the City.
- k. District shall reimburse City for any repair or replacement of City property, equipment or fixtures damaged by District or damaged during the District's use of the pool or during use of the pool for any District sponsored activity at the pool.
- l. District shall reimburse the City for all costs related to remedy Pool to be in compliance with Yavapai County Health Code requirements caused by District's failure, or failure of District's personnel, volunteers, participants, coaches, parents, visitors or spectators, to adhere to pool rules or Yavapai County Health Codes (i.e., broken glass) during District's use of the pool. In the event District, its personnel, volunteers, participants, coaches, parents, visitors or spectators violate any pool rules or policies or Yavapai County Health Code Regulations, District will be fined \$50 per occurrence payable to the City. Said occurrences will be invoiced monthly and payment is due to the City 30 days from date of invoice.

- m. If damage to the pool requiring repair or replacement does not arise from the negligence or willful misconduct of either party, and is of a type that under generally accepted accounting principles is to be capitalized or depreciated, and to the extent provided for in their annual budget appropriation the parties shall equally share the cost of such repair or replacement. The parties shall mutually determine when the cost of such repair or replacement will be incurred.
 - n. District shall monitor and log the utility meters and invoice the City monthly.
2. *Obligations of the City.* The City will have the following responsibilities:
- a. Pay all Pool management, operations, and general maintenance expenses.
 - b. Give priority to the District programs over private users of the Pool, provided District Programs do not interfere with City sponsored programming.
 - c. Pay all utility expenses to the District monthly.
 - d. Retain discretion to pass along the cost of chemicals, staff, and utilities to individuals and groups utilizing the Pool for non-City sponsored programs.
 - e. Retain discretion to sublet pool to other user groups.
 - f. Provide certified lifeguards for City sponsored programs and activities.
3. *General Provisions.* The parties will jointly review the capital improvements and costs involved in maintaining the Pool and adjacent facilities in a safe and working condition. The real property and fixtures which are the subject of the Agreement shall remain the property of the District. All items purchased for the benefit of programs shall remain the property of the purchaser. These items include but are not limited to: water aerobics equipment, swim lesson equipment, bleachers, deck chairs and stereo equipment. Funding for this agreement will be determined by budgeted appropriations by the governing body of each party.
4. *Term.* The term of this Agreement shall be for a period of five (5) years, beginning upon execution by the parties and filing with the County Recorder pursuant to ARS 11-952.G, and terminating on March 26, 2028. The parties may, by mutual agreement, agree to extend the Agreement for one (1) additional term of not more than one (1) year.
5. *Conflict of Interest.* Pursuant to ARS § 38-511, the parties may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement

on behalf of that party is, at any time while the Agreement or an extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity, or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

6. *Indemnification and Insurance.* Each party agrees to indemnify and hold harmless the other for any and all claims, expenses and damages due to that party's negligence arising out of the Agreement and the use of the Pool by the District, and the use, maintenance, and operation of the Pool by the City. The parties each agree to provide proof of liability insurance in the amount of not less than one million (\$1,000,000), naming the other party as an additional insured, and issue a certificate of insurance. Written notice shall be provided to the other party at least thirty (30) days prior to cancellation of the insurance, and failure to renew the coverage may be deemed by the additional insured as grounds for termination of the agreement for cause.

7. *Notice.* Notice concerning the application and interpretation of the Agreement shall be provided in writing by mail, FAX, or email to the following representatives:

For the City
Karen Osburn, City Manager
City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336

For the District
Dennis Dearden, Superintendent
Sedona-Oak Creek
Unified School District No. 9
995 Upper Red Rock Loop Rd.
Sedona, AZ 86336

8. *Termination.* This Agreement may be terminated by either party with or without cause by providing ninety (90) days written notice.

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

By: _____
Mayor

Dated: _____

ATTEST:

City Clerk

Dated: _____

Pursuant to A.R.S. § 11-952(D), the undersigned City Attorney has determined that this Agreement is in proper form and within the powers and authority granted under the laws of the State of Arizona to the City of Sedona.

_____ Dated: _____
City Attorney

THE SEDONA-OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9, a political subdivision of the State of Arizona.

By: _____ Dated: _____

Its: _____

ATTEST:

_____ Dated: _____

Pursuant to A.R.S. § 11-952(D), the undersigned attorney as counsel for the Sedona-Oak Creek Unified School District No. 9 has determined that this Agreement is in proper form and within the powers and authority granted under the laws of the State of Arizona to the District.

_____ Dated: _____
Counsel for the Sedona-Oak Creek Unified
School District No. 9

RESOLUTION 2023-__

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE SEDONA-OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9 FOR USE OF THE SEDONA COMMUNITY SWIMMING POOL.

WHEREAS, two or more public agencies may enter into an intergovernmental agreement pursuant to A.R.S. § 11-952.A, and

WHEREAS, the City of Sedona (“Sedona”) and the Sedona-Oak Creek Unified School District No. 9 (“District”) have determined that it would be in their best interests to enter into an intergovernmental agreement regarding the use of the Sedona Community Swimming Pool at Posse Grounds Park, and

WHEREAS, Sedona has reviewed the terms of the proposed agreement for use of the community swimming pool and determined that it qualifies as an intergovernmental agreement under A.R.S. § 11-952.B,

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

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement between the City and the Sedona-Oak Creek Unified School District No. 9 for the operation and maintenance of the Sedona Community Swimming Pool at Posse Grounds Park and authorizes the Mayor to execute said agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 28th day of March, 2023.

Scott M. Jablow, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney

**INTERGOVERNMENTAL AGREEMENT
WITH THE SEDONA-OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9
FOR USE OF FACILITIES**

This is an Agreement by and between the City of Sedona, a municipal corporation, hereinafter referred to as "City," and the Sedona-Oak Creek Unified School District No. 9, a school district, hereinafter referred to as "District," their successors, heirs and assigns.

Whereas, the District and the City each own certain public facilities in the Sedona area; and

Whereas, on March 26, 2019, the City and District entered into an Intergovernmental Agreement wherein the City and the District agreed to jointly use and operate recreational and other public facilities, which Intergovernmental Agreement terminated on March 26, 2023; and

Whereas, the parties have mutually agreed to enter into a new Intergovernmental Agreement for a five (5) year term to continue the joint use and operation of recreational and other public facilities; and

Whereas, both parties are authorized to carry on the activities included in this Intergovernmental Agreement pursuant to A.R.S. §§ 11-952, 15-341, 15-342, 15-364; and 15-1105.

Now Therefore, in consideration of the terms, conditions and obligations set forth herein, the parties agree as follows.

Section 1. Recitals

The above recitals are true and correct and incorporated herein.

Section 2. Purpose

The purpose of this Intergovernmental Agreement is to provide for the joint use and operation of recreational and other public facilities currently owned by each of the parties hereto to enhance the ability of each party to provide quality programs and services for their respective constituents, in the best interest of the youth and citizens of the Sedona area and to promote the educational function of the District. This Intergovernmental Agreement shall not apply to the Sedona Performing Arts Center, Posse Grounds Pavilion in Barbara Antonsen Memorial Park or the Sedona Community Swimming Pool.

Section 3. District Obligations

The District agrees to provide for the use of the City, its patrons, and citizens the following:

- A. Unoccupied classroom space, gymnasium space, multi-purpose room and athletic fields at the West Sedona Elementary School and Sedona Red Rock High School for City-sponsored programs that shall be approved in writing by the District, subject to the terms of this Intergovernmental Agreement and any other conditions deemed appropriate by the District.
- B. District shall permit City to place City event signage in or on District real property and facilities upon approval.
- C. Keys for City Staff and City Volunteers to operate approved programs at District facilities. The number of keys will be determined based on need for each program and number of available keys.
- D. West Sedona Elementary School and Sedona Red Rock High School parking lots may be used as overflow parking (at no charge) for City events with advance approval by District, provided it is outside of normal school hours and no District events are scheduled.
- E. Storage space/area for equipment that is used during recurring programs. Once the season/program has ended, the equipment must be removed.
- F. The District agrees to notify the City immediately of any problem, malfunction, or need for repair in the owning party's facilities. The District shall reimburse the City for any repair or replacement of City property, equipment or fixtures damaged by the District or damaged during the District's use of the facility.
- G. District calendar of events for each year. Special consideration will be made to avoid scheduling events at West Sedona School on days where permission has already been granted to the City for use of school parking lots.

Section 4. City's Obligations and Duties

The City agrees to provide for the use of the District, its patrons, fundraising ancillaries, and students the following facilities:

- A. Facilities currently owned by the City, including the Hub, Recreation Room and athletic fields for District-sponsored or supported programs that shall be approved in writing by the City, subject to this Intergovernmental Agreement and any other conditions deemed appropriate by the City.

- B. The City shall use the gymnasium, classrooms, multi-purpose room and fields at West Sedona Elementary School and Sedona Red Rock High School free of charge upon written approval from the District as available in coordination with District and rental events. The City shall pay a \$35 per hour custodial fee should the District deem necessary when using facilities on a non-school day. The District reserves the right to adjust the user fee should circumstances deem necessary with written notice as required by Section 7.
- C. The City agrees to notify the District immediately of any problem, malfunction, or need for repair in the owning party's facilities. The City shall reimburse the District for any repair or replacement of District property, equipment or fixtures damaged by the City or damaged during the City's use of the facility. Any lost key will be immediately reported to District. Effected door cores will be replaced at the expense of the City. The District will provide to the City a list of after-hours contact information for the City to report time sensitive and/or emergency issues.
- D. The City reserves the right to charge the District, at rates established in the City's adopted Fee Schedule, for Added Alternatives and Restroom Restocking Fees should they reserve City's fields for event purposes. In such event, an hourly rental fee will not be charged.
- E. Posse Grounds Park parking lots may be used as overflow parking (at no charge) for District events with advance approval by City, provided there are no City events/activities scheduled.

Section 5. General Provisions

- A. The party holding title to each facility shall have first priority for its use. Each party shall give priority to the other over private users, provided said use does not interfere with the party's own programs.
- B. While one party is using the facility of the other, unless the owning party elects to provide on-site supervision, the using party shall be solely responsible for supervision of its patrons, security of buildings and equipment, and the maintenance of required records of usage.
- C. Only authorized individuals, as designated under this Intergovernmental Agreement, can enter the premises on the specific dates and times. Any misuse of the facilities may result in the termination of this Intergovernmental Agreement.
- D. Each party shall be responsible for contacting the other party to fill out all the necessary forms for use of the other party's facility.
- E. The source of funds for financing this Intergovernmental Agreement is limited to the annual budget appropriations of each party.

F. All items purchased for the benefit of programs shall remain the property of the purchaser.

G. An agreement to use the swimming pool is outlined in a separate Intergovernmental Agreement.

Section 6. Term of Agreement

This Intergovernmental Agreement shall be for a term of five (5) years, commencing on March 26, 2023, and terminating on March 26, 2028. The parties may, by mutual agreement, agree to extend the Agreement for one (1) additional period of not more than one (1) year.

Section 7. Indemnification

The City shall indemnify and hold the District harmless for any and all claims, expenses, and damages, and all other costs arising out of this Intergovernmental Agreement and the City's use of District facilities. The District shall indemnify and hold the City harmless for any and all claims, expenses, and damages, and all other costs arising out of this Agreement and the District's use of City facilities.

Section 8. Insurance

The City and the District shall provide proof of liability insurance in the amount of One Million Dollars (\$1,000,000.00), each to the other. The other party shall be named as an additional insured on the respective policies of the District and City, and a certificate of insurance shall be provided to the other party. Written notice shall be provided to the District and City, respectively, thirty (30) days prior to cancellation of insurance coverage.

Section 9. Notice

Notice pursuant to this Intergovernmental Agreement shall be provided in writing, by United States, certified, return receipt requested mail, express mail or facsimile transmission, to the following:

City
Karen Osburn
City Manager
City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336

District
Dennis Dearden
Superintendent
Sedona-Oak Creek
Unified School District No. 9
995 Upper Red Rock Loop Rd.
Sedona, AZ 86336

Section 10. Entire Agreement

The Intergovernmental Agreement is the entire agreement between the parties, and all oral representations, prior written agreements, or correspondence are superseded by this Intergovernmental Agreement.

Section 11. Amendments or Modifications

Any amendments to this Intergovernmental Agreement shall be in writing, approved by the District and City, and executed with equal dignity herewith.

Section 12. Severability

In the event any provision of this Intergovernmental Agreement is declared void or unenforceable by a court of competent jurisdiction and said provision does not make it impossible to carry out the mutual intent of the parties, all other provisions shall remain in full force and effect.

Section 13. Applicable Law

This Intergovernmental Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona. This agreement is subject to termination pursuant to the provisions of ARS §38-511.

Section 14. Termination

This Agreement may be terminated by either party with or without cause by providing ninety (90) days written notice.

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

By: _____
Mayor

Dated: _____

ATTEST:

City Clerk

Dated: _____

Pursuant to A.R.S. § 11-952(D), the undersigned City Attorney has determined that this Agreement is in proper form and within the powers and authority granted under the laws of the State of Arizona to the City of Sedona.

City Attorney

Dated: _____

THE SEDONA-OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9, a political subdivision of the State of Arizona

By: _____ Dated: _____

Its: _____

ATTEST:

_____ Dated: _____

Pursuant to A.R.S. § 11-952(D), the undersigned attorney as counsel for the Sedona-Oak Creek Unified School District has determined that this Agreement is in proper form and within the powers and authority granted under the laws of the State of Arizona to the District.

_____ Dated: _____

Counsel for the Sedona-Oak Creek Unified
School District No. 9

RESOLUTION 2023-__

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE SEDONA-OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9 FOR USE OF FACILITIES.

WHEREAS, two or more public agencies may enter into an intergovernmental agreement pursuant to A.R.S. § 11-952.A; and

WHEREAS, the City of Sedona (“Sedona”) and the Sedona-Oak Creek Unified School District No. 9 (“District”) have determined that it would be in their best interests to enter into an intergovernmental agreement regarding joint use of recreational and public facilities; and

WHEREAS, Sedona has reviewed the terms of the proposed agreement for joint use of facilities and determined that it qualifies as an intergovernmental agreement under A.R.S. § 11-952.B.

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

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement between the City and the Sedona-Oak Creek School District No. 9 for the joint use of recreational and public facilities and authorizes the Mayor to execute said agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 28th day of March, 2023.

Scott M. Jablow, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney



**CITY COUNCIL
AGENDA BILL**

**AB 2933
March 28, 2023
Regular Business**

Agenda Item: 8a

Proposed Action & Subject: Presentation/discussion by Executive Director Marjorie Harris of the Sedona Community Center to provide an update to the City Council on the Community Center’s activities, accomplishments, and general service provision to the community.

Department	City Manager
Time to Present	15 minutes
Total Time for Item	15 minutes
Other Council Meetings	NA
Exhibits	None

City Attorney Approval	Reviewed 3/21/23 KWC	Expenditure Required
		\$
City Manager’s Recommendation	For presentation and discussion only.	Amount Budgeted
		\$
		Account No. N/A (Description)
		Finance <input checked="" type="checkbox"/> Approval

SUMMARY STATEMENT

Background: As part of the provider agreements between the City of Sedona and each of the city-funded non-profit community service providers, including the Sedona Community Center, the organizations are asked to present periodic updates to the City Council. It has now been several years since the last presentations were made. Since the provider agreements are being considered for renewal for FY2024, it is a good time to have all the service organizations provide an update to the City Council on the services they are providing for the benefit of the community.

Marjorie Harris, Executive Director of the Sedona Community Center will be the next presenter. The remaining service providers will be scheduled to present at upcoming City Council meetings over the next few months.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s):

MOTION

I move to: For presentation and discussion only.



**CITY COUNCIL
AGENDA BILL**

**AB 2920
March 28, 2023
Regular Business**

Agenda Item: 8b

Proposed Action & Subject: Discussion/possible action regarding approving a Settlement Agreement with Tlaq Partners, LLC to acquire necessary right-of-way and to resolve other claims for the SR179 Pedestrian Crossing at Oak Creek.

Department	City Attorney/Public Works
Time to Present	10 minutes
Total Time for Item	20 minutes
Other Council Meetings	N/A
Exhibits	A. Settlement Agreement B. Map of Proposed R/W & TCE

City Attorney Approval	Reviewed 3/21/23 KWC	Expenditure Required	
		\$ 94,738.00	
City Manager's Recommendation	Approve the Settlement Agreement with Tlaquepaque Partners LLC.	Amount Budgeted	
		\$ 1,678,860 (FY23 budget balance remaining)	
		Account No. 23-5320-89-6881	
		(Description) (SIM-04c Pedestrian Crossing at Oak Creek)	
		Finance Approval <input checked="" type="checkbox"/>	

SUMMARY STATEMENT

Staff is requesting approval of a Settlement Agreement with Tlaq Partners, LLC et al., providing for the acquisition of right-of-way in fee title and temporary construction easements to support the construction of a shared use path associated with the SR 179 Pedestrian Crossing at Oak Creek Project (Project).

The Settlement Agreement provided in the attached Exhibit A, establishes mutual covenants, agreements, obligations, and acknowledgements on the part of the City of Sedona (City) and owners of the Tlaquepaque Arts and Retail Village (Tlaquepaque). These are summarized as follows:

1. Acquisition of all necessary land rights from Tlaquepaque to the City for \$85,000.
2. Common acknowledgement of traffic congestion and the need to conduct additional analysis of the existing SR 179 at-grade crosswalk.
3. Acknowledgment of stipulations and obligations related to issuance of an ADOT permit for the Project including:

- a. The City will perform a warrant analysis for continuance of an at-grade pedestrian crosswalk warrant analysis,
 - b. The City will conduct a study on the feasibility of creating a parkway to separate the roadway curb and adjoining sidewalk in front of Tlaquepaque and coordination of the same with Tlaquepaque,
 - c. The City will perform a study/investigation to determine the best means of ensuring pedestrian safety while maintaining acceptable traffic performance operations at the at-grade crosswalk and coordination of the same with Tlaquepaque,
 - d. The City will develop and define signal operations as part of the at-grade crosswalk study, including studying a z-crossing.
 - e. The City will coordinate at-grade crosswalk improvements with Tlaquepaque as dictated by the results of the pedestrian warrant analysis, and
 - f. The City will provide prompt notice to Tlaquepaque should the warrant analysis as concluded by ADOT find the at-grade crossing is no longer warranted.
4. A valuation of existing trees as may be damaged or taken due to the Project construction, and oversight of the Project construction by a certified arborist to be paid for by the City. The City is agreeing to pay \$9,738 for the purchasing of replacements, planting and care of six small sycamore trees that will be removed as part of the Project. The City is also agreeing to set aside up to \$205,053 in the event the Project significantly damages or kills any of the nine (9) large sycamore trees adjacent to or within the Project path. The City does not expect to significantly damage or kill these nine (9) trees.
 5. Other acknowledgements, obligations related to the existing arched entrance for the east driveway, relocation of an existing water meter, and preservation of parking and drive aisles.

Land rights sought by the City of Sedona are summarized as follows:

- Parcel 401-19-027H (Tlaq Partners, LLC):
 - Special Warranty Deed for right-of-way, containing 2,790 SF +/-; and
 - Temporary Construction Easement, containing 9,927 SF +/-.
- Parcel 401-18-074B (HRT/Sedona LLC):
 - Temporary Construction Easement, containing 1,569 SF +/-.

A map to illustrate the location and area of the above referenced land rights is provide in the attached Exhibit B.

Background:

The SR 179 Pedestrian Crossing at Oak Creek Project raised numerous issues and concerns among adjoining property owners and ADOT including impacts to trees, local retail businesses, parking, oak creek riparian and floodplain areas, treatment of existing at-grade pedestrian crossings, pedestrian crossing safety, aesthetics of the project, and impacts to traffic. Design development of the project scope and schedule resultingly evolved to analyze and resolve the various issues and concerns raised.

Of significance was the disposition of the existing at-grade pedestrian crossing located west of the Oak Creek Bridge serving to connect retail businesses on the north and south sides of State Route 179. There were implications that the existing at-grade crossing was no longer necessary and could be removed upon completion of the new grade separated crossing. Alternatively, it was recognized that the new pathway was a longer circuitous route to cross

State Route 179 and that some pedestrians would alternatively choose to choose to cross unsafely without a crosswalk in place or avoid crossing altogether. Further, there was representation that the existing un-signalized intersection posed a safety concern for pedestrians.

The Public Works Department in conjunction with the City Manager’s and City Attorney’s Office collaborated extensively with representatives of ADOT and Tlaquepaque to examine the existing at-grade crossing. With the involvement of ADOT and Tlaquepaque, Public Works staff examined and developed a signalized pedestrian crossing styled after a HAWK type crossing and worked with consultant Kimley-Horn and Associates to examine impacts on traffic congestion of the at-grade crossing, using the transportation model. The model analyzed impacts based on implementation of the various transportation improvement strategies and found that continuance of an at-grade pedestrian crossing had some benefit on the traffic network and flow in areas of the “Y” and Uptown.

With this information and further joint meeting discussions involving the City, ADOT and Tlaquepaque it was decided that additional analysis would be needed to determine the warrants for continuance of the existing at-grade crossing and development of a newly signalized pedestrian crossing at the current location. Staff will pursue the signalization study, determination of the best signalization option, and permitting and installation of a signal at the at-grade crossing simultaneous to the construction of the underpass. The warrant analysis, however, should take place after construction of the new grade-separated crossing. This would have the additional benefit of assessing the utilization of the new grade-separated crossing.

Schedule:

The Settlement Agreement, if approved, will have no effect on the project schedule. Design of the project is complete and with a second bid solicitation scheduled to close on March 23rd of this year and with the presumption of favorable bid results we anticipate construction could begin the first part of May and be completed by the January/February of 2024.

Budget:

Due to the delays in the start of construction, adequate capacity exists in the SIM-04c Pedestrian Crossing at Oak Creek budget for FY 2023 to cover the \$94,738 requested.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): Council could elect not to approve the Settlement Agreement with Tlaquepaque, which would result in either the SR 179 Pedestrian Crossing at Oak Creek Project not moving forward; or being delayed negotiating a revised agreement acceptable to Council.

MOTION

I move to: approve the Settlement Agreement with Tlaquepaque to acquire necessary right-of- way and to resolve other claims for the Pedestrian Crossing at Oak Creek Project.

SETTLEMENT AGREEMENT

This Agreement ("Agreement") is entered into by and between the City of Sedona, an Arizona municipal corporation (herein "City") and the owners of the Tlaquepaque Arts and Retail Village who own the real property and improvements as tenants in common as identified in Section II, Recitals, Paragraph 2.1 (the tenants in common owners are collectively referred to herein as "Tlaquepaque"). The City and Tlaquepaque are referred to herein collectively as the "Parties."

In consideration of the mutual covenants, agreements, and obligations of the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby represent and agree as follows:

I. EFFECTIVE DATE.

1.1 The effective date of this Agreement is March 28, 2023.

II. RECITALS.

2.1 **Ownership of the Tlaquepaque Property.** The Coconino County Assessor identifies parcel numbers 401-18-009A, 020A, 021A, 074B and 401-19-027H as contiguous to one another. These parcels collectively represent a ±6.595-acre property located at the southeast corner of State Route 179 and Ranger Road (the "Tlaquepaque Property"). Parcels 401-18-074B and 401-19-027H of the Tlaquepaque Property are owned by the following entities:

- a. Ownership of parcel 401-19-027H includes: Tlaq. Partners, LLC, Ragland/Sedona, LLC, CMR/Sedona, LLC, and Horn/Sedona, LLC as tenants in common.
- b. Ownership of Parcel 401-18-074B includes HRT/Sedona, LLC, Tlaq Partners, LLC, Ragland/Sedona, LLC, CMR/Sedona, LLC and Horn/Sedona, LLC as tenants in common.

2.2 **The SR 179 At-Grade Crosswalk.** Around 2009, the Arizona Department of transportation ("ADOT") made improvements to SR 179 adjacent to the Tlaquepaque Arts and Retail Village. ADOT acquired land, including a number of mature Sycamore trees, from the Tlaquepaque Property for the public project. ADOT also mandated the installation of the SR 179 at-grade crosswalk between Schnebly Hill Rd. and Ranger Rd., and allowing pedestrians to cross SR 179 from the west and east sides of the road.

2.3 **Tlaquepaque North Development.** Around 2010, the site for Tlaquepaque North was purchased and a retail center was developed by 2016, with the approval of the City. The development requirements for Tlaquepaque North imposed by the City included, but were not limited to, completing pedestrian and traffic studies, evaluation of the level of service of the existing SR 179 at-grade pedestrian crosswalk, and payment of significant funds toward the enhancement of the crosswalk by owners of Tlaquepaque North.

2.4 **Connectivity.** Tlaquepaque North and the Tlaquepaque Arts and Retail Village are considered to be a single economic unit by Tlaquepaque and the owners of Tlaquepaque North, connected by the SR 179 at-grade crosswalk.

2.5 **The Underpass - SR 179 Pedestrian Crossing at Oak Creek.** The City has planned, designed, and approved a capital improvement project known as SR 179 Pedestrian Crossing at Oak Creek (the “Public Project”) and it is necessary for the City to acquire certain land rights from the Tlaquepaque Property as part of this Public Project. The necessary land rights required include:

- A Shared Use Path of $\pm 2,790.37$ SF in fee title from parcel 401-19-027H;
- A Temporary Construction Easement of $\pm 9,927$ SF.09 over a portion of parcel 401-19-027H; and
- A Temporary Construction Easement of $\pm 1,569.40$ SF over a portion of parcel 401-18-074B.

The locations and area calculations for the property rights to be acquired are depicted in the plans and drawings under **Exhibit A**, attached hereto.

2.6 **Affected Parcels.** The public project, SR 179 Pedestrian Crossing at Oak Creek, will specifically impact Coconino County Assessor parcel numbers 401-18-074B and 401-19-027H of the Tlaquepaque Property.

2.7 **City Approval of Acquisitions from the Tlaquepaque Property.** On February 14, 2023, the City Council approved acquisition of the necessary land rights from the Tlaquepaque Property for the Public Project.

2.8 **Traffic Congestion.** The Parties acknowledge that traffic congestion in Sedona is a public concern. Tlaquepaque has, and continues to support, viable public projects by the City that will provide meaningful and measurable relief to traffic congestion. Tlaquepaque questioned the public necessity of the proposed underpass (the Public Project). It also opposed removal of the existing SR 179 at-grade crosswalk for various reasons, including the studies and modeling completed by the City and its consultants did not support a conclusion that the crossing was as a significant cause to traffic congestion and removal of the crossing would not meaningfully reduce traffic travel times until further geometric improvements are made.

2.9 **ADOT Encroachment Permit Application.** As part of the SR 179 Pedestrian Crossing at Oak Creek project, the City submitted an application with the Arizona Department of Transportation (“ADOT”) for an encroachment permit (the “ADOT Encroachment Permit Application”) to construct improvements related to the planned underpass – a grade separated crossing - within ADOT’s right-of-way for SR 179. The ADOT Encroachment Permit Application is attached hereto as Exhibit B and incorporated herein.

2.10 **Proposed Permit Language.** The ADOT Encroachment Permit Application includes certain language which the City and Tlaquepaque reviewed, negotiated, and approved. The approved language concerns the existing, at-grade crosswalk connecting the Tlaquepaque Arts and Retail Village with Tlaquepaque North and conditions for the crosswalk to remain.

2.11 **The SR 179 At-Grade Crosswalk.** Preserving the use, availability, functionality, and safety of the existing at-grade crosswalk is significantly important to Tlaquepaque, but Tlaquepaque recognizes ADOT owns and controls the existence of the at-grade crosswalk.

2.12 **Litigation.** The Parties desire to avoid the cost, expense, and time of litigation associated with eminent domain and a condemnation lawsuit to acquire the necessary property rights for the Public Project. To that end, the Parties have engaged in meaningful discussions regarding the Public Project, its impacts on the Tlaquepaque Property, and traffic congestion over the past two years and enter into this Agreement according to the terms, conditions, and provisions hereof. The parties are entering into this Agreement in order to buy such party's peace and avoid litigation with each other and the costs and expenses associated therewith, and in so doing, each party agrees to bear that party's own attorney's fees and costs.

III. WARRANTIES AND REPRESENTATIONS.

3.1 Each of the Parties expressly represents and warrants that the Recitals set forth above are fair and accurate.

3.2 The Parties each expressly represent and warrant that the Parties' undersigned individuals and or entities are authorized to execute this Agreement on its behalf.

3.3 The Parties each represent and warrant that they have been represented by legal counsel with respect to the negotiation, terms, and execution of this Agreement, that they have read the Agreement, and that they are freely and voluntarily entering into this Agreement.

IV. TERMS OF AGREEMENT.

4.1 The foregoing "Recitals" and Representations" are incorporated by reference into the "Terms of Agreement" section of this Agreement as though fully set forth herein.

4.2 ADOT Encroachment Permit and Obligations.

4.2.1 The Parties acknowledge and expressly agree that the approval by ADOT for an encroachment permit that includes the language approved by the City and Tlaquepaque, as set forth in **Exhibit B**, is a condition subsequent of this Agreement. In the event ADOT denies issuance of an Encroachment Permit to the City for the SR 179 Pedestrian Crossing at Oak Creek project or issues an Encroachment Permit that does not include the language substantially in the form as approved by the Parties in the ADOT Encroachment Permit Application, then this Agreement is void.

4.2.2. Upon ADOT approving and issuing an encroachment permit as contemplated by Paragraph 4.2.1, the Parties expressly agree to the following obligations relating to the ADOT Encroachment Permit and its requirements:

- a. Permit Requirement: As required by the ADOT Encroachment Permit, the City will perform a Pedestrian Crosswalk warrant analysis in accordance with ADOT TGP 91.

City's Obligation to Tlaquepaque: City shall notify Tlaquepaque at least 30 days in advance of the planned warrant analysis and allow Tlaquepaque to observe, receive, and discuss the results of the warrant analysis prior to submitting the information to ADOT.

- b. Permit Requirement: As required by the ADOT Encroachment Permit, the City will perform the following actions in relation to the existing at-grade crosswalk:
- The City shall study the feasibility of creating a parkway that would provide physical separation between the sidewalk and the back of the curb in front of Tlaquepaque and present the results of the study to ADOT. If it is determined this action is feasible, the City shall develop and construct said parkway.

City's Obligation to Tlaquepaque: City shall advise Tlaquepaque 60 days in advance of beginning the feasibility study of creating a parkway that would provide physical separation between the sidewalk and the back of the curb in front of Tlaquepaque, provide Tlaquepaque with the results of the feasibility study, and discuss the results of the study prior to submitting the information to ADOT.

- c. Permit Requirement: As required by the ADOT Encroachment Permit, the City will perform a study and investigation (including analysis of MUTCD traffic signal Warrant 4, Pedestrian Volume) to determine how best to ensure pedestrian safety while maintaining acceptable traffic operational performance at the at-grade crosswalk.

City's Obligation to Tlaquepaque: Advise Tlaquepaque 60 days in advance of the study and investigation, provide the results to Tlaquepaque, and discuss the information and results with Tlaquepaque.

- d. Permit Requirement: As required by the ADOT Encroachment Permit, the City shall develop signal operational characteristics, including cycle length and coordination as part of the study for all studied at-grade crosswalk enhancements.

City's Obligation to Tlaquepaque: Advise and discuss with Tlaquepaque signal operational characteristics, including cycle length and coordination as part of the study for all studied at-grade crosswalk enhancements.

- e. Permit Requirement: If the MUTCD traffic signal Warrant 4 Pedestrian Volume is met as required by the ADOT Encroachment Permit, City shall advise Tlaquepaque of the results and discuss the alternatives for enhancements to the at-grade crosswalk.
- f. Permit Requirement: As required by the ADOT Encroachment Permit, within 60 days of receiving notice from ADOT that the at-grade crosswalk is no longer warranted, the City must submit a permit application with ADOT to remove the crosswalk.

City's Obligation to Tlaquepaque: Promptly advise Tlaquepaque if ADOT gives the City notice that the crosswalk is no longer warranted.

- g. Notwithstanding that the City removed the Z-Crossing as part of the scope of work covered by its request for construction bids relating to the Underpass, the Z-Crossing shall be considered as a possible viable enhancement to the at-grade crossing when the studies and recommendations outlined in 4.2.2 a, b, c, d, e, and f, above, are undertaken by the City.

4.3 **Acquisition of Land Rights.** The City does hereby acquire from Tlaquepaque and Tlaquepaque does hereby agree to sell to the City the following land rights for the Public Project in lieu of exercising its power of eminent domain for this Public Project:

- a. The Shared Use Path of +2,790.37 SF in fee title from parcel 401-19-027H in the location described and in the form of **Exhibit C** attached hereto and to be recorded at City's expense upon execution of this Agreement;
- b. A Temporary Construction Easement of +9,927.09 SF from parcel 401-19-027H for a period of 12 months beginning on the date the City starts construction of the Public Project, in the location described and in the form attached hereto as **Exhibit D**;
- c. A Temporary Construction Easement of +1,569.40 SF from parcel 401-18-074B for a period of 12 months beginning on the date the City starts construction of the Public Project, in location described and the form attached hereto as **Exhibit E**.

4.4 As compensation for the land rights acquired by the City as set forth in Paragraph 4.3, the City shall pay Tlaquepaque the sum of \$85,000 upon execution of this Agreement.

4.5 In the event either or both of the temporary construction easements being acquired by the City continues for more than 12 months from the date the City starts construction of the Public Project, the City shall pay a per diem to Tlaquepaque, as follows:

- a. \$276.25 per day for the Temporary Construction Easement over the defined area of parcel 401-18-074B until the easement is terminated by the City.
- b. \$710.00 per day for the Temporary Construction Easement over the defined area of parcel 401-19-027H until the easement is terminated by the City.

4.6 **Taking and Damaging of Sycamore Trees.** Compensation for Sycamore trees that are to be removed, or that are damaged or that die as a result of the Public Project if the damage or death occurs within 36 months of the completion of the Public Project, shall be paid by the City to Tlaquepaque, as follows:

- a. Non-Replaceable Sycamore Trees (greater than 12" diameter). Four (4) trees identified on Plan Sheet D13 are located within the project excavation area of the creek bed and may be removed, damaged or die as a result of the Public Project.

Tlaquepaque shall be compensated by the City, as follows if the trees are removed, damaged or die as a result of the Public Project:

4 trees: 16.75 in. diameter/average
 8.375 in. radius
 220.241563 sq. in.
 @ \$41/sq. in.
 \$9,030 per tree
 Not to exceed \$36,120 Total

The funds shall be paid to Tlaquepaque within 30 days upon presenting notice to the City that a non-replaceable tree has been: 1) removed as part of the Public Project, or 2) was damaged or died within 36 months of the date the City completes construction of the Public Project if the damage or death is result of the Public Project as determined by a certified arborist approved by both Parties.

- b. Replaceable Sycamore Trees (less than 12" diameter). Six (6) Sycamore trees that vary in diameter from 5" to 7" and saplings between 1" and 2" caliper, are located within the project excavation area of the creek bed and will likely be removed. Tlaquepaque shall be compensated by the City, as follows:

6 trees: \$799 per tree (36" box tree)
 \$80 sales tax (estimated)
 \$744/tree planting cost
 \$1,623 per tree
 Not to exceed \$9,738 Total

Payment of \$9,738 shall be made to Tlaquepaque shall be made within 30 days of the date the City starts construction of the Public Project.

- c. At-Risk Trees to Be Protected. Five (5) mature Sycamore trees located at the top of the embankment adjacent to the proposed Underpass. These trees are at future risk if the construction protections implemented ultimately fail. Three (3) of the five (5) at-risk trees are shown of Plan Sheet 23-24. Tlaquepaque to be compensated, as follows:

5 trees: 32.4" average diameter
 16.2" average radius
 824.0616 sq. in.
 @ \$41/sq. in.
 \$33,787 per tree
 Not to exceed \$168,933 Total Potential Damage/Loss

The funds shall be paid to Tlaquepaque within 30 days upon it presenting notice to the City that an at-risk tree has been: 1) removed as part of the Public Project, or 2) was damaged or died within 36 months of the date the City completes construction of the Public Project if the damage or death is a result of the Public Project as determined by a certified arborist approved by both Parties.

- d. For the purposes of this Section 4.6, the following definition applies:

“Damage, damaged, damaging” means a significantly reduced lifespan of the tree or significant health decline of the tree such as major: branch damage, structural damage to stem, or root system destruction, as determined by a certified arborist approved by both Parties. Some minor root system destruction is anticipated by the parties as part of the construction of Public Project.

- e. Notwithstanding the foregoing, Tlaquepaque is now and will remain responsible for the good care and upkeep of all trees on its property including the replacement trees discussed in this Section 4.6. The City will not be responsible for any replacement costs for trees that are damaged or die more than 36 months after the completion of the Public Project or for tree damage or death that is not the result of the Public Project.
- f. Certified Arborist. Tlaquepaque and City agree to work in good faith to identify one or more certified arborist(s) not previously used by either party. Approval of the certified arborist may not be unreasonably withheld by either party. The Certified Arborist will provide an initial tree assessment no earlier than 30 days prior to the commencement of construction of the Public Project at City’s expense. The certified arborist will also assess the trees every two months during underground construction of the Public Project and every six months for the 36-month period after completion of the Public Project.

4.7 **Arched Entrance.** The existing arched entrance over the east driveway to the Tlaquepaque Arts and Retail Village is not planned to be removed, or to have its existing footings modified, as disclosed by the City’s 100% project plan sheets. If, for any reason, the footings to the archway, the arch itself, or the east driveway will be modified, the City agrees that in advance and prior to any such work, the City will:

- a. Notify Tlaquepaque in writing of the need to modify the arch, the footings, and/or driveway;
- b. Consult with and obtain Tlaquepaque’s consent to any proposed modifications and revised plans;
- c. Obtain the approval of Tlaquepaque in advance for any modifications to the arched entrance, the footings, and/or the driveway; and
- d. Resolve to the reasonable satisfaction of Tlaquepaque all impacts caused by changes to the arch, the footing for the arch, and/or the driveway, whether through compensation or other consideration.

4.8 **Vault and Meter Relocation.** The Tlaquepaque Property is benefitted by an existing, large water meter vault between the existing parking and the east driveway on parcel 401-19-027H. The 100% project plans for the Public Project require the vault and meter to be relocated. The City agrees to perform all necessary work for removing the existing water meter vault, relocating the vault and water meter, and re-establishing connections with the property’s line(s)

and components, to an area selected by and approved by Tlaquepaque, and to pay for all costs associated.

4.9 **Parking and Drive Aisles.** The City's 100% project plans for the Pedestrian Underpass at Oak Creek do not contemplate the permanent loss of any existing parking stalls, permanent impairment to existing parking stalls, permanent changes to maneuvering room for parking, or permanent modifications to drive aisles on the property. Some temporary impairment will occur within the Temporary Construction Easements contemplated in Sections 4.3 and 4.5 of this Agreement. In the event any parking stalls, maneuvering room for parking, or drive aisles are lost or permanently impaired as a result of the Public Projector completion of project improvements, the City agrees to:

- a. Pay Tlaquepaque for all costs associated with any work that may be reasonably required to design, review with the City, obtain approval from the City, to obtain permits, and to modify the property in order to cure the lost parking stall(s), the maneuvering room, and/or the drive aisles. If any parking stalls are lost as a result of the Public Project or completion of project improvements, then (i) the City shall pay Tlaquepaque \$35,000 per stall and (ii) in determining any parking requirements for the Tlaquepaque Arts and Retail Village, Tlaquepaque shall be given credit for the lost parking stalls as if they still existed.

4.10 **Notice.** All notices to be made or required under this Agreement shall be sent to:

If to City:

Kurt Christianson
City Attorney
102 Roadrunner Drive
Sedona, AZ 86336
KChristianson@sedonaaz.gov

with a copy to:

Andy Dickey
Assistant City Manager
102 Roadrunner Drive
Sedona, AZ 86336

If to Tlaquepaque:

Wendy Lippman, General Manager
Tlaquepaque
P.O. Box 1868
Sedona, AZ 86339
wendy@tlaq.com

with a copy to:

Anthony Misseldine, Esq.
Jackson White, P.C.
40 N. Center Street, Suite 200
Mesa, AZ 85201
amisseldine@jacksonwhitelaw.com

4.11 **Further Cooperation.** The Parties agree that each of them shall take such further action and execute such further documents, if any, which may be necessary or appropriate to implement this Agreement according to its terms.

4.12 **Severability.** If, after the date of this Agreement, any provision hereof is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and the remainder of the Agreement shall remain enforceable and not affected thereby.

4.13 **Modifications.** This Agreement shall not be altered, modified, or amended except by written agreement signed by the Parties.

4.14 **Interpretation.** This Agreement has been reached through negotiations between, and has been jointly drafted by, the Parties. The Parties have used their own judgment in entering into this Agreement. Therefore, this Agreement shall not be construed against the “drafter” of the same.

4.15 **Integration.** With respect to its subject matter, including without limitation all matters incorporated herein by reference, this Agreement is a complete integration and final expression of the Parties' rights and duties, and there are no other agreements or understandings between the Parties, oral or otherwise, to the contrary.

4.16 **Attorney's Fees.** In the event of any conflict, claim or dispute between the Parties affecting or relating to the subject matter of this Agreement, the prevailing Party shall be entitled to receive from the non-prevailing Party its reasonable expenses, including but not limited to, attorneys' fees and costs. Costs and attorneys' fees shall be assessed by the court and not by a jury and shall be included in any judgment obtained by the prevailing Party.

4.17 **Time of the Essence.** Time is of the essence for the obligations under this Agreement.

4.18 **Counterparts.** This Agreement may be executed in any number of counterparts. All counterparts are deemed to constitute one and the same instrument, and each counterpart is deemed to be an original of that instrument.

4.19 **Applicable Law.** This Agreement is made in Arizona and is governed by and construed in accordance with Arizona law. The sole and exclusive jurisdiction for any dispute arising under this Agreement shall be the state or federal courts in Arizona, and all Parties consent to the jurisdiction of those courts.

4.20 **Delivery of Copies.** The Parties agree that signatures and executed copies of this Agreement may be delivered by facsimile or e-mail, and upon receipt, shall be deemed originals and binding upon the Parties.

4.21 **Reasonable Efforts.** The City acknowledges that Tlaquepaque believes the at-grade crosswalk is essential to the continued economic viability and success of Tlaquepaque North and the Tlaquepaque Arts and Retail Village. Consequently, in the future the City agrees to use all reasonable efforts to assist Tlaquepaque in preserving the continued existence of the at-grade crosswalk.

4.22 **Full and Final Settlement.** Each party declares that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making, respectively as the context may be, a full and final compromise, adjustment and settlement and release for all claims released herein, disputed or otherwise, between and among the parties hereto. This Agreement constitutes the full, complete, final, and exclusive expression of all of the representations, warranties, covenants, promises, and agreements of the parties hereto relative to the subject matter hereof. In consideration of the terms, conditions and releases in this Agreement, the parties agree that each party hereby fully, completely, and finally releases and forever discharges the other party from any and all claims, demands, actions, or causes of action of any nature whatsoever relating to, accruing or arising at any time through the date of the execution and delivery hereof, whether known or unknown, whether contingent or not contingent, relating to this Public Project as defined in this Agreement.

4.23 **SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL.** THE PARTIES TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, DO THE FOLLOWING: (1) SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF ARIZONA WITH RESPECT TO ANY ACTION ARISING FROM OR RELATING TO THIS AGREEMENT; (2) AGREE THAT THE SUPERIOR COURT OF ARIZONA, COCONINO COUNTY (SITTING IN FLAGSTAFF, ARIZONA) SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT; (3) WAIVE ANY CLAIM THAT THE COURT IN SUBPART (2) IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE; (4) AGREE THAT THE EXCLUSIVE CHOICE OF FORUM SET FORTH IN THIS PARAGRAPH SHALL NOT PRECLUDE ANY PARTY FROM ENFORCING OR SEEKING TO ENFORCE ANY JUDGMENT IN ANY OTHER APPROPRIATE JURISDICTION; AND (5) ACKNOWLEDGE AND AGREE THAT (i) ANY CONTROVERSY WHICH MAY ARISE UNDER, AS A RESULT OF, OR IN CONNECTION WITH THIS AGREEMENT WOULD BE BASED UPON DIFFICULT OR COMPLEX ISSUES; AND (ii) AS A RESULT, ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF SEDONA

TLAQUEPAQUE (As to parcel 401-19-027H)

Tlaq. Partners, LLC

By: Scott M. Jablow
Its: Mayor

By:
Its: Authorized Agent

ATTEST:

Ragland/Sedona, LLC

JoAnne Cook, City Clerk

By:
Its: Authorized Representative

APPROVED AS TO FORM

Kurt W. Christianson, City Attorney

CMR/Sedona, LLC

By:
Its: Authorized Representative

Horn/Sedona, LLC

By:
Its: Authorized Representative

TLAQUEPAQUE (as to parcel 401-18-074B)

Tlaq Partners, LLC

By:
Its: Authorized Representative

Signatures continued on page 12

Ragland/Sedona, LLC

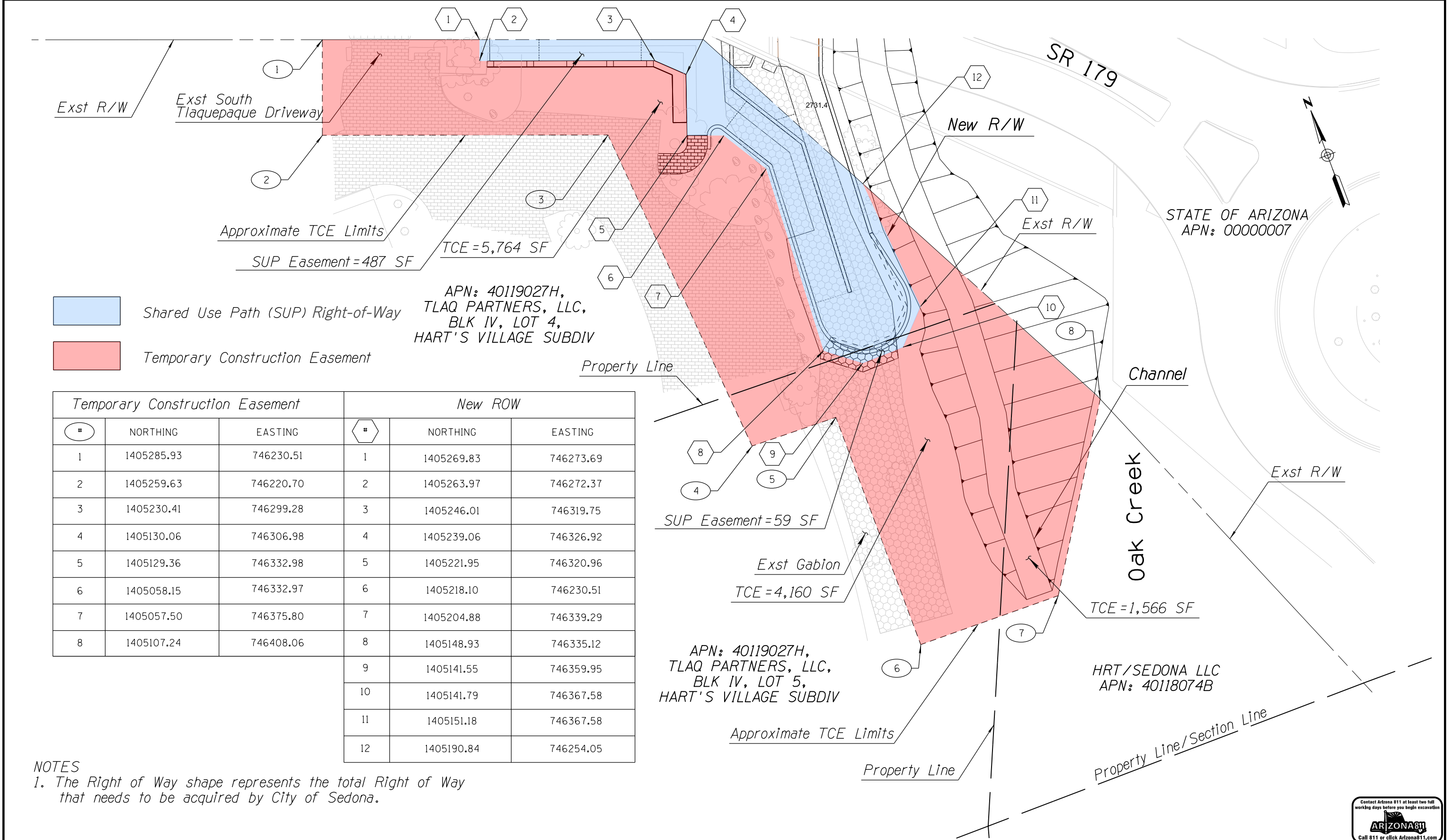
By:
Its: Authorized Representative

CMR/Sedona, LLC

By:
Its: Authorized Representative

Horn/Sedona, LLC

By:
Its: Authorized Representative



APN: 40119027H,
TLAQ PARTNERS, LLC,
BLK IV, LOT 4,
HART'S VILLAGE SUBDIV

APN: 40119027H,
TLAQ PARTNERS, LLC,
BLK IV, LOT 5,
HART'S VILLAGE SUBDIV

HRT/SEDONA LLC
APN: 40118074B

STATE OF ARIZONA
APN: 00000007

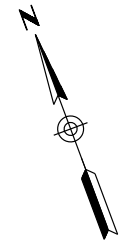
Temporary Construction Easement			New ROW		
#	NORTHING	EASTING	#	NORTHING	EASTING
1	1405285.93	746230.51	1	1405269.83	746273.69
2	1405259.63	746220.70	2	1405263.97	746272.37
3	1405230.41	746299.28	3	1405246.01	746319.75
4	1405130.06	746306.98	4	1405239.06	746326.92
5	1405129.36	746332.98	5	1405221.95	746320.96
6	1405058.15	746332.97	6	1405218.10	746230.51
7	1405057.50	746375.80	7	1405204.88	746339.29
8	1405107.24	746408.06	8	1405148.93	746335.12
			9	1405141.55	746359.95
			10	1405141.79	746367.58
			11	1405151.18	746367.58
			12	1405190.84	746254.05

NOTES
1. The Right of Way shape represents the total Right of Way that needs to be acquired by City of Sedona.

Symbol	Revisions	Date	Appr.	Designed by: J. Ilijevski	Date: 02/2022	PRELIMINARY EXHIBIT NOT FOR CONSTRUCTION OR RECORDING			CITY OF SEDONA PUBLIC WORKS DEPARTMENT 102 ROADRUNNER DRIVE SEDONA, ARIZONA 86336 928-204-7111	SEDONA SR 179 Proposed R/W & TCE	SHEET ID 1
				Drawn by: J. Ilijevski	Scale: 1:20						SHEET NO. 1 of 2
				Checked by: A. Galletti	Project Code:						



Temporary Construction Easement		
#	NORTHING	EASTING
1	1405422.70	746181.41
2	1405445.01	746189.73
3	1405415.22	746269.62
4	1405402.24	746264.78
5	1405345.22	746417.70
6	1405335.90	746414.23



Property Line

Property Line

ENG DECENDENTS FAMILY TRUST
APN: 40118072B

ENG ENTERPRISES LTD
APN: 40118030K

NORTH TLAQ PARTNERS LLC
APN: 40118030P

Center for New Age

N. Tlaquepaque

Exst Gabion

Approximate TCE Limits

TCE = 829 SF

Exst Center for New Age Driveway

TCE

Oak Creek

Proposed ADA Path

Property Line

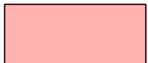
Exst R/W

Exst S/W

Exst R/W

TCE = 2,825 SF



SR 179



Temporary Construction Easement

NOTES
1. The Right of Way shape represents the total Right of Way that needs to be acquired by City of Sedona.



Symbol	Revisions	Date	Appr.	Designed by: J. Ilijevski	Date: 02/2022	PRELIMINARY EXHIBIT NOT FOR CONSTRUCTION OR RECORDING	wsp	 WSP USA Inc. 1230 W. Washington St. Suite 405 Tempe, AZ 85281	 CITY OF SEDONA PUBLIC WORKS DEPARTMENT 102 ROADRUNNER DRIVE SEDONA, ARIZONA 86336 928-204-7111	SEDONA SR 179 <i>Proposed ROW & TCE</i>	SHEET ID 2
				Drawn by: J. Ilijevski	Scale: 1:20						SHEET NO. 2 of 2
				Checked by: A. Galietti	Project Code:						

ccccSYTIMEcccc

ccccDGNcSPECIFICATIONcccc



**CITY COUNCIL
AGENDA BILL**

**AB 2934
March 28, 2023
Regular Business**

Agenda Item: 8c

Proposed Action & Subject: Discussion/possible action regarding the approval of a Resolution approving a Land Lease Option Agreement and a \$300,000 financial contribution in the form of a loan to The Villas on Shelby, LLC, for a Low-Income Housing Tax Credit (LIHTC) application at 2250 Shelby Drive.

Department	CM - Housing
Time to Present	20 minutes
Total Time for Item	60 minutes
Other Council Meetings	N/A
Exhibits	A. Resolution B. Lease Option C. Draft Lease

City Attorney Approval	Reviewed 3/21/23 KWC	Expenditure Required	\$ 300,000 (balance sheet loan)
City Manager's Recommendation	Approve a Resolution related to the application by Villas on Shelby LLC for competitive 9% tax credits and approve the associated land lease Option Agreement and \$300,000 financial contribution in the form of a loan to the project.	Amount Budgeted	\$ 300,000 (to be included in the FY24 budget)
		Account No. (Description)	12-0000-00-1500 (Long-term loans receivable)
		Finance Approval	<input checked="" type="checkbox"/>

SUMMARY STATEMENT

Background:

The Sedona Housing Needs Assessment and Action plan of 2020 and the Verde Valley Housing Needs Assessment of 2021 both identified a shortage of traditional apartments as a major contributor to the lack of affordable housing for low- and moderate-income households.

“The inventory of traditional apartment units in the Verde Valley is very low. Across Arizona, these units account for nearly 16% of all housing units. In the Verde Valley, they only total 6.2% of total units. In most communities the percentage is even lower... 4.7% in Sedona.”

Overall, the studies found a shortage of affordable housing units of any type to be at least 1300 units in Sedona and nearly 3700 units across the Verde Valley by 2026.

The Assessments also found that at least 43% of Sedona households were housing cost burdened, defined as paying more than 30% of their household income towards housing.

The Project:

In December of 2022, the City acquired the property at 2250 Shelby Drive for the purpose of developing affordable/workforce housing. The parcel was identified for affordable housing development due to the walkability and proximity to Sunset Park, recreational trails, and other amenities. At that time an analysis indicated the site could support up to a 30-unit apartment building with three stories.

The property is located in the Sunset Community Focus Area (CFA) which allows for buildings up to four stories high and addresses the Community Plan goal of diverse and affordable housing options by supporting and encouraging the development of multi-family housing in the CFA. The property is also located within the City's designated Housing Development Area.

Just prior to closing on the land at 2250 Shelby Drive, the Housing Manager was contacted by an experienced affordable housing developer, HS Development Partners, LLC, currently working in Flagstaff, seeking to identify a site in Sedona for a potential project eligible for Low-Income Housing Tax Credits (LIHTC). Knowing the proximity to amenities would score highly in the competitive LIHTC application/selection process, HS Development was asked to consider whether a 30-unit project would be competitive (many LIHTC developers won't consider a project under 50 units) and whether they had the capacity to prepare and submit a complete application in the upcoming LIHTC cycle. HS Development was able to make that commitment, but stated they'd need to get started right away. Staff determined that an RFP process at the time would preclude any developer from applying in the upcoming cycle and would either delay the project by a year or prevent the deep affordability tax credits can provide a project.

The proposed project with The Villas on Shelby, LLC (a subsidiary of HS Development Partners) will be a three-story apartment building with 30 units (the "Improvements"), all affordable to households at or below 60% of area median income. At this time, the requested City contributions would include an up to 75-year ground lease and a \$300,000 loan to the development. In exchange, The Villas on Shelby, LLC agrees to pay \$50,000 up front for the right to lease the vacant land and construct the Improvements and \$1,200 annually thereafter. If the tax credits are awarded, other DIGAH incentives such as reduced setbacks, density, and permitting fee waivers, may be provided as the design is finalized. The finalized Land Lease Agreement will be brought back to Council at a later date for Council approval. The Land Lease Agreement includes the City's option to purchase the Improvements for \$1 after year 30 of the Lease. The residual value of the Improvements in 30 years will far exceed the value of leasing the vacant land to The Villas on Shelby, LLC and the City's loan to the project.

LIHTC is a highly competitive funding source administered by the Arizona Department of Housing (ADOH). Applications are due April 3rd. In the 2023 cycle ADOH expects to award one project in each county before any county is awarded a second project. Projects are scored on a 200-point rubric and the limited allocation of tax credits are only awarded to the highest scoring

projects. Last year, both projects awarded in Yavapai County scored 185 points. Up to 15 points are awarded for local support. The requested \$300,000 loan to the project and the 75-year ground lease will achieve the full 15 points. Other scoring criteria takes into account the developer experience, affordability commitments, population served, energy-efficiency and proximity to amenities.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): None

MOTION

I move to: Approve Resolution 2023-__ related to the application by Villas on Shelby LLC for competitive 9% tax credits and approve the associated land lease Option Agreement and \$300,000 financial contribution in the form of a loan to the project.

RESOLUTION NO. 2023-__

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN OPTION AGREEMENT WITH THE VILLAS ON SHELBY, LLC FOR THE OPTION TO LEASE 2250 SHELBY ROAD TO CONSTRUCT AFFORDABLE APARTMENTS AND APPROVING A \$300,000 LOAN TO THE PROJECT.

WHEREAS, the City of Sedona wishes to encourage development and maintenance of affordable housing in the City; and

WHEREAS, Section 42 of the Internal Revenue Code provides the private market with an incentive to invest in affordable rental housing called the LIHTC Program; and

WHEREAS, the Sedona City Council by Resolution No. 2012-21 dated October 23, 2012, designated a Housing Development Area that includes the 2250 Shelby Road; and

WHEREAS, The Villas on Shelby, LLC, intends to apply for the 2023 LIHTC allocation to construct affordable apartments on 2250 Shelby Road; and

WHEREAS, the City of Sedona desires to lease 2250 Shelby Road to The Villas on Shelby, LLC for the construction of affordable apartments.

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

Section 1. That it is deemed in the best interest of the City of Sedona and its citizens that the City enter into the Option Agreement with The Villas on Shelby, LLC and approve a \$300,000 loan to the Project contingent upon The Villas on Shelby, LLC being awarded the LIHTC allocation and the execution of a mutually acceptable land lease agreement for the Property by December 1, 2023.

Section 2. That the Mayor is authorized and directed to execute and deliver said agreement on behalf of the City of Sedona.

ADOPTED AND APPROVED by the Mayor and Council of the City of Sedona, Arizona, this 28th day of March, 2023.

Scott M. Jablow, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney

OPTION AGREEMENT

This option agreement (the "Agreement") is entered into this ____ day of _____, 2023, by and between City of Sedona, an Arizona municipal corporation ("Optionor") and The Villas on Shelby, LLC, an Ohio limited liability company ("Optionee").

RECITALS:

- A. Optionor is the owner certain real property located in Sedona, Yavapai County, Arizona, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (such parcel hereinafter referred to as the "Option Property").
- B. Optionor desires to lease to Optionee and Optionee desires to lease from Optionee the Option Property for the purpose of developing and operating an affordable housing apartment project on the Option Property.
- C. Optionor has agreed to grant Optionee the option to lease the Option Property on the terms and conditions hereinafter set forth.

Now, therefore, in consideration of the foregoing and the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

AGREEMENTS:

1. Grant of Option. In consideration of the payment of One Hundred Dollars (\$100), Optionor hereby grants Optionee the exclusive option to lease the Option Property on the terms and conditions hereinafter described and upon execution of a mutually acceptable lease agreement. If Optionor satisfies the conditions imposed upon Optionor by this Option Agreement and Optionee does not exercise this option, the payment made pursuant to this paragraph shall be retained by Optionor, free and clear of all claims by Optionee.
2. Method of Exercise of Option. Optionee may exercise its option to lease the Option Property, at any time after the date hereof and prior to the expiration of the Term (as hereinafter defined), by written notice to Optionor. The date that notice is given shall be referred to in the Agreement as the "Option Exercise Date."
3. Rent and Terms of Lease. The rent and terms of the lease shall be substantially as set forth in Exhibit "B" attached hereto and incorporated herein by this reference. If Optionee exercises its option to lease the Option Property, the lease provides that Optionee will pay Optionor the amount of \$50,000 at the

effective date of the lease and will pay annual base rent for the Option Property of \$1,200 for the term of the lease.

4. Term of Option. Except to the extent previously exercised or unless extended in writing by mutual agreement of the parties, the option granted hereunder shall expire upon the earlier of the execution of a mutually acceptable lease agreement for the Option Property or December 1, 2023.

5. Notices. All notices required or permitted to be given hereunder shall be in writing and shall become effective upon personal service or seventy-two (72) hours after being deposited in the United States mail, certified or registered mail, postage prepaid and addressed as shown below or to such other address as the parties may, from time to time, designate in writing.

Optionor: City of Sedona
City Manager
102 Roadrunner Drive
Sedona, AZ 86336

Optionee: The Villas on Shelby, LLC
30 S. Oak Street
London, OH 43140

6. Time. Time is of the essence for all periods specified in this Agreement.

7. Attorneys' Fees. In the event of any litigation or other proceeding concerning the Option Agreement, the prevailing party shall be entitled to recover its costs, reasonable attorneys' fees, and other reasonable expenses.

8. Successors. This Agreement will run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No assignment hereunder will be valid without the prior written consent of the other party hereto, which consent will not be unreasonably withheld or delayed, provided, however, that Optionor consents to the assignment of this Option to The Villas on Shelby, LLC without its prior written consent.

9. Additional Documents. Optionor and Optionee shall each execute and deliver any and all additional documents that may be reasonably requested by the other party in order to document and perform properly under this Agreement.

10. Interpretation. This Agreement and the rights, duties and obligations of the parties hereto will be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been reached by negotiation between the parties and will therefore not be construed against the drafter of this Agreement.

11. Brokers. The parties each warrant and represent that they have not taken and will not take any action which would cause a broker's or finder's fee to be payable on any of the transactions described herein. Each party shall indemnify and hold the other harmless for, from and against any breach of this paragraph.

12. Property Ownership. Optionor represents that it did not acquire ownership of the Option Property from Optionee or any affiliate of Optionee.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which will constitute an original and all of which will constitute one and the same instrument.

14. Memorandum of Option. Simultaneously with the execution of this Agreement, the parties will execute a Memorandum of Option in the form attached hereto as Exhibit C. Neither party shall record this Agreement, and any recordation will be limited to the memorandum described above.

In witness whereof, the parties have executed this Agreement as of the date first above written.

OPTIONOR:

City of Sedona

By: Scott M. Jablow
Its: Mayor

OPTIONEE:

The Villas on Shelby, LLC

By: _____
Its: _____

Exhibit A
Legal Description of Option Property

Exhibit B

Form of Lease Agreement

Exhibit C

Memorandum of Option

This Memorandum is entered into this ___ day of _____, 2023, between City of Sedona, an Arizona municipal corporation ("Optionor") and The Villas on Shelby, LLC, an Ohio limited liability company ("Optionee").

Optionor and Optionee have entered into that certain Option Agreement, dated as of _____, 2023 (the "Option Agreement"), whereby Optionee was granted an exclusive option (the "Option") to lease from Optionor that certain real property described on Exhibit A attached hereto and incorporated herein by this reference (the "Property") pursuant to the provisions of the Option Agreement.

Optionor and Optionee desire to give actual and constructive notice to all persons dealing with the Property that Optionee has a vested and binding Option to lease the Property pursuant to the terms of the Option Agreement.

The Option will continue in full force and effect until the earlier of (i) the final exercise date determined in accordance with the terms and conditions of the Option Agreement (as such date may be specified in an instrument executed by Optionor and Optionee and recorded after the date hereof), or (ii) the date that the Option is terminated in accordance with the terms and conditions of the Option Agreement.

A copy of the Option Agreement is in the possession of both Optionor and Optionee. In the event of any conflict between this Memorandum of Option Agreement and the Option Agreement, the Option Agreement will control.

In witness whereof, the parties have executed this Memorandum of Option Agreement as of the date first set forth above.

[signatures and notarial acknowledgements appear on following pages]

Signatures for Memorandum of Option Agreement:

OPTIONOR: City of Sedona

By: _____
Its: _____

STATE OF ARIZONA)
)ss.
County of Yavapai)

The foregoing Memorandum of Option Agreement was acknowledged before me this ____ day of _____, 2023 by _____ as _____ on behalf of City of Sedona.

My commission expires: _____
Notary Public

OPTIONEE: The Villas on Shelby, LLC

By: _____
Its: _____

STATE OF OHIO)
)ss.
County of)

The foregoing Memorandum of Option Agreement was acknowledged before me this ____ day of _____, 2023 by _____, _____, Manager of The Villas on Shelby, LLC.

My commission expires: _____
Notary Public

CITY OF SEDONA, ARIZONA

LAND LEASE AGREEMENT -
2250 SHELBY ROAD FOR THE CONSTRUCTION OF AFFORDABLE APARTMENTS
(THE VILLAS ON SHELBY, LLC)

(PLEASE DO NOT REMOVE-THIS IS PART OF THE OFFICIAL DOCUMENT)

LAND LEASE AGREEMENT

This Land Lease Agreement (“this Lease”) is executed to be effective the ___ day of _____, 20___ (“Effective Date”), between the City of Sedona, an Arizona municipal corporation (“the City”), and The Villas on Shelby, LLC an Ohio limited liability company (“Lessee”). City and Lessee are sometimes referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, the City is the owner of the vacant land located at 2250 Shelby Road, Yavapai County APN 408-28-103C, containing approximately 1.13 acres and being more particularly described on **Exhibit A** attached to this Lease (the “Property”).

WHEREAS, Lessee desires to lease the Property on which to construct an affordable, multi-family, rental housing project comprised of 30 residential rental units and being more particularly described in **Exhibit B** attached to this Lease (the “Project”);

WHEREAS, the Property is located in the City’s Housing Development Area as declared in Resolution 2012-21 and this Lease is entered into under the authority of A.R.S. §9-441 et. seq. which declares municipal assistance in providing for the acquisition, construction or rehabilitation of housing a valid public purpose and authorizes municipalities to use its monies to aid the planning, undertaking and carrying out of housing development projects authorizes the City the powers listed in A.R.S. §9-441.02.

WHEREAS, The Parties acknowledge that the Project qualifies as an economic development activity; that the Project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the residents of the City by increasing access to affordable housing, stimulating further economic development in the City, generally enhancing the economic welfare of the city’s citizens and by constructing public infrastructure improvements; that the City’s participation in this Lease will in fact serve legitimate economic development purposes as authorized by A.R.S. §9-500.11; and that the City’s participation authorized by this Lease is not grossly disproportionate to the benefits the City will receive during the Lease and that in the absence of the City’s participation the affordable housing Project would not be constructed.

WHEREAS, City is entering into this Lease to implement and to facilitate development of the Arizona Department of Housing Low Income Housing Tax Credit Program and Lessee agrees to restrict 100% of the Project units for affordable housing for the duration of this Lease. This Lease is consistent with the City’s Development Incentives and Guidelines for Affordable Housing (“DIGAH”), and the City’s Community Plan in effect on the date of this Lease. The Project, as shown in the Site Plan, meets DIGAH requirements and is eligible for a density bonus, if applicable.

WHEREAS, Lessee desires to use the Property for the Project in accordance with the Sedona Land Development Code and subject to the terms and conditions of this Lease; and

WHEREAS, the City is willing to lease the Property to Lessee on the terms and conditions specified below.

AGREEMENT

THEREFORE, in consideration of the following mutual covenants and conditions, the parties hereby agree as follows:

1. The Recitals set forth at the beginning of this Lease are deemed incorporated herein, and the parties hereto represent they are true and correct.
2. LEASE; PRIVILEGES; RESTRICTIONS; RESERVATIONS.
 - A. The City hereby leases the Property to Lessee and grants to Lessee the following privileges, uses and rights, subject to and conditioned upon Lessee's full, timely, complete, and faithful performance of all terms and conditions:
 1. (a) Lessee will be deemed the sole owner of the Project, (b) Lessee alone will be entitled to all of the tax attributes of ownership including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credits described in Section 42 of the Internal Revenue Code of 1986, as amended, and (c) Lessee will have the right to amortize capital costs and to claim any other federal or state benefits attributable to the Project improvements.
 2. So long as Lessee is not in default of its obligations hereunder, City shall not transfer, encumber or otherwise dispose of the Property or any interest therein without the consent of Lessee.
 3. In addition to said general privileges, uses and rights, the City grants to Lessee the right to construct and operate the Project on the Property, provided Lessee complies with all applicable federal, state, and local laws, building and fire codes.
 - B. Lessee hereby accepts the Property and the terms and conditions of the Lease. Lessee shall not use the Property for any purposes other than those specified above.
3. TERM.
 - A. The construction term of this Lease shall commence on the Effective Date and continue

for a maximum period of twenty-four (24) months or when the Certificate of Occupancy is issued, whichever comes first (the "Construction Term"). In no event shall the Construction Term last longer than twenty-four months. The original term of this Lease shall be for a period of 75 years commencing on the expiration of the Effective Date and expiring on the same date 75 years later, unless sooner terminated pursuant to the provisions contained in this Lease.

4. RENT.

- A. At the Effective Date of this Lease, Lessee will pay the City the sum of \$50,000. Annually thereafter, Lessee shall pay, without notice and free from all claims, deductions or set-offs against the City, annual rent in the amount of \$1,200 per year, which rent shall be paid without notice and free from all claims, deductions or set-offs against the City.
- B. If Lessee fails to pay any rent in full on or before the due date, Lessee shall be responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment in full is made.

5. UTILITIES.

Lessee will pay for all charges, fees, deposits and other amounts for utilities used at the Property. Any changes to utility facilities shall be strictly limited to the Property and shall be undertaken by Lessee at its sole cost and expense.

6. IMPROVEMENTS.

- A. Lessee shall have the right to construct a 30-unit apartment complex and related improvements (collectively, sometimes referred to herein as the "Improvements" or the "Project") on the Property. Before commencing any improvements or modifications, Lessee shall submit detailed construction plans and specifications to the City, and upon completion of any improvements or modifications, Lessee shall furnish to the City two complete sets of detailed plans and specifications of the work as completed. Prior to the start of any construction of improvements or modifications to the Property, Lessee shall secure all applicable building permits and approvals from the City. In addition, Lessee shall furnish any additional information concerning any proposed improvements or modifications, which the City may deem necessary with regard to the safety of the Property. Use of the Property is hereby restricted to affordable housing and related uses and the Property may not be used for any other purpose with the prior written consent of the City, which may be given or withheld at City's sole discretion.
- B. Design Requirements. All of Lessee's improvements shall comply with the following design requirements:
 - 1. All Lessee's improvements shall be contained entirely within the Property and without any encroachment or dependence upon any other property, except

that Lessee's improvements shall include construction of related curbs, gutters, pavement, landscaping, and other improvements City determines to be appropriate.

2. All Lessee's improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Property.
 3. All Lessee's improvements shall comply with all requirements of law. Lessee shall be responsible to directly obtain all necessary permits and approvals from any and all necessary governmental agencies.
- C. Lessee shall, at its own cost, finance, design, and construct the Project. The building shall be constructed pursuant to preliminary plans and specifications which must be approved by the City. All improvements and modifications made by Lessee shall be constructed in a good, workmanlike manner.
- D. City's consent shall not be required for minor changes deemed by Lessee during the course of construction to be necessary to complete construction as contemplated by the latest plans approved by the City. Minor changes are those that do not materially alter the structure, size, layout, location, quality, appearance, functionality or other aspects of any area, feature, structure, or other aspects of any Improvements. Lessee shall give to the City as much advance notice of any minor changes as is reasonably possible.
- E. Prior to the start of any construction on the Property, Lessee or its contractor shall name the City as a dual obligee under the payment and performance bonds to be obtained by Lessee's general contractor with respect to construction of the Improvements. Each bond shall be filed with the Yavapai County Recorder prior to commencement by Lessee of the Improvements on the Property.
- F. Lessee shall keep the Property and all improvements free of any liens of any kind or nature for any work done, labor performed or material furnished on or to the Property. If any such lien is filed, Lessee shall, at its sole cost, remove such lien from the Property within thirty days of notice.
- G. Lessee will begin construction of any improvements and modifications to the Property within a reasonable period of time following the approval of the City and the issuance of a building permit, if necessary, for the construction. Lessee will diligently pursue construction of the improvements or modifications.
- H. The Project, and all other improvements and modifications made by Lessee which become fixtures to the Property become the property of the City, at no cost to the City, upon the expiration or termination of this Lease, free of any security interest or claims of any kind from Lessee.

- I. In the event the Property consists of more or less than any stated acreage or square feet, this Lease shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

7. ACCEPTANCE; MAINTENANCE; REPAIRS.

- A. Lessee warrants that it has inspected the Property and accepts possession of the Property and any current improvements thereon "as is" in its present condition, and subject to all limitations imposed upon the use thereof by Federal, state and local law, and Lessee acknowledges the suitability and sufficiency of the Property for the uses permitted hereunder. Except as may otherwise be specifically provided for herein, the City shall not be required to maintain or to make any improvements, repairs or restorations upon or to the Property, the Project, or to any of the improvements presently located thereon. Under no circumstances shall the City have any obligation to repair, maintain or restore the Project and any improvements placed upon the Property by Lessee.
- B. Lessee shall be solely responsible, at its cost, for all repairs and maintenance whatsoever on the Property and shall maintain the Project and all improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise, including following the lifetime maintenance schedule. Additionally, Lessee, without limiting the generality hereof, shall
 1. Keep at all times, in a clean and orderly condition and appearance, the Property, the Project, all improvements thereon and all of Lessee's fixtures, equipment and personal property which are located on any part of the Property;
 2. Be responsible for the maintenance and repair of all utility services lines and fire suppression systems placed on the Property and used by Lessee exclusively; and
 3. Repair any damage caused by Lessee, or its agents, employees or invitees, to the Property or Project.
- C. If Lessee fails to maintain, clean, repair, replace, rebuild or repaint the Project within a period of thirty (30) days after written notice from the City to do any maintenance or repair work required to be done by Lessee, the City may terminate this Lease or, at its option, enter the Property, without such entering causing or constituting a termination of this Lease or any interference with the possession of the Property, and repair, replace, rebuild or paint any part of the Property or the improvements thereon, and do all things reasonably necessary to accomplish the work required, and all costs thereof shall be payable to the City by Lessee on demand; provided that if in the opinion of the City, Lessee's failure to perform any such maintenance endangers the safety of the public, the employees, the tenants or property of the City, and the City so states in its notice to Lessee, the City may, in its sole discretion, elect to perform such maintenance at any time after the giving of such notice, and Lessee shall pay to the City all costs of such work

on demand. If the City, its officers, employees or agents undertake any work hereunder, Lessee hereby waives any claim for damages, consequential or otherwise, resulting there from except for claims for damages arising from the City's sole negligence. The foregoing shall in no way affect or alter the primary obligations of the Lessee as set forth in this Lease and shall not impose upon the City any obligations to be stated otherwise herein.

8. ADDITIONAL OBLIGATIONS OF LESSEE.

- A. Except as expressly set forth herein, City will not be called upon to make any expenditure in connection with the Property or the Project, and all costs, expenses and obligations of every kind relating to the Property and the Project which may arise or come due during the Lease term will be paid by Lessee.
- B. Lessee agrees to pay during the Lease term, all real estate taxes and special assessments assessed with respect to the Property, Project, and improvements and all personal property taxes assessed with respect to Lessee's personal property.
- C. Lessee shall comply with all written instructions of the City in disposing of its trash and refuse and shall use a system of recycling and refuse disposal approved by the City.
- D. Lessee shall not commit nor permit to be done anything which may result in the commission of a nuisance, waste or injury on the Property.
- E. Lessee shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system and fire hydrants and hoses, if any, installed or located on the Property.
- F. Lessee shall not do, nor permit to be done, any act or thing upon the Property which may constitute a hazardous condition so as to increase the risks attendant upon the operations permitted by this Lease.
- G. Land Use Restriction Agreement. The Property or Project shall not be used for short-term rentals (rental terms of less than 30 days) or conversion to a condominium or otherwise divide the Property during the term of this Lease. Lessee shall cause to be recorded, a deed restriction, limiting the rental of Property units in substantially the form provided in **Exhibit "D"** Land Use Restriction Agreement ("LURA") which will be effective only during the term of this Lease. Upon the expiration of the Affordability Period (as defined in the LURA) and for the remainder of the Lease Term, the parties agree that the Project will continue to be affordable housing units with income restrictions to serve households earning at or below 100% of Yavapai County Area Median Income.

H. Annual Audit and Report. Lessee shall provide a copy of an annual audit to the City for the previous 12 months of operation of the Project. Additionally, the Lessee shall provide an annual occupancy report to the City providing income amounts of tenant occupied units, unit rent, employer, unit type and AMI bracket of each tenant. The Lessee shall provide a copy of any required audit by HUD or LIHTC funding to City. The books and records of the Lessee shall be made available to the City upon written request to the Lessee with fourteen (14) day advance notice.

I. Lessee Representations. Lessee represents and warrants that:

1. Lessee has the full right, power and authority to enter into and perform this Lease and each of the obligations and undertakings of Lessee under this Lease, and the execution, delivery and performance of this Lease by Lessee has been duly authorized and agreed to in compliance with the Lessee's organizational documents.
2. As of the date of this Lease, Lessee knows of no litigation, proceeding or investigation pending or threatened against or affecting Lessee contesting the validity or enforceability of this Lease or Lessee's performance under this Lease.
3. The execution, delivery and performance of this Lease by Lessee is not prohibited by, and does not conflict with, Lessee's organizational documents or any other agreements, instruments, judgments or decrees to which Lessee is a party or to which Lessee is otherwise subject.
4. Lessee has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys and any licensed appraiser retained by the Lessee. Lessee has been assisted by counsel of its own choosing in connection with the preparation and execution of this Lease.

9. CITY LOAN.

A. City of Sedona Loan. The City shall provide the Lessee, to reimburse Lessee for costs of construction of the Project, with a loan in an amount not to exceed \$300,000 ("City Loan"). The City Loan shall be evidenced by the City of Sedona Affordable Housing Loan Secured Promissory Note ("Promissory Note") and secured by the City of Sedona Affordable Housing Loan Deed of Trust and Assignment of Rents ("Deed of Trust") both executed by the Lessee of even date herewith, substantially in the forms attached hereto as **Exhibit "E"** and incorporated herein by this reference. The term of the City Loan shall be 30 years. Prior to disbursement of the City Loan, Property Owner will execute the Deed of Trust, Promissory Note and LURA. The City Loan shall be evidenced by this Lease and the Promissory Note and secured by the Deed of Trust.

1. City Loan Repayment Terms. Lessee hereby unconditionally acknowledges and

promises to repay the City Loan as follows: Lessee shall pay to City 360 consecutive monthly, equal principal installments and interest payments, interest rate shall be the long term AFR at closing on the City Loan, commencing upon Lessee's conversion from construction loan financing to permanent loan financing for the Project; provided, however, that payment of monthly installments of the City Loan will be determined by the Lessee's cash flow for the prior year as provided for in Lessee's amended and restated operating agreement, provided further that any such payment not so paid will accrue and be payable from Lessee's future cash flow and any such missed payments will not be considered a default under the City Loan. The City Loan is absolutely due and payable 30 years after the Effective Date of this Lease, whichever occurs first ("Maturity Date"), at which time Lessee shall pay City the entire outstanding principal amount and interest payments of the City Loan.

10. ASSIGNMENT AND SUBLETTING.

- A. Other than in the normal course of its business, Lessee shall not assign or sublease any of its interest under this Lease, nor permit any other person to occupy the Property without the prior written consent of the City, such consent not to be unreasonably withheld.
- B. To obtain City's consent, Lessee shall provide the City with written notice at least 30 days prior to the proposed assignment of: the potential assignee's biographical and financial information—which may include but is not limited to: has the assignee turned a profit for the last two years, does the assignee have a positive credit history and a history devoid of any illegal or litigious activities—the proposed effective date of the assignment, a description of the portion of the premises to be assigned, all of the material terms of the proposed assignment and the consideration therefor, and any other information reasonably required by the City in order to evaluate the proposed transfer. Any assignment or transfer made without the City's prior written consent shall, at the City's option, be void.
- C. No assignments of this Lease are contemplated or bargained for except for those to which the City has given consent in this Lease. City has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment, except as expressly provided in this Lease.
- D. At the initial closing, Lessee may only mortgage, encumber or assign any portion of its right, title and interest in the leasehold estate created by this Lease to those parties and for those purposes as set forth in Exhibit "F" ("Permitted Encumbrance"), incorporated herein by this reference. Any such Permitted Encumbrance shall be subject to all of Lessee's obligations under this Lease. Except for a Permitted Encumbrance, no person or entity shall have the right to place any mortgages, deeds of trusts, liens or encumbrances of any nature on the Property, nor shall any permitted assignment result in a subordination, in whole or in part, of the City's rights under this Lease. After the initial closing, City has the absolute right for any reason or for no reason in its sole discretion to give or withhold approval of any additional Permitted Encumbrance, mortgage, deeds of trusts, liens, or debt of any nature on the Property.

E. This Lease shall control any conflict between this Lease and the terms of any assignment.

11. SIGNS.

Lessee may install on the Property, subject to the City's sign ordinance, signs identifying its business. The number, general type, size, and location of signs must be approved in writing by the City prior to installation.

12. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Lease by giving Lessee thirty (30) days written notice after the happening of any of the following events:

1. The failure of Lessee to perform any of its obligations under this Lease, provided that Lessee fails to cure its default within said 30-day notice period;
2. The taking of possession for a period of ten (10) days or more of substantially all of the personal property used on the Property belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;
3. The filing of any lien against the Property because of any act or omission of Lessee which is not discharged within thirty (30) days of receipt of notice by Lessee.

B. The City may place Lessee in default of this Lease by giving Lessee 30 days written notice of Lessee's failure to timely pay the rent provided for in this Lease or any other charges required to be paid by Lessee pursuant to this Lease. During said 30-day notice period, Lessee shall cure said default; otherwise, the City may elect to terminate this Lease or do any of the following:

1. Institute action(s) to enforce this Lease;
2. Take possession of the Property, together with improvements, fixtures, and equipment therein contained without terminating this Lease, and on behalf of Lessee relet the same or any part thereof for a term, shorter, longer, or equal to the then unexpired remainder of the Lease term. The City may at any time after taking possession terminate this Lease by giving notice to Lessee and sue for damages;
3. Terminate this Lease, without further notice to Lessee, re-enter the Property and recover damages, including but not limited to, all costs of repossession

and reletting and brokerage commissions for services performed by or for the City;

4. Exercise the "Remedies of Landlord" as set forth in Arizona Revised Statutes, Title 33;
 5. Exercise any other remedy allowed by law or equity.
- C. If Lessee at any time fails to maintain all insurance coverage required by this Lease, the City shall have the right, upon written notice to Lessee, to immediately terminate this Lease or to secure the required insurance at Lessee's expense.
- D. Upon the termination of this Lease for any reason, all rights of Lessee shall terminate, including all rights of Lessee's creditors, trustees, and assigns, and all others similarly situated as to the Property.
- E. Lessee acknowledges Lessee's unconditional obligation to comply with this Lease. No failure by City to demand any performance required of Lessee under this Lease, and no acceptance by City of any imperfect or partial performance under this Lease, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, full compliance with this Lease. Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder shall not constitute a waiver of said default nor of any subsequent default by Lessee. Acceptance of rent and other fees by the City under the terms hereof for any period after a default by Lessee of any of its obligations shall not be deemed a waiver or estoppel of the City's right to terminate this Lease for any subsequent failure by Lessee to comply with its obligations. Lessee expressly disclaims and shall not have the right to rely on any supposed waiver or other change or modification, whether by word, or conduct or otherwise, not conforming to this paragraph.

13. TERMINATION BY LESSEE.

Lessee may terminate this Lease at any time that it is not in default in its obligations by giving the City thirty (30) days' written notice after the happening of any of the following events:

- A. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Lessee's use of any substantial portion of the Property and the remaining in force of such injunction for a period of thirty (30) consecutive days.
- B. The inability of Lessee to use any substantial portion of the Property for a period of thirty (30) consecutive days, due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
- C. The lawful assumption by the United States Government of the operation, control, or use of the Property or any substantial part of it for military purposes in time of war or national emergency.

14. INDEMNIFICATION.

Lessee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the “City” in this Section) from all loss, damages or claims of whatever nature, including attorney’s fees, expert witness fees and costs of litigation, which arise out of any act or omission of Lessee or its agents, employees and invitees (hereinafter referred to collectively as “Lessee” in this Section) in connection with Lessee’s operations at the Property and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or arising out of the failure of Lessee to comply with any provisions of this Lease. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence of the City, be indemnified by Lessee against all such loss, damages or claims, regardless of whether the loss, damages or claims are caused in part by the negligence, gross negligence or fault of the City. The City shall give Lessee prompt notice of any claim made or suit instituted which may subject Lessee to liability under this Section, and Lessee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City’s selection without relieving Lessee of any obligations hereunder. Lessee’s obligations hereunder shall survive any termination of this Lease or Lessee’s activities at the Property.

15. INSURANCE.

Lessee shall procure and at all times maintain, at its own cost, the types and amounts of insurance required for the full replacement cost of the Project at the limits required in **Exhibit C**. The City shall be named as an additional insured as required in **Exhibit C**. Insurance policies shall contain a provision that written notice of cancellation thereof shall be given to the City not less than thirty (30) days before such cancellation takes effect. Lessee shall deliver an appropriate certificate of insurance for each policy to the City in a form and from a company acceptable to the City. The City reserves the right to modify insurance requirements at any time. In case any improvements are fifty percent (50%) or more destroyed, then Lessee and City shall agree as to whether or not the building shall be repaired or reconstructed. Should it be agreed not to repair or reconstruct such building the insurance proceeds shall be divided proportionately as follows:

- A. Lessee’s share = Time remaining from date of loss to end of Lease term.
- B. City’s share = Time elapsed from Effective Date of Lease to date of Loss.

16. QUIET ENJOYMENT.

So long as Lessee shall timely pay the rent required under this Lease and perform all of its other obligations under this Lease, Lessee shall peaceably have and enjoy the exclusive use of the Property.

17. SURRENDER OF POSSESSION; REVERSION.

- A. Upon the expiration or termination of this Lease, Lessee’s right to occupy the Property and exercise the privileges and rights herein granted shall cease, and it shall surrender the same and leave the Property in good condition, normal wear and tear excepted. All improvements, including the Project, and modifications made by Lessee which become

fixtures to the Property shall become the property of the City, at no cost to the City, upon the expiration or termination of this Lease, free of any security interest or claims of any kind from or through Lessee; provided that if Lessee is not in default of any of its obligations under this Lease and can remove any of its trade fixtures or personal property at its own expense without materially damaging the Property, Lessee may remove such fixtures at the termination or expiration of this Lease. None of the improvements hereafter placed on the Property shall be removed there from at any time without City's written consent.

18. NOTICE.

All notices required or permitted to be given under this Lease may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY: City of Sedona
 City Manager
 102 Roadrunner Road
 Sedona, Arizona 86336

TO LESSEE: The Villas on Shelby

 Tel:
 Email:

Any notice given by certified mail shall be deemed to be received on the next business day after the date of mailing. Either party may designate in writing a different address for notice purposes pursuant to this Section.

19. NO BOYCOTT OF ISRAEL.

The Parties agree that they are not currently engaged in, and agree that for the duration of the Lease they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

20. STATUTORY CANCELLATION RIGHT.

This Lease is subject to cancellation for conflicts of interest under the provisions of A.R.S. §38-511.

21. SEVERABILITY.

Should any provision of this Lease be declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

22. TAXES AND LICENSES.

- A. Lessee shall pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the Property or conduct of business at the Property under authority of this Lease, including any such tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, such tax shall also be paid by Lessee for the period this Lease is in effect.
- B. Lessee acknowledges that any failure by Lessee to pay all taxes due, including under A.R.S., Title 42, Chapter 13 after notice and an opportunity to cure shall constitute a default that could result in divesting Lessee of any interest in or right to occupancy of the Property.
- C. Lessee shall, at its own cost, obtain and maintain in full force and effect during the term of this lease all licenses and permits required for the operations authorized by this Lease.

23. LITIGATION

This Lease shall be governed by the laws of the State of Arizona. In the event of any litigation or arbitration between the City and Lessee arising under this Lease, the successful party shall be entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration. Both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising under this Lease and consent to a trial to the court.

24. RULES AND REGULATIONS.

Lessee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations, the Property (including the Americans with Disabilities Act), or the operation, management, maintenance or administration of the Project, including all laws, ordinances, rules and regulations adopted after the effective date of this Lease. Lessee shall display to the City, upon request, any permits, licenses, or other evidence of compliance with such laws. All rules and regulations, as currently existing or as may be amended or adopted, are hereby incorporated in this Lease. Should a court of competent jurisdiction, the Arizona Attorney General's Office, or any administrative agency with oversight authority determine that any part of this Lease is contrary to established Federal, State and City laws applicable to the respective responsibilities of the Parties as described herein, this Lease, and any part thereto that is in conflict with said laws, shall be modified upon mutual agreement of the Parties in order to bring the Lease into full legal compliance.

25. RIGHT OF ENTRY RESERVED.

- A. The City shall have the right at all reasonable times and upon reasonable notice to enter upon the Property for any lawful purpose, provided such action does not unreasonably interfere with Lessee's use, occupancy or security of the Property.
- B. If any personal property of Lessee shall obstruct the access of the City or any utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, Lessee shall move such property, as directed by the City or utility

company, in order that access may be had to the system for inspection, maintenance or repair. If Lessee fails to move such property after direction from the City or utility company to do so, the City or the utility company may move it, and Lessee shall pay the cost of such moving upon demand, and Lessee hereby waives any claim for damages as a result therefrom, except for claims for damages arising from the City's sole negligence.

- C. Exercise of any or all of the foregoing rights by the City or others pursuant to the City's rights shall not constitute an eviction of Lessee, nor be made the grounds for any abatement of rent or any claim for damages.

26. SURVIVAL OF LESSEE'S OBLIGATIONS.

If this Lease is terminated by the City in accordance with the provisions herein or if the City reenters or resumes possession of the Property as provided herein, all of Lessee's obligations under this Lease shall survive such termination, re-entry or resumption of possession and shall remain in full force and effect for the full term of this Lease, and the amounts of damages or deficiencies shall become due and payable to the City to the same extent, at the same times, and in the same manner as if no termination, re-entry or resumption of possession had taken place. The City may, at its option and at any time, sue to recover the full deficiency for the entire unexpired term of this Lease. The amount of damages for the period of time subsequent to termination (or re-entry or resumption of possession) shall include all expenses incurred by the City in connection with regaining possession, restoring the Property, acquiring a new lease for the Property, putting the Property in order, maintenance and brokerage fees.

27. REMEDIES TO BE NONEXCLUSIVE.

All remedies provided in this Lease shall be deemed cumulative and additional, not in lieu of or exclusive of, each other, or of any other remedy available to the City or Lessee at law or in equity, and the exercise of any remedy, or the existence herein of other remedies, shall not prevent the exercise of any other remedy.

28. NONLIABILITY OF CITY OFFICIALS AND EMPLOYEES.

No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Lease or related to this Lease.

29. TIME IS OF THE ESSENCE.

Time is of the essence with regard to the performance of all of the parties' obligations under this Lease.

30. MISCELLANEOUS.

- A. This Lease constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters.
- B. This Lease shall be interpreted, applied and enforced according to the fair meaning

of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Lease may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Lease shall be binding upon and inure to the benefit of the parties' successors and assigns.

- C. Nothing contained in this Lease shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Lease, no term or provision of this Lease is intended or shall be for the benefit of any person or entity not a party to this Lease, and no such other person or entity shall have any right or cause of action under this Lease.
- D. The City did not acquire the Property from Lessee or any personal or entity affiliated Lessee.

31. CITY'S OPTION TO PURCHASE.

Commencing with the date that is 30 years from the Effective Date and ending one year thereafter, City shall have the option to purchase the Project from Lessee for the sum of \$1, the principal amount of outstanding debt secured by the Project and all expenses of sale. The exercise of the City's option to purchase shall cause this Lease to terminate.

32. EXHIBITS.

The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference:

Exhibit A	Property Description, Legal Description
Exhibit B	Project Description
Exhibit C	Insurance Requirements
Exhibit D	LURA
Exhibit E	Promissory Note, Deed of Trust
Exhibit F	Permitted Encumbrance

EXECUTED to be effective on the date specified above.

“City”.

CITY OF SEDONA, an Arizona
municipal corporation

By: Scott M. Jablow
Its: Mayor

ATTEST:

JoAnne Cook, CMC
City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson
City Attorney

LESSEE:

The Villas on Shelby, LLC

By:
Its: Owner/member

STATE OF _____)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, in his or her capacity as manager of The Villas on Shelby, LLC, an Ohio limited liability company.

Notary Public

My Commission Expires:

EXHIBIT A
2250 Shelby Road; the PROPERTY
(see attached legal description)

EXHIBIT B
Project Description
(see attached)

EXHIBIT C
(Insurance Requirements)

1. **INSURANCE** Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Lessee, its agents, representatives, employees or contractors.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- i. **Commercial General Liability (CGL):** Insurance covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence, **\$5,000,000** aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. **Premises Liability:** Insurance covering premises liability on the Property, with limit no less than **\$2,000,000** per accident for bodily injury and property damage.
- iii. **Workers’ Compensation:** as required by the State of Arizona, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- iv. **Property Insurance:** Lessee shall obtain and keep in force during the Term of this Lease a policy or policies of commercial property insurance written on ISO form CP 00 10 10 12, or a substitute form providing coverage at least as broad, with all risk or special form coverage, covering the loss or damage to the Property and Project to the full insurable value of the improvements located on the Property (including the full value of the Project, all improvements and fixtures owned by Lessee) at least in the amount of the full replacement cost thereof, and in no event less than the total amount required by any lender holding a security interest.

If the Lessee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Lessee.

- B. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insured’s on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.
- ii. **Primary Coverage.** For any claims related to this contract, the Lessee’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its

officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

- iii. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- iv. **Waiver of Subrogation.** Lessee hereby grants to City a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- v. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- vi. **Verification of Coverage.** Lessee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received by City and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- vii. **Special Risks or Circumstances** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT D
LURA
(see attached)

EXHIBIT E

Deed of Trust, Promissory Note
(see attached)

EXHIBIT F
Permitted Encumbrance
(see attached)



**CITY COUNCIL
AGENDA BILL**

**AB 2931
March 28, 2023
Regular Business**

Agenda Item: 8d
Proposed Action & Subject: Discussion/possible action regarding proposed amendments to the Sedona City Council Rules of Procedures and Policies.

Department	City Attorney's Office
Time to Present	15 minutes
Total Time for Item	60 minutes
Other Council Meetings	October 9, 2018, April 14, 2021, January 25, 2022
Exhibits	A. Council Rules of Procedure and Policies with Proposed Changes

City Attorney Approval	Reviewed 3/21/23 KWC	Expenditure Required	
		\$	0
City Manager's Recommendation	Approve the amendments to the City Council Rules of Procedure and Policies as shown on Exhibit A.	Amount Budgeted	
		\$	0
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

SUMMARY STATEMENT

Background: City Council discussed changes to the City Council Rules of Procedure and Policies during its Council Retreat in January 2023. There are several proposed changes:

1. Rule 3.E.11: limiting the time and which Councilors can move for a reconsideration of past Council action.
2. Rule 3.H.1: clarifying that a motion to approve that fails is a denial, but a motion to deny that fails is not an approval.
3. Rule 3.P: modifying the Order of Business to follow current practices.
4. Rule 3.Q.1-2: clarifying Mayor's authority to reduce 3-minute public speaking limit in the event there are many speakers.
5. Rule 3.Q.4: clarifying the appeal process for the Board of Adjustment.
6. Rule 3.R.1.a: clarifying that if 4 or more councilors request for an item to be placed on a future Agenda it is not subject to the introductory discussion rule.
7. Rule 4.A.4.f: Removing the mention of the authority of Mayor to close businesses per A.R.S. 26-311(B).
8. Rule 6: various changes related to the public conduct at meeting.
9. Policy C: meal per diem amounts to mirror the current staff per diem amounts.

This agenda item is for discussion and possible adoption of the proposed changes as shown on Exhibit A.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): None

MOTION

I move to: approve the amendments to the City Council Rules of Procedure and Policies as shown on Exhibit A.



CITY OF SEDONA

CITY COUNCIL

RULES OF PROCEDURE

AND POLICIES

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CITY OF SEDONA PRINCIPLES OF ETHICAL CONDUCT FOR ELECTED OFFICIALS

The following principles are meant to reflect a commitment to the integrity, responsibility, and leadership required of those holding public office. Council members pledge to uphold these Principles of Ethical Conduct in their behavior and actions in order to merit the trust bestowed upon them by the citizens they serve.

1. I will put forth honest effort in the performance of my duties.
2. I will make no unauthorized commitments or promises of any kind purporting to bind the City of Sedona Government.
3. I will not use public office for private gain.
4. I will act impartially and not give preferential treatment to any private organization or individual.
5. I will disclose waste, fraud, abuse, and corruption to the appropriate authorities.
6. I will treat everyone with respect and fairness at all times.
7. I will endeavor to avoid any actions creating the appearance that I am violating the law or these ethical standards.

RULE 1

RULES OF PROCEDURE

A. PURPOSE

1. The purpose of these Rules is to provide standard methods and general policy guidelines for the City Council to use when conducting business with City staff, the general public, and its own members. These Rules should be read and interpreted to be in harmony with the provisions of the Sedona City Code and State and Federal law. However, in every case where a conflict of interpretation may arise, the City Code and State and Federal law will control. These Rules shall be in effect upon their adoption by the Council by motion until such time as they may be amended.
2. Where the term Mayor is used throughout this document, it shall be deemed to include, when appropriate, the Vice Mayor or other designated persons acting in the capacity of Mayor.

B. PROCEDURE FOR INITIATING OR AMENDING RULES

Two Councilors may propose a new or amended Rule. To do so, the following procedure shall be followed:

1. Present the new or amended Rule(s) in draft, written form to the City Clerk.
2. The proposed draft will be submitted to the City Attorney for review before it is released.
3. The City Council will discuss or take action on the proposed or amended Rule(s) at a regularly scheduled Council meeting.
4. Suspension of These Rules: Any provision of these Rules not governed by ordinances or the City Code may be temporarily suspended, for that meeting, by a majority vote of those eligible to vote. The vote on any suspension shall be taken by "ayes" and "nays" and entered upon the record.
5. Amendment of These Rules: These Rules may be amended, or new rules adopted, by a majority vote of all members of the Council.

C. MASTER FILE OF ORIGINALS

The Clerk will maintain a Master File of all Rules contained herein and any amendments thereto.

D. REFERENCE MANUAL – RULES OF PROCEDURE

A reference manual containing these Rules will be kept in electronic and loose-leaf form in the City Hall for City staff and public use.

E. COUNCILORS' RULES OF PROCEDURE MANUALS

All new and amended Rules will be issued to each Councilor. The Rules will be issued in electronic form.

RULE 2

CONDUCT OF COUNCILORS AND ENFORCEMENT

A. CITY COUNCILOR ATTENDANCE AT SCHEDULED CITY MEETINGS

1. Councilors will notify both the Mayor and City Manager's Office in writing (email is appropriate) of their inability to attend any scheduled City Council meeting.
2. Should a Councilor be unable to attend any scheduled City Council meeting by unforeseen circumstances, that Councilor will notify the Mayor and the City Manager's Office as soon as possible after the meeting.
3. The second failure by a Councilor to notify the Mayor and City Manager's Office of anticipated or unforeseen absences may result in actions as outlined in Section L below.

B. EQUAL VOICE AND VOTE

All members of the City Council, including those serving as Mayor and Vice Mayor, have equal votes. All Councilors should be treated with equal respect.

C. GENERAL RULES OF DECORUM

1. Councilors shall fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others.
2. At all times, Councilors shall be respectful of other people's time, and shall attempt to stay focused and act efficiently during public meetings.
3. Councilors shall conduct themselves so as to serve as a model of leadership and civility to the community, inspire public confidence in Sedona government, and demonstrate honesty and integrity in every action and statement.
4. Councilors will strive to always be on time for Council meetings.

D. CONDUCT IN PUBLIC MEETINGS

During all regular and special Council meetings, the following rules of decorum shall apply:

1. The role of the Mayor shall be recognized in maintaining order.
2. Councilors shall refrain from distraction during the "moment of silence".
3. Councilors shall refrain from dominating the discussion.
4. Personal attacks on other Councilors shall be avoided.
5. Councilors shall demonstrate effective problem solving approaches.
6. Councilors shall be polite to speakers and treat them with respect.
7. Councilors shall actively listen when others speak.
8. Councilors shall refrain from debating and arguing with the public.
9. Everyone attending Council meetings will turn off all cell phones. If an imminent emergency or serious family matter is anticipated, cell phones may be set on vibrate.
10. Councilors shall refrain from eating at the dais.
11. "Business Casual" is the appropriate dress standard for all scheduled meetings of the full Council.
12. Councilors should be respectful of citizens, citizen opinions, and citizen issues.

E. CONDUCT IN UNOFFICIAL PUBLIC SETTINGS

1. Councilors will continue to practice respectful behavior in unofficial public settings.
2. Councilors will always be aware that conversations can have a public presence, and therefore ensure that all City-related conversations are appropriate and respectful.
3. All Councilors will refrain from making promises on behalf of the City Council unless such promises have been approved by official action.
4. Councilors shall refrain from making negative personal comments about other Councilors that go beyond appropriate criticism of another Councilor's opinion or position on a matter.

F. PUBLIC COMMUNICATIONS

1. When speaking publicly regarding City issues, Councilors will inform their listeners that **"any expressions of opinion can only be attributed to me and do not necessarily represent the position or opinion of the City Council or City staff,"** or words to that effect.
2. When writing an item for publication, such as a letter to the editor, Councilors will conclude their written statement with the disclaimer **"Any expression of opinion that may be read into this article can only be attributed to me as the author and does not necessarily represent the position or opinion of the City Council or City staff,"** or words to that effect.
3. Articles assigned to be written by Councilors, such as City Talk, will include the disclaimer as outlined in Section F, Paragraph 2 above, and will be distributed to all local media through the City Manager's Office.

G. COUNCILOR CONDUCT WITH CITY STAFF

1. Councilors shall treat all City staff as professionals.
2. Councilors shall refrain from personal public criticism of an individual employee that goes beyond appropriate criticism or questioning of his/her position on a City matter. Concerns about an employee's performance should be discussed in private and should be brought to the attention of the City Manager.
3. Councilors should attempt to avoid unnecessary or prolonged disruption of City staff from their jobs. Councilors should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their duties, unless there is a compelling time-sensitive concern that must be addressed immediately.
4. Councilors shall refrain from involvement in administrative functions. The role of each Councilor, as an individual, is to represent the community and to share their ideas, recommendations, and point of view during consideration of matters before Council. Councilors shall respect and adhere to the Council-manager structure of the Sedona City government as outlined in City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards, commissions, committees and City staff. Councilors therefore may not interfere with the administrative functions of the City or the professional duties of City staff; nor impair the ability of staff to implement Council policy decisions. Councilors shall not expressly or implicitly give orders or direction to staff, except through their participation on Council. Councilors shall also refrain from individually directing

the City Manager and City Attorney in the performance of his/her job responsibilities.

5. All Councilor requests for research, information or any other staff project shall be directed to the City Manager or City Attorney. No Councilor shall make a request requiring more than one hour researching, compiling information, or otherwise spending staff time without first seeking approval of a majority of City Council. Councilor requests that involve less than one hour staff time, as determined by the City Manager, shall be completed without the need of Council action. Councilors recognize that the City Manager and City Attorney have discretion to take any additional action they believe necessary on a request.
6. Councilors must not attempt to unduly influence City staff on the making of appointments, awarding of contracts, selecting consultants, processing of development applications, or granting City licenses and permits. However, this does not preclude City Council members from being involved in such decisions when they are part of a committee that has been formed for the purpose of recommending the selection of a professional firm or recommending the hiring of a key staff member. In being part of that committee, it is understood that they will be impartial and make their recommendation based on the merits of the applicants and will recuse themselves from the process if there is a conflict of interest.
7. Upon receipt of a citizen's complaint, a Councilor may refer the complaint to the City Manager for review and response. Before responding to a citizen complaint, Councilors should check with the Mayor or City Manager to see if any action has already been taken on the issue. Copies of any response may be provided to other Councilors and the City Manager.

H. RESPONSE TO COMMUNICATIONS FROM THE PUBLIC

1. Councilors are strongly encouraged to acknowledge telephone, letter and electronic communications from the public.
2. When responding to such inquiries regarding City issues, Councilors should indicate a disclaimer such as: **“Any expression of opinion that may be read into this response can only be attributed to me as the author and does not necessarily represent the position or opinion of the City Council or City staff,”** or words to that effect.
3. Individual Councilors may respond to correspondence that has been directed to the entire City Council. Councilors should qualify any response they make which contains their personal opinions as opposed to any official position of the City.
4. Councilors shall always be courteous and professional in any correspondence or interaction with members of the public.

I. REFERRAL OF CITIZEN COMPLAINTS CONCERNING CITY SERVICES

When contacted by a citizen concerning a complaint regarding a City service, Councilors will notify the City Manager of the complaint and inform the citizen that his/her concern has been forwarded to the City Manager's Office. The City Manager should inform the referring Councilor of what action may have been taken.

J. IMPROPER INFLUENCE

1. A Councilor may not use City staff or letterhead to support personal or non-City functions or fundraisers.
2. Councilors shall not use their official office as a means of advancing personal opinions through public statements whereby an inference can be drawn that they are speaking on behalf of the City. Any such public statements shall contain clear language indicating that such statements are the opinions and comments of the individual and are not necessarily the position of the City of Sedona.

K. GIFTS

1. Councilors shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the City of Sedona, and whose interests may be substantially affected by the performance or nonperformance of the Councilor's duties.

L. ENFORCEMENT OF THE RULES OF PROCEDURE

1. City Councilors who fail to follow these Rules of Procedure are subject to both private reprimand and formal censure. It is at the discretion of the Mayor to initiate action if a Councilor's behavior is called into question by another Councilor. When this occurs, the Mayor will discuss the behavior with the concerned Councilor whose actions are being questioned and may issue a private reprimand. If the Mayor is the individual whose actions are being questioned, the same procedure will be followed after a Councilor expresses a concern to the Vice Mayor.
2. If, after a second private reprimand concerning the same behavior, the conduct continues, the matter shall be referred to the City Council to consider whether a public censure is appropriate. Any public censure for violation of these Rules of Procedure can only take place upon a (two-thirds) vote of the entire City Council.

M. COUNCILOR APPOINTMENT

1. Upon the death or resignation of a City Councilor, the City Clerk shall immediately advertise the vacancy, request applications from all interested and qualified citizens, and accept applications for a period of not less than three weeks.
2. After the application period is closed, City Council shall meet to determine which applicants will be interviewed. Applicants who receive a majority vote of Councilors present in a regular, open session shall be interviewed. A tie vote results in an applicant not being interviewed.
3. Appointments to City Council shall be made after an open session interview with the City Council and through a majority vote of Councilors present. Council may hold an executive session to consider or discuss appointment of a Councilor.

RULE 3

MEETINGS

A. GENERAL RULES CONCERNING MEETINGS

1. Meetings and Minutes to be Public: All meetings of the Council shall be open to the public, except that upon approval of a majority vote of the Council, the Council may meet in an executive session in a manner pursuant to the requirements of state law. Minutes of all open meetings shall be available for inspection by the public.
2. Regular Meetings: The Council shall meet on the second and fourth Tuesday of each month at 4:30 p.m. except for the fourth Tuesday in July and December.
 - a. If the regular meeting falls upon a legal holiday, then the Council shall meet at the regular time on the next succeeding day not a holiday.
 - b. All regular meetings of the Council shall be held at the Sedona City Hall or such place as determined by the Mayor or Council and as designated in the meeting notice.
 - c. A regular meeting may be canceled upon a majority vote of Council or due to lack of a quorum; in such a case, the reason for cancellation shall be conveyed to the Council and the public.
3. Special Meetings: The Mayor, upon his/her own initiative, the Clerk, upon the written request of three (3) members of the Council, or the Council, by majority vote, may convene the Council at any time by notifying the members of the date, hour, place, and purpose of the special meeting. Notice of the meeting must be made pursuant to state law.
4. Work Sessions: The Council may meet in work sessions at the call of the Mayor or any three (3) members of the Council on the day following a regularly scheduled Council meeting at 3:00 p.m. except for the Wednesday following the second regular Council meeting in November. Work sessions are open to the public and are designed to allow the Council to obtain detailed information and public input, on issues of major significance so any final decision made at the regular Council meeting may be expedited. No official action may be taken at a work session unless so stated on the agenda for that meeting.
5. Executive Session: The Council may meet in executive session pursuant to the requirements of A.R.S. § 38-431 et seq. The Council may vote to go into executive session, pursuant to § 38-431.03A(3), for discussion and consultation for legal advice with the City Attorney on the matter(s) set forth in the agenda item, or for other purposes as set forth in A.R.S. § 38-431.03.
 - a. The only persons allowed to attend the executive sessions are members of the Council and those employees and agents whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities. Upon reconvening in public session, following an executive session, the Council may take formal action on matters considered in that executive session.
6. Council Meeting - Quorum: State statute (A.R.S. § 9-233) specifies that, "A majority of the councilmen shall constitute a quorum for transacting business." A vote of a majority of the quorum of those present is required in order to take

official action.

7. Recessed Meetings: A properly called regular or special meeting may be recessed and resumed the following day with less than twenty-four (24) hours' notice by announcing the time and place for resumption of the meeting in open session. Any such recess shall be made by a procedural motion in open session during the regular or special meeting. To accommodate possible continuations of regular Council meetings to the following day, all Wednesday Special Meeting and Work Session agendas shall contain an item at the beginning of the agenda giving notice of the possible continuation of any uncompleted business from the regular Council meeting that was held on the previous day. If a meeting is recessed or continued to a time longer than twenty-four (24) hours, the continued meeting will be noticed and posted in accordance with normal statutory procedures.

B. PRESIDING OFFICER, DUTIES AND FUNCTIONS

1. Presiding Officer: The Mayor shall preside at all Council meetings if he/she is present. The Mayor shall have the right to vote on all issues. In order to address the Council, a member must be recognized by the Mayor. If the Mayor is absent, the Vice Mayor shall preside. The Vice Mayor or another member who is temporarily presiding retains all of his/her rights as a member of the City Council, including the right to make motions and the right to vote. The Mayor or other presiding officer shall have the following powers:
 - a. To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
 - b. To determine whether a speaker has gone beyond reasonable time limits or standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
 - c. To resolve questions of parliamentary law or procedure;
 - d. To call a brief recess at any time;
 - e. To adjourn in an emergency.
2. A decision by the presiding officer under any of the first three powers listed may be appealed to the Council upon motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member moving the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

C. RIGHT OF FLOOR

1. The Mayor will call the agenda item and open the floor for discussion by the Council.
2. During the question and answer session, Councilors shall be recognized by the Mayor before speaking. The Mayor will make every attempt to allow each Councilor the opportunity to ask questions before recognizing a Councilor who has already asked his/her questions.
3. The Mayor shall moderate the Council's discussion and comment session by recognizing individual Councilors in the order in which they have indicated the desire to speak. The Mayor will make every attempt to allow each Councilor the opportunity to comment before recognizing a Councilor who has already

commented.

4. When a Councilor desires to ask a Councilor who has just finished speaking a question to clarify a point, he/she should immediately address the Mayor requesting the opportunity to ask the question.
5. If one or more Councilors wish to further explore a particular point made by another Councilor, he/she should address the Mayor requesting the opportunity to do so. The Mayor at his/her discretion may allow the exploration of a specific point by allowing Councilors to speak to that point before resuming the original moderated discussion.
6. During that exploration (see 4. above), the Mayor shall monitor the discussion to preclude protracted arguments over those points encouraging instead that Councilors use their moderated discussion turn to continue their argument.
7. With or without a request from a Councilor, the Mayor may announce that the Council is in "open discussion" to facilitate a freer form of conversation and debate on an issue. During open discussion, Councilors may speak without being recognized and may address each other but will adhere to the conventions of respectful, civil dialogue. The Mayor may set a time limit for the open discussion and may end it at any time.

D. ACTION BY THE COUNCIL

1. Any member, including the Mayor, may make a motion.
2. A motion may only address a single point. Where a series of actions or decisions are required, each action or decision shall be a separate motion.
3. Last minute extended editing or "word crafting" of complex motions during Council meetings is discouraged. However, when it is necessary for the Council to "word craft" a complex motion, that motion shall be made available to the Council in writing, either on screen or in hard copy, prior to their voting. If the issue is not time sensitive, the motion may be tabled to the Consent Item Section of the next regular Council meeting to allow City staff to properly formulate the motion.
4. If the motion is time sensitive requiring immediate action by the Council, the Mayor will request a recess to allow City staff to prepare the motion on screen or in hard copy.
5. A substantive motion is out of order while another substantive motion is pending.
6. No further discussion will be allowed after a motion has been voted on, unless there is a motion to reconsider.

E. PROCEDURAL MOTIONS

Certain Other Motions Allowed: In addition to substantive motions, generally only the following procedural motions are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of votes cast for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted. In order of priority, the procedural motions are:

1. Motion to Appeal a Procedural Ruling of the Presiding Officer: A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the Council as specified in Rule 3.B.2. This appeal is in

order immediately after such a decision is announced and at no other time. The member moving the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

2. Motion to Adjourn: This motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess to a time and place certain shall also comply with the requirements of Rule 3(A)(7).
3. Motion to Take a Brief Recess: This motion, which allows the Council to pause briefly in its proceedings, is similar to the motion to recess. A motion to take a brief recess is in order at any time except when a motion to appeal a procedural ruling of the presiding officer or a motion to adjourn is pending. Under these Rules, the Mayor or other presiding officer has the power to call a brief recess at any time in accordance with Rule 3(B)(1) (d).
4. Motion to Follow the Agenda: This motion must be made at the first reasonable opportunity. It is intended to ascertain by a vote of the Council whether the open meeting laws are being adhered to with regard to the discussion being pursued by the City Council. Prior to voting on this motion, the Council may request and receive legal advice from the City Attorney.
5. Motion to Suspend the Rules of Procedure: This motion is made per Rule 1(B)(4) above.
6. Motion to Go Into Executive Session: The Council may go into executive session for one or more of the permissible purposes set forth in A.R.S. § 38-431.03(A), so long as such purpose and a description of the subject matter or issue being discussed is set forth in the meeting agenda. The motion should cite for the record the purpose of the executive session.
7. Motion to Come Out of Executive Session: This motion provides a procedural mechanism for returning from an executive session to an open meeting.
8. Motion to Defer Consideration: The Council may defer a substantive motion for later consideration at an unspecified time, or in order to ensure that a motion is duly considered, may defer consideration to a date and time certain.
9. Motion to Suspend Discussion and Vote on the Motion at Issue: This motion is not in order until there has been at least ten (10) minutes of debate, any members of the public wishing to speak on the issue have been given an opportunity to do so, and every member of the Council has had an opportunity to speak once. If this motion passes, then a vote will immediately thereafter be taken on the substantive motion at issue.
10. Motion to Amend a Pending Motion: An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A friendly amendment to a motion may be accomplished if the maker of the original motion indicates agreement to amend his/her motion in accordance with the proposed amendment. Upon such agreement, the motion is deemed amended. Absent a "friendly amendment," a motion may be amended only upon a majority vote.
11. Motion to Reconsider a Past Action of the Council: The following rules will govern any matter coming up for reconsideration after it has been acted upon by the Council.

- a. After a matter has been voted upon by the entire Council, any absent Councilor or Councilor who voted in the majority with the prevailing side may, within seven-sixty (760) days, request that the City Manager place the issue of reconsideration on the next regular available Council meeting agenda. The motion to reconsider will be debated and voted upon by the Council, and if passed, the Council will then deliberate anew on the substantive issue being reconsidered.
- b. ~~At any time after sixty (60) days that an issue was acted upon, any Councilor may request that the item be placed on the Council agenda. Then, in accordance with Section R (1) (e) of this Rule, the matter will be placed on a future Council agenda. The agenda will indicate that the motion for reconsideration will be considered and voted upon by the Council, and if passed, the Council will then deliberate anew on the substantive issue being reconsidered. After a motion to reconsider has been acted upon, no other motion for reconsideration may be made without unanimous consent of the Council.~~
- c. Certain issues may or may not be subject to reconsideration depending on whether or not reconsideration would create a potential claim of equitable estoppel against the City. Examples of matters that could potentially give rise to such a claim include, but are not limited to:
 - 1) Reconsideration of decisions involving the rezoning of property, where a previously made decision has created vested rights in favor of the property owner.
 - 2) Reconsideration of bid awards where an awardee has reasonably relied on a previous Council decision and has committed money and or resources to the project.
- d. The City Attorney will review any request for reconsideration to determine whether or not it creates a potential legal liability for the City and will advise the entire City Council either by way of privileged written communication or in executive session.

F. ATTENDANCE BY STAFF

The City Manager, City Attorney or Assistant City Attorney, and the City Clerk or Deputy City Clerk shall attend all regular meetings of the Council unless excused by the Mayor. The City Manager may make recommendations to the Council and shall have the right to take part in all discussions of the Council. If the City Clerk and Deputy City Clerk are excused from an executive session, an alternate Clerk will be appointed. The City Clerk shall keep the official minutes and perform such other duties as may be required by the Council. The attendance of other staff members will be as directed by the City Manager. Notwithstanding the above, the City Attorney and City Manager need not attend City Council meetings wherein the only business transacted concerns interviews for Commission or Committee positions. In addition, neither the City Manager, City Attorney, or City Magistrate shall attend annual Council evaluations outside of their own evaluation.

G. CLARIFYING COUNCIL DIRECTION

When the Council gives general direction to the staff without voting on a motion, the

City Manager will restate for the record the final direction given by the Council in order to avoid any confusion. If the Council disagrees with the restatement, they may make corrections setting forth the direction to be given.

H. RECORDING VOTES

1. On all voting matters, if the vote is other than unanimous, the Mayor shall state for the record, and the Clerk shall have recorded in the minutes, all yea and nay votes. In the case of a tie vote on any motion, the motion shall be considered lost. Any motion for approval which fails to carry shall be considered a denial of the proposal. Any motion for denial which fails to carry shall not be considered an approval of the proposal. A subsequent motion for approval may be made. A roll-call vote shall be taken upon the request of any Councilor.
2. If the Mayor calls out a vote count and a Councilor believes the vote count is incorrect, he/she must ask for a roll call at the time of the vote. Once announced, the vote total is final. If a Councilor wishes to abstain from voting, that member must do so prior to the issue being discussed and explain the abstention. A Councilor indicating an intention to abstain from voting may not participate in the discussion and should leave the dais.

I. MINUTES OF THE MEETINGS

1. Minutes of all open meetings of the Council shall be kept by the Clerk and shall be entered in a book constituting the official record of the Council.
2. Appropriate technology recordings of all open Council meetings shall be retained for a minimum of three years and may, within the City Clerk's discretion, be retained for a longer period after the minutes of the meeting are approved.
3. If a person needs to refer to the details of a discussion, he/she should refer to the meeting's recording, in accordance with Section M of this Rule. The City Clerk will exercise his/her best discretion, in accordance with appropriate minute taking procedures, to assure that the substance of the meeting is recorded accurately and that the name of each person speaking is recorded.
4. If a member of the Council or the public presents written material they wish to have included in the official record of the meeting, this will be done. The material will be attached to the original minutes that will be kept on permanent file in the Clerk's office.
5. Copies will not be included with the minutes that are distributed. Copies of attachments will be made available to Councilors upon request.
6. The City Clerk will tape record executive sessions whenever possible. Either the recording or minutes will be maintained in accordance with A.R.S. § 38-431.03, and shall be kept confidential. If the City Clerk or Deputy City Clerk cannot attend an executive session due to a conflict of interest, the tapes or minutes for that session shall be retained in the City Manager's Office until the conflict has been resolved.

J. READING OF MINUTES

Minutes will not be read unless requested by a quorum of Councilors. Copies of the minutes shall be distributed to Councilors upon request. A master copy of the minutes is available for review in the City Clerk's Office prior to the meeting at which they are to be approved.

K. CORRECTIONS TO COUNCIL MINUTES

1. If a Councilor has corrections, other than substance, such as spelling or punctuation, he/she may call them into the City Clerk or present them in writing before the next meeting and they will be corrected accordingly.
2. All corrections that have been approved by the Council at a Council meeting will be made to the original minutes in question before the City Clerk signs the certification form.

L. ORDINANCES: CONFINED TO ONE SUBJECT: EXCEPTIONS

No ordinance, except an appropriation ordinance, an ordinance adopting or embodying an administrative or governmental code, or an ordinance adopting a code of ordinances shall relate to more than one subject, which shall be clearly stated in its title.

M. APPROPRIATE TECHNOLOGY OF MEETINGS

Councilors have the right, if they wish verbatim portions of a particular meeting, to use copies of the official media to obtain this information for themselves. An appointment shall be made for the appropriate media use. (If a Councilor requests the City Clerk to perform this task, it will be done when the Clerk can judiciously do it without impeding the City Clerk's official daily work.) Master recordings shall not be removed and must physically remain in the possession of the City Clerk's Office.

N. CONFLICTS OF INTEREST

1. Each Councilor has responsibility for compliance with the provisions of A.R.S. Title 38, Chapter 3 Article 8¹, concerning conflicts of interest. When a Councilor recognizes a conflict of interest, the member shall announce the conflict, refrain from discussion or voting on the matter and shall leave the dais. A Councilor should consult with the City Attorney well in advance of any decision where there may be a potential conflict of interest.
2. A Councilor may in certain situations choose to abstain from participation in a matter even though he/she does not have a legal conflict of interest. However, such abstentions, absent compelling personal convictions or a strong perception of a moral conflict of interest, are discouraged. Ultimate discretion concerning personal abstentions are, however, left to the discretion of the individual Councilor. In such cases, the Councilor should announce his/her decision to abstain before any discussion of the item in question begins, and should thereafter refrain from discussion and voting on the matter, and should leave the dais. By participating in discussion of an item, Councilors thereby waive their right to abstain from voting.

O. MEETING TIME LIMITS

The Council will make every effort to comply with the proposed time limits established for each item on the agenda. However, any Councilor, after four (4) hours of meeting time has elapsed, may make a motion to continue the meeting to a date and time certain. Any Wednesday Work Session or Special Meeting shall contain an item at the beginning of the agenda providing for consideration of items continued from the prior meeting.

1. General

- a. The Mayor may remind Councilors of these guidelines during a meeting.
- b. Councilors are encouraged to read the packet ahead of time and submit questions to staff by the Monday of Council week.
- c. As much as possible each Councilor should be given the opportunity to speak before a Councilor speaks a second time.

2. Time Monitoring

- a. It is not necessary to speak on every issue. When you do speak, do not ask questions that have already been answered, do not repeat information, make your point as quickly as possible, and be mindful of the time you take.
- b. The Mayor may interrupt a Councilor if he/she is repetitious or not on topic.
- c. The Mayor may remind the Council about time.
- d. The Mayor may limit discussion when it appears that statements are redundant and that the time has come to vote.

3. Agendas

- a. Agendas may include a recommended time limit next to each item. The Mayor may remind Councilors when the time limit is being approached.
- b. Placing items on the agenda that could be handled administratively should be avoided.
- c. Less time-sensitive items may be delayed to a later meeting when major substantive issues are on the agenda.
- d. Agendas may be chronologically rearranged by the mayor after consulting with other Council members if it is determined to be in the best interest of facilitating the meeting while also ensuring compliance with Open Meeting laws.

4. Public Input and Presentations

- a. Presentations and reports shall include detailed, written materials in the Council’s packet. Speakers should present the key points only and not just read what is already in the Council packet.
- b. Presenters shall make every attempt to stay within the time designated on the agenda bill. Additional time may be granted at the discretion of the Mayor.
- c. The Mayor may manage public input by asking the public:
 - 1) To not repeat what previous speakers have said on the issue.
 - 2) That if they have nothing new to add to what other speakers have said, then to simply indicate they are for or against the item.
 - 3) For the next speaker to stand “on deck” to save time.

P. ORDER OF BUSINESS

1. Generally: The general order of business in regular meetings shall be as follows:

- a. Call to Order/Pledge of Allegiance/Moment of Silence
- b. Roll Call
- c. ~~City’s Vision Statement~~/Moment of Art (Second Tuesday only)
- d. Consent Items
- e. Appointments
- f. ~~Citizens Engagement Program Update—Discussion/Report~~
- g.f. Summary of Current Events by Mayor/Council/City Manager
- h-g. Public Forum

i.h. Proclamations, Recognitions, and Awards

j.i. Regular Business

k.j. Reports/~~discussion~~ on Council assignments

l.k. ~~Discussion/possible action on~~ Requests for future meetings/agenda items.
Councilors should be apprised of topics/issues that are being prepared for future Council agendas or possible executive session items

m.l. Executive Session

n.m. Return to Open Session

o.n. Adjournment

2. Consent Items: Many items of business require action by the Council, but are of a routine and non-controversial nature. In order to expedite the public business and provide time for deliberation of non-routine matters, a Consent Items Section shall be used as follows:
 - a. When any item of business requires action by the Council, but is routine, such items may be presented as part of the Consent Items Section.
 - b. Any member of the Council, City staff, or the public may request that an item be removed from the Consent Items. All such items shall be considered individually and acted upon with a motion in the order in which they appeared in the Consent Items Section.
 - 1) Whenever possible, Councilors should attempt to notify the Mayor and the City Manager, at least one hour before the meeting commences, of their intent to remove any item from the Consent Items Section.
 - c. Following the removal of items from the Consent Items Section, there shall be no debate or discussion by any Councilor regarding any items remaining in the Consent Items Section beyond asking questions for simple clarification.
 - d. The Consent Items shall be introduced by a motion "to approve the Consent Items" and shall be considered by the Council as a single item.
 - e. The motion to approve the Consent Items Section shall be equivalent to approval, adoption, or enactment of each motion, resolution, or other item of business exactly as if each has been acted upon individually. The motion of approval is only for those items that have not been removed from the Consent Items Section.
3. Proclamations: Proclamations may be placed on the agenda by the City Manager or with the sponsorship of any two Council members.
 - a. Before placing a Proclamation on the agenda, due consideration should be given concerning whether the Proclamation is consistent with the City's vision statement and the goals of the Community Plan. Those that promote a particular political or religious agenda will not be accepted.
 - b. All Proclamations must be submitted in accordance with the City's established timeline for placing items on a Council agenda and must be approved as part of the Consent Agenda prior to being presented. Proclamations will be read and presented only when the recipient of the Proclamation so requests and is present to receive it at the Council meeting where it is considered.
4. Summary of Current Events: This portion of the agenda should be confined to items such as recent or upcoming meetings or events of interest to Councilors and the public. It should not be used to state a position or deal with an issue.

Such items should be agendized for future meetings.

5. Commission /Council Joint Meeting and Written Reports: The City Council will meet individually with each commission as needed to give direction. For this meeting, each commission chair is required to submit, a written status report summarizing accomplishments and major issues for his/her commission. The Council liaison for each commission or the Mayor, may at his/her discretion, bring back to the Council a request for an additional Council meeting if it appears to be warranted.

Q. TIME LIMITATIONS REGARDING PUBLIC PARTICIPATION

1. Public Forum: ~~Normally, d~~During the “Public Forum,” each member of the public will generally be limited to three minutes, unless the Mayor reduces the limit to allow time for all speakers. If at the expiration of three minutes a request for additional time is made, the request will be considered at the sole discretion of the Mayor. During an open call to the public, individual Councilors may respond to criticism made by those who have addressed the public body, may ask staff to review a matter, or may ask that a matter be put on a future agenda. However, Councilors shall not discuss or take legal action on matters raised during an open call to the public unless the matters were properly noticed for discussion and legal action.
2. Public Input Concerning Agenda Items: During the “Agendized Portion” of the meeting, each member of the public will generally be limited to three minutes, unless the Mayor reduces the limit to allow time for all speakers. Speakers may be granted additional time by the Mayor. In the event a Councilor verbally objects, a vote will be taken.
 - a. Individuals opposed to or supporting an agenda item will be recognized by the Mayor and must state his/her name and city of residence or county, then speak the issue. In the interest of time, the Mayor may request that he/she does not repeat statements presented by previous speakers. If the person does not wish to speak, the person can simply state his/her name and position on the issue.
 - b. ~~In all cases, t~~The Mayor **may** grant ~~the speaker~~ additional time to speakers representing two or more persons if the Council agrees it is appropriate.
 - c. Any Councilor may make a procedural motion to re-open the public comment period, if it is perceived that members of the public wish to offer additional comments or rebuttal to matters presented after the original public comment period is closed. The Council will vote on the motion and if passed, the public comment period will be reopened.
3. Public Disruption: The Mayor has the authority to preserve order at all Council meetings, and may call for recess and/or remove or cause the removal of any person from any Council meeting. A member of the public who disrupts and is ordered removed from a Council meeting shall be excluded from the remainder of that meeting.
4. Planning and Zoning and Board of Adjustment Appeals: If the item before the City Council concerns an appeal of a planning and zoning issue or an appeal from the Board of Adjustment Hearing Officer, the appealing party and the

party defending the prior decision will each be given ~~twentyten~~ (120) minutes to present their position and respond to questions from the Council. The Council will then allow _____ public comment in accordance with the three-minute rule governing such comment. Following the public comment period, the appealing and defending parties will have five (5) minutes for rebuttal. The Council will then ask questions, deliberate, and reach a decision on the appeal.

- a. After an appeal has been filed in a matter where the Council is acting in a quasi-judicial capacity, and during the pendency of an appeal before the City Council, a member of the City Council may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the appeal, except at a meeting of the Council.
- b. Notwithstanding Section a. above, no decision or action of the City Council shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision making body receiving the contact:
 - 1) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
 - 2) Gives notice before or at the hearing of the parties' right to rebut the substance of the communication.

R. AGENDAS

1. Determination of Specific Items to be Included. Two Councilors, the City Manager or a Department Head may request to have items placed on the agenda. Council members wishing to place an item on a future agenda may make the request at a City Council meeting during Future Meeting/Agenda Items. As an alternative or if the item is of a time sensitive nature, the Councilor may contact the City Manager with the request. The City Manager shall be notified of all upcoming agenda requests from Councilors so that staff can be prepared.
 - a. In the case of Council members, the support of at least two (2) Councilors is required to have items placed on the agenda. An item supported by at least four (4) Councilors shall be placed on a future agenda without the need for an introductory item discussion. If the City Manager determines ~~that an the~~ item supported by less than four (4) Councilors will require substantial research and/or staff time (generally more than two hours), the item will initially be agendized as a ~~4520~~-minute introductory item (10 minutes for presentation and 10 minutes for discussion) and a majority support of Council will be required to pursue the item further. Introductory items that fail to receive the majority support of Council may not again be placed on the agenda by the same two Councilors for 90 days.
 - b. The general public may have items placed on the agenda only through Councilors.
 - c. Requests by Councilors for information or reports concerning the administration of the City or matters having to do with actions of or failure to act by the City staff or amenable to administrative disposition shall not be placed on the agenda of any Council meeting until the City Manager shall have been given a reasonable opportunity to resolve the matter and to furnish the interested Councilor or Councilors with an explanatory statement.

- d. The City Council may, by majority vote, identify items to be added to the agenda of a specified future Council meeting.
 - e. Items submitted by Department Heads for consideration as possible agenda items shall be presented to the City Manager and City Clerk under cover of a transmittal form, "Request for a City Council Agenda Item."
 - f. An agenda team comprised of at least the City Manager, Mayor, Vice Mayor, City Attorney, and City Clerk shall meet prior to the regular meeting to select, discuss, and prioritize the draft agenda items and decide their placement on future agendas.
 - g. An agenda item submitted by Councilors shall be placed on a regularly scheduled Council meeting agenda within two (2) meetings of the submitted request. The agenda item may be postponed because of other agenda item priorities as determined by the agenda team.
 - h. As soon as the "draft agenda" is set, the City Clerk shall distribute it by email to all members of the City Council.
 - i. Only in extraordinary circumstances and after approval of the Mayor should any additional agenda items be added to the City Council packet after its distribution.
 - j. Once Councilors receive their meeting packets, any typographical or housekeeping errors in ordinances or resolutions under consideration should be presented in writing to the Clerk before the meeting at which they are considered and the necessary changes will be made by the Clerk for consideration by the Council at the Council meeting.
2. Posting of Agendas: All agendas for regular meetings shall be posted in one (1) official public places as well as the City's website. All agendas will be publicized in the local newspaper on the Friday prior to the scheduled meetings. Agendas published in the newspaper will be marked "tentative," and will have the following disclaimer "This is an unofficial tentative agenda and is subject to change until twenty-four (24) hours before the actual meeting. To review the final agenda(s), please consult with officially posted agenda(s) within twenty-four (24) hours of the meeting time." Agendas will be posted by Friday, but in no case (other than an emergency meeting) later than twenty-four (24) hours prior to the meeting.

RULE 4

MAYOR, VICE MAYOR, DUTIES & SUCCESSION

A. MAYOR

1. Preservation of Order: The Mayor shall preserve order and decorum, decide all questions of order, prevent intrusion upon personalities or the impugning of members' motives, confine members in debate to the question under discussion, and conduct the meetings in accordance with parliamentary rules contained in Robert's Rules of Order (Revised). These Rules shall prevail in cases of conflict with Robert's Rules of Order.
2. Questions to be Stated: The Mayor shall state all questions submitted for a vote and announce the results. The recording of votes shall be in accordance with Rule 3, Section H.
3. Voting: The Mayor shall vote as a member of the Council.
4. Powers and Duties: The powers and duties of the Mayor shall include the following:
 - a. Serve as the chief executive officer of the City;
 - b. Be the chairman of the Council and preside over its meetings. He/she may make and second motions and shall have a voice and vote in all its proceedings;
 - c. Enforce the provisions of these Rules;
 - d. Execute and authenticate by his/her signature such instruments as the Council or any statutes, ordinances, or these Rules shall require;
 - e. Make such recommendations and suggestions to the Council as he/she may consider proper;
 - f. Declare, by proclamation, a local emergency to exist due to fire, conflagration, flood, earthquake, explosion, war, bombing or any other natural or man-made calamity or disaster or in the event of the threat or occurrence of riot, rout or affray or other acts of civil disobedience which endanger life or property within the City. After declaration of such emergency, the Mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the City, including but not limited to:
 - 1) Imposition of a curfew in all or any portion of the City;
Ordering the closing of any business;
 - 2) Closing to public access of any public building, street, or other public place;
 - 3) Calling upon regular or auxiliary law enforcement agencies and organizations within or without the political subdivision for assistance.
 - g. Perform such other duties required by state statute and these Rules as well as those duties required as chief executive officer of the City.

B. VICE MAYOR

1. Designation/Election: At the Council meeting when new Councilors are seated following a general election, the Council shall designate one of its members as Vice Mayor, who shall serve, at the pleasure of the Council, until after the next general election. The designation process shall be as follows:

- a. The Mayor will solicit a single nomination from the Mayor and each Councilor desiring to nominate until all nominations have been made. Nominations do not require a second. When it appears that no one else wishes to make a nomination, the Mayor will declare the nominations closed. A motion to close the nominations is not necessary.
 - b. After nominations have been closed, each nominee will have an opportunity to speak. If the nominee chooses to speak, it may not be for longer than three minutes. Any person so nominated may at this time withdraw his or her name from nomination.
 - c. Then voting for Vice Mayor will take place in the order nominations were made. Councilors will be asked for a voice vote and a raise of hands. As soon as one of the nominees receives a majority vote of the Councilors present, then the Mayor will declare that individual elected. No votes will be taken on the remaining nominees.
 - d. If none of the nominees receives a majority vote of Council, the Mayor will call for nominations again and repeat the process until a candidate receives a majority vote.
 - e. A tie vote results in a failed nomination.
2. Duties: The Vice Mayor shall have the powers to perform the duties of the Mayor during his/her absence or disability. In addition, the Mayor may delegate any of his/her ministerial duties to the Vice Mayor, including but not limited to, attendance and participation on non-City boards and committees.
 3. Acting Mayor: In the absence or disability of both the Mayor and Vice Mayor, the Council shall designate another of its members to serve as Acting Mayor who shall have all the powers, duties, and responsibilities of the Mayor during such absence or disability.

C. MAYOR SUCCESSION

1. Upon the death or resignation of the Mayor, the Vice Mayor shall assume the duties of the Mayor until an interim Mayor is appointed by the City Council. The Council will fill any such vacancy by selecting the interim Mayor from among its members by majority vote. The person selected will serve until the next general election.
2. After making an interim appointment of the Mayor, the Council shall then immediately select one of its members as interim Vice Mayor, who shall serve at the pleasure of the Council until a new Mayor is elected and seated.
3. If the Councilor selected as Mayor is in his/her first or second year of a four-year Council term, then upon fulfilling the remainder of the former Mayor's two-year term, he/she will re-assume his/her position as a Councilor and complete the remainder of his/her term. If such an appointee desires to run for the office of Mayor, upon declaring his/her candidacy, he/she will be required to relinquish his/her right to re-assume his/her former position as Councilor. Upon declaring a candidacy for Mayor, because a vacancy will be created for his/her former Council seat, the Council will fill that vacancy per the options set forth in A.R.S. § 9-235.
4. Any person appointed to fill the vacancy created by a Councilor assuming the position of Mayor, will serve only until the next general election, unless appointed for a longer term per the provisions of A.R.S. § 9-235.

RULE 5

CREATION OF COMMITTEES, BOARDS & COMMISSIONS

A. COMMITTEES, BOARDS AND COMMISSIONS

The Council may create Committees, Boards, and Commissions to assist in the conduct of the operation of the City government with such duties as the Council may specify which are not inconsistent with the City Code. No member of the City Council including the Mayor shall be allowed to independently form an official City committee, subcommittee, task force, or other body however designated, without the prior approval of the City Council.

B. MEMBERSHIP AND SELECTION OF COMMISSION OR BOARD MEMBERS

1. Individuals applying for a Board or Commission must fill out and submit the City application form by the established deadline.
2. The Mayor, Mayor's designee from City Council, and the Chair (or Vice Chair if the Chair is applying for reappointment) will interview applicants for commission seats and forward a recommendation for appointment to the Council.
3. If an existing Committee member is seeking re-appointment and is the sole applicant, he/she may be interviewed at the discretion of the reviewing body.
4. In situations where a replacement is being selected who will fill less than six (6) months of a remaining term, the reviewing body may recommend to the Council that the selected candidate be appointed to serve for the remaining term, plus the next full term for that position.
5. The recommendation will be placed in the Appointments Section of the next available Council agenda for approval.
6. Any Committee, Board, or Commission created shall cease to exist when abolished by a majority vote of the Council.

C. MEMBERSHIP AND SELECTION OF COUNCIL COMMITTEE MEMBERS

1. Council Committees may be formed and members appointed at the discretion of the Council or in the manner in which Boards and Commissions are formed.
2. Committees created through Council action are subject to the open meeting laws.
3. No Committee so appointed shall have powers other than advisory to the Council except as otherwise specified by ordinance, the City Code, or State Statute.

D. RESIDENCY REQUIREMENTS

1. Planning and Zoning Commission and Personnel Board members shall be residents of the City of Sedona. The Historic Preservation Commission and any Committees it may appoint, may have a maximum of two members each who are not residents of the City of Sedona, but only if they have a direct connection to the City corporation limits, including but not limited to, situations such as being an employee within the City limits or owning a business or property within the City limits.
2. Special, single issue, Committees set up by the City Council shall be comprised primarily of City residents, but may have up to two non-resident members, but only if they have a direct connection to the City corporate limits such as being an

employee within the City limits or owning a business or property within the City limits.

E. REMOVAL OF MEMBERS OF COMMITTEES, BOARDS & COMMISSIONS

The Council may remove any member of any Committee, Board or Commission by a majority vote of the Council, or as otherwise provided by ordinance or City Code.

F. INAPPROPRIATE ACTION/BEHAVIOR OF BOARD, COMMITTEE, OR COMMISSION MEMBERS

1. Any Committee, Board, or Commission member may not use City staff or letterhead to support personal or non-City functions or fundraisers.
2. Members of any Board, Committee, or Commission shall not use his/her official office as a means of advancing personal opinions through public statements whereby an inference can be drawn that they are speaking on behalf of the City. Any such public statements shall contain clear language indicating that such statements are the opinions and comments of the individual and are not necessarily the position of the City of Sedona.

G. ATTENDANCE AT COUNCIL, COMMISSION, COMMITTEE, BOARD OR TASK FORCE MEETINGS

In order to ensure that open meeting laws are complied with, the following procedures will govern the attendance of Council, Commission, Committee, Board and Task Force members at meetings other than those of the body that the public official serves on.

1. All notices of official City meetings will contain appropriate wording regarding the possible attendance by City Council, Commission, Committee, Board or Task Force members, such as the following example:
“This is to notify the public that a quorum of members of the City Council or various other City Commissions, Committees, Boards, or Task Forces may be in attendance.
2. If, despite the precautions taken in Paragraph 1 above, a quorum of City Council, Commission, Committee, Board, or Task Force members appear at a public meeting, event, or private gathering, they will not congregate in a manner that would create a perception that the majority may be conducting City business.

The Mayor and City Councilors may from time to time be invited to attend and participate in staff initiated committees, task forces, or CEP work group meetings that are not subject to open meeting laws, and they may always attend as observers; however, they may not serve as regular members of those committees, task forces, or work groups.

RULE 6

CITIZENS' INTERACTION

A. ADDRESSING THE COUNCIL

1. Following submission of a Citizen Information Card and when recognized by the Mayor, anyone may address the Council on ~~any subjects~~ not on the agenda that are within the jurisdiction of the Council during the "Public Forum" portion of the meeting. Remarks shall be addressed to the Council as a whole, and not to City staff or any member of the general public. There shall be no Council discussion of such unagendized issues, other than to refer the matter to staff, respond to a personal criticism, or have the matter placed on a future agenda.
2. To speak on specific agenda items at other times throughout the meeting, a member of the public must fill out a "Public Comment Card" and present it to the City Clerk before or during the time that agenda item is discussed. The person must fill out his/her name, ~~physical address~~ city/town of residence, phone number, the agenda item he/she wishes to address, and the name of the group he/she represents, if any.
3. ~~Oral or written remarks are limited to three minutes, although additional time may be granted by a majority vote of the City Council in accordance with provisions of Rule 3, Section Q, Paragraphs 1 and 2.~~ Advocacy for or against a candidate or ballot measure during a City Council Meeting is not allowed pursuant to State law, as well as any other expression made for the purpose of influencing the outcome of an election, and is therefore not allowed and deemed not to be within the Council's jurisdiction.
4. No person, other than members of the Council and the person having the floor, shall be permitted to enter into any discussion, either directly or through the members of the Council.

B. CONDUCT AT MEETINGS; PERSONAL AND SLANDEROUS REMARKS

1. Members of the public shall not engage in disorderly, disruptive, disturbing, delaying or boisterous conduct, such as, but not limited to, handclapping, stomping of feet, whistling, making noise, use of profane language or obscene gestures, yelling or similar demonstrations, when such conduct substantially interrupts, delays, or disturbs the peace and good order of the proceedings of the council.
2. Members of the Council shall not, by disorderly, insolent, or disturbing action, speech, or otherwise, substantially delay, interrupt or disturb the proceedings of the Council.
3. Any person who becomes disruptive while attending a Council meeting in a manner that constitutes disorderly conduct per A.R.S. § 13-2904², may be requested to leave the meeting and, if necessary the Mayor may request that the police escort the person from that particular meeting.

C. RESPONSE TO CITIZENS' COMPLAINTS

In response to a citizen's complaint, the Councilor may refer the complaint to the City Manager in accordance with provisions of Rule 2, Section I.

D. WRITTEN COMMUNICATIONS

Interested parties or their authorized representatives may address the Council, in writing, regarding any matter concerning business over which the Council has control.

² A person commits disorderly conduct if, with the intent to disturb the peace or quiet of a ...person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior; or
2. Makes unreasonable noise; or
3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or
4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of business of a lawful meeting, gathering or procession; or
5. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

RULE 7

PROCEDURE FOR COUNCIL AND CITY MANAGER (OR DESIGNEE) LIAISONS/REPRESENTATIVES TO PROVIDE INPUT TO REGIONAL BOARDS AND COMMITTEES

A. APPOINTMENT

Appointments shall be made at the Mayor's discretion with input from the City Manager. Appointments will be revisited and possibly reassigned following City Council elections. Councilors may express interest in certain liaison roles; however, the final determination for the appointment will be a decision of the Mayor. New liaison roles will be approved by the Mayor and City Manager. City staff may be assigned in lieu of a City Councilor.

B. ROLES

Roles are defined in the categories of Informal Voluntary, Financial Relationship, and Shared Governance.

1. Informal Voluntary - liaisons to these organizations are voluntary based on interest from Councilors. Liaisons should limit activity to attending meetings, collecting information, and reporting back to Council. Councilors are discouraged from giving general reports except those that are limited to information relevant to the organization to which the liaison serves or as otherwise directed by Council.
2. Financial Relationship - liaisons to these organizations are established based on a significant, ongoing financial contribution, often resulting in a service contract, MOU, IGA, or a specific service rendered in exchange for a fee. Liaisons should play a more active role in observing and assessing fiscal stewardship and alignment between funding and any stated goals or outcomes associated with funding from the City. Whenever practical, Council should provide input to liaisons so they can more effectively represent the City. Input could be related to seeking specific information from the organization such as annual reports or audits or direction given to advocate for certain outcomes. Liaisons should never vote or make commitments on anything without delegation from Council. The Council liaison and staff liaison should coordinate efforts to maximize effectiveness of both positions and eliminate possible conflicting information.
3. Shared Governance - liaisons should play the most active role; influencing the organization through voting, lobbying, and other means in the interest of the City. Whenever practical, Council should provide input to liaisons so they can more effectively represent the City. Input could be related to seeking specific information from the organization such as annual reports or audits or direction given to advocate for certain outcomes. Liaisons should never vote or make commitments on anything without delegation from Council. The Council liaison and staff liaison should coordinate efforts to maximize effectiveness of both positions and eliminate possible conflicting information.

C. REPORTS TO COUNCIL

After appointment by the City Council to a Board or Committee, the Council representative should periodically report items of significance to the Council as part of the Council Assignments portion of City Council meetings and may also wish to provide periodic updates to the City Manager.

D. DIRECTION FROM COUNCIL

1. Upon the request of the Council representative, issues may be agendaized for Council consideration before the next meeting so the representative may receive instruction and direction from the Council. Staff may also participate in and make a recommendation to the Council.
2. The City Council will deliberate and indicate by motion the instruction and direction which the representative is to present in representing the City before regional bodies and Committees.

E. SPEAKING ON BEHALF OF COUNCIL

1. If a Councilor appears before any federal, state, regional, county or other governing body, board or committee, and has not received any direction from the City Council as a whole concerning matters which are being discussed, any comments or statements made by said Councilor should clearly indicate that the Councilor is speaking only as an individual and that his/her comments should not be construed as representing the views of the City of Sedona or the Sedona City Council. (See Rule 2, Section F, Paragraphs 1 and 2)
2. Where time constraints require immediate input on behalf of the City, and where the Councilor has a substantial good-faith basis for assuming that there would be strong Council support and there is support for the particular issue in the Community Plan and/or Strategic Plan, the Councilor may proffer a tentative City position and shall thereafter give, within twenty-four (24) hours, written notice to other Councilors and the City Manager of the position taken.

CITY OF SEDONA

POLICIES

POLICY A

LIQUOR LICENSE APPLICATIONS

The Sedona City Council shall consider all applications for Liquor Licenses in accordance with Arizona Revised Statutes, Title 4, unless that authority has been delegated to City staff by an official Council Resolution.

POLICY B

ELECTRONIC MAIL (E-MAIL) AND INTERNET POLICY

A. COUNCIL SPECIFIC PROVISION

City Councilors may communicate with each other via e-mail concerning City business under the following conditions:

1. E-mail communications concerning City business or City related issues are considered public records. If an email related to City business is received by an account other than a City email account, this email shall be forwarded to the official City email account for records preservation. The email will be preserved and made available for public inspection.
2. E-mail cannot be used as a means of discussion of City business between all or a quorum of members of the City Council.
3. E-mail cannot be used as a means of taking straw polls on City issues.
4. E-mail cannot be used to facilitate a form of "hub and spoke" communication whereby one Councilor acts as a go-between disseminating communications between other Councilors. In summary, communication by e-mail cannot be used as a means of circumventing the open meeting laws.
5. A Councilor may use e-mail to distribute informational material to all other Councilors through the City Clerk. However, such distribution should not be made with the intent to initiate responses from other Councilors. Any discussion of such informational communication should be reserved for public City Council meetings.
6. E-mail communication to or from the City Attorney concerning pending litigation or legal advice should contain a warning in the subject line stating: "Confidential Attorney-Client Privileged." A corresponding copy of the e-mail should also be sent to the City Clerk's direct e-mail address. The Clerk will make a hard copy of the e-mail and maintain it in a confidential non-public file. Such communications should also contain the following boilerplate at the end of the communication:

The information contained in this message is attorney/client privileged and/or confidential information intended only for the use of the individual or individuals named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or printing of this communication is strictly prohibited. If you have received this message in error, please notify us immediately by telephone at 928-204-7200 (or by reply e-mail) and delete this message.

Thank you.

B. CITY WIDE E-MAIL INTERNET POLICY

1. Purpose
 - a. This policy sets forth the parameters for the proper use, preservation, disclosure and disposition of electronic mail (e-mail). It also establishes appropriate standards for use of the Internet within the City.
 - b. This policy applies to all employees and public officials including City Councilors and members of City Committees or Commissions who access e-mail or the

Internet through the City computer network, either by way of a City computer or through a remote connection to the City computer network.

- c. E-mail is a communications tool that, when made available to City employees, is provided for performance of their duties. E-mail is to be used for official business purposes. Personal messages shall be kept to a minimum. No solicitations shall be conducted through e-mail.
- d. The City's connection to the Internet exists to facilitate the official work of City staff members. The Internet facilities and services are provided for staff members for the efficient exchange of information and the completion of assigned responsibilities.
- e. Employees shall not be granted access to the e-mail system until they have read this policy and signed and have returned the Policy Consent Form to Human Resources.

2. General Policy Statement for E-mail

- a. The City of Sedona maintains an electronic mail system in order to facilitate expeditious communication among City employees, public officers, citizens and persons or companies doing business with the City. The contents of all electronic mail messages composed, sent or received on the City electronic mail system are the intellectual property of the City of Sedona, and are not the private property of any employee or public official. The use of the e-mail system is a privilege; therefore, acceptable use of the e-mail system is based on good judgment and common sense. Employee e-mail accounts are not to be used as the sole or primary e-mail address for personal correspondence.
- b. The confidentiality of any e-mail message should not be assumed. Even when a message is deleted, it may still be possible to retrieve and read that message. Further, the use of passwords for security does not guarantee confidentiality. The City reserves the right to review, audit, intercept, access and disclose all e-mail messages created, received, or sent over the City's electronic mail system. Except as noted in Par. A(3) below, the contents of electronic mail may be disclosed without the notice or permission of the sender. Notwithstanding the City's right to retrieve and read any electronic mail messages, such messages shall be treated as confidential by other employees and public officers and shall be accessed only by the intended recipient. No electronic messages may be monitored, reviewed, audited, intercepted, accessed, or disclosed without the authorization of the City Manager.
- c. No electronic messages created, received or sent over the electronic mail system by any employee or agent of the Sedona City Attorney's office may be monitored, reviewed, audited, intercepted accessed or disclosed without the prior written authorization of the Sedona City Attorney. This policy complies, in all respects, with the provisions of the Rules of the Supreme Court, Rule 42, Professional Conduct, including, but not limited to the provisions of ER 1.6, Confidentiality of Information.
- d. The City Clerk's Office is responsible for creating and distributing the e-mail records policy, in accordance with State Statute and City requirements.

C. DEFINITIONS

1. Electronic Mail (e-mail): Electronic Mail is any transmission of messages, including attachments and imbedded objects, through the City's computer information network by electronic means.
2. Public Records: For purposes of this policy, Public Record means any e-mail communication made or received by any City employee or public officer in pursuance of law or in connection with the transaction of public business including, but not limited to, communications that concern the City's organization, functions, policies, decisions, procedures, operations or other activities or which are of informational or historical value. Few records in the possession or control of an employee or public officer will not be considered "Public Records." Exceptions include routine e-mail communications of a personal nature, spam, or communications containing information that is not related in any way to City business.
3. Routine E-mail: Routine E-mail Communications include communications that are routine in nature such as those used to schedule meetings or conference calls, notices of vacations, times away from the office, etc., and which have little relevance in terms of recording official actions or decisions made by City staff or public officials.

D. SECURITY, PRIVACY AND OWNERSHIP ISSUES

1. E-mail is Not Secure. E-mail transmitted inside the City is more secure than e-mail transmitted via the Internet. If additional security is needed for sensitive information, such as for health records information, then additional security measures, such as encrypted e-mail messages, must be taken to secure the contents of the message or another form of communication should be used.
2. Expectation of Privacy: Employees using e-mail shall have no expectation of privacy related to the use of this technology. E-mail may be a public record subject to disclosure under the Arizona Public Records Law (Arizona Revised Statutes (A.R.S.) § 39-121). Confidential messages should never be sent electronically for two reasons:
 - a. Messages may inadvertently be sent to the wrong addressee.
 - b. E-mail should always be used with the assumption that messages will be read by someone other than the intended recipient.
3. Property Rights: E-mail is an information technology/computer service and is the property of the City. All messages created in the system belong to the City, not employees, vendors or customers. The City reserves the right to monitor e-mail use by any user at any time.

E. GUIDELINES FOR USING E-MAIL

1. E-mail shall be used primarily for official business purposes.
2. All City e-mail addresses should not be used on any non-official business related website form.
3. E-mail communications shall be professional in content, and consistent with City policies and procedures.
4. When communicating with the City Attorney about a legal issue, always insert the phrase "Attorney-Client Privileged" in the subject line.

5. City work rules governing use of City property, record keeping and communications with others apply to the use of e-mail. Employees should never send an e-mail communication they would not feel comfortable communicating face-to-face or over the phone.
6. No e-mail communications shall be created or sent that might constitute discriminatory, harassing, intimidating, hostile or offensive communications on the basis of gender, race, color, national origin, sexual orientation, disability, or other grounds.
7. Employees shall not read the e-mail of another employee without a legitimate business purpose consistent with the City's policies and business communications practice.
8. No employee shall send e-mail under another person's name without that person's authorization, and the sender shall indicate his/her identity in the message.
9. Examples of Unacceptable Use:
 - a. E-mail shall not be used for personal business beyond that allowed in paragraph 9 below, or for personal gain.
 - b. E-mail shall not be used for soliciting or for issuing or forwarding serial or "chain mail"-type messages or advertisements of any commercial nature.
 - c. E-mail shall not be used for soliciting or recruiting membership for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations.
 - d. E-mail shall not be used for creating any offensive or disruptive messages which contain sexual implications or comments that offensively address race, color, religion, gender, national origin, ancestry, marital status, sexual orientation, age, physical or mental disability, medical condition or veteran status, or are otherwise considered unethical, illegal, unprofessional or disruptive.
 - e. E-mail shall not be used for any activity that would jeopardize the legitimate interests of the City or the citizens of the City of Sedona.
10. Personal Use of E-mail: In addition to the use of electronic mail in the performance of their job duties, employees may make limited personal use of electronic mail in circumstances similar to those appropriate for personal phone communication such as the following:
 - a. Scheduling of personal appointments as an effective extension of ones overall time management, i.e. lunches, meetings, medical appointments, etc.
 - b. Sharing of event-driven information and planning of work-related social events where the intent is to enhance employee morale, i.e. birthdays, marriages, birth announcements, etc.
 - c. Limited personal use in corresponding to associates or family members during allowed break or lunch time.

F. E-MAIL RECORDS, RETENTION AND DISPOSITION

1. Public Record: E-mail communications may be public records. Any e-mail communication that meets the definition of a "public record" shall be preserved in accordance with this policy and the records retention and disposition, as approved from time to time by the State Department of Archives.

2. E-mail Retention: You are responsible for saving the e-mail record and any attachments if you are (a) the sender of the message or (b) the person receiving an e-mail record from a source outside the City. The sender includes the person who sent the original message, the sender of a response and the person forwarding a message with comment. Employees who transmit e-mail shall determine whether to preserve or delete the e-mail communication as follows:
 - a. Routine e-mail, communications of a transitory value, may be deleted after being read and after the required action is taken, subject to the limitations set forth in paragraphs 3, 4, and 5 below.
 - b. Communications that meet the definition of a “public record” transmitted on the City’s electronic mail system, or received from outside the City, through the City’s electronic mail system, shall either be printed and preserved in the appropriate file, in permanent paper format or, shall be preserved, unedited, in the employee’s or public official’s e-mail system without printing in a manner that will enable it to be easily retrieved upon request. With every communication that qualifies as a “public record,” the sender shall ensure that the following information is included and preserved.
 - 1) The time and date the message was sent and received.
 - 2) The complete sender and receiver identification.
 - 3) An accurate description of the subject matter of the e-mail and whether or not the e-mail is attorney-client privileged or confidential in the “Subject” section of the e-mail message.
 - 4) The complete message, and any and all attachments to the message. The content of the message, not the medium, determines whether and how long you save it.
3. Examples of E-mail Messages that Should be Saved as a Record:
 - a. E-mail discussions with colleagues on how to deal with an issue or case are part of the public record and should be saved.
 - b. If documentation is needed for a project, then save the e-mail messages related to the project.
 - c. If you would save and file a message transmitted on paper, you should also save and file it if it is transmitted via e-mail.
4. Examples of E-mail Messages that Should be Deleted:
 - a. E-mail messages related to routine phone calls, or routine announcements such as bulletins about social or recreational events can be deleted when you have acted on them.
 - b. If you invite coworkers to a business meeting, then the messages should be deleted as soon as they are not needed.
 - c. E-mail messages between you and a supervisor about a memo you are drafting for his/her signature and the various drafts of the memo itself do not need to be saved. The supervisor should save a copy of the final signed memo.
5. Records Management Manual: Each department has a Records Management Manual that has a Department of Library and Archives approved Records

Disposition schedule. If you have a question about records retention and disposition, call the City Clerk's Office.

- a. Communications subject to an existing public record request, or to formal discovery in ongoing litigation, will be preserved in the appropriate file or the e-mail system.
 - b. If an e-mail message has been saved in another authorized medium, it may be deleted from the e-mail system.
6. The volume of e-mail received daily builds quickly and can affect e-mail system performance. Employees should practice good file management by regularly deleting routine e-mails when their value has been served, and consider printing a paper copy of records to retain for the length of time required for that record series, as noted in the City of Sedona's Records Management Manual.
7. Records saved in the e-mail system should be organized by topic within folders inside the employees e-mail cabinet, in which folders are named appropriately to clearly describe the contents.
8. The Information Technology Division (IT) is responsible for a weekly backup of the data of the entire e-mail system, in accordance with the following procedures:
- a. The system administrator will structure the e-mail system so that all City users will not be able to permanently delete e-mails that are moved to the "trash" folder on their individual systems. E-mails in the "trash" folder will be deleted monthly by the System Administrator in accordance with the procedure set forth below.
 - b. Full data backups of the e-mail system server will be performed weekly.
 - c. Each of these weekly backups will be maintained for a period of four weeks.
 - d. On the first weekend of every month, the complete e-mail system backup, as required in paragraph b. above, will be made and preserved for a period of three years. This is to insure that no e-mail that is to be preserved for at least three years under the City's retention policy is inadvertently deleted. Following the successful completion of this monthly system backup, the system administrator will delete all e-mail placed in every City user's "trash" during the preceding month.

G. SPAM MANAGEMENT

1. The City of Sedona may use e-mail filtering, blocking, and or management software to limit, minimize, and/or delete e-mail messages that are not in accordance with the City's E-mail and Internet policy. Examples of e-mail messages that may be filtered or blocked include:
 - a. Messages that are obscene in nature;
 - b. Messages that are personal and are not relevant to business conducted at the City of Sedona;
 - c. Messages that have a blank subject line;
 - d. Messages that are from a randomly generated address;
 - e. Messages that have content that is randomly generated;
 - f. Messages that do not have a message body;
 - g. Messages that have an attachment that may contain a virus;
 - h. Messages that have embedded HTML comments

2. The rules for filtering and blocking messages are centralized through software. However, all employees are responsible for managing the release of all and/or any messages that have been filtered or blocked by the software. The software provides a method for employees to perform release messages from the software directly and unreleased messages will be deleted from the City's system after a specified number of days.
3. The City is not responsible for any personal messages that are blocked and/or deleted in accordance to these policy guidelines.

H. GENERAL POLICY STATEMENT FOR INTERNET USE GUIDELINES

1. Access to the Internet is provided to City employees for the primary purpose of conducting official City business. Employees should use the Internet to accomplish job responsibilities more effectively. The Internet may not be used for prohibited purposes, such as but not limited to, conducting private business, political campaigning, any illegal uses, or any actions listed in Section 2: Unacceptable Use. Personal use of the Internet should not have any cost to the City, be excessive in time, or interfere with an employee or co-worker's work. Employee e-mail addresses are not to be used during personal Internet usage.
2. Certain features of the Internet can clog the City's network and e-mail system, and should be used strictly for work-related purposes, such as:
 - a. Subscriptions to a listserv. In order for an employee to join a work related listserv, the employee must gain permission from his/her supervisor. Then, IT must be notified in writing with the e-mail address, web address, and purpose of the listserv in order to ensure delivery of listserv e-mail.
 - b. Streaming media, which uses a large amount of bandwidth (for example, Internet Radio).
3. Use of the Internet is a privilege and not a right. Users should be aware that monitoring of Internet usage, including sites visited, occurs without user consent or prior notice on a regular basis. If inappropriate use is determined, the City may deny, revoke, or suspend Internet access to any user at any time.
 - a. Acceptable Internet use includes the following:
 - 1) Communications and information exchanges directly relating mission, goals and work tasks of the City.
 - 2) Use for advisory, standards, research, analysis, professional society or development activities related to the user's job duties and responsibilities.
 - 3) Official legal or law enforcement investigations.
 - 4) Those specifically instructed by supervisors
 - b. Examples of Unacceptable Use
 - 1) It is unacceptable for an Internet user to view, submit, publish, display, or transmit on the network, or any agency computer system, any unauthorized information that:
 - i. Violates or infringes on the rights of any other person.
 - ii. Contains defamatory, false, abusive, obscene, pornographic, profane, sexually oriented, threatening, racially offensive, or otherwise biased, discriminatory, or illegal material.

- iii. Violates any applicable laws, including federal, state and agency regulations, prohibiting sexual harassment.
 - iv. Uses the system for any illegal purpose.
- 2) It is also unacceptable use of the Internet or City e-mail address to:
- i. Conduct personal or unapproved business, or personal business transactions.
 - ii. Solicit any activity prohibited by law.
 - iii. Transmit material, information, or software in violation of any law.
 - iv. Conduct any political activity.
 - v. Conduct any gambling, betting or gaming activity.
 - vi. Conduct any activity for personal gain.
 - vii. Make unauthorized purchases.
 - viii. Download software or browser plug-ins without obtaining pre-authorization from IT.
- c. Personal Responsibility
- 1) Some Internet sites routinely keep logs of who visits their website. Individual users must be aware of and at all times attempt to prevent potential City liability in their use of the Internet. For that reason, all Internet communication, wherein the employee is expressing a personal opinion and which does not reflect the official position of the City or department, must include the following disclaimer: "The opinions expressed here are my own and do not necessarily represent those of the City of Sedona."
 - 2) Employees should be aware that there is a wide variety of information on the Internet. Some individuals may find some information on the Internet offensive or otherwise objectionable. Individual users should be aware that the City has no control over and can therefore not be responsible for the content of information available on the Internet.
- d. Records Retention. The same policy for retention of records, set forth in the City of Sedona E-mail and Internet Policy, shall apply to all records obtained or received via the Internet. City employees who transmit or receive material via the Internet shall determine whether to preserve or delete the material and communications consistent with the records retention schedule and records retention policy of their department.
- e. Copyrighted Material
- 1) All communications and information accessible via the Internet should be assumed to be private property. Internet users shall honor copyright laws including those protecting software and intellectual property.
 - 2) Duplicating, transmitting, or using software not in compliance with software license agreements is considered copyright infringement.
 - 3) Users shall not make copies of software or literature without authorization and the full legal right to do so.
 - 4) Unauthorized use of copyrighted materials, or another person's original writings, is considered copyright infringement.

- 5) Internet users shall not transmit copyrighted materials, belonging to others, over the Internet without permission.
 - 6) If the agency permits, users may download copyrighted material from the Internet, but its use must conform to the restrictions posted by the author or current copyright law.
 - 7) Copyrighted information used on websites must be clearly identified as such.
- f. Public Domain Material. Internet users may download public domain materials for business related use. Redistribution of public domain materials is done so with the assumption of all risks regarding the determination of whether or not the materials are in the public domain. Any redistribution of public domain materials is strictly limited to non-commercial use.

I. SOFTWARE ACQUISITIONS AND USE

1. IT must review, approve, and purchase or acquire all software to be used or installed on City owned computers. Employees who wish to download software or browser plug-ins must obtain authorization from their department head prior to contacting IT.
2. No games other than the standard ones supplied with Windows will be approved for purchase or installation.
3. A valid license or shareware documentation must be held for all software. Illegal duplication of software will not be allowed.
4. Only IT personnel or an approved alternate may install software. It is the responsibility of IT for tracking and recording all software licenses for the City. If shareware products are being used, documentation should certify that the registration fee has been paid or that the software is provided free of charge.

J. HARDWARE USAGE

1. The City's computer systems are a valuable resource, and they should not be abused or wasted. Examples would include excessive use of printer supplies and disk space.
2. Food and beverages can damage a computer, and therefore are prohibited in the immediate computer workstation area. Any other activities that may result in damage to the hardware or software must be avoided.
3. Employees are responsible for periodically reviewing files and removing those that are unnecessary or obsolete.
4. All screen savers and background should be professional and not display any offensive messages. For purchasing, please see the City of Sedona's Purchasing Manual.

K. REGULATION AND ENFORCEMENT

Department Heads (or their designee) shall be responsible for agency compliance with the provisions of this policy and for investigating suspected non-compliance. Violation of any element of this policy may result in disciplinary action, which will follow the guidelines of the Employee Manual.

POLICY C

TRAVEL POLICY FOR COUNCILORS

A. INTRODUCTION

The City of Sedona provides its Councilors with adequate accommodations when traveling on City business, while maintaining an obligation for reasonable use of public funds. The procedures contained herein are designed to provide guidelines for appropriate use of such funds. (Refer to the City's Purchasing Policy for further rules)

B. TRAVEL AUTHORIZATION

Each Councilor has the primary responsibility to ensure validity of travel, and that all expenses are properly documented and correctly incurred within the guidelines of the City's Travel Policy. Management is also responsible for providing/communicating City travel guidelines to Councilors.

C. ELIGIBLE EXPENDITURES

1. All expenses for travel, hotels, mileage, telephone, etc., should be submitted promptly, and accompanied, where applicable, by receipts attached to expense forms provided by the City Clerk. These expense forms should be submitted within two weeks of the activity.
2. Generally, eligible expenditures include travel and living costs incurred by the Councilor while away from the City, and expenses incurred within the City necessitated by City business. If a spouse, friend or any one not employed by the City accompanies a Councilor, the other person's expenses are not covered.
3. Approval must be obtained for training, conferences, and travel expenses prior to the intended travel. A copy of the conference/registration form and supporting documentation, indicating the purpose/business nature of the trip, should be submitted for review by the City Manager and Finance Manager prior to payment.

D. ELIGIBILITY FOR PURCHASING CARD CHARGES

Eligibility for purchasing card charges and expense reimbursement will be based on the following conditions:

1. Registration:
 - a. The actual cost of registration of any Councilor at a meeting, conference, or convention which is specifically for City business is an eligible expense.
 - b. Receipts must be submitted for reimbursement, or accompany the credit card billing statement if paid with City purchasing card. If a check is needed, the request must be submitted at least three weeks in advance of the deadline for registration to the Finance Department so that it will be processed with the regular accounts payable procedures.
2. Air Travel:
 - a. Air coach transportation will be considered standard for out-of-state travel. All airfare arrangements must be made by the traveler or a department representative. Since travel agents charge varying "ticketing fees," it is suggested that travelers look for an agent that offers low fares and reduced fees.

- b. In some cases, the lower airfare may require the traveler to endure a connecting flight or slightly longer layover between flights. Travelers are encouraged to attempt this whenever it makes business sense and helps to contain expenses.
- c. Travelers are expected to make travel arrangements in advance (at least twenty-one (21) days prior to travel) to take advantage of less expensive flight options. Waiting until the last minute becomes extremely costly to the City. Travel arrangements made less than twenty-one (21) days in advance should be supported by an explanation as to the business necessity for last minute travel arrangements.
- d. Criteria for flight selection must always be based on the lowest-priced airfare rather than the opportunity for personal benefit of the traveler. A Councilor must check a minimum of two airline quotes to ensure the best rate. Councilors should maintain documentation supporting the airline and flight chosen was procured using the best possible rate to the City (using a twenty-one (21) day advance, coach fare, non-refundable ticket).
- e. When a traveler makes personal stops enroute to a business destination point, the traveler will only be reimbursed for the round-trip coach fare from Phoenix to the business destination point.

3. Lodging:

- a. All hotel arrangements must be made by the Councilors traveling or the appropriate department representative. It is suggested that Councilors try to make arrangements to stay at a hotel that is close to the business meeting or training facility. It is even possible, in a lot of instances, to stay in the hotel where the event is taking place. This will reduce the need for a rental car or other ground transportation expenses.
- b. When making the room reservation, travelers should also inquire about a government room discount rate and the event's discount rate and select the lesser of the two.

4. Meals and Incidentals:

- a.—Meals for City Council, Boards, Commissions, and staff conducting formal City business during meal times are specifically authorized, ~~not to exceed \$45.00 per day according to the City's current policy on staff per diem amounts.~~ While traveling, individuals must submit detailed receipts (nota summary that only shows the total) for all reasonable meals and incidentals incurred. No alcohol, tobacco, reading material, personal items, etc. may be included. Gratuity may not exceed 20% of the total bill.
- b.a. Except for lodging where individuals share the same room or transportation conveyance (cab, rental car, etc.), each individual seeking reimbursement must incur his/her own expense and seek individual reimbursement. The only exceptions are group meals arranged for working sessions or banquets arranged by a department.
- e.b. In the case of group meals, each Councilor does not have to be broken out separately.

5. Ground Transportation:

- a. It is the traveler's responsibility to use the most economical means for ground transportation and parking in order to maintain control over the departmental travel budget.
- b. In most cases, it is more reasonable to take a taxi, public transportation, or hotel transportation instead of renting a car. Travelers should also check ahead to see if a shuttle service is available for airport pick-up to conference or seminar locations.

6. Personal Auto Usage:

- a. Travelers will be reimbursed for use of their personal vehicle for City business only if a City vehicle is not available and the travel is greater than ten (10) miles outside of the City limits. However, if the absence is to be more than three (3) days, a City vehicle may not be used. The mileage reimbursement rate will be updated periodically in accordance with the approved IRS guidelines. To find out what the current reimbursable rate is, contact Financial Services. The origination and destination of the trip, total number of miles, and odometer reading must be indicated on the Standard Expense Voucher.
- b. Though a personal vehicle may be used in lieu of air travel, only the lesser of the mileage reimbursement or airfare, rental car, and parking will be paid.

E. CITY POOL VEHICLE

1. Vehicle Usage: Vehicles shall be used for City of Sedona business only. City pool vehicle(s) shall be available to all on a first come first serve basis. "Pool Vehicle" is defined as a vehicle which is not designated to a specific department. Pool vehicle(s) may be used for in town or out of town City business not to extend beyond a three (3) working day period without written approval of the City Manager.
2. Passengers: Passengers shall not be permitted in City vehicles unless such passengers are in the vehicle in regard to official City business or serve as City officials. A spouse or other family member may accompany the City official on City related business, however, only the City official may operate the City vehicle.
3. Licensing: All operators of City vehicles shall possess a valid Arizona driver's license. Proof of valid registration and automobile insurance is located in each City vehicle.
4. Safety: Vehicles shall be operated in a safe and responsible manner at all times. All drivers and passengers shall wear seat belts at all times.

F. VEHICLE ACCIDENTS

1. Incident Report: In the event of an accident, Councilors are required to complete an Incident Report form located in each City vehicle or obtained from the Legal Department. The Incident Report is used to provide information about the incident and is required by the insurance company. Report this information to the Legal Department at the earliest possible time (928-204-7200).
2. Damage to a Personal Vehicle: Damage to a traveler's personal vehicle that was used while on City business is a non-reimbursable City expense.

G. RENTAL CARS

1. Most transportation needs are met through air travel, taxi, personal vehicles, or motor pool vehicles.
2. Conferences and seminars usually do not require attendees to do extensive driving during the event. However, should the need for a rental car arise, the Councilor should base the quote on an intermediate size car.
3. In addition to the twenty-four (24) base rate, other items to ask about include:
 - a. Mileage costs, if any.
 - b. Hourly pro-rata cost beyond the twenty-four (24) period.
 - c. Availability of grace periods (each agency has their own policy).
 - d. Any special or discount rates available.
4. Non-City individuals (guests) are not permitted to use/drive a City rented vehicle.

H. NON-REIMBURSABLE EXPENDITURES

The following expenditures are considered personal, not directly related to business travel, and therefore non-reimbursable. If any of the following expenses are inadvertently paid for by the City, the Councilor or Commissioner must reimburse the City for the expense.

This is not meant to be an all-inclusive list.

1. Beauty parlor or barber,
2. Personal entertainment, social events, sporting events, golf, movies, etc. including those at a business conference,
3. Liquor,
4. Theft, loss, or damage to personal property,
5. Personal postage, reading materials, or phone calls,
6. Personal toiletry articles,
7. Fines or penalties for parking or traffic violations,
8. Hotel charges for failure to notify and/or cancel reservations,
9. Valet parking and services.

I. PURCHASING CARDS

With pre-approval of the Mayor, a Councilor will be issued a purchasing card. Purchasing cards should be used for payment of travel, lodging, registration, and meal approval in attending training classes or conferences.

J. TRAVEL AND TRAINING PURCHASE ORDER REQUISITION (PRE-TRIP PAPERWORK)

A Travel and Training Purchase Order Requisition is required in all cases where a Councilor will be traveling or attending a workshop, seminar or conference. This requisition process is completed in the Finance Department's Caselle program, Accounts Payable, Data Entry, Requisition Entry.

K. STANDARD EXPENSE VOUCHER (POST-TRIP PAPERWORK)

This form is used to report reimbursable expenses such as mileage, meals, lodging, and any other expenses paid out of pocket. Receipts must be attached to the Standard Expense Voucher. Do not include City purchasing card charges. These

charges will be accounted for on your monthly statement. This form is available on the Intranet, Department Documents area, in the Finance folder under Forms, Standard Expense Voucher (SEV).

CITY OF SEDONA

APPENDIX

APPENDIX A

SERVICE CONTRACT POLICY LANGUAGE

The City of Sedona has a long established practice of using public funds to support not-for-profit organizations through contractual agreements. The organizations funded through these service contracts provide services to City residents that the City does not provide. While all of the services within this category are not mandatorily provided by a municipality, it has been determined that the desire/need for those services has broad based citizen support and provides a community benefit. It has also been determined that in the absence of these organizations, the City may provide these services directly.

There may be other not-for-profit organizations that also provide strong community benefits, and may be desirous of entering into a contractual arrangement with the City of Sedona for ongoing operational support. At this time the City has determined that the list of existing services/service contracts are beneficial to the community and sustainable by the City. Given the City's longstanding commitment to the existing service contract organizations, the contract program for these organizations should be maintained. Expansion of the service contract program is not warranted at this time.

If other not-for-profit organizations came forward with a compelling justification for a new community service contract, prior to being presented to the Sedona City Council, a sustainable funding source would need to be identified to sufficiently fund the service into the future.

New service contract requests must also meet the following criteria:

- Be a not-for-profit organization as defined by the IRS
- Be seeking funding for a program/project that is non-religious and non-political
- Provide a benefit for the entire community
- Principally serve community needs within the boundaries of the City
- Demonstrate a broad based citizen support for funding that service with public funds.

Should an organization meet the above criteria, the City Manager and/or two City Councilors may request the item be placed on a City Council agenda for further discussion/consideration.



**CITY COUNCIL
AGENDA BILL**

**AB 2861
March 28, 2023
Regular Business**

Agenda Item: 8e
Proposed Action & Subject: Discussion/possible direction/action regarding proposed State legislation, short-term rental legislation and State budget and their potential impact on the City of Sedona.

Department City Manager
Time to Present 15 Minutes
Total Time for Item 45 Minutes
Other Council Meetings January 24, 2023; February 14, 2023; February 28, 2023; March 14, 2023
Exhibits None

City Attorney Approval	Reviewed 03/20/23 KWC	Expenditure Required	
		\$ N/A	
City Manager's Recommendation	For discussion and direction only.	Amount Budgeted	
		\$ N/A	
		Account No. (Description)	N/A
		Finance Approval	<input checked="" type="checkbox"/>

SUMMARY STATEMENT

Background: During the course of the State Legislative Session, many bills are introduced that have a potential impact on the City of Sedona. The League of Arizona Cities and Towns, the City's legislative advocate and City staff routinely monitor bills of interest as they progress through the legislative process.

This item is scheduled to provide a summary update on relevant bills and the proposed State budget, to answer questions that the City Council may have regarding any individual bill or the budget, and to consider the need for the City Council to take a formal position in support or opposition of any particular bill.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): None

MOTION

I move to: for presentation and direction purposes only.