

AGENDA



4:30 P.M.

CITY COUNCIL MEETING

TUESDAY, JUNE 25, 2024

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

2. ROLL CALL

3. CONSENT ITEMS - APPROVE

LINK TO DOCUMENT =

- Minutes - June 11, 2024 City Council Special Meeting - Executive Session.
- Minutes - June 11, 2024 City Council Regular Meeting.
- Minutes - June 12, 2024 City Council Special Meeting.
- AB 3080 Approval of a contract change order with Abdo Financial Solutions, LLC for Interim Director of Finance services and certain accounting, audit, budget, and software implementation services.
- AB 3057 Approval of an updated Construction Manager at Risk (CMAR), Construction Services contract for the Uptown Sedona Parking Garage Project with McCarthy Building Companies, Inc. in an amount not-to-exceed \$17,545,098.

4. APPOINTMENTS - None

5. SUMMARY OF CURRENT EVENTS BY MAYOR/COUNCILORS/CITY MANAGER & COUNCIL ASSIGNMENTS

6. PUBLIC FORUM

(This is the time for the public to comment on any issue within the jurisdiction of City Council 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 3061 **Public hearing/discussion/possible action** regarding an appeal of the Planning and Zoning Commission's April 16, 2024, approval of a development review application for the Oak Creek Heritage Lodge located at 65-195 Schnebly Hill Road & 20 Bear Wallow Lane. PZ23-00004 (DEV), APPE24-00001, APPE24-00002.
- AB 3073 **Discussion/possible action** regarding approval of an Agreement for Sharing of Information Regarding Water Consumption and Water Service Disconnection with Arizona Water Company.
- AB 3066 **Discussion/possible action** regarding future meeting/agenda items.

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

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



Page 2, City Council Meeting Agenda Continued

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: 06/20/2024

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 Chambers
102 Roadrunner Drive, Sedona, Arizona
Tuesday, June 11, 2024, 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, and Councilor Jessica Williamson.

Staff Present item: City Manager Anette Spickard, and City Clerk JoAnne Cook.

3. Executive Session

Motion: Councilor Fultz moved to enter into Executive Session at 2:31 p.m. Seconded by Councilor Vice Mayor Ploog. Motion carried with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, and Williamson) and zero (0) opposed.

JoAnne Cook gave the admonition.

- a. **Discussion and consideration of the city manager evaluation policy of City Manager Anette Spickard including expectations and goal setting. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(1).**
- b. **Return to open session. Discussion/possible action regarding executive session items.**

Reconvened in open session at 3:38 p.m.

No action taken.

4. Adjournment

Mayor Jablow adjourned the meeting at 3:38 p.m.

I certify that the above are the true and correct actions of the Special City Council Meeting held on June 11, 2024.

JoAnne Cook, CMC, City Clerk

Date

Action Minutes
Regular City Council Meeting
City Council Chambers, Sedona City Hall,
102 Roadrunner Drive, Sedona, Arizona
Tuesday, June 11, 2024, 4:30 p.m.

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

Mayor Jablow called the meeting to order at 4:30 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 Anette Spickard, Deputy City Manager Andy Dickey, City Attorney Kurt Christianson, Assistant City Attorney Monique Cody, Planning Manager Cari Meyer, Police Chief Stephanie Foley, Accounting Manager Renee Stanley, Budget and Financial Analyst Sterling West, Director of Public Works/ City Engineer Kurt Harris, Jean McGann Interim Director of Financial Services, Revenue Supervisor Bernadette Krchnavy, Jeanne Frieder Housing Coordinator, Sustainability Manager Bryce Beck, Procurement Office Ian Coubrough, Assistant Engineer Hanako Ueda, Executive Assistant Sherri O'Connor, Deputy City Clerk Marcy Garner, and City Clerk JoAnne Cook.

2. Roll Call/Moment of Art

Nancy Lattanzi introduced three students who performed in the “Sedona’s Got Talent” competition that was presented by Parangelo Players. The performers were:

1. Lilu Cordova - Sedona Charter School
performs a ballet to Once Upon A December (or Anastasia)?
She took 2nd Place in the Sedona Charter School competition and 6th in the finale
2. Yazleen Lopez - West Sedona Elementary
will be singing Adele’s, “Set Fire to the Rain”
Yazleen took 1st in the West Sedona competition and 2nd send place in the finale.
3. Kiana Christopherson – Sedona Charter School
performing her contortionist act to the music “Luminary.”
She took 1st place in both the Sedona Charter School competition and the finale.
Since Kiana took 1st place overall, she also won the school trophy to display in the school office at Sedona Charter School.

3. Consent Items

- a. **Minutes - May 28, 2024 City Council Regular Meeting.**
- b. **Minutes - May 29, 2024 City Council Special Meeting.**
- c. **AB 3068 Approval of a potential multi-year contract for quarterly culvert cleaning for approximately \$38,664 per year.**
- d. **AB 3069 Approval of a Resolution authorizing the City of Sedona to enter into a development agreement with Blueflagiris, LLC, Redrockiris, LLC, Alkemista, Inc, and Alkemista Brew, Inc. for the development of a mixed-**

use project at 2144 W State Route 89A and 40 Goodrow Lane with lease term restrictions for the multi-family units and shared parking agreements and restricted hours of operation for the commercial uses.

- e. **AB 3070 Approval of the renewal of undercover license plates for existing undercover vehicles.**

Item 3d was pulled off Consent Items by staff.

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

Kurt Christian presented the updated agreement for item 3d to Council.

Motion: Councilor Williamson moved to approve consent item 3d, as amended. Seconded by Councilor Dunn. 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

Councilor Williamson stated Sedona Recycles is closing the recycle station located at Red Rock Loop Road and the Cultural Park the due to illegal dumping. She said Yavapai College has not been willing to accommodate the fire district's requests to provide the mandated trainings for paramedics on this side of the mountain. She stated the number of people who view city council meetings that was provided in an article in the Red Rock News only included the YouTube views, not the number of live stream views. Mayor Jablow said that he and the city manager attended a quarterly meeting with two county supervisors and the Verde Valley city managers where there was discussion regarding the Northern Arizona Council of Government's Master Transportation Plan, the disproportionate amount of local training for the fire department, housing. Anette Spickard advised that the president of Yavapai College is planning a road show to go to all of the cities within the county and will be presenting at a future council meeting.

6. Public Forum

Opened to the public at 4:55 p.m.

Rob Smith, Sedona, spoke regarding the building permit process.

Jen Farnsworth, Sedona, spoke against the parking garage.

Brought back to Council at 5:00 p.m.

7. Proclamations, Recognitions & Awards - None.

8. Regular Business

- a. **AB 3055 Presentation/discussion by Arizona Public Service (APS) regarding their fire mitigation efforts and summer readiness program.**

Presentation by Frank Sanderson, Northern Arizona Division Director - APS.

Comments and questions from Council.

- b. **AB 3046 Discussion/possible action regarding the adoption of a Resolution approving the sale and execution and delivery of Excise Tax Revenue Obligations, Series 2024, in an amount not to exceed \$18,000,000; approving the form and authorizing the execution and delivery of necessary agreements, instruments and documents; delegating authority to determine certain matters with respect to the foregoing and declaring an emergency.**

Presentation by Stifel Public Finance Director and City Financial Advisor Jack Leeper, Jean McGann, and Paul M. Gales, Greenberg Traurig, LLP.

Comments and questions from Council.

Opened to the public at 6:28 p.m.

Bill Noonan, Sedona, spoke against this item.

Allison Nichols, Sedona, chose not to speak.

Mike Wise, Sedona, spoke in favor of this item.

Brought back to Council at 6:32 p.m.

Comments and questions from Council.

Motion: Councilor Williamson moved to approve Resolution 2024-13, approving the sale, execution, and delivery of excise tax revenue obligations evidencing a proportionate interest of the owners thereof in a purchase agreement from the City; approving the form and authorizing the execution and delivery of such purchase agreement and other necessary agreements for such sale; delegating authority to designate certain terms thereof; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by the Resolution and declaring an emergency. Seconded by Councilor Dunn.

Comments from Council.

Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

Break at 7:12 p.m. Reconvened at 7:35 p.m.

- c. **AB 3059 Discussion/possible action regarding the approval of a Resolution adopting the City's Public Safety Personnel Retirement System Pension Funding Policy for fiscal year 2024-2025.**

Presentation by Renee Stanley and Jean McGann.

Comments and questions from Council.

Motion: Councilor Kinsella moved to approve Resolution No. 2024-14, adopting Exhibit B to this agenda bill as the City's Public Safety Personnel Retirement System Pension Funding Policy. Seconded by Councilor Furman. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

- d. **AB 3072 Discussion/possible action to approve the Notice of Intent to**

Increase Wastewater Rates and set the public hearing date regarding the same.

Presentation by Jean McGann, Renee Stanley, and Bernadette Krchnavy.

Comments and questions from Council.

Motion: Councilor Fultz moved to approve the Notice of Intent to Increase Wastewater Rates and set the public hearing for August 13, 2024. Seconded by Councilor Williamson. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

e. AB 2953 Presentation/discussion regarding the March 2024 Sales and Bed Tax Report.

Presentation by Jean McGann, Renee Stanley, and Bernadette Krchnavy.

Comments and questions from Council.

Council agreed to continue with 5 years of historical trending comparisons, and to drop "Pre-Covid" from the comparisons.

f. AB 3074 Discussion/possible direction regarding transportation projects that will be submitted to NACOG for funding opportunities.

Presentation by Andy Dickey and Kurt Harris.

Comments and questions from Council.

Opened to the public at 8:41 p.m.

Lars Romey, Sedona member of the Verde Valley Cyclists Coalition spoke in favor this item and also made the following suggestions to Council regarding connectivity:

- These are highly supported by the VVCC with robust multimodal infrastructure alongside them.
- Also consider the Chavez Crossing via USFS lands. The two crossings together could transform multimodal and shuttle transport with the correct site hardening and infrastructure. This could create a loop around airport mesa allowing commuters and shuttles to make a circular route with existing and new Forest access along the way. This would allow for a dramatically better multimodal experience commuting around Sedona and give good reason to get out of your car.
- Having Chavez would ease pressure and impacts to residents along Verde Vally School Rd.
- Both crossings together would make dramatic improvements to emergency response and transport times.
- Design should prioritize making it great for residents to move around town out of their vehicle, which in turn will work well for everyone visiting.
- Think through the lens of a mother letting a school aged child navigate the multimodal routes for how they are designed and implemented.
- All new areas will need good site hardening I.E. curbs/bike lanes like 179 to keep aesthetics good and prevent heavy roadside parking as we see in so many areas. Signs and cables should be avoided. If this site hardening is done in areas like this and dry creek it makes shuttle use much more likely.

- This should also be coordinated with the upcoming Oak Creek RAP plan by the USFS RRRD
- Needs to be included into a larger planning process based on needs identified in the recent VOLPE report. Combined with NACOG and supporting documentation from VOLPE hopefully robust funding can be secured to make these big ticket items a reality.
- Decongesting 179 will make the corridor safe for cyclists.
- These crossings and many other road/trail/pathway projects need to be planned as a holistic system that helps decongest roads.

Brought back to Council at 8:44 p.m.

Comments and questions from Council.

By majority consensus, Council agreed with staff's recommendations.

g. AB 3027 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 Kurt Christianson.

Questions and comments from Council.

h. AB 3066 Discussion/possible action regarding future meeting/agenda items.

Mayor Jablow advised there is a meeting tomorrow at 3:00 p.m.

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:

- To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).**
- Return to open session. Discussion/possible action on executive session items.**

No Executive Session was held.

10. Adjournment

Mayor Jablow adjourned the meeting at 8:59 p.m. without objection.

I certify that the above are the true and correct actions of the Regular City Council Meeting held on June 11, 2024.

JoAnne Cook, CMC, City Clerk

Date

Action Minutes
Special City Council Meeting
City Council Chambers, Sedona City Hall
102 Roadrunner Drive, Sedona, Arizona
Wednesday, June 12, 2024, 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, and Councilor Jessica Williamson.

Staff in attendance: City Manager Anette Spickard, Deputy City Manager Andy Dickey, City Attorney Kurt Christianson, Assistant City Attorney Monique Coady, Director of Community Development Steve Mertes, Planning Manager Cari Meyer, Principal Planner Cynthia Lovely, Housing Coordinator Jeanne Frieder, City Clerk JoAnne Cook and Deputy City Clerk Marcy Garner.

3. Special Business

a. AB 3067 Discussion/possible direction regarding housing projects and potential changes to the Land Development Code (LDC) and Development Incentives and Guidelines for Affordable Housing (DIGAH) to address housing issues.

Presentation by Cynthia Lovely, Cari Meyer and Jeanne Frieder.

Questions and Comments from Council throughout the presentation.

Open to public comment at 5:09 p.m.

Darius Mahmoudi, Flagstaff, Aspey Watkis and Diesel, Attorney, representative of a client. Thanked Community Development staff for their work and spoke to giving them more flexibility.

Luke Sefton, Sedona, spoke on developers' difficulties due to building costs, criticism and push-back from the community. He spoke on empowering staff.

Max Licher, Sedona, spoke on the high demand for properties with garages and the multiple requests for garage conversions. He spoke on being judicious with the level of detail requested on proposed projects due to high costs.

Closed public comment at 5:18 p.m.

Questions and comments from Council continue throughout the presentation.

By majority consensus, Council directed staff to:

- Explore increasing density and housing options.
- Provide more information regarding AMI, (Area Medium Income).
- Explore increased heights with viewshed analyses and renderings.
- Explore parking requirements and costs and impact on streets.

- Explore allowing full kitchens in guest houses.
- Explore a 30-year deed restriction length and more city contribution/involvement.
- Explore a shorter affordability restriction if the availability restriction is longer.
- Explore a larger variety of units.
- Provide more information on housing and employment numbers. Visuals to represent the impact of a project and neighborhood outreach.
- Explore changes to the process that would allow P&Z to provide feedback on design modifications, prior to Council's final decision.

b. Discussion/possible action regarding ideas for future meetings/agenda items – None.

4. Executive Session

Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

- a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).**
- b. Return to open session. Discussion/possible action on executive session items.**

No Executive Session was held.

5. Adjournment

Mayor Jablow adjourned the meeting at 6:18 p.m. without objection.

I certify that the above are the true and correct actions of the Special City Council Meeting held on June 12, 2024.

 Marcy Garner, Deputy City Clerk

 Date



**CITY COUNCIL
AGENDA BILL**

**AB 3080
June 25, 2024
Consent Items**

Agenda Item: 3d
Proposed Action & Subject: Approval of a contract change order with Abdo Financial Solutions, LLC for Interim Director of Finance services and certain accounting, audit, budget, and software implementation services.

Department	CM
Time to Present	N/A
Total Time for Item	N/A
Other Council Meetings	None
Exhibits	A. Contract Change Order

Finance Approval	Reviewed 6/18/24 RMS
City Attorney Approval	Reviewed 6/18/24 KWC
City Manager's Recommendation	Recommend approval. ABS 6/18/24

Expenditure Required	
	\$ 123,000
Amount Budgeted	
	\$ Paid from vacancy savings and professional services
Account No. (Description)	10-5222-01-6005/6405

SUMMARY STATEMENT

Background: Abdo Financial Services was selected by the City after review of 3 qualified accounting firms to provide Interim Finance Director services and technical support to the finance staff while the city recruits a permanent Finance Director. The recruitment process is being handled by a professional recruiting firm who anticipates a candidate placement within three months or less.

The original professional services agreement (attached) with Abdo was signed April 9, 2024, with one amendment which expires on June 30, 2024. Work completed to date includes monthly accounting services and oversight, debt financing support, employee training, preparation of federal financial reporting, budget software evaluation, ADP payroll process streamlining, preparation of requirements for the request for proposals for ERP system, wastewater rate implementation, final budget preparation and state filings, treasury management, year-end close-out, and external audit preparation. All work performed to date has been highly satisfactory.

This second amendment extends the time for an additional three months or until the new Finance Director is on board. A new scope of work includes the following services and estimated costs:

Description	Month	Anticipated Fees
Accounting services	July	\$ 28,000
Accounting services	August	28,000
Accounting services	September	28,000
Debt Book software setup	June - July	6,500
Audit prep	July - Sept	15,000
Fixed asset policy and clean up before ERP implementation	July - Sept	16,500
Budget software implementation	June 20 - October 31	10,000
		\$ 132,000

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): Reduce the scope of work of the contract to monthly accounting services at \$28,000 per month plus the audit prep of \$15,000 for a total of \$99,000 and postpone the remaining project work until the new Finance Director is on board which will delay implementation of the new ERP system and the new budget software.

MOTION

I move to: approve the change order extending contract with Abdo Financial Services, LLC to September 30, 2024, for Director of Finance services and certain accounting, audit, budget, and software implementation services.

**PROFESSIONAL SERVICES AGREEMENT
FOR
THE CITY OF SEDONA**

This Professional Services Agreement (“Agreement”) is made and entered into on this 9th day of April, 2024 (“Effective Date”), by and between the City of Sedona, an Arizona municipal corporation (“CITY”) and Abdo Financial Solutions, LLC (“CONSULTANT”).

RECITALS

- A. CITY intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in Exhibit A, Scope of Work.
- B. CITY desires to retain the professional services of CONSULTANT to perform certain services and produce the specific work as set forth in Exhibit A.
- C. CONSULTANT desires to provide CITY with professional services (“Services”) consistent with consulting or other professional practices and the standards set forth in this Agreement, in order to complete the project; and
- D. CITY and CONSULTANT desire to memorialize their agreement with this document.

AGREEMENT

The parties agree as follows:

1. SCOPE OF WORK.

- A. Scope of Work. The CONSULTANT agrees to perform certain professional consulting and coordinating services for CITY, in connection with Accounting Services (the “Project”) as set forth in **Exhibit A** “Scope of Work” attached hereto and incorporated by this reference. The services include any and all services reasonably contemplated, normally included, and necessary to complete the Scope of Work in a professional manner with due diligence and in a timely manner, including working closely with the CITY and its designated employees. CONSULTANT shall perform the services required by, and as outlined in, Exhibit A to the satisfaction of the City, exercising that degree of care, skill, diligence and judgment ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided.
- B. Change in Scope of Work. If deemed necessary by CITY, the CONSULTANT and CITY will confer to further define specific tasks in the Scope of Work and estimate the amount of time to be spent on those tasks. Any work that is different from or in addition to the work specified shall constitute a change in the Scope of Work. No such change, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the City Manager and by CONSULTANT. If CONSULTANT proceeds without such written authorization, CONSULTANT shall be deemed to have waived any claims of unjust enrichment, *quantum meruit* or implied contract. Except as expressly provided herein, no agent, employee or representative of CITY shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the

terms and scope of this Agreement.

- C. Inspection; Acceptance. All work and Services performed by CONSULTANT will be subject to inspection and acceptance by the CITY at reasonable times during CONSULTANT's performance. If requested by the CITY, CONSULTANT will provide the CITY with record drawings at the completion of the project in such form and detail as the CITY may require.
- D. Time. Time is of the essence for this Agreement. CONSULTANT shall complete all Services timely, efficiently and in accordance with any schedule set forth in Exhibit A.
- E. Corrections. CONSULTANT shall promptly provide, at no additional cost to the CITY, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the work, Services, documents, designs, specification, and/or drawings by CONSULTANT.
- F. Key Personnel. CONSULTANT shall utilize the key personnel, if any, listed in Exhibit A or in the proposal to the CITY. CONSULTANT shall not change key personnel, not utilize the listed key personnel, or utilize any other key personnel without the prior written approval of the CITY. Any substituted personnel shall have the same or higher qualifications as the personnel being replaced.

2. COMPENSATION; BILLING.

- A. Compensation. CITY agrees to pay the CONSULTANT as compensation for Services on a time and materials basis in accordance with the Scope of Work and fee schedule set forth in **Exhibit A** not to exceed a total amount of \$60,000.00. Except as otherwise set forth in this Agreement, billing and payment will be in accordance with the conditions set forth in **Exhibit A**.
- B. Payment. Unless otherwise agreed to by the CITY in writing, CONSULTANT will submit monthly invoices to the CITY. CITY will process and remit payment within thirty (30) days and payment will be delinquent only thirty (30) days after the date received by CITY. Each invoice shall set forth a general description of the work performed, in accordance with the Scope of Work, for the hours billed. Payment may be subject to or conditioned upon CITY'S receipt of unconditional waivers and releases on final payment from all subconsultants. If a dispute over payment arises, and during all claims resolution proceedings, CONSULTANT shall continue to render the Services in a timely manner. Payment by the CITY does not constitute acceptance by the CITY of the Services or CONSULTANT's performance, nor does payment constitute a waiver of any rights or claims by the CITY.
- C. Expenses. Any fee required by any governmental agency in order for CONSULTANT to accomplish a task hereunder shall be provided by CITY and is not included in the hourly fee. No reimbursable expenses or costs of any kind shall be paid by the CITY unless expressly approved by the CITY in writing before they are incurred. Any approved reimbursable expenses will be paid at the actual cost without any markup and will be paid only after they are incurred.

- D. Taxes. CONSULTANT shall be solely responsible for any and all tax obligations which may result out of the CONSULTANT's performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONSULTANT.
3. **OWNERSHIP OF DOCUMENTS.** All documents, including, but not limited to, correspondence, estimates, notes, recommendations, analyses, reports, data and studies that are prepared in the performance of this Agreement are to be, and shall remain, the property of CITY and are to be delivered to CITY before the final payment is made to the CONSULTANT. CONSULTANT hereby grants to the CITY an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by CONSULTANT pursuant to this Agreement. Any modifications made by the CITY to any of the CONSULTANT'S documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the CONSULTANT will be at the CITY'S sole risk and without liability to the CONSULTANT.
4. **PROFESSIONAL RESPONSIBILITY.** CONSULTANT hereby warrants that it is qualified to assume the responsibilities and render the Services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. CONSULTANT warrants that the Services rendered will conform to the requirements of this Agreement and to the professional standards in the field. The CITY has no obligation to provide CONSULTANT any business registrations, licenses, tools, equipment or material required to perform the Scope of Work.
5. **COMPLIANCE WITH LAW.** It is contemplated that the work and Services to be performed by CONSULTANT hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations that are in effect on the date of this Agreement. Any subsequent changes in applicable laws, ordinances, rules or regulations that necessitate additional work shall constitute a change in the Scope of Work. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included.
6. **INDEMNIFICATION.** To the fullest extent permitted by law, CONSULTANT will indemnify, defend and hold harmless CITY, and each council member, officers, boards, commissions, officials, employee or agent thereof (collectively the CITY and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) relate to, arise out of, or are caused by, or in connection with the negligent acts or omissions, recklessness or intentional misconduct of CONSULTANT, its officers, employees, agents or any tier of subcontractor in connection with CONSULTANT'S work or Services in the performance of this Agreement. In consideration of the award of this Agreement, CONSULTANT agrees to waive all rights of subrogation against the Indemnified Party for losses arising from the work or Services performed by CONSULTANT for the CITY. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

7. INSURANCE.

A. General:

1. The CONSULTANT agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages and as may be requested by CITY, either in the initial bid, or prior to commencement of particular tasks. CONSULTANT shall submit to CITY before any work is performed, certificates from the CONSULTANT's insurance carriers indicating the presence of coverages and limits of liability as follows:

2. Worker's Compensation Insurance:

Coverage A: Statutory benefits as required by the Labor Code of the State of Arizona.

Coverage B: Employer's Liability

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

3. Commercial General or Business Liability Insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.

4. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) for any one occurrence, with respect to each of the CONSULTANT'S owned, hired or non-owned automobiles assigned to or used in performance of the Services. Certificate to reflect coverage for "Any Auto, All Owned, Scheduled, Hired or Non-Owned."

5. Professional Liability coverage with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate. If approved by CITY, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages. Coverage must have no exclusion for design-build projects.

B. CONSULTANT shall procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to CITY, acceptance of which shall not be unreasonably withheld. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the CONSULTANT pursuant this Agreement. In the case of any claims made to the policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

C. All policies must be written by insurance companies whose rating, in the most recent AM Best's Rating Guide, is not less than A- VII or higher, unless CONSULTANT obtains prior written approval of CITY.

D. A Certificate of Insurance shall be completed by the CONSULTANT'S insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits

are in full force and effect and shall be subject to review and approval by CITY. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or limits reduced until at least thirty (30) days prior written notice has been given to CITY. The CITY shall be named as an additional insured. The completed Certificate of Insurance shall be sent to:

City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336
ATTN: City Clerk

- E. Failure on the part of CONSULTANT to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a Material Breach of Contract upon which CITY may immediately terminate this Agreement or, at its discretion, CITY may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by CITY shall be repaid by the CONSULTANT to CITY upon demand, or CITY may offset the cost of the premiums against any monies due to CONSULTANT from CITY.
 - F. CITY reserves the right to request and receive a certified copy of any policy and any pertinent endorsement thereto. CONSULTANT agrees to execute any and all documents necessary to allow CITY access to any and all insurance policies and endorsements pertaining to this particular job.
 - G. All policies shall provide primary coverage and waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to any person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay for the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged.
 - H. The following policies shall include Additional Insured endorsements: Automobile Liability Insurance and Commercial General Liability.
 - I. CITY reserves the right to require higher limits of liability coverage if, in the CITY's opinion, operations or services create higher than normal hazards.
8. **NON-ASSIGNABILITY.** Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.
9. **TERM; TERMINATION.**
- A. Term. This Agreement shall terminate on December 31, 2024, or at such time as the work in the Scope of Work is completed, whichever occurs first.
 - B. Termination for Convenience. This Agreement is for the convenience of the CITY and may be immediately terminated without cause after receipt by the CONSULTANT of written notice by the CITY. Upon termination for convenience, CITY shall pay CONSULTANT for all work previously authorized and performed prior to the date of termination. If,

however, CONSULTANT has substantially or materially breached the standards and terms of this Agreement, CITY shall have any remedy or right of set-off available at law and equity. Upon any termination of this Agreement, no further payments shall be due from the CITY to CONSULTANT unless and until CONSULTANT has delivered to the CITY full sized and usable copies of all documents, designs, drawings, and specifications generated by CONSULTANT in relation to the Project or this Agreement. No other payments, including any payment for lost profit or business opportunity, and no penalty shall be owed by CITY to CONSULTANT in the event of termination upon notice. After termination, CONSULTANT may complete other such work as it deems necessary, except that such work will be at its own expense and there shall be no "termination charge" whatsoever to CITY.

- C. Termination for Cause. CITY may terminate this Agreement for cause if CONSULTANT fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.
 - D. Extension for Procurement Purposes. Upon expiration of the Term of this Agreement, including the initial term and any renewals, at the CITY'S discretion, this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the CITY to complete its procurement processes to select a vendor to provide the services/materials similar to those provided under this Agreement. There are no automatic renewals of this Agreement.
 - E. Appropriation of Funds. Every payment obligation of the CITY under this Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the CITY at the end of the period for which funds are available. No liability shall accrue to the CITY in the event this provision is exercised, and CITY shall not be obligated or liable for any future payments or for any damages resulting from termination under this provision.
10. **VENUE; JURISDICTION; JURY TRIAL WAIVER**. This Agreement shall be governed by the laws of the State of Arizona, and any legal action concerning the provisions hereof shall be brought in the County of Yavapai, State of Arizona. Both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising out of this Agreement or the subject matter thereof and consent to a trial to the court.
11. **INDEPENDENT CONTRACTOR**. CONSULTANT is an independent contractor. Notwithstanding any provision appearing in this Agreement, and any exhibits and/or addenda, all personnel assigned by CONSULTANT to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of CONSULTANT for all purposes. The CITY does not have the authority to supervise or control the actual work of CONSULTANT, its employees or subcontractors. CONSULTANT shall make no representation that it is the employee of CITY for any purpose.
12. **NO WAIVER**. Delays in enforcement or the waiver of any one (1) or more defaults or breaches of this Agreement by CITY shall not constitute a waiver of any of the other terms or obligations of this Agreement.

13. **ENTIRE AGREEMENT.** This Agreement, together with the attached exhibits, is the entire agreement between CONSULTANT and CITY, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed except by written amendment executed by both parties. This Agreement will be construed and interpreted according to its plain meaning, and no presumption will be deemed to apply in favor of or against the party drafting the Agreement. In the event any term or provision of this Agreement is held to be illegal or in conflict with any law of the United States or Arizona or any local law, the validity of the remaining provisions shall not be affected, and this Agreement shall be construed and enforced as if it did not contain the particular term or provision.
14. **NON-DISCRIMINATION.** CONSULTANT, its agents, employees, contractors and subcontractors shall not discriminate in any employment policy or practice. "Discrimination" means to exclude individuals from an opportunity or participation in any activity or to accord different or unequal treatment in the context of a similar situation to similarly situated individuals because of race, color, gender, gender identity, sexual orientation, religion, national origin or ancestry, marital status, familial status, age, disability, or Veteran status. (Ordinance 2015-10) (2015).
15. **COMPLIANCE WITH FEDERAL AND STATE LAWS.**
- A. In the performance of this Agreement, CONSULTANT will abide by and conform to any and all federal, state and local laws.
 - B. Under the provisions of A.R.S. § 41-4401, CONSULTANT hereby warrants to CITY that CONSULTANT and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject CONSULTANT to penalties up to and including termination of this Agreement at the sole discretion of CITY. CITY retains the legal right to inspect the papers of any contractor or subcontractor employee who works on this Agreement to ensure that the contractor or subcontractor is complying with the Contractor Immigration Warranty. CONSULTANT agrees to assist CITY in regard to any such inspections. CITY may, at its sole discretion, conduct random verification of the employment records of CONSULTANT and any subcontractors to ensure compliance with the Contractor Immigration Warranty. CONSULTANT agrees to assist CITY in regard to any random verification performed. Neither CONSULTANT nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if CONSULTANT or any subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.
 - C. The provisions of this Section must be included in any contract that CONSULTANT enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. For the purposes of this paragraph, "Services" are defined as furnishing labor, time or effort by a contractor or subcontractor. Services include construction or

maintenance of any structure, building or transportation facility or improvement to real property.

- D. If applicable (CONSULTANT is a natural person), CONSULTANT shall execute the required documentation and affidavit of lawful presence as set forth in ARS 1-502/8 USC § 1621 (**Exhibit B**).
 - E. CONSULTANT understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: CONSULTANT must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. § 34-302, as amended, "Residence Requirements for Employees."
16. **DISPUTE RESOLUTION.** The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this Agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, upon which demand the matter shall be submitted to a mediation firm mutually selected by the parties. The mediator shall hear the matter and provide an informal opinion and advise within twenty (20) days following written demand for mediation. Said informal opinion and advice shall not be binding on the parties, but shall be intended to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter may then be submitted to the judicial system.
17. **DELAYS.** CONSULTANT shall not be responsible for delays which are due to causes beyond CONSULTANT'S reasonable control. In case of any such delay, any deadline established as part of the Scope of Work shall be extended accordingly.
18. **REMEDIES UPON BREACH.** If any party to this Agreement materially breaches the terms of the Agreement, the non-breaching party may exercise any and all remedies available to them under Arizona law, including, without limitation, if applicable, bringing a lawsuit for monetary damages or specific performance. **THE PARTIES HERETO EXPRESSLY COVENANT AND AGREE THAT IN THE EVENT OF LITIGATION ARISING FROM THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO AN AWARD OF ATTORNEY FEES, EITHER PURSUANT TO CONTRACT, PURSUANT TO A.R.S. § 12-341.01 (A) AND (B), OR PURSUANT TO ANY OTHER STATE OR FEDERAL STATUTE, COURT RULE, CASE LAW, OR COMMON LAW.**
19. **CONFLICT OF INTEREST.** From the date of this Agreement through the termination of its service to CITY, CONSULTANT shall not accept, negotiate or enter into any contract or agreements for services with any other party that may create a substantial interest, or the appearance of a substantial interest in conflict with the timely performance of the work or ultimate outcome of this Agreement and/or adversely impact the quality of the work under this Agreement without the express approval of the City Manager and the City Attorney. Whether such approval is granted shall be in the sole discretion of the City Manager and the City Attorney. The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of ARS § 38-511.

20. **NOTICE.** Any notice or communication between CONSULTANT and CITY that may be required, or that may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first-class United States Mail, addressed as follows:

CITY: City of Sedona
Attn: Anette Spickard, City Manager
102 Roadrunner Drive
Sedona, AZ 86336

CONSULTANT: Abdo Financial Solutions, LLC
Jean McGann, President
5201 Eden Avenue
Edina, MN 55436

21. **EXHIBITS.** The following exhibits, are a part of this Agreement and incorporated by this reference:

- Exhibit A Scope of Work
- Exhibit B Affidavit of Lawful Presence
- Exhibit C Employment of Contractor's employees

In the event of any conflict between the terms of an Exhibit and this Agreement, the terms of the Agreement shall control.

22. **NOTICE TO PROCEED.** Unless otherwise noted by CITY, acceptance of this Agreement is official notice to proceed with the work.

23. **PUBLIC RECORDS.** Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, CONSULTANT acknowledges that all documents provided to the CITY may be subject to disclosure by the Arizona public records law under A.R.S. 39-121 and related provisions. In the event CONSULTANT objects to any disclosure, CONSULTANT agrees to handle all aspects related to the request including properly communicating with the requester and timely responding with information and CONSULTANT agrees to indemnify the CITY from an claims, actions, lawsuits, damages and losses resulting from CONSULTANT's objection to the disclosure.

24. **NO BOYCOTT OF ISRAEL OR USE OF FORCED LABOR OF ETHNIC UYGHURS IN PEOPLES REPUBLIC OF CHINA.** As applicable, CONSULTANT certifies and agrees it is not currently engaged in and for the duration of the Agreement will not engage in a boycott of Israel, as that term is defined in A.R.S. §35-393 and will not use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the People's Republic of China (PRC) or any contractors, subcontractors or suppliers that use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the PRC as provided by A.R.S. §35-394.

CITY OF SEDONA, ARIZONA

Anette B. Spickard

Anette Spickard, City Manager

ATTEST:

JoAnne Cook

JoAnne Cook, City Clerk

APPROVED AS TO LEGAL FORM:

KC

Kurt W. Christianson, City Attorney

Abdo Financial Solutions, LLC

By: *Jean D. Madann*

Title: President

I hereby affirm that I am authorized to enter into and sign this Agreement on behalf of CONSULTANT

EXHIBITS

Exhibit A

- Scope of Work and Associated Costs.

Exhibit B

- Affidavit of Lawful Presence as set forth in ARS 1-502/8 USC §1621.
- Affidavit of Lawful Presence not required as this consultant is a corporation (Inc., I.L.C, I.LP).

Exhibit C

- City Employment of Contractors Employees

Value

Our team at Abdo Financial Solutions (Abdo FS) helps cities achieve their financial team goals.

Fees are based on the assumption and limitations outlined in the Scope of Services. Below are the fees for our services.

STAFF LEVEL	HOURLY RATES *
Partner	\$480
Senior Manager	\$350
Manager	\$290
Senior Associate	\$225 - \$240
Associate/Accounting Specialist	\$180 - \$225
Administration	\$105

We understand there is a large variance in our proposed rates. However, we'd like to assure you our top priority is delivering the highest value at the most economical cost to you. Our experienced project management team is committed to judiciously allocating tasks and resources to ensure the majority of the work will be executed at the lowest available rate, without compromising on the quality of the deliverables. We believe that with this approach, we can achieve a balance between cost-efficiency and excellence in execution.

*** Hourly rates are subject to change on September 1st each year**

This quote is valid for thirty (30) days.

Travel is invoiced at 1/2 the hourly rate and mileage is charged at the standard IRS rate.

Travel and mileage will be charged from our Scottsdale, Arizona office.

Monthly installment fees will be invoiced throughout the contract.

In an effort to reduce environmental impact, you will receive printable, downloadable PDFs of your report. To receive one (1) paper report, you will be charged \$150 for a set-up fee. Additional paper copies will be charged at the rate of \$50 per report.

Scope of Services

ABDO FS CONTRACT TASK

Interim Finance Director

Budget assistance

Assessment of processes and recommendations for streamlining and creating efficiencies

Potential areas:

- Internal charges
- Financial reporting
- Accounts payable
- Accounts receivable
- Cash receipting
- Billing
- Budget process
- Fixed assets
- Others as requested
- Financial system utilization/automation

Technical finance and accounting assistance/processing support as requested

Audit preparation assistance

ON-SITE AND REMOTE SERVICES

Interim Finance Director services will be a combination of on-site and remote. Jean McGann will be on-site for the first three (3) days of the contract. The next four (4) weeks, services will be performed remotely unless there is a specific request by the City for on-site work. In week six (6), Jean McGann will be on-site for two (2) consecutive days. This process will be repeated for the duration of the contract. This schedule may be modified as requested by the City.

Budget assistance, if requested, will be performed remotely by *Kasha Gansky*.

Process assessments will be performed by *Kasha Gansky, Kelli Truver, Brenna Ramy, and Brittany Bauer*. Depending on the assessment area will dictate which team member(s) are providing the service.

Technical and audit preparation assistance (as requested) will be provided by *Kasha Gansky and Amanda Watson*.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/3/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 2850 Golf Rd Rolling Meadows IL 60008	CONTACT NAME: Elisabeth Harkner PHONE (A/C, No, Ext): 952-358-7581 E-MAIL ADDRESS: Elisabeth.Harkner@ajg.com	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED Abdo, LLP 100 Warren Street, Suite 600 Mankato MN 56001	INSURER A : Cincinnati Insurance Company	NAIC # 10677
	INSURER B : The Harford Mutual Insurance Company	14141
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 523909880 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	ECP 0297014	12/17/2023	12/17/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPI/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		EBA 0297014	12/17/2023	12/17/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			ECP 0297014	12/17/2023	12/17/2026	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	83WECBC1NE4	12/17/2023	12/17/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Employee Dishonesty			ECP 0297014	12/17/2023	12/17/2026	Employee Dishonesty Deductible \$500,000 \$2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Certificate Holder is an additional insured if required by written contract on the General Liability. Additional Insured status has been added on the Automobile.
 Waiver of Subrogation. 30 Day Notice of Cancellation.

CERTIFICATE HOLDER**CANCELLATION**

City of Sedona
 102 Roadrunner Drive
 Sedona AZ 86336

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Exhibit C

City Employment of Contractor's Employees

The City acknowledges and agrees that Contractor's workforce, including employees assigned to staff the engagement provided for under this Agreement, constitutes an important and vital aspect of Contractor's business. In recognition of the foregoing and the harm that Contractor will suffer in the event of the loss of one or more of its employees, the City agrees that during the Term of this Agreement and for a period of six (6) months following the termination of this Agreement for any reason (the "Restrictive Time Period") the City shall not, directly or indirectly, on behalf of itself or any person, firm, corporation, association or other entity, (a) recruit, solicit, or assist anyone else in the recruitment or solicitation of, any of Contractor's employees to terminate their employment with Contractor and to become employed by or otherwise engaged with or by the City in any capacity independent of Contractor; (b) hire or engage any Contractor employee; or (c) otherwise encourage or induce any of Contractor's employees to terminate their employment with Contractor (collectively the "Contractor Employee Restrictive Covenant").

Notwithstanding the foregoing, Contractor may (but shall not be obligated to) consent to the City's recruitment, solicitation, employment or other engagement of a Contractor employee otherwise prohibited by this paragraph provided that (a) the City discloses to Contractor in writing its desire to recruit, solicit, employ or otherwise engage the Contractor employee independent of Contractor before engaging with the Contractor employee regarding any such potential relationship; (b) the City agrees to pay Contractor a Restrictive Covenant Exception Fee (as hereafter defined) in the event the Contractor employee becomes employed by or otherwise engaged with the City independent of Contractor; and (c) Contractor provides written consent to the City to engage with the Contractor employee regarding any such relationship. For purposes of this Agreement, the Restrictive Covenant Exception Fee shall be the greater of: (i) 200% of the annual contracted cost of Contractor's services under this Agreement in addition to the annual contracted cost paid or due Contractor hereunder; or (ii) 200% of the fees paid or due Contractor for services provided under this Agreement during the twelve (12) month period immediately prior to the termination of this Agreement or, in the event the Agreement has not been terminated, during the twelve (12) month period immediately prior to Contractor's provision of written consent to the City to engage in the recruitment, solicitation, employment or other engagement of a Contractor employee otherwise prohibited by this paragraph.

In the event Contractor is unwilling to consent to the City's recruitment, solicitation, employment, or other engagement of a Contractor employee otherwise prohibited by this paragraph and/or agree on the City's payment of a Restrictive Covenant Exception Fee, then the Contractor Employee Restrictive Covenant shall remain in full force and effect. If the City breaches or threatens to breach the Contractor Employee Restrictive Covenant, Contractor shall be entitled to injunctive and other equitable relief from a court of competent jurisdiction restraining the City's breach of said covenant in addition to such other remedies as may be available to Contractor in law and equity, as well as the recovery from City of Contractor's reasonable attorneys' fees and costs incurred in any such legal action. The City also acknowledges, understands, and agrees that although the harm Contractor will suffer as a result of the City's breach of the Contractor Employee Restrictive Covenant cannot be or is very difficult to accurately estimate, the sum which is the greater of (i) 200% of the average annual fees paid by the City to Contractor for services under this Agreement during the three-year period preceding the breach, or (b) 200% of the employee's average annual compensation during the three-year period preceding the breach represents and constitutes a reasonable estimation of the damages to Contractor caused by City's breach (the "Liquidated Damages Amount"). Therefore, at its sole election, Contractor may elect to enforce and compel the City's compliance with the Contractor Employee Restrictive Covenant or to seek an award from City of the Liquidated Damages Amount, together with the reasonable attorneys' fees and costs incurred by Contractor in connection with any legal action to obtain such relief.



SERVICE PROPOSAL FOR

City of Sedona

102 Roadrunner Drive, Building 106, Sedona, Arizona 86336

June 18, 2024

abdosolutions.com | Mankato, MN - Edina, MN - Scottsdale, AZ

Abdo
Financial
Solutions

Proposed by

Jean McGann, CPA

Partner | Abdo

President | Abdo Financial Solutions

jean.mcgann@abdots.com

P 952.715.3059

Packet Page 29

Anette Spickard, City Manager
City of Sedona
102 Roadrunner Drive, Building 106,
Sedona, Arizona 86336

June 18, 2024

Proposed by Abdo Financial Solutions

-

Change Request:

Per request of the City of Sedona (the City) we are extending the accounting services agreement to September 30, 2024 or when the City Finance Director recruitment process is complete. The original terms and conditions from the contract dated April 9, 2024 still apply.

The additional investment is needed in order to provide accounting services during the City Finance Director recruitment process.

- **Reason for requiring the change order:** To provide accounting services during the City Finance Director recruitment process.
- **Nature of work to be performed:** Finance Director services along with other accounting services as needed
- **Contract extension:** September 30, 2024, or when the City Finance Director recruitment process is complete
- **Estimated cost of change/ additional work:** Fees based on hourly rates outlined in the original contract dated April 9, 2024.

Change order will be invoiced on a monthly basis. Bill rates are subject to change on September 1st of each year.



APPROVED

City of Sedona

Anette Spickard, City Manager
102 Roadrunner Drive, Building 106,
Sedona, Arizona 86336



SIGNATURE

Anette Spickard

Abdo Financial Solutions, LLC

5201 Eden Avenue, Suite 250
Edina, Minnesota 55436

A handwritten signature in black ink that reads "Jean D. McGann".

Jean McGann, CPA

Partner | *Abdo*
President | *Abdo Financial Solutions, LLC*
June 18, 2024

REJECTED

By declining this proposal, the City is signifying they do not want Abdo Financial Solutions, LLC to perform the additional services required. I will be responsible for ensuring that our personnel will provide the requested assistance.



**CITY COUNCIL
AGENDA BILL**

**AB 3057
June 25, 2024
Consent Items**

Agenda Item: 3e
Proposed Action & Subject: Approval of an updated Construction Manager at Risk (CMAR), Construction Services contract for the Uptown Sedona Parking Garage Project with McCarthy Building Companies, Inc. in an amount not-to-exceed \$17,545,098.

Department	Public Works
Time to Present	N/A
Total Time for Item	N/A
Other Council Meetings	December 10, 2019; February 25, 2020; November 24, 2020; January 12, 2021; May 25, 2021; September 15, 2021; March 14, 2023; June 27, 2023; August 9, 2023; November 15, 2023; May 14, 2024
Exhibits	A. CMAR, Construction Services Contract

Finance Approval	Reviewed RMS 6/18/24	
City Attorney Approval	Reviewed KWC 6/18/24	Expenditure Required
		\$ 17,545,098
City Manager's Recommendation	Recommend approval ABS 6/17/24	Amount Budgeted
		\$ 22,942,770
		Account No. 22-5320-89-68A4 (Description) Construction-Uptown Parking Garage (SIM-03a)

SUMMARY STATEMENT

Staff are requesting approval of an updated Construction Manager at Risk (CMAR), Construction Services contract with McCarthy Building Companies, Inc for the Uptown Sedona Parking Garage, SIM-03A (Parking Garage).

Background:

At its May 14, 2024, Regular City Council Meeting, City Council approved a motion associated with Agenda Bill 3057 (AB 3057) granting award of a Construction Manager At Risk, Construction Services contract for the Uptown Sedona Parking Garage project with McCarthy Building Companies, Inc in an amount not-to-exceed \$17,545,098 subject to approval of a written contract by the City Procurement Officer and City Attorney's office. As a component of

the AB 3057 a draft contract for the CMAR, Construction Services was provided as an Exhibit intended to serve as the basis for the contract between the City and McCarthy Builders, Inc.

Following council approval of AB 3057 on May 14th, efforts for execution of the contract with McCarthy Building Companies, Inc were initiated. During that process a further substantive review of the contract was conducted by the legal counsel and project management of both the City and McCarthy Building Companies, Inc which found cause to amend or clarify certain terms and conditions of the contract. Ultimately, both parties have been able to successfully collaborate on an amended contract acceptable to each. The amended CMAR, Construction Services contract is provided herewith as Exhibit A.

While the City Attorney's Office has found most of these contract changes, individually, are not significant enough to require City Council approval, it felt the cumulative effect of changes should have Council approval.

A summary of the contract changes from what was presented to Council on May 14, 2024 have been summarized in four main areas as follows:

1. Testing/Inspection

- a. "Cost of Work" clarified labor costs are controlled by the agreed to labor rates and that some testing will be done by 3rd parties.
- b. 2.7.3 Design professional and City have 10 working days to complete review.
- c. 2.8.2 clarifies City can only reject materials for non-conformance with contract documents.
- d. 2.8.5/2.8.7 clarifies City is responsible for Special Inspection testing, but that CMAR still has testing and inspection requirements.
- e. 2.10.7.1/2 no printed drawings required; electronic project records okay.

2. Project Startup (Permits/Fees/Insurance)

- a. 2.3.1 City responsible for the cost of all permits, approvals, and licenses.
- b. 2.3.4 clarifies CMAR responsible for temporary water costs. City responsible for permanent water bills and Impact Fees.
- c. 2.6.2 clarifies City dust control requirements are reasonable.
- d. 2.6.4 clarifies CMAR control and responsibility of Site and Work through Final Acceptance.
- e. 3.4.1 City's 3rd party contractors (GLA, Fann, Speedy, etc.) must have similar insurance requirements as Fann.
- f. 4.6 Mutual waiver of claims for consequential damages.
- g. 10.2.6 If City requires higher insurance, contractors can pass along cost.
- h. 12.23 City as owner responsible for any hazardous substances.
- i. Attachment 1 to Exhibit C Special Conditions: changes made to dust control, work hours, parking control, public convenience and safety, neighbor notification in the start of construction section.

3. Completion of Project

- a. 2.6.4 clarifies CMAR control and responsibility of Site and Work through Final Acceptance.

- b. 4.0.1/4.0.1.1 Clarifies Contract Time versus Performance Period and the times are dependent on Fann work completion by October 31, 2024. Need City to execute contract by June 26th not June 15th.
- c. 4.1.5 clarifies City responsible for Work at Final Acceptance.
- d. 4.3.1 LDs capped at 50%.
- e. 4.4.1 Parties to later review an incentive bonus plan by mutually agreed upon Change Order.
- f. 8.1.4 Added in nonbinding mediation step prior to litigation.
- g. 9.1.5.3 Removed the anticipated loss language.
- h. 10.1.5.2 Insurance to remain in place until Final Acceptance.

Additional minor changes are proposed, these are non-substantive, and not listed specifically.

Budget:

The value of the amended contract remains \$17,545,098 as represented in AB 3057, as such no change to the budget is proposed herein.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s):

1. The council could elect to not approve the amended contract, or only approve portions of the amended contract, for CMAR Construction Services.

MOTION

Staff Recommended Motion 1 (CMAR, Construction Services Contract):

I move to: approve award of the updated Construction Manager At Risk, Construction Services contract for the Uptown Sedona Parking Garage project to McCarthy Building Companies, Inc in an amount not-to-exceed \$17,545,098 subject to final approval of the written contract by the City Procurement Officer and City Attorney's office.



City of Sedona, Arizona
Public Works

EXHIBIT A

Project: _____
Date: _____
Vendor: _____
Section/Job Order#/Description: _____
Document: CMAR

SIM-3A, UPTOWN SEDONA PARKING GARAGE PROJECT
CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES CONTRACT

DATED

6/25/2024

MAYOR

SCOTT JABLOW

VICE MAYOR

HOLLI PLOOG

CITY COUNCIL

MELISSA DUNN KATHY KINSELLA
BRIAN FULTZ JESSICA WILLIAMSON
PETE FURMAN

CITY MANAGER

ANETTE SPICKARD

Table of Contents

RECITALS 3

ARTICLE 1 – DEFINITIONS..... 3

ARTICLE 2 – CMAR’S SERVICES AND RESPONSIBILITIES 7

ARTICLE 3 - CITY’S SERVICES AND RESPONSIBILITIES..... 16

ARTICLE 4 - CONTRACT TIME 18

ARTICLE 5- CONTRACT PRICE 22

ARTICLE 6 - CHANGES TO THE CONTRACT PRICE AND TIME 24

ARTICLE 7- PROCEDURE FOR PAYMENT..... 27

ARTICLE 8- CLAIMS AND DISPUTES 31

ARTICLE 9 – SUSPENSION AND TERMINATION 33

ARTICLE 10 - INSURANCE AND BONDS 35

ARTICLE 11 - INDEMNIFICATION 40

ARTICLE 12 – GENERAL PROVISIONS..... 41

SIGNATURE PAGE 49

EXHIBIT A - PROJECT DESCRIPTION 50

EXHIBIT B – APPROVED GMP PROPOSAL 51

EXHIBIT C – TECHNICAL SPECIFICATIONS..... 52

ATTACHMENT 1 TO EXHIBIT C – SPECIAL CONDITIONS 53

SPECIAL DETAILS **Error! Bookmark not defined.**

EXHIBIT D – CONSTRUCTION DRAWINGS 57

**CITY OF SEDONA, ARIZONA
PUBLIC WORKS**

**SEDONA IN MOTION- PROJECT 3A, UPTOWN SEDONA PARKING GARAGE PROJECT CONSTRUCTION
MANAGER AT RISK CONSTRUCTION PHASE SERVICES**

THIS CONTRACT, hereinafter referred to as “Contract” or “Agreement”, made and entered by and between City of Sedona, an Arizona municipal corporation, hereinafter designated the “City” and McCarthy Building Companies, Inc, a Missouri corporation, hereinafter designated the “Construction Manager at Risk” or “CMAR” or “Contractor”.

RECITALS

- A. The Sedona City Code authorizes the Sedona City Manager to approve procurement of design phase services, construction, and construction services utilizing the Construction Manager at Risk job delivery method in accordance with the Arizona Revised Statutes (A.R.S.) Section 34-602 et. seq. and to execute contracts with the CMAR for design phase services, construction, and construction services.
- B. The City intends to construct the UPTOWN SEDONA PARKING GARAGE Project as more fully described in Exhibit A attached, hereinafter referred to as the “Project”.
- C. The City will provide construction administration services for this work.
- D. The CMAR has represented to the City the ability to provide construction management services and to construct the Project and based on this representation the City engages the CMAR to provide these services and construct the Project.
- E. A contract dated 3/6/2021 has been executed previously between City and CMAR to perform CMAR design phase services. Those services may continue during the duration of this Contract.

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and CMAR as follows:

ARTICLE 1 – DEFINITIONS

“Agreement” (“Contract”) means this written document signed by the City and CMAR covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

“Change Directive” means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

“Change Order” means a type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by City and CMAR, agreeing to changes to a GMP. The Change Order will state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.

"City ("Owner"") means the City of Sedona, a municipal corporation, with whom CMAR has entered into this Contract and for whom the services are to be provided pursuant to this Contract. Regulatory activities handled by the City of Sedona are independent of any responsibilities of the City under this Agreement.

"City's Representative" means the person designated in Article 8.3.1.2.

"City's Senior Representative" means the person designated in Article 8.3.1.1.

"Construction Administration" means review of contract performance in a general sense or to the degree deemed appropriate by the Owner as necessary to determine if the work appears to comply with the contract requirements, and based upon such review determine appropriate payments to be made or other actions the Owner or its agent(s) should or may take under the contract provisions.

"Construction Documents" means the plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

"CMAR" means the firm selected by the City to provide construction services as detailed in this Agreement.

"CMAR's Contingency" means a fund to cover cost growth during the project used at the discretion of the CMAR usually for costs that result from project circumstances. The amount of the CMAR's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CMAR's Contingency is described in Article 5.1.2.3.

"CMAR's Representative" means the person designated in Article 8.3.2.2.

"CMAR's Senior Representative" means the person designated in Article 8.3.2.1.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and the CMAR: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

"Contract Price" means the amount or amounts set forth in Article 5.

"Construction Fee" means the CMAR's administrative costs, home office overhead, and profit.

"Contract Time" means the Days as set forth in Article 4; the period of time, including authorized adjustments, allotted in the Contract Documents for Final Acceptance of the Work.

"Cost of the Work" means the direct costs necessarily incurred by the CMAR in the proper performance of the Work. The Cost of the Work shall include direct labor costs performed at labor rates agreed to with the City, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing not by a 3rd party, and related items. The Cost of the Work shall not include the CMAR's Construction Fee, General Conditions Costs, and taxes.

"Critical Path" means the sequence of activities from the start of the Work to the Final Acceptance of the Project. Any delay in the completion of these activities will extend the Final Acceptance date.

"Day(s)" mean calendar days unless otherwise specifically noted in the Contract Documents.

"Design Phase Contract" means the agreement between the City and CMAR for the Services provided by the CMAR during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate(s), subcontractor bid phase services and GMP preparation.

“Design Professional” means a qualified, licensed design professional who furnishes design and/or construction administration services required for the Project.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered in the execution of the Work and generally recognized as inherent in the Work, or in the performance of reasonable and prudent due diligence on the part of the CMAR.

“Final Acceptance” means the completion of the Work as prescribed in Section 4.2.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Final Acceptance date.

“General Conditions Costs” includes, but is not limited to the following types of costs for the CMAR during the construction phase: (i) payroll costs for project manager or CMAR for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management or working personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CMAR or Subcontractors.

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CMAR’s Contingency.

“GMP Contract” means the UPTOWN SEDONA PARKING GARAGE Project Construction Manager at Risk Construction Services Contract.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the CMAR to start Work.

“Owner’s Contingency” means a fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes. The amount of the Owner’s contingency will be set solely by the Owner and will be in addition to the project costs included in the CMAR’s GMP packages. Use and management of the Owner’s contingency is described in Article 5.1.4.

“Performance Period” means the period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated within each GMP and shown on the Project Schedule.

“Payment Request” means the City form used by the CMAR to request progress payments for Work in accordance with Article 7.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CMAR to illustrate materials or equipment for some portion of the Work.

“Project” means the work to be completed in the execution of this Agreement as may be amended from time to time and as described in the Recitals above and in Exhibit A attached.

“Project Record Documents” means the documents created pursuant to Article 2.10.

“Samples” means physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” mean drawings, diagrams, schedules and other data specially prepared for the Work by the CMAR or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” means the land or premises on which the Project is located generally described as 460 and 430 Forest Road, Sedona, AZ.

“Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

“Subcontractor” means an individual or firm having a direct contract with the CMAR or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the construction phase Work for which the CMAR is responsible.

“Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can use the Project or a portion thereof for its intended purposes. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to Section 2.4.3.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CMAR or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CMAR or any Subcontractor.

“Work” means the entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

ARTICLE 2 – CMAR’S SERVICES AND RESPONSIBILITIES

2.0 The CMAR shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CMAR in Sedona, Arizona. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project’s Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.

2.1. General Services

2.1.1. CMAR’s Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CMAR’s Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CMAR. CMAR’s Representative may be replaced only with the written consent of City.

2.1.2. *Section intentionally left blank*

2.2 Prohibition on Discrimination

2.2.1 CMAR, its agents, employees, and subcontractors, shall not discriminate in any employment policy or practice. “Discrimination” means to exclude individuals from an opportunity or participation in any activity or to accord different or unequal treatment in the context of a similar situation to similarly situated individuals because of race, color, gender, gender identity, sexual orientation, religion, national origin or ancestry, marital status, familial status, age, disability, or veteran status. (Sedona City Code Section 9.30.030))

2.3 Government Approvals and Permits

2.3.1 Unless otherwise provided, CMAR shall assist Design Professional and the City to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. Cost of permits, approvals and licenses shall be paid for by the City. **The CMAR is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

2.3.2 Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Sedona Fire District permits, a copy of the application for permit shall also be provided to the City’s Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

2.3.3 *Section intentionally left blank*

2.3.4 CMAR is responsible for the cost of temporary water meter(s), and all water bills on the temporary project meters until Final Acceptance of the Project. Arrangements for construction

of the temporary water system are the CMAR's responsibility. Impact Fees, water and sewer taps, fire lines and taps, and all water bills on the permanent project meters will be the responsibility of the City.

2.4 Pre-construction Conference

2.4.1 Prior to the commencement of any Work, the City's Representative will schedule a Pre-construction conference.

2.4.2 The purpose of this conference is to establish a working relationship between the CMAR, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved during construction.

2.4.3 The Notice to Proceed date will be negotiated between the City and the CMAR. After the pre-construction conference a Notice to Proceed letter will be issued confirming the construction start date, Performance Period and if applicable, conditions of Substantial Completion, and the Final Acceptance date.

2.4.4 *Section intentionally left blank*

2.4.5 The CMAR shall provide a schedule of values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying the CMAR's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.

2.4.6 Minimum attendance by the CMAR shall be the CMAR's Representative, who is authorized to execute and sign documents on behalf of the CMAR, the job superintendent, the CMAR's safety officer, and a representative for each specialty sub-contractor.

2.5 Control of the Work

2.5.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, CMAR shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CMAR to complete the Work consistent with the Contract Documents.

2.5.2 CMAR shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CMAR shall, at all times, exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.5.3 CMAR or the CMAR's Superintendent shall be present at the Site at all times in which construction activities are taking place.

2.5.3.1 All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.

- 2.5.3.2** In the event of noncompliance of this Section, the City may require the CMAR to stop or suspend the Work in whole or in part.
- 2.5.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CMAR's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.
- 2.5.5** Before ordering materials or doing work, the CMAR and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the City for resolution before proceeding with the work.
- 2.5.6** The CMAR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CMAR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City at once.
- 2.5.7** The CMAR shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of the same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona.
- 2.5.8** Any person employed by the CMAR or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CMAR or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. The CMAR or Subcontractor shall keep the City harmless from damages or claims, which may occur in the enforcement of this Section.
- 2.5.9** CMAR assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.10** CMAR shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CMAR agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.6 Control of the Work Site

- 2.6.1** Throughout all phases of construction, including suspension of Work, CMAR shall keep the Site reasonably free from debris, trash and construction wastes to permit CMAR to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CMAR shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

2.6.2 CMAR shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City in its reasonable discretion.

2.6.3 CMAR shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CMAR shall be responsible for the phasing and coordination of all work to minimize disruption to building occupants and facilities, traffic flow and normal City services.

2.6.4 Only materials and equipment, which are to be used directly in the Work, shall be brought to and stored on the Site by the CMAR. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity through Final Acceptance is solely the responsibility of the CMAR.

2.7 Shop Drawings, Product Data and Samples

2.7.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CMAR proposes to conform to the information given and the design concept expressed in the Contract Documents. In light of this, it is understood that City review of submittals or approval of same does not constitute a change of contract provisions. Such changes if made must be made by Contract Change Orders.

2.7.2 The CMAR shall review, approve, verify, and submit to the City one electronic copy of each Shop Drawing, Product Data, and similar submittals required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the City or of separate contractors. Contractor shall supply City with one physical product and/or material samples required by the Contract Documents. Submittals made by the CMAR, which are not required by the Contract Documents, may be returned without action.

2.7.3 The CMAR shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals. City and Design Professional shall have 10 working days to complete their review of the submittals and provide approval or comments back to the CMAR.

2.7.4 By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CMAR represents that the CMAR has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

2.7.5 The CMAR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City 's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CMAR has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. The CMAR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data,

Samples, or similar submittals by the City's approval thereof.

2.7.6 The CMAR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.

2.7.7 Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

2.7.8 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.8 Quality Control, Testing and Inspection

2.8.1 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.8.2 All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City for non-conformance with the contract documents shall be removed immediately and replaced in an acceptable manner.

2.8.3 *Section intentionally left blank*

2.8.4 *Section intentionally left blank*

2.8.5 City shall be responsible for all required Special Inspection testing, inspection of materials and installations and special observation to assure compliance with contract requirements. CMAR shall be provided with those tests and inspection results upon request or as otherwise required by the contract documents. CMAR shall be responsible for testing and inspection of materials and installations and as required by the contract documents.

2.8.5.1 When the first and subsequent tests and inspections indicate noncompliance with the Contract Documents, all retesting and reinspection shall be performed by the same testing agency, unless written approval is received for another agency from City. Such approval shall not be unreasonably withheld.

2.8.5.2 The CMAR will cooperate with the selected 3rd party testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

2.8.5.3 The City may contract with a third-party testing agency, at no cost to the CMAR, to conduct its own quality control testing and inspection or to verify CMAR's test results.

2.8.6 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.8.7 Special Inspections and special observation as required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the

responsibility of and shall be paid by the City. CMAR shall be responsible for testing and inspection of materials and installations and as required by the contract documents.

2.8.8 CMAR's convenience and quality control testing and inspections shall be the sole responsibility of the CMAR and paid by the CMAR.

2.9 Trade Names and Substitutions.

2.9.1 Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:

2.9.1.1 The substitution shall be submitted by CMAR in writing to the City.

2.9.1.2 The CMAR shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.9.1.3 The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.

2.9.1.4 The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.

2.9.1.5 The CMAR if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.9.1.6 The City will make the final decision and will notify the CMAR in writing as to whether the substitution has been accepted or rejected.

2.9.1.7 If the City does not respond in a timely manner, the CMAR shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.10 Project Record Documents

2.10.1 During the construction period, the CMAR shall maintain at the jobsite an electronic set of blue-line or black-line prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

2.10.2 The CMAR shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits

- Revisions to electrical circuitry
 - Actual equipment locations
 - Locations of concealed internal utilities
 - Changes made by Change Order
 - Details not on original Contract Drawings
- 2.10.3** Mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.
- 2.10.4** Mark Project Record Drawings sets with red erasable colored pencil or red electronic markups.
- 2.10.5** Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- 2.10.6** The CMAR shall as a condition of Final Acceptance, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.
- 2.10.7** Upon receipt of the reviewed Project Record Drawings from the City, the CMAR shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:
- 2.10.7.1** A complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with City of Sedona CADD technology will be provided by the Design Professional. The Design Professional will revise and update the electronic drawing files based on the marked up Project Record Drawings prepared by the CMAR. Each drawing shall be clearly marked with "As-Built Document."
- 2.10.7.2** A complete set of electronic record drawings from the final AutoCAD drawings.
- 2.10.7.3** The original copy of the electronic Project Record Drawings (redline mark-ups).
- 2.11 Project Safety**
- 2.11.1** CMAR recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.11.2** CMAR assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.3** CMAR shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CMAR's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- 2.11.4** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CMAR's personnel, Subcontractors and others as applicable.

- 2.11.5** CMAR and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
- 2.11.6** CMAR will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.11.7** CMAR's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.12 Warranty

- 2.12.1** CMAR warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2** CMAR's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CMAR or anyone for whose acts CMAR may be liable.
- 2.12.3** CMAR's warranty obligation shall be for two years after Final Acceptance.
- 2.12.4** Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. CMAR will provide City with all manufacturers' warranties upon Final Acceptance.

2.13 Correction of Defective Work

- 2.13.1.** CMAR agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of two years from the date of Final Acceptance of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 2.13.2.** During the Work, CMAR shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps during the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CMAR with written notice that City will commence correction of such nonconforming Work with its own forces.
- 2.13.3.** CMAR shall, take meaningful steps to commence correction of nonconforming Work subject to

Section 2.12 above, within seven days of receipt of written notice from City. This includes the investigation, correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CMAR fails to commence the necessary steps within such seven-day period, City, in addition to any other remedies provided under the Contract Documents, may provide CMAR with written notice that City will commence correction of such nonconforming Work with its own forces.

- 2.13.4.** If City does perform such corrective Work, CMAR shall be responsible for all reasonable costs incurred by City in performing such correction.
- 2.13.5.** Nonconforming Work that creates an emergency requiring an immediate response, the CMAR will respond and initiate corrections within twenty-four hours.
- 2.13.6.** The two-year period referenced in Section 2.12 above applies only to CMAR's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CMAR's other obligations under the Contract Documents.

ARTICLE 3 - CITY'S SERVICES AND RESPONSIBILITIES

3.1 Duty to Cooperate.

3.1.1 City shall, throughout the performance of the Work, cooperate with CMAR and perform its responsibilities, obligations and services in a timely manner to facilitate CMAR's timely and efficient performance of the Work and so as not to delay or interfere with CMAR's performance of its obligations under the Contract Documents.

3.1.2 City shall furnish at the CMAR's request, at no cost to the CMAR, a CADD file of the Construction Documents in AutoCAD format compatible with City of Sedona CADD technology.

3.2 City's Representative

3.2.1 City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CMAR to fulfill its obligations under the Contract Documents.

3.2.2 City's Representative shall also provide CMAR with prompt notice if it observes any failure on the part of CMAR to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

3.2.3 The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CMAR. The inspector is for the purpose of assisting the City's Representative only and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory.

3.2.3.1 Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.

3.2.3.2 The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

3.2.3.3 The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the CMAR.

3.2.3.4 The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

3.2.3.5 The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequenced or procedures or for safety precautions or programs or responsibility for the CMAR's failure to perform the work in accordance with Contract Documents.

3.3 Design Professional Services

3.3.1 The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CMAR. The CMAR shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.

3.3.2 The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.

- 3.3.2.1** Provide oversight of the Work. The City and CMAR shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.
- 3.3.2.2** Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work, and will endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction, which does not conform to the Construction Documents, and to require additional inspection or testing of the construction in accordance with Section 2.8.
- 3.3.2.3** Review and recommend approval of Payment Requests.
- 3.3.2.4** Review and approve or take other appropriate action upon the CMAR's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.7.
- 3.3.2.5** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CMAR. The design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.6** Review Change Orders prepared by the CMAR, and may authorize minor changes in the Work as provided in Section 6.6.1.
- 3.3.2.7** Conduct inspections to determine Substantial Completion and Final Acceptance.
- 3.3.2.8** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CMAR.
- 3.4 City's Separate Contractors**
 - 3.4.1** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, CMAR in order to enable CMAR to timely complete the Work consistent with the Contract Documents. City shall retain its separate contractors under contractual conditions substantially similar to this agreement as it relates to insurance and waiver of subrogation requirements.
- 3.5 Permit Review and Inspections.**
 - 3.5.1** If requested by the CMAR, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
 - 3.5.2** Regulating agencies of the City, such as Developmental Services, Planning Departments, and Sedona Fire District enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

ARTICLE 4 - CONTRACT TIME

4.0. Contract Time

- 4.0.1.** Contract Time for the Uptown Sedona Parking Garage shall start upon full execution of this CMAR agreement and end with Final Acceptance. The Performance Period as indicated in section 4.0.1.1 of this agreement is dependent upon the City of Sedona completing the project site excavation and shoring scope of work and turning the site over to McCarthy by no later October 31, 2024.
- 4.0.1.1.** This GMP will establish a Performance Period. The Performance Period shall be 365 calendar days for the entire work from the execution of the CMAR Construction Agreement to Final Acceptance based on the Agreement being executed by the City on June 26th, 2024. The Performance Period is dependent upon the completion of the excavation and shoring of the basement foundation scope of work being complete and safe to work in by October 31, 2024.
- 4.0.2.** CMAR agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.
- 4.0.3.** All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.

4.1. Substantial Completion

- 4.1.1.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed.
- 4.1.2.** Prior to notifying the City in accordance to Division 4.1.3 below, the CMAR shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CMAR shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents.
- 4.1.3.** CMAR shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4.** Within five (5) days of City's receipt of CMAR's notice, City and CMAR will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5.** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CMAR's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Final Acceptance, except as may otherwise be noted in the Certificate of Substantial Completion. City accepts and relieves CMAR of all risk of loss to the Work at Final Acceptance and will provide their proof of property insurance covering the Work at the same time.
- 4.1.6.** City, at CMAR's option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has

been issued for the portion of Work addressing the items set forth in Division 4.1.5 above, (ii) CMAR and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CMAR agree that City's use or occupancy will not interfere with CMAR's completion of the remaining Work.

4.2. Final Acceptance

4.2.1. Within five (5) days of City's receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance by the City, City and CMAR will jointly inspect to verify that the remaining items of Work have been completed as set forth in Division 4.1.5. The City will issue a Final Acceptance Letter and payment pursuant to Section 7.5.

4.3. Liquidated Damages

4.3.1. CMAR understands that if Substantial Completion is not attained within the Contract Time as adjusted, City will suffer damages, which are difficult to determine and accurately specify. CMAR agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CMAR shall pay the City One Thousand Seven Hundred and Eighty dollars (\$1,780) as liquidated damages for each Calendar Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted. Liquidated Damages are to be capped at fifty percent (50%) of CMAR's Fee as indicated in the GMP proposal.

4.4. Incentive Bonuses.

City and CMAR agree to review an incentive bonus plan for CMAR's for efficient performance for the potential future inclusion into the contract via change order.

4.5. Project Schedule

4.5.1. The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.

4.5.2. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CMAR of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

4.5.3. Updated Project Schedule shall be submitted at least monthly to the City as part of the Payment Request.

4.5.3.1. CMAR shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP and within the Contract Time.

4.5.3.2. With each schedule submittal the CMAR shall include a transmittal letter including the following:

- Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
- Current and anticipated delays including:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay
 - Notice of potential impact of the delay on other activities, milestones, and on the date of Substantial Completion or Final Acceptance.
- Changes in construction sequence
- Pending items and status thereof including but not limited to:

- Time Extension requests
 - Other items
 - Final Acceptance date status:
 - If ahead of schedule, the number of calendar days ahead.
 - If behind schedule, the number of calendar days behind.
 - Other project or scheduling concerns
 -
- 4.5.4.** City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CMAR from compliance with the requirements of the Contract Documents or be construed as relieving the CMAR of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 4.5.5.** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 4.5.5.1.** The CPM diagram schedule shall be in Working Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.5.5.2.** The CPM diagram schedule shall indicate all relationships between activities.
- 4.5.5.3.** The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 4.5.5.4.** The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.
- 4.5.5.5.** The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 4.5.5.6.** The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CMAR activities.
- 4.5.5.7.** The schedule shall include a critical path activity that reflects anticipated weather delays during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site.
- 4.5.6.** The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.5.7.** Float time shall be as prescribed below:
- 4.5.7.1.** The total Float within the overall schedule, is not for the exclusive use of either the City or the CMAR, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
- 4.5.7.2.** The CMAR shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Final Acceptance date.

4.5.7.3. Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CMAR, etc.). In such an event, the CMAR shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Final Acceptance date is also exceeded.

4.6. Waiver of Claims for Consequential Damages

4.6.1. The City and CMAR waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes (i) damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (ii) damages incurred by the CMAR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

4.6.2. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Contract Documents. Nothing contained in this Section shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 5- CONTRACT PRICE

- 5.0.** The CMAR agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved Guaranteed Maximum Price.
- 5.1. Contract Price.**
- 5.1.1.** The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as Exhibit B.
- 5.1.2.** Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable and lump sum amounts defined below. The CMAR is at risk to cover any additional Project costs. Any amounts in excess of the actual Cost of the Work, CMAR's Contingency and/or taxes shall revert to the City.
- 5.1.2.1.** The Cost of the Work is actual costs as defined in the GMP and is a not-to-exceed reimbursable amount.
- 5.1.2.2.** The General Conditions Costs and the Construction Fee are firm fixed lump sums.
- 5.1.2.3.** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, such as those costs related to unanticipated Cost of the Work resulting from local market, labor and material conditions, bidder and Subcontractor defaults, errors or negligence of the Construction Manager, interfacing omissions between and from the various Work Categories, General Conditions Costs in excess of estimate, and any other liability of the Construction Manager to the Owner under this Agreement. CMAR's contingency use is subject to written approval from the city. Such approval shall not be unreasonably withheld.
- 5.1.2.1** When the CMAR utilize CMAR's Contingency funds, the CMAR shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CMAR shall deduct the amount of CMAR's Contingency funds used from the CMAR's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CMAR's Contingency funds are used for a new line item that was not given with the original schedule of values that will be so indicated.
- 5.1.3** Taxes are deemed to include all sales, use, consumer and other taxes, which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective, or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.
- 5.1.4** Owner's Contingency is funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes. Markups for Construction Fee and taxes will be applied by the CMAR at the time that Owner's Contingency is used.
- 5.1.5** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.
- 5.1.5.1** GMP amendments are accumulative except for contingency. The amount of contingency for

each GMP amendment will be negotiated separately.

- 5.1.5.2** If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

ARTICLE 6 - CHANGES TO THE CONTRACT PRICE AND TIME

6.0. Delays to the Work

- 6.0.1.** If CMAR is delayed in the performance of the Work that will cause a change in the date of Final Acceptance due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CMAR is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.0.2.** The CMAR shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary.
- 6.0.3.** By way of example, events that will entitle CMAR to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.0.4.** If weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Final Acceptance.
- 6.0.5.** It is understood, however, that permitting the CMAR to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights.
- 6.0.6.** In addition to CMAR's right to a time extension for those events set forth in this Section, CMAR shall also be entitled to an appropriate adjustment of the Contract Price for adverse weather conditions not reasonably anticipated that cumulatively results in more than 21 days of delay, provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CMAR and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions reasonably anticipated, and other acts of God.

6.1. Differing Site Conditions

- 6.1.1.** If CMAR encounters a Differing Site Condition, CMAR will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CMAR's cost and/or time of performance are adversely impacted by the Differing Site Condition. Inasmuch as the CMAR has had an opportunity and responsibility to determine existing subsurface conditions on the project site per Section 2.6 of the Design Phase Services Contract for this project, existence of subsurface rock in the excavation area of this project will not be considered as a Differing Site Condition on the Project.
- 6.1.2.** Upon encountering a Differing Site Condition, CMAR shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CMAR shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.2. Errors, Discrepancies and Omissions

- 6.2.1.** If the CMAR observes errors, discrepancies or omissions in the Contract Documents, CMAR shall promptly notify the City and the Design Professional and request clarification through the City. It

is recognized that the CMAR's review is made in the CMAR's capacity as a contractor and not as a licensed design professional.

6.2.2. If the CMAR proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, CMAR does so at its own risk. Adjustments involving such circumstances made by the CMAR prior to clarification by the Design Professional shall be at the CMAR's risk.

6.3. City Requested Change in Work

6.3.1. The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

6.3.2. Such alterations and changes shall not invalidate this Agreement nor release the surety and the CMAR agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

6.3.3. The City will request a proposal for a change in Work from CMAR, and an adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

6.4. Legal Requirements

6.4.1. The Contract Price and/or Contract Times shall be adjusted to compensate CMAR for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP, affecting the performance of the Work

6.5. Change Directives and Change Orders

6.5.1. City and CMAR shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.5.2. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

6.6. Minor Changes in the Work

6.6.1. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, workmanship, cost, and schedule required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CMAR. The CMAR shall carry out such written orders promptly.

6.6.2. CMAR may make minor changes in Work, provided, however that CMAR shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CMAR.

6.6.3. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.7. Contract Price Adjustments

6.7.1. The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

6.7.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

- 6.7.1.2.** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; and
- 6.7.1.3.** Costs, fees and any other markups.
- 6.7.2.** The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit B.
- 6.7.3.** If an increase or decrease cannot be agreed to as set forth in items Sections 6.7.1.1 through 6.7.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CMAR shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.7.4.** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CMAR because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.7.5.** If City and CMAR disagree upon whether CMAR is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CMAR shall resolve the disagreement pursuant to Article 8 hereof.
 - 6.7.5.1.** As part of the negotiation process, CMAR shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
 - 6.7.5.2.** If the parties are unable to agree and City expects the CMAR to perform the services in accordance with City's interpretations, CMAR shall proceed to perform the disputed services, conditioned upon City issuing a written order to CMAR (i) directing CMAR to proceed and (ii) specifying City's interpretation of the services that are to be performed.
- 6.7.6. Emergencies**
 - 6.7.6.1.** In any emergency affecting the safety of persons and/or property, CMAR shall act, at its discretion, until direction is provided by responsible authorities, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Division shall be determined as provided in this Article. The CMAR shall notify the City of any emergency, actual or potential, as quickly as feasible.

ARTICLE 7- PROCEDURE FOR PAYMENT

- 7.0.** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the said CMAR the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and the CMAR's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.
- 7.1. GMP Payment Request**
- 7.1.1.** At the pre-construction conference prescribed in Section 2.4, CMAR shall submit for City's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CMAR throughout the Work.
- 7.1.2.** At least five (5) working days prior to the date established for a Payment Request, the CMAR shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request.
- 7.1.3.** The Payment Request shall constitute CMAR's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.
- 7.1.4.** Unless otherwise stated in this contract the Payment Request may request payment for stored equipment and materials provided the equipment and materials are stored in licensed, bonded, and insured warehouses or storage yard and documentation is provided to show the actual purchase and storage of the equipment and material. City not responsible for storage costs. Requests for payment for equipment and materials shall only be made for equipment and materials actually installed, placed, or used or otherwise incorporated into the Work. If Payment Request for stored equipment and materials is allowed the request may not include request for payment for equipment or materials that are not anticipated to be incorporated into the work based on approved plans and specifications for the work.
- 7.1.4.1.** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.
- 7.1.4.2.** For materials and equipment stored off the Site, the City must approve the storage. The material and/or equipment must be accessible for City's inspection. The CMAR must protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.
- 7.1.4.3.** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.
- 7.1.5.** CMAR shall submit to City on the monthly anniversary of the construction Notice to Proceed beginning with the first month after the construction Notice to Proceed, its Payment Request. Only one payment per each calendar month shall be requested, and there shall be at least 15 days between payment requests.

7.2. Payment of GMP

7.2.1. City shall make payment in accordance with A.R.S. 34-609. Payment will be made no later than fourteen (14) days after the Payment Request is certified and approved, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

7.2.2. City shall pay CMAR all amounts properly due. If City determines that CMAR is not entitled to all or part of a Payment Request, it will notify CMAR in writing within (7) days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CMAR must take to rectify City's concerns. CMAR and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CMAR may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.2.3. Prior to the City making the first progress payment the Contractor shall submit a schedule itemized similar to the itemization in for determination of the GMP and any approved change orders. The format of the schedule shall be approved by the City, but shall at a minimum include columns showing original estimated cost for each line item, the percent completion of an item, cost incurred for an item, and the amount billed for an item. The schedule shall be updated for each progress payment billing and supporting documentation for the cost of labor performed at agreed upon labor rates, equipment, and material employed on the project shall be provided.

7.2.4. The City shall comply with the A.R.S. 32-1181 through 1188, the Prompt Pay Act.

7.3. Retention on GMP

7.3.1. City will retain ten percent (10%) of each Payment Request amount provided, however, that when fifty percent (50%) of the Work has been completed by CMAR, upon request of the CMAR, City may reduce the amount retained to five percent (5%) from CMAR's subsequent Payment Requests if the CMAR's performance of work has been satisfactory.

7.3.2. In lieu of retention, the CMAR may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the state of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.

7.3.2.1. CDs assigned to the City must be maintained at the City's single servicing bank designated by the City, in the form of time deposit receipt accounts.

7.3.2.2. Securities deposited in lieu of retention must be deposited into a separate account with a bank designated by the City having a branch located in the City of Sedona.

7.3.2.3. CDs and Securities shall be assigned exclusively for the benefit of the City of Sedona pursuant to the City's form of escrow Agreement. All requirements of ARS 34-609.B.5 shall be adhered to in the event CDs or securities are used in lieu of retainage.

7.4. *Section intentionally left blank*

7.5. Final Payment

7.5.1. After receipt of a final Payment Request, City shall make final payment 60 days after the receipt by the City, provided that CMAR has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

7.5.2. At the time of submission of its final Payment Request, CMAR shall provide the following information:

7.5.2.1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;

7.5.2.2. A general release executed by CMAR waiving, upon receipt of final payment by CMAR, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

7.5.2.3. Consent of CMAR's surety, if any, to final payment.

7.6. Payments to Subcontractors or Supplier

7.6.1. CMAR shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. The CMAR shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CMAR shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CMAR shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the CMAR. No Contract between CMAR and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

7.6.2. If the CMAR fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CMAR agrees that the City may take such actions:

7.6.2.1. To hold the CMAR in default under this Agreement;

7.6.2.2. Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

7.6.2.3. Reject all future offers to perform work for the City from the CMAR for a period not to exceed one year from Final Acceptance date of this Project; or

7.6.2.4. Terminate this agreement.

7.6.3. If CMAR's payment to a Subcontractor or supplier is in dispute, CMAR and Subcontractor or supplier agree to submit the dispute to any of one of the following dispute resolution processes within fourteen (14) calendar days from the date any party gives notice to the other: (a) binding arbitration; (b) a form of alternative dispute resolution (ADR) agreeable to all parties or (c) a City of Sedona facilitated mediation. When disputed claim is resolved through ADR or otherwise, the CMAR and Subcontractor or supplier agrees to implement the resolution within

seven (7) calendar days from the resolution date.

7.6.4. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

7.6.5. CMAR shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.7. Record Keeping and Finance Controls

7.7.1. Records of the CMAR's payroll hours, reimbursable expenses pertaining to this Project and records of accounts between the City and CMAR shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance of the Project.

7.7.2. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

7.7.3. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CMAR's records, the audit discloses the CMAR has provided false, misleading, or inaccurate cost and pricing data.

7.7.4. The CMAR shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data as it relates to cost plus change orders only.

7.7.5. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

ARTICLE 8- CLAIMS AND DISPUTES

8.0. Requests for Contract Adjustments and Relief

- 8.0.1.** If either CMAR or City believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.0.2.** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.0.3.** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.0.4.** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.1. Dispute Avoidance and Resolution

- 8.1.1.** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CMAR and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. CMAR understands that authorities granted City employees and representatives to resolve disputes are subject to City Code requirements and constraints.
- 8.1.2.** CMAR and City will first attempt to resolve disputes or disagreements at the field level through discussions between CMAR's Representative and City's Representative.
- 8.1.3.** If a dispute or disagreement cannot be resolved through CMAR's Representative and City's Representative, CMAR's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than fourteen (14) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 8.1.4.** If a dispute or disagreement cannot be resolved through CMAR's Senior Representative and City's Senior Representative, the dispute or disagreement shall be subject to non-binding mediation followed by litigation.

8.2. Duty to Continue Performance

- 8.2.1.** Unless provided to the contrary in the Contract Documents, CMAR shall continue to perform the Work and City shall continue to satisfy its payment obligations to CMAR, pending the final resolution of any dispute or disagreement between CMAR and City.

8.3. Representatives of the Parties

8.3.1. City's Representatives

- 8.3.1.1.** City designates the individual listed below or his designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.1.3:

Kurtis Harris, PE, Director of Public Works/ City Engineer
102 Roadrunner Drive
Sedona, AZ 86336
(928) 203-5059

- 8.3.1.2.** City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in Division 8.1.2:

Robert Welch, PE, Associate Engineer
102 Roadrunner Drive
Sedona, AZ 86336

8.3.2. CMAR's Representatives

- 8.3.2.1.** CMAR designates the individual listed below as its Senior Representative ("CMAR's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.1.3:

Chris Nickle, Executive Vice President
6225 N 24th Street, Suite 125
Phoenix, AZ 85016

- 8.3.2.2.** CMAR designates the individual listed below as its CMAR's Representative, which individual has the authority and responsibility set forth in Division 8.1.2:

Sean Slawson, Vice President Operations
6225 N 24th Street, Suite 125
Phoenix, AZ 85016

ARTICLE 9 – SUSPENSION AND TERMINATION

9.0. City’s Right to Stop Work

- 9.0.1.** City may, at its discretion and without cause, order CMAR in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.
- 9.0.2.** CMAR may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

9.1. Termination for Convenience

- 9.1.1.** Upon receipt of written notice to CMAR, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CMAR only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination. CMAR shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.2.** If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such termination, the CMAR shall proceed with the following obligations.
 - 9.1.3.1** Stop Work as specified in the notice.
 - 9.1.3.2** Place no further subcontracts or orders.
 - 9.1.3.3** Terminate all subcontracts to the extent they relate to the work terminated.
 - 9.1.3.4** Assign to the City all right, title and interest of the CMAR under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - 9.1.3.5** Take any action that may be necessary for the protection and preservation of the property related to the contract that is in the possession of the CMAR and which the City has or may acquire an interest.
- 9.1.4** The CMAR shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.
- 9.1.5** The City shall pay CMAR the following.
 - 9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.
 - 9.1.5.2** The reasonable costs and expenses attributable to such termination.
 - 9.1.5.3** CMAR shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.6** The CMAR shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.7.

9.2. City's Right to Perform and Terminate for Cause

- 9.2.1.1.** If the City provides the CMAR with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CMAR fails to comply in a time frame specified, the City may have work accomplished by other sources at the CMAR's expense.
- 9.2.1.2.** If CMAR persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work are completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 9.2.3 and 9.2.4 below.
- 9.2.2.** Upon the occurrence of an event set forth in Section 9.2.1.2 above, City may provide written notice to CMAR that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CMAR's receipt of such notice.
- 9.2.2.1.** If CMAR fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CMAR of its intent to terminate within an additional seven (7) day period.
- 9.2.2.2.** If CMAR, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to CMAR of such declaration.
- 9.2.3.** Upon declaring the Agreement terminated pursuant to Section 9.2.2.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CMAR hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.4.** In the event of such termination, CMAR shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CMAR will only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.2.5.** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CMAR shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from CMAR's default.
- 9.2.6.** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

- Employers' Liability
 - Each accident \$1,000,000
 - Disease – Each Employee \$1,000,000
 - Disease – Policy Limit \$1,000,000

This policy shall contain a **waiver of subrogation** against the City of Sedona.

10.1.5. Builders' Risk Insurance and Installation Floater \$17,545,098

- Combined Single Limit (CSL) In an amount equal to the initial Guaranteed Maximum Price plus additional coverage equal to the agreed amount for all subsequent change orders.

10.1.5.1. Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement.**

10.1.5.2. Policy shall be maintained until whichever of the following shall first occur: (i) Final Acceptance has been issued by the City; or, (ii) until no person or entity, other than the City of Sedona, has an insurable interest in the property required to be covered.

10.1.5.3. Policy shall be endorsed such that the insurance shall not be cancelled or lapse because of any partial use or occupancy by the City.

10.1.5.4. Policy must provide coverage from the time any covered property becomes the responsibility of the CMAR, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

10.1.5.5. CMAR is responsible for the payment of all policy deductibles.

10.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

10.2.1. On insurance policies where the City of Sedona is named as an additional insured, the City of Sedona shall be an additional insured to the full limits of liability purchased by the CMAR even of those limits of liability are in excess of those required by this Agreement.

10.2.2. The CMAR's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

10.2.3. The required Insurance policies in Article 10 shall include waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to any person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay for the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged.

10.2.4. The City of Sedona shall be named as an additional insured on the required insurance policies in Article 10 except for Workers Compensation, Employers' Liability and Professional Liability, and the CMAR shall provide Additional Insured endorsements to the City. The City of Sedona shall be

an additional insured to the full limits of liability purchased by the CMAR for these policies, even if those limits of liability are in excess of those required by this Contract.

- 10.2.5.** Coverage provided by the CMAR shall not be limited to the liability assumed under the indemnification provision of this Agreement.
- 10.2.6.** City reserves the right to require higher limits of liability coverage if, in the City's opinion, operations or services create higher than normal hazards. In such cases, the CMAR and/or subcontractors shall have the right to adjust their contract prices to account for the increased costs associated with obtaining the additional required coverage.
- 10.3. Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.
- 10.4. Acceptability of Insurers.** All policies must be written by insurance companies whose rating, in the most recent AM Best's Rating Guide, is not less than A-VII or higher, unless CMAR obtains prior written approval of City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CMAR from potential insurer insolvency.
- 10.5. Verification of Coverage**
- 10.5.1.** CMAR shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 10.5.2.** All certificates, including any required additional insured endorsements, and waivers of subrogation, are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure on the part of CMAR to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a Material Breach of Contract upon which City may immediately terminate this Contract or, at its discretion, City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by City shall be repaid by the CMAR to City upon demand, or City may offset the cost of the premiums against any monies due to CMAR from City.
- 10.5.3.** All certificates required by this Agreement shall be sent directly to City's Senior Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- 10.5.4.** If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the contractor must: Submit a current insurance certificate (dated within 15 days of the payment request submittal) with each payment request form. The payment request will be rejected if the insurance certificate is not submitted with the payment

request.

- 10.5.5.** The City, its officers, officials, agents, and employees will be additional insureds to the full limits of liability purchased by the CMAR, even if those limits of liability are in excess of those required by this Contract. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B GC 20 10 11 85.
- 10.5.6.** The City reserves the right to request and receive a redacted copy of required policy in Article 10 and any pertinent endorsement thereto. CMAR agrees to execute any and all documents necessary to allow City access to any and all insurance policies and endorsements pertaining to this Project.
- 10.6. Subcontractors.** CMAR shall furnish to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.
- 10.7. Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the City Attorney's Office, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- 10.8. Bonds and Other Performance Security**
- 10.8.1.** Prior to execution of this Agreement, the CMAR must provide a performance bond and a payment (labor and materials bond), each in an amount equal to the full amount of the GMP set forth in this Agreement, and each of which complies with A.R.S. 34-610. Performance and Payment bonds forms will be provided by the City.
- 10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be made payable and acceptable to the City of Sedona.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.8.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.
- 10.8.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CMAR shall promptly furnish a copy of the bonds or shall permit a copy to be made.

10.8.6 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of “B+6 or better for the prior four quarters” by the A.M. Best Company.

ARTICLE 11 - INDEMNIFICATION

11.1 Indemnification.

11.1.1 To the fullest extent permitted by law, CMAR will indemnify, defend and hold harmless the City, and each council member, officers, boards, commissions, officials, employee or agent thereof (collectively the CITY and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) relate to, arise out of, or are caused by, or in connection with the negligent acts or omissions, recklessness or intentional misconduct of CMAR, its officers, employees, agents or any tier of subcontractor in connection with CMAR's work or Services in the performance of this Contract. In consideration of the award of this Agreement, CMAR agrees to waive all rights of subrogation against the Indemnified Party for losses arising from the work or Services performed by CMAR for the CITY. The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of the indemnity in this Section. This indemnification survives the expiration or termination of this Contract.

ARTICLE 12 – GENERAL PROVISIONS

12.1 Contract Documents

12.1.1 Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, and Addenda (if any) are used as the basis for the Guaranteed Maximum Price Proposal, as accepted by the Mayor and Council per Council Minutes of the 5/14/2024 meeting, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

12.1.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

12.1.3.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.

12.1.3.2 Specifications take precedence over Plans.

12.1.3.3 In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Contract, the Contract Documents take precedence over the Design Phase Contract

12.1.4 The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.1.5 The Contract Documents form the entire agreement between City and CMAR, superseding all prior oral or written communications, and by incorporation herein are as fully binding on the parties as if repeated herein.

12.2 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.3 Time is of the Essence. City and CMAR mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

12.4 Mutual Obligations. City and CMAR commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

12.5 Cooperation and Further Documentation. The CMAR agrees to provide the City such other duly

executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.

- 12.6 Successors and Assigns.** The City and the CMAR will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CMAR will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relationship be created or be construed to be created as between any third party and the City.
- 12.7 Third Party Beneficiary.** Nothing under this Contracts shall be construed to give any rights or benefits in the Contract to anyone other than the City and the CMAR, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CMAR and not for the benefit of any other party.
- 12.8 Governing Law and Jurisdiction.** This Contract shall be governed by the laws of the State of Arizona, and any legal action concerning the provisions hereof shall be brought in the County of Coconino, State of Arizona. Both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising out of this Contract or the subject matter thereof and consent to a trial to the court.
- 12.9 Severability.** If any provision of this Contract or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.10 Compliance with All Laws.** CMAR understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to this Agreement. The CMAR agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.
- 12.10.1** In the performance of this Contract, CMAR will abide by and conform to any and all federal, state and local laws.
- 12.10.2** Under the provisions of A.R.S. §41-4401, CMAR hereby warrants to City that CMAR and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject CMAR to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any CMAR or subcontractor employee who works on this Contract to ensure that the CMAR or subcontractor is complying with the Contractor Immigration Warranty. CMAR agrees to assist the City in regard to any such inspections. City may, at its sole discretion, conduct random verification of the employment records of CMAR and any subcontractors to ensure compliance with the Contractor Immigration Warranty. CMAR agrees to assist City in regard to any random verification performed. Neither CMAR nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if CMAR or any subcontractor establishes that it has complied with the employment

verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

12.10.3 The provisions of this Section must be included in any contract CMAR enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. For the purposes of this paragraph, "Services" are defined as furnishing labor, time or effort by a contractor or subcontractor. Services include construction or maintenance of any structure, building, transportation facility or improvement to real property.

12.10.4 CMAR understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. If applicable, CMAR must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, as amended, "Residence Requirements for Employees."

12.11 Legal Requirements. CMAR shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CMAR's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CMAR recognizes that portions of the Construction Documents are at variance therewith, the CMAR shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

12.12 Independent Contractor. CMAR is an independent contractor. Notwithstanding any provision appearing in this Contract and any exhibits, all personnel assigned by CMAR to perform work under the terms of this Contract shall be and remain employees or agents of the CMAR for all purposes. The City does not have the authority to supervise or control the actual work of CMAR, its employees or subcontractors. CMAR shall make no representation that it is the employee of the City for any purpose.

12.13 City's Right of Cancellation. All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Sedona pursuant to the provisions of A.R.S. 38-511.

12.14 Survival. All warranties, representations and indemnifications by the CMAR shall survive the completion or termination of this Agreement.

12.15 Covenant Against service Fees. The CMAR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Sedona has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Sedona shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12.16 No Waiver. The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision. Delays in enforcement or the waiver of one or more defaults or breaches of this Contract by the City shall not constitute a waiver of any of the other terms or obligations of this Contract.

12.17 Notice.

12.17.1 Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or email transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of an e-mail transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CMAR:

Sean Slawson, Vice President Operations
6225 N 24th Street, Suite 125
Phoenix, AZ 85016
Phone: 480-449-4700

To City of Sedona:

Robert Welch
102 Roadrunner Drive
Sedona, Arizona 86336
Attn: Robert Welsh, PE, Associate Engineer
Phone: (928)203-5120

With Copies to:
Design Professional:
Gabor Lorant Architects, Inc.
Attn: Jan Lorant
3326 N. 3rd Ave, Suite 200
Phoenix, AZ 85013

Or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.19.2 Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CMAR:

Sean Slawson, Vice President Operations 6225 N 24th Street, Suite 125

Phoenix, AZ 85016
Phone: 480-449-4700

To City of Sedona:

Public Works

102 Roadrunner Drive
Sedona, Arizona 86336
Attn: Robert Welsh, PE, Associate Engineer
Phone: (928)203-5120

Or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.20 Equal Opportunity/Affirmative Action

12.20.1 . CMAR, its agents, employees, and subcontractors, shall not discriminate in any employment policy or practice. "Discrimination" means to exclude individuals from an opportunity or participation in any activity or to accord different or unequal treatment in the context of a similar situation to similarly situated individuals because of race, color, gender, gender identity, sexual orientation, religion, national origin or ancestry, marital status, familial status, age, disability, or veteran status. (Ordinance 2015-10 (2015)).

12.20.2 The City of Sedona extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority owned or Woman owned business to reflect both the industry and community ethnic composition.

12.21 Confidentiality of Plans & Specifications

12.21.1 Any plans or specifications CMAR receives regarding this project are for official use only. CMAR may not share them with others except as required to fulfill the obligations of CMAR contract with the City.

12.21.2 All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CMAR shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of your contract with the City of Sedona".

12.22 PROJECT STAFFING

12.22.1 Prior to the start of any work or Deliverable under this Contract, the CMAR will submit to the City, an organizational chart for the CMAR staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CMAR desires to change such key personnel from performing such services under this Contract, the CMAR will submit the

qualifications of the proposed substituted personnel to the City for prior reasonable approval. Any substituted key personnel shall have the same or higher qualifications as the key personnel being replaced. Key personnel will include, but are not limited to, principal in charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

12.22.2 Key personnel on the Uptown Sedona Parking Garage project include:

Project Manager – Ben Whitlock
Assistant Project Manager – Cat Duffy
Superintendent – Rogelio Flores

12.22.3 The CMAR will maintain an adequate number of competent and qualified persons, as reasonably determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CMAR's staff, the CMAR will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City

12.23 Hazardous Materials

12.23.1 Unless included in the Work, if the CMAR encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he shall immediately stop work and report the condition to the City.

12.23.2 If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CMAR shall not resume work in the affected area until the material has been abated or rendered harmless. The CMAR and the City may agree, in writing, to continue work in non-affected areas onsite. Remediation of hazardous substances or materials will be performed by the City at their own expense.

12.23.3 An extension of Contract Time and/or Contract Sum will be granted in accordance with Article 6 and the City will Indemnify and hold harmless the CMAR from any claims arising from or related to hazardous substances or materials.

12.23.4 The CMAR will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

12.24 Traffic Control. CMAR will comply with all provisions of the City of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.

12.25 DELETED

12.26 Conflict of Interest. From the date of this Contract through the termination of its Service to City, CMAR shall not accept, negotiate or enter into any contract or agreements for services with any other party that may create a substantial interest, or the appearance of a substantial interest in conflict with the timely performance of the work or ultimate outcome of this Contract and/or adversely impact the quality of the work under this Contract without the express approval of the

City Manager and the City Attorney. Whether such approval is granted shall be at the sole discretion of the City Manager and the City Attorney.

12.26.1 To evaluate and avoid potential conflicts of interest, the CMAR will provide written notice to the City, as set forth in this section, of any work or services performed by the CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CMAR for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Sedona
102 Roadrunner Dr.
Sedona, AZ 86336

12.26.2 Actions considered to be adverse to the City under this Contract include but not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- (c) Using data to produce income for the CMAR or its employees independently of performing the services under this Contract, without the prior written consent of the City.

12.26.3 The CMAR represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CMAR under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

12.26.4 The CMAR's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

12.27 CONTRACTOR'S LICENSE. Prior to beginning work under this Contract, the CMAR must provide to the City of Sedona, its Contractor's License Classification and number and its Federal Tax I.D. number.

12.28 FORCE MAJEURE. If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

12.29 REMEDIES UPON BREACH. If any party to this Contract materially breaches the terms of the Contract, the non-breaching party may exercise any and all remedies available to them under Arizona law, including, without limitation, if applicable, bringing a lawsuit for monetary damages or specific performance. The parties hereto expressly covenant and agree that in the event of litigation arising from this Contract, neither party shall be entitled to an award of attorneys' fees, either pursuant to contract, pursuant to A.R.S. §12-341.01 (A) and (B), or pursuant to any other state or federal statute, court rule, case law, or common law.

12.30 PUBLIC RECORDS. Notwithstanding any provisions of this Contract regarding confidentiality, secrets, or protected rights, CMAR acknowledges that all documents provided to the City may be subject to disclosure by the Arizona public records law under A.R.S. §39-121 and related provisions. In the event CMAR objects to any disclosure, CMAR agrees to handle all aspects related to the request including properly communicating with the requester and timely responding with information, and CMAR agrees to indemnify CITY from an claims, actions, lawsuits, damages and losses resulting from CONTRACTOR's objection to the disclosure.

12.31 NO BOYCOTT OF ISRAEL OR USE OF FORCED LABOR OF ETHNIC UYGHURS IN PEOPLES REPUBLIC OF CHINA. As applicable, CMAR certifies and agrees that it is not currently engaged in and for the duration of the Contract will not engage in a boycott of Israel, as that term is defined in A.R.S. §35-393 and will not use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the People's Republic of China (PRC) or any contractors, subcontractors or suppliers that use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the PRC as provided by A.R.S. §35-394.

12.32 BUSINESS IN ARIZONA. CMAR, and any subconsultants, subcontractors, and/or suppliers must be granted authority to transact business in the state of Arizona by the Arizona Corporation Commission and be in good standing prior to beginning any work under this Contract, unless a valid statutory exception is asserted in writing to the City.

12.33 DEBARMENT AND SUSPENSION. CMAR shall notify the City if it or any of its principals become debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any procurement process by any federal, state or local department or agency.

CITY OF SEDONA, ARIZONA
Public Works

The Uptown Sedona Parking Garage Project

IN WITNESS WHEREOF, the parties hereto have executed this Contract on _____.

The CMAR agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), per the terms and conditions of the Agreement.

Guaranteed Maximum Price

Seventeen Million Five Hundred Forty- Five Thousand Ninety-Eight Dollars and Zero Cents

\$17,545,098.00

CITY OF SEDONA, ARIZONA,
an Arizona Municipal Corporation
Anette Spickard, City Manager

McCarthy Building Companies, Inc
a Missouri Corporation

By: _____
Anette Spickard, City Manager

By: _____

Title: _____

DATE: _____

DATE: _____

(Corporate Seal)

ATTEST:

JoAnne Cook, City Clerk

ATTEST: (Signature and Title)

APPROVED AS TO FORM:

APPROVED BY CITY COUNCIL
DATE: 5/14/2024

Kurt Christensen, City Attorney

EXHIBIT A - PROJECT DESCRIPTION

This project consists of a three-deck type parking garage structure with one level below grade and having a parking capacity for approximately 270 automotive vehicles. The project site for the parking garage is located at 430 and 460 Forest Road, Sedona (Parcels 401-16-071 & 401-16-100) and has a combined acreage of 1.24 acres. The site has approximately 315-feet of frontage along Forest Road and is surrounded by mostly residential use properties. Site topography is generally described as hillside, sloping downward from north to south toward Forest Road at approximately 12% grade. The availability of utility services in this area is considered good and includes public water and sanitary sewer connections. Ancillary parking garage features, components, facilities, and equipment, include elevator and stairway; public restroom facilities; custodial/maintenance room(s); storm water management; ground level plaza; automated self-paid parking system; street side transit drop-off/pickup zone; multi-modal facilities; photovoltaic solar array system, E-Vehicle Charging Stations, and other. The specifications and plans for this project are described in Exhibits C and D.

EXHIBIT B – APPROVED GMP PROPOSAL

See Attached EXHIBIT B – McCarthy Building Companies, Inc Construction Company GMP Proposal dated 5/7/2024, with related Summary and Contingency worksheets

EXHIBIT C – TECHNICAL SPECIFICATIONS

See attached Exhibit C – Technical Specifications

ATTACHMENT 1 TO EXHIBIT C – SPECIAL CONDITIONS

General

Work shall be in accordance with the Uptown Sedona Parking Garage Project Manual except where the work is not specified in the contract documents the Uniform Standard Specifications for Public Works Construction, distributed by Maricopa Association of Governments, 2020 edition, revised through 2023 (MAG), shall apply. -

Whenever in MAG standards the term County is used it shall be held to mean the City of Sedona. Whenever in the MAG standards the term County Engineer is used it shall be held to refer to the City Engineer.

Electrical work shall be subject to inspection by the City of Sedona Building Safety Division and/or Design Professional for compliance with its requirements.

1. Dust Control

- a) Dust control shall be maintained at all times on the project.
- b) A dust control plan shall be submitted prior to start of construction. The dust control plan shall address specific equipment and procedures the contractor shall follow to control dust during trenching, backfill, and hauling activities, and to control dust on streets and other surfaces affected by the construction.
- c) The equipment used to sweep streets shall be of a type or operated in such a manner and rate that it does not generate high amounts of dust in the reasonable opinion of the City Engineer or his authorized agents.

2. Work Hours

The contractor shall limit work hours from 7:00 A.M. to 5:30 P.M. Monday through Friday, and from 7:00 A.M. to 5:30 P.M. on Saturday. City Holidays and work outside the aforementioned work hours periods shall be considered non-regular work hours. The active work hours shall be within the times indicated above and shall include clean up time and time for storage of equipment and material. The contractor shall provide the Engineer with a written work schedule projecting out at least two workweeks. Permission to work non-regular work hours shall be subject to approval of the Engineer.

3. Testing

Sewer mains (Force and Gravity), laterals, and storm drainage pipes placed under roadways or within the roadway’s loading zone of influence shall be subject to the following testing frequency. Testing by City contracted 3rd party.

<u>Activity</u>	<u>Frequency</u>
Bedding Material	1 each 100 ft per lift
AB Subgrade	1 each 100 ft per lift
Trench Backfill	1 each 100 ft per lift

4. Intentionally Left Blank:

5. Storage of Equipment and Material

Equipment and material shall not be stored in the right-of-way during non-work hours without the permission of the City Engineer. Such permission shall be subject to a finding that it is impractical to move the equipment or material because of size or that permission has been granted to close the right-of-way to all traffic, including local traffic. Lack of construction yard or other staging area shall not be considered as reason to grant permission. Such permission if granted shall be subject to conditions determined at the sole discretion of the City Engineer. The contractor shall be responsible for security of the site, equipment, work, and materials.

6. Intentionally Left Blank:

7. Traffic Control:

In addition to Item D, Section 18, of the General Conditions the following shall apply:

a) General

- i. All streets and traffic ways shall be kept continuously open for the passage of all traffic and pedestrians during the construction period, unless otherwise approved by the CITY, in writing, or authority having jurisdiction over same.
- ii. When required to cross, obstruct or temporarily close a street or traffic way, CONTRACTOR shall provide and maintain suitable bridges, detours or other approved temporary expedient for the accommodation of traffic. Closings shall be for the shortest time practical, and passage shall be restored immediately after completion of backfill and temporary paving or bridging.
- iii. CONTRACTOR shall give the advance notice to the fire and police departments of his proposed operations, involving closure of roads.
- iv. CONTRACTOR shall give notice to owners, tenants of private property and nearby residents who may be affected by his operations. Upon request, the CITY will furnish the CONTRACTOR with the names and addresses of the nearby residents.
- v. CONTRACTOR shall provide signs, signals, barricades, flares, lights and all other equipment, service and personnel required to regulate and protect all traffic and warn of hazards. All such work shall conform to requirements of CITY or authority having jurisdiction. Remove temporary equipment and facilities when no longer required, and restore grounds to original or to specified conditions.
- vi. CONTRACTOR shall conform to all applicable requirements of Section 401 of the Uniform Standard Specifications for Public Works Construction by the Maricopa Association of Governments (MAG), City of Sedona, Yavapai County and The City of Phoenix Traffic Control Manual.

8. Easements

The Contractor shall remain within easement areas and rights-of-way obtained or owned by the City or easement areas the contractor has obtained. Disturbed areas shall be reasonably restored upon completion of installation of storm drainage facilities and related appurtenances in the easement. The Contractor shall be responsible to adhere to easement provision whether the easement was obtained by Contractor or City.

A temporary 4-foot high orange fence shall be placed to define the work area for all easements encompassing all work that occurs outside the City right-of way. Clearing by manual means for the purpose of defining the area to be fenced shall be the only activity allowed on the easement before fence is placed. City shall provide the Contractor with a copy of the easement agreement with the property owner. Contractor shall be responsible for all restoration of the easement as described in the easement agreement. Trees and larger vegetation shall be preserved to the maximum extent practicable.

9. Survey Monumentation

Prior to construction the Contractor shall locate property corner monuments located within and adjacent to the Contract's easements. The Contractor shall be responsible for the preservation of all existing property pins. If disturbed or damaged the Contractor shall be responsible for all costs associated with the restoration of any property pins disturbed by the construction activities. Any property pins, which require resetting, shall be done under the direction of a licensed Surveyor by the State of Arizona. Compensation for this work shall be considered as included in the Cost Proposal Item "Construction Staking".

10. Permits

The City shall pay for permits required for the work, except stormwater pollution prevention permits for construction.

11. Project Sign

Project Signs as shown on Project Construction Sign Detail, shall be securely mounted and placed so that the bottom of the sign is does not impeded vehicular or pedestrian traffic flow or otherwise become a safety concern. The Contractor shall provide the project signs for the duration of the Contract. Payment of more than 75% of mobilization shall not be payable until the sign is in place. Failure to maintain the sign erect and in legible condition may result in up to a deduction from the contract payment equal to 0.25% for each time a written notice regarding improper sign maintenance is issued by the Engineer. Two project signs shall be prepared, installed and maintained.

The required Sign shall be mounted at locations within the project limits visible to the public as it enters or moves adjacent to the project area. The contractor shall place the project sign at a location mutually agreed upon with the Engineer and the contractor. The Contractor shall present the sign design as a project submittal. The Percent Complete Bar shall be filled in as the project progresses in accordance.

12. Public Convenience and Safety

Within the City of Sedona public convenience and safety are matters to which the Contractor is expected to devote attention to at all times during the project. The contractor shall minimize disruption of normal vehicular and pedestrian traffic patterns and routes, the disruption of normal property services such as, but not limited to, mail delivery and garbage pick-up.

13. Access to Adjacent Properties

Care shall be taken not to block access into or out of properties adjacent to the work. Access may be limited to on 11-foot wide lane during working hours, provided proper traffic control is provided, as approved by the City Engineer.

14. Start of Construction

Construction shall not begin until the contractor has at a minimum provided the following:

- A traffic control plan that has been approved by the City Engineer
- A storm water pollution control plan complying with the project specifications
-
- A complete project schedule as required by the project specifications.
- The Project Signs have been posted.
- Survey stakes and marks have been placed in the field to accommodate at least two weeks construction work and survey notes have been provided to the City as per the project specifications.

This provision does not operate to require that the City of Sedona refrain from issuing a notice to proceed or require an extension of time to accommodate Contractor compliance with it.

15. Project Control

The Contractor shall be responsible for all survey on the project.

16. Stormwater Pollution Prevention Plan

The Contractor shall provide the City with a copy of the plan. The Contractor shall adhere to State of Arizona requirements regarding stormwater pollution prevention. The City may require evidence of compliance with State requirements.

17. Sedona Red Concrete

All new sidewalks and curbing shall be integrally colored "Sedona Red". The amount of concrete color additive required is 3.05 lbs of Davis 160 liquid per sack of concrete. This is the Sedona Red as manufactured by Hanson Concrete in Cottonwood Arizona. Variations in the additive to accomplish the "Sedona Red" shall be subject to City Engineer approval.

18. Intentionally Left Blank

19. Mobilization

Retention shall apply to mobilization payments. The first payment for mobilization shall be contingent on providing:

- A traffic control plan that has been approved by the City Engineer
- A storm water pollution control plan complying with the project specifications
- A complete project schedule as required by the project specifications.
- The Project Sign has been posted.

20. Various items of Work

- a) All sewer pipe acceptance tests required by Arizona Department of Environmental Quality shall be performed and written results provided. The written results shall identify the firm and the individual conducting the tests.

EXHIBIT D – CONSTRUCTION DRAWINGS

SPECIFICATIONS

Titled: Uptown Sedona Parking Garage - 50% CD Specifications

Prepared by: Gabor Lorant Architects

Dated: 15 January 2024

DRAWINGS/DETAILS

Titled: UPTOWN SEDONA PARKING FACILITY

Prepared by: GABOR LORANT ARCHITECTS

Dated: 09 February 2024

<u>EXHIBIT II - UPTOWN SEDONA PARKING FACILITY</u>		
SHEET NO.	DESCRIPTION	DATE
ARCHITECTURAL		
a000	Cover Sheet	09 February 2024
a001	Occupancy & Code Analysis	09 February 2024
a000	Cover Sheet	09 February 2024
a001	Occupancy & Code Analysis	09 February 2024
a050	Architectural Site Plan	09 February 2024
a100	Lower Level Tier Plan	09 February 2024
a101	Ground Level Tier Plan	09 February 2024
a102	Roof Level Tier Plan	09 February 2024
a200	Lower Level Tier- Reflected Ceiling Plan	09 February 2024
a201	Ground Level Tier - Reflected Ceiling Plan	09 February 2024
a301	Details	09 February 2024
a400	Exterior Elevations	09 February 2024
a401	Enlarged - Exterior Elevations	09 February 2024
a500	Sections	09 February 2024
a501	Sections	09 February 2024
a550	Wall Sections	09 February 2024
a600	Interior Elevations & Details	09 February 2024
a605	Enlarged Plan	09 February 2024
a606	Enlarged Plan	09 February 2024
a607	Enlarged Plan	09 February 2024
a608	Enlarged Plan - Mechanical Shafts	09 February 2024

a609	Enlarged Plan - Mechanical Shafts	09 February 2024
a610	Enlarged Plan - Mechanical Shafts	09 February 2024
a620	Millwork Details	09 February 2024
a650	Stairs	09 February 2024
a651	Stair Details	09 February 2024
a652	Ramp Plans	09 February 2024
a653	Ramp Sections	09 February 2024
a700	Door Schedule	09 February 2024
a701	Accessibility Diagrams	09 February 2024
STRUCTURAL		
S000	COVER SHEET	01/05/2024
S001	GENERAL STRUCTURAL NOTES	01/05/2024
S002	GENERAL STRUCTURAL NOTES	01/05/2024
S003	GENERAL STRUCTURAL NOTES	01/05/2024
S100	BASEMENT FOUNDATION PLAN	01/05/2024
S101	GROUND LEVEL FRAMING PLAN	01/05/2024
S102	UPPER DECK FRAMING PLAN	01/05/2024
S103	CANOPY FRAMING PLAN	01/05/2024
S200	PT BEAM PROFILES	01/05/2024
S300	TYPICAL CONCRETE DETAILS	01/05/2024
S301	TYPICAL CONCRETE DETAILS	01/05/2024
S302	TYPICAL MASONRY DETAILS	01/05/2024
S400	FOUNDATION DETAILS	01/05/2024
S401	FOUNDATION DETAILS	01/05/2024
S402	FOUNDATION DETAILS	01/05/2024
S500	FRAMING DETAILS	01/05/2024
S501	FRAMING DETAILS	01/05/2024
S502	FRAMING DETAILS	01/05/2024
S503	FRAMING DETAILS	01/05/2024
MECHANICAL		
M0.1	MECHANICAL LEGENDS, SYMBOLS, AND SPECIFICATIONS	06 February 2024
M0.2	MECHANICAL SCHEDULES	06 February 2024
M1.1	MECHANICAL LOWER LEVEL FLOOR PLAN	06 February 2024
M1.2	MECHANICAL GROUND LEVEL FLOOR PLAN	06 February 2024
M1.3	MECHANICAL TOP LEVEL FLOOR PLAN	06 February 2024
M3.1	SECTIONS	06 February 2024
M3.2	SECTIONS	06 February 2024
M4.1	DETAILS	06 February 2024
PLUMBING		

P0.1	PLUMBING LEGENDS, SYMBOLS, SPECIFICATIONS	06 February 2024
P0.2	PLUMBING SCHEDULES	06 February 2024
P1.1	PLUMBING BASEMENT LEVEL FLOOR PLAN	06 February 2024
P1.2	PLUMBING GROUND LEVEL FLOOR PLAN	06 February 2024
P1.3	PLUMBING TOP LEVEL FLOOR PLAN	06 February 2024
P1.4	PLUMBING ENLARGED PLANS	06 February 2024
P2.1	PLUMBING DETAILS	06 February 2024
P2.2	PLUMBING DETAILS	06 February 2024
ELECTRICAL		
e0.0	Electrical Cover Sheet	08 February 2024
e0.1	Electrical Legend	08 February 2024
e0.2	Electrical Specifications	08 February 2024
e0.3	Lighting Specifications & Energy Calculations	08 February 2024
e0.4	Fire Alarm Riser Diagram	08 February 2024
e1.0	Electrical Site Plan	08 February 2024
e1.1	Photometric Site Plan	08 February 2024
e1.2	Site Lighting Cutsheets	08 February 2024
e2.0	Lower Levels - Power & Fire Alarm Plan	08 February 2024
e2.1	Ground Levels - Power & Fire Alarm Plan	08 February 2024
e2.2	Upper Deck - Power & Fire Alarm Plan	08 February 2024
e3.0	Lower Levels - Lighting Plan	08 February 2024
e3.1	Ground Levels - Lighting Plan	08 February 2024
e3.2	Upper Deck - Lighting Plan	08 February 2024
e5.0	Enlarged Plans	08 February 2024
e6.0	One-Line Diagram & Schedules	08 February 2024
e7.0	Panel Schedules	08 February 2024
e8.0	Electrical Details	08 February 2024
e8.1	Lighting Control Details	08 February 2024
e8.2	Electrical Details	08 February 2024
CIVIL		
CV01	COVER SHEET	02/05/2024
GN01	GENERAL NOTES	02/05/2024
GC01	GEOMETRIC CONTROL	02/05/2024
DM01	DEMOLITION PLAN	02/05/2024
GD01	GRADING AND DRAINAGE PLAN	02/05/2024
SD01	STORM DRAIN PLAN	02/05/2024
SD02	STORM DRAIN PLAN	02/05/2024
SC01	SECTION VIEWS	02/05/2024
SC02	SECTION VIEWS	02/05/2024

UT01	UTILITY PLAN	02/05/2024
RD01	SITE PLAN	02/05/2024
LANDSCAPE		
LS01	LANDSCAPE NOTES	02/05/2024
LS02	LANDSCAPE PLAN	02/05/2024
LS03	LANDSCAPE DETAILS	02/05/2024
IR01	IRRIGATION PLAN	02/05/2024
IR02	IRRIGATION DETAILS	02/05/2024
ER01	EROSION CONTROL PLAN	02/05/2024
50% CD SPECIFICATIONS		
00 63 13	REQUESTS FOR INTERPRETATION FORM	15 January 2024
00 63 25	SUBSTITUTION REQUEST	15 January 2024
01 26 13	REQUESTS FOR INTERPRETATION	15 January 2024
01 33 00	SUBMITTAL PROCEDURES	15 January 2024
01 45 00	QUALITY CONTROL	15 January 2024
01 50 00	TEMPORARY FACILITIES AND CONTROLS	15 January 2024
01 70 00	CLOSEOUT PROCEDURES	15 January 2024
01 71 23	FIELD ENGINEERING	15 January 2024
01 73 29	CUTTING AND PATCHING	15 January 2024
01 74 00	CLEANING	15 January 2024
01 78 39	PROJECT AS BUILT AND RECORD DOCUMENTS	15 January 2024
02 41 00	DEMOLITION	15 January 2024
03 05 00	FLY ASH	15 January 2024
03 10 00	CONCRETE FORMING	15 January 2024
03 20 00	CONCRETE REINFORCEMENT	15 January 2024
03 30 00	CAST-IN-PLACE CONCRETE	15 January 2024
03 35 43	POLISHED CONCRETE FLOORS	15 January 2024
04 01 20.52	MASONRY CLEANING	15 January 2024
04 05 26	CMU INTEGRAL WATER REPELLANT	15 January 2024
04 05 15	MORTAR AND MASONRY GROUT	15 January 2024
04 22 00	CONCRETE UNIT MASONRY	15 January 2024
05 50 00	METAL FABRICATIONS	15 January 2024
05 51 00	METAL STAIRS	15 January 2024
05 52 00	HANDRAILS AND RAILINGS	15 January 2024
05 52 20	RAILING CABLE SYSTEMS	15 January 2024
06 10 53	MISCELLANEOUS CARPENTRY	15 January 2024
07 11 13	BITUMINOUS DAMPROOFING	15 January 2024
07 14 23	FLUID-APPLIED REINFORCED WATERPROOFING MEMBRANE ASSEMBLY	15 January 2024
07 19 00	WATER REPELLANTS	15 January 2024

07 21 00	BUILDING INSULATION	15 January 2024
07 41 13	FORMED METAL WALL PANELS	15 January 2024
07 54 00	THERMOPLASTIC POLYOLEFIN ROOFING	15 January 2024
07 60 00	FLASHING AND SHEET METAL	15 January 2024
07 84 00	FIRESTOPPING	15 January 2024
07 92 00	JOINT SEALERS	15 January 2024
08 11 10	STEEL DOORS AND FRAMES	15 January 2024
08 71 00	DOOR HARDWARE	15 January 2024
08 80 00	GLAZING	15 January 2024
09 22 16	NON-STRUCTURAL METAL FRAMING	15 January 2024
09 29 00	GYPSUM BOARD	15 January 2024
09 31 00	TILE	15 January 2024
09 81 00	ACOUSTICAL INSULATION	15 January 2024
09 96 00	HIGH-PERFORMANCE COATINGS	15 January 2024
10 14 00	SIGNAGE	15 January 2024
10 28 13	TOILET ACCESSORIES	15 January 2024
10 44 00	FIRE PROTECTION SPECIALTIES	15 January 2024
32 32 36	WIRE MESH GABIONS	15 January 2024



**CITY COUNCIL
AGENDA BILL**

**AB 3061
June 25, 2024
Regular Business**

Agenda Item: 8a

Proposed Action & Subject: Public hearing/discussion/possible action regarding an appeal of the Planning and Zoning Commission's April 16, 2024, approval of a development review application for the Oak Creek Heritage Lodge located at 65-195 Schnebly Hill Road & 20 Bear Wallow Lane. PZ23-00004 (DEV), APPE24-00001, APPE24-00002.

Department	Community Development
Time to Present	80 min
Total Time for Item	2 hours
Other Council Meetings	November 10, 2020 (Oak Creek Zoning District Amendments and Rezoning of Subject Property to OC); November 14, 2018 (Creation of Oak Creek Zoning District); April 11, 2017 (Adoption of Schnebly CFA Plan)
Exhibits	<p>Due to file size constraints, the following items are provided at the following links and not attached to this packet:</p> <ul style="list-style-type: none"> • Application, Letter of Intent, Project Plans, and Appeal Packets: https://www.sedonaaz.gov/your-government/departments/community-development/projects-and-proposals/oak-creek-resort • April 16, 2024 Planning and Zoning Commission Meeting Agenda, Packet, and Minutes: https://www.sedonaaz.gov/your-government/meetings-documents/-folder-5714 <p>A. Additional Public Comments (Received after P&Z Meeting)</p>

Finance Approval	Reviewed RMS 6/17/24	
City Attorney Approval	Reviewed 6/18/24 KWC	Expenditure Required
		\$ xxx
City Manager's Recommendation	Reviewed ABS 6/17/24	Amount Budgeted
		\$ xxx
		Account No. (Description)

SUMMARY STATEMENT

This is an appeal of the Planning and Zoning Commission's April 16, 2024, approval of a development review application (DEV) for Oak Creek Heritage Lodge located at 65-195 Schnebly Hill Road & 20 Bear Wallow Lane, pursuant to LDC Section 8.2 (Summary Table of Review Procedures) and LDC Section 8.8.E (Appeal).

Background:

RD Olson Development (owner of the subject properties) and their representatives requested consideration and approval of a development review application to allow for the construction of a new lodging project on approximately 11.5 acres to the west of Schnebly Hill Road between State Route 179 and Bear Wallow Lane.

The applicant submitted a conceptual application in July 2021 and conceptual review public hearings were held with the Planning and Zoning Commission on December 7, 2021 and May 14, 2022.

The applicant submitted a comprehensive development review application in March 2023. The application was amended in September 2023 and February 2024 in response to comments from the public, staff, and review agencies.

The applicant's letter of intent states that the proposed project consists of a 70 room hotel, 4,600 square foot restaurant, 2,500 square feet of outdoor seating, 4-treatment room spa, and 1,900 square feet of meeting space. A full description of the proposed use, along with a project plans, engineering reports, and previous versions of the submittal can be reviewed at the project page on the City's website at the following link:

<https://www.sedonaaz.gov/your-government/departments/community-development/projects-and-proposals/oak-creek-resort>

A public hearing for the DEV application was held by the Planning and Zoning Commission on April 16, 2024. Packet materials provided to the Planning and Zoning Commission, public comments received prior to the meeting, and minutes from that meeting are available at the following link:

<https://www.sedonaaz.gov/your-government/meetings-documents/-folder-5714>

After presentations from Staff and the applicant, questions from the Commission, public input, and further discussion, a motion for approval of the project was made and seconded. A vote on this motion resulted in a 7-0 vote, approving the project.

On April 30, 2024, two separate appeals of the Commission's approval of the DEV were filed by Lauren Thomas/Christine Wagner (Bear Wallow Lane Home Owners) and Sedona Residents Unite (Carol Breen, Nancy Friedman, Ann Kelley, Sean Smith, and Mark TenBroek), pursuant to LDC [Section 8.2 \(Summary Table of Review Procedures\)](#) and [LDC Section 8.8.E \(Appeal\)](#). The documents submitted in support of the appeal can be reviewed at the project page on the City's website at the following link:

<https://www.sedonaaz.gov/your-government/departments/community-development/projects-and-proposals/oak-creek-resort>

Public comments received prior to the Planning and Zoning Commission's hearing are included in the Commission's packet (link above). Additional public comments that have been received are included as Exhibit A.

Development Review Application

The property is zoned OC (Oak Creek Heritage Area). The proposed use is considered Lodging, Medium Density, which [LDC Section 3.2.E, Table 3.1 \(Table of Allowed Uses\)](#), lists as a permitted use in the OC zone. The non-lodging uses (restaurant, spa, meeting space) are considered accessory and are permitted in conjunction with the lodging use. Multiple use specific standards for these uses apply (see [LDC Section 3.3.C\(10\), \(14\), and \(15\)](#)) apply in the OC zone.

Review of Development Review applications is governed by the Land Development Code, specifically [LDC Section 8.3 \(Common Review Procedures\)](#) and [LDC Section 8.4.A \(Development Review\)](#). Staff’s evaluation of the proposal for compliance with LDC requirements and the required findings for a DEV is contained within the staff report provided to the Planning and Zoning Commission. As outlined in these documents, Staff’s evaluation concluded that the proposal met the requirements and findings and recommended approval of the project.

Planning and Zoning Commission Approval

At the April 16, 2024, public hearing, the Planning and Zoning Commission voted unanimously to adopt Staff’s evaluation as their findings.

Appeal

The appeal letters and associated documents submitted by the appellants (project page link above) outline the reasons for the appeal and why they believe the project should be denied.

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

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

The City’s Sustainability Staff reviewed the original submittal and provided comments related to energy conservation, electric vehicle support, water conservation, landscaping, and recycling/composting. The applicant responded to these comments through their resubmittals and Sustainability did not have any outstanding comments on the project that was presented to the Planning and Zoning Commission.

Board/Commission Recommendation: Applicable - Not Applicable

On April 16, 2024, the Planning and Zoning Commission held a public hearing for the proposed project. At that hearing, the Commission heard presentations from staff and the applicant, asked questions of staff and the applicant, heard public testimony, and discussed the application further.

A motion for approval of the project was made and seconded. A vote on this motion resulted in a 7-0 vote, unanimously adopting Staff’s evaluation and findings and the evaluation and findings of the Planning and Zoning Commission and approving the project, subject to the recommended conditions of approval.

The materials provided to the commission and minutes of the meeting are included at the links above.

Alternative(s):

The City Council can choose to affirm, reverse, or amend the Planning and Zoning Commission’s approval of the DEV application. ([LDC Section 8.8.E\(3\)d](#))

I move to:

Please note that the following motions are offered as samples only and that the Council may make other motions as appropriate.

Affirmation of DEV approval (Denial of Appeals)

I move to: deny case numbers APPE24-00001 and APPE24-00002, thereby affirming Planning and Zoning Commission's approval of case number PZ23-00004 (DEV), Oak Creek Heritage Lodge, at 65-195 Schnebly Hill Road & 20 Bear Wallow Lane, based on compliance with all ordinance requirements of LDC Section 8.3 and 8.4 and satisfaction of the Development Review findings and applicable Land Development Code requirements as outlined in the Planning and Zoning Commission staff report, which staff report is hereby adopted as the findings of the City Council, and the recommended conditions of approval.

Reversal of DEV approval (Approval of Appeals)

I move to: approve case numbers APPE24-00001 and APPE24-00002, thereby reversing Planning and Zoning Commission's approval of case number PZ23-00004 (DEV), Oak Creek Heritage Lodge, at 65-195 Schnebly Hill Road & 20 Bear Wallow Lane, based on the following findings (specify findings)

Amendment of DEV

I move to: deny case numbers APPE24-00001 and APPE24-00002, and amend Planning and Zoning Commission's approval of case number PZ23-00004 (DEV), Oak Creek Heritage Lodge, at 65-195 Schnebly Hill Road & 20 Bear Wallow Lane, based on compliance with all ordinance requirements of LDC Section 8.3 and 8.4 and satisfaction of the Development Review findings and applicable Land Development Code requirements as outlined in the Planning and Zoning Commission staff report, which staff report is hereby adopted as the findings of the City Council, and the recommended conditions of approval, and the following additional conditions (specify amendments):

Oak Creek Heritage Lodge - Appeal

Clare Pollack <Clare.Pollack@analyticalgroup.com>

Wed 6/5/2024 9:29 AM

To: Cari Meyer <CMeyer@sedonaaz.gov>

Hi Cari,

Jack and I own the house at 370 Bear Wallow Lane.

We had already written comments about this project a while ago. We would like to submit our comments for the Appeal.

Just to reaffirm where we stand on this issue, we do think that the size and scope of this project will negatively impact the Schnebly Hill Road area.

Currently, the traffic on the weekends is already backed up for at least 2 miles on State Route 179 heading into that roundabout. The traffic coming down Schnebly is made up of residents in the area, guests of the RV park, and many, many sight seers, jeep tour vehicles and off-road vehicles. Adding possibly 70 more hotel guest vehicles and who knows how many hotel staff vehicles on Schnebly into this already enormous traffic headache seems ludicrous to us. Then adding restaurant traffic into the mix seems impossible to comprehend.

Even the construction project of this alone will negatively impact the area. With work trucks and equipment parked and driving in and out, we will probably have traffic backed up on Schnebly and then also on Bear Wallow. This will make it very difficult for us to get to and from our home.

We really try to have a quiet, peaceful existence in our neighborhood. The two resorts across the creek that were built during the time we owned our home, have impacted us negatively, but we have learned to live with it.

We currently have many, many trespassers on our property, as we are the last residence before the national forest and directly across the creek from Amara. We have private property and no trespassing signs up, but to no avail. We are very concerned that this Hotel will aggravate our situation.

It seems reasonable, in our opinion, to either stop this Hotel from being built or scaling it down to a size that does not impact the area and our lives.

Thank you for your attention to this matter!

Sincerely,

Jack and Clare Pollack
370 Bear Wallow Lane
Sedona, AZ 86336

Oak Creek Heritage Lodge City Council Meeting June 25, 2024 - PHOTOS

Terrie Frankel <Twins@esedona.net>

Mon 6/10/2024 6:24 PM

To: Cari Meyer <CMeyer@sedonaaz.gov>

Cc: Anthony W <anthony.wrzosek@rdodevelopment.com>; Bob Olson <bob.olson@rdodevelopment.com>; Sharon Ying <sharon.ying@rdodevelopment.com>; Luke sefton <LS@sefengco.com>; Fred Shinn <Sparty601@gmail.com>

Dear Cari Meyer and Sedona City Council,

This email is in support of the Oak Creek Heritage Lodge, on calendar for the City Council Meeting Tuesday, June 25, 4:30 pm.

One very important reason why Oak Creek Heritage Lodge should be built ASAP is that this development will add a much needed sidewalk for pedestrians, who presently have no recourse to walking on Schnebly Hill Road.

In its present state, with no sidewalk and lighting, this stretch of roadway on Schnebly Hill Road is unsafe. The Oak Creek Heritage Lodge sidewalk will make it safe.

People walk on Schnebly Hill Road, 'to and from' the popular Rancho Sedona RV Park (located to the north end of the Oak Creek Heritage Lodge property). This is the only way - both day and night - for pedestrians to access restaurants, shops and entertainment at: Tlaquepaque, Tlaquepaque North, Exposures Gallery, Hillside, Creekside Plaza, the Hyatt Pinon Pointe, and Uptown.

This area of Schnebly Hill Road is often pitch black at night, and over the years, we have found ourselves narrowly missing un-anticipated pedestrians on the road.

There are several reasons why we - and our fellow neighbors and store owners - support Oak Creek Heritage Lodge. See previous petition and letters of support from our neighbors at Red Rock Heights, and merchants, shop owners and hoteliers from Hillside, Exposures, Hozho, Hike House, Creekside Plaza, El Portal, etc.

We took these photos below from our balcony and the street during the last few days. This reflects the danger of no walkway along this stretch of Schnebly Hill Road.

The planned sidewalk by Oak Creek Heritage Lodge will make Schnebly Hill Road safe for visitors, patrons and locals.

Thank you for your consideration.

Fred Shinn and Terrie Frankel
85 Sedona View Drive
Sedona, AZ 86336
928-239-0165 - 928-274-0433







NOTE: There is presently no sidewalk on Schnebly Hill Road.
Oak Creek Heritage Lodge will provide a sidewalk.



As seen in this photo at dusk (below), this stretch of Schnebly Hill Road is extremely dangerous. The danger will be eliminated with the addition of a paved walkway by Oak Creek Heritage Lodge.



Panorama (below) by local photographer Scott Stulberg, shows Schnebly Hill Road

(no sidewalk), next to the Oak Creek Heritage Lodge property. Pedestrians presently walk unsafely to and from the RV Park property, bordering on right (north) - to the Roundabout on left. The Oak Creek Heritage Lodge sidewalk and lighting will make this stretch of land safe for pedestrians. (Click on photo to make larger).



Date: June 16, 2024
Subject: Comments to Appeals
Re: P&Z April 16, 2024 Approval of Oak Creek Heritage Lodge (project")
By: D. Tracy¹

With all due respect to our neighbors, appellant Thomas/Wagner ("Wagner") and our many friends at appellant Sedona Residents Unite ("SRU"), we disagree with appellants' arguments to Sedona City Council ("Council") that the Sedona City staff ("staff") erred in recommending approval for the above project and that the Sedona Planning and Zoning Commission ("P&Z") erred in unanimously approving this project. Both staff and P&Z properly applied the relevant criteria in the Sedona Land Development Code ("LDC") to this project. In contrast, appellants Wagner and SRU base their arguments on the Sedona Community Plan² ("CP") and/or Schnebly Hill Community Focus Area plan ("CFA"). There are key differences between these two planning documents and the LDC.

To signify its importance, the first text page of the CP (page ii) contains some important legal disclaimers³ including an Arizona Court ruling that general (community) plans are not self-executable; they are guides, not regulatory documents. Cities must undertake further specific actions such as adopting zoning ordinances before a document is actionable⁴. Appellants can not base their appeals and arguments on the CP or the CFA as these are visionary plans, not actionable legal documents. As will be shown in numerous examples to follow, appellants base their arguments on their own [subjective] interpretations of the visions/guidelines in the CP and CFA, and not the specific criteria codified in the Oak Creek Heritage zoning ordinance which has been approved by the Community and was properly used by both the staff and P&Z in approving this project.

An appeal is a form of lawsuit and must be based on facts relevant to an actionable, regulatory document such as the LDC and the OCH zoning ordinance⁵. Neither appellant has met this burden of proof; both essentially argue for their interpretations of the visions outlined in the CP and CFA. Their appeals of the P&Z decision approving this project are not the appropriate legal venue to enact the changes sought by the appellants. P&Z properly based their decision on compliance with the LDC, a regulatory document approved by the community. Appellants based their appeals on their preferred interpretation of the visions in the CP and/or CFA which have not been codified into the LDC. The process to modify the language of the CP, CFA, and LDC is via "amendments", either major or minor, with procedures detailed in each of the respective documents.

¹ Schnebly Hill resident (26 years) and member of the Schnebly Hill Community Focus Area (CFA) planning group.

² As adopted and ratified in 2013-4.

³ As noted in *Fritz v. City of Kingman*, 191 Ariz. 432 (1998), Arizona statutes require that each municipality adopt a general plan and that such plans are aspirational guides or statements of policies and preferences. (See A.R.S. Sec 9-461.05(C)) This court concluded that a general plan is not a self-executing document and recognized that in order to realize a general plan's abstract policies and preferences, a city must undertake further specific actions such as adoption of zoning ordinances that apply specific uses and densities to specific properties.

⁴ Actionable is defined in law dictionaries as "when enough facts or circumstances exist to meet the legal requirements to file a legitimate lawsuit."

⁵ Ordinance 2018-12. Disposition "Codified". Section 2.2 contains Oak Creek (OC) Heritage Area as amended. <https://sedona.municipal.codes/enactments/Ord2018-12>

Rather than paper Council with a detailed response to each of the appellants' arguments since their filings total 170 pages, the following is an executive summary of their key points and a reasonable person response to each.

Sedona Residents Unite Appeal (SRU)

SRU argues two basic points based on their interpretation of the CFA:

1. Scale of the project is not consistent with the CFA.
2. Project does not protect the environment consistent with the CFA.

However, most of their filing is devoted to a hydrological analysis of the flood risk to the developer's buildings from a flood event which exceeds the 100 year *regulatory* design criteria or if the SR 179 bridge is blocked with debris. This point will be addressed separately, labeled as follows:

3. Relocate all structures outside the 500 year floodplain to avoid flood risk.

1. SRU argues that the scale of the proposed project is inconsistent with the CFA vision, that only single story, single room cabins and cottages should be allowed as shown pictorially in the CFA.

Response: In addition to cabins and cottages, the text of both the CFA and LDC currently allow various types of lodging such as boutique hotels as well as many other uses with individual footprints not to exceed 5000 sf. Staff and P&Z appropriately applied these criteria in their development review. SRU is arguing for only cabins and cottages with footprints about 200 sf, similar to Hoel's cabins in the canyon and as shown in the CFA⁶. SRU's desired interpretation is not consistent with the language in either the CFA or LDC and should be dismissed.

2. SRU argues that the riparian corridor should be [re]defined to extend well beyond the edges of the stream.

Response: Staff's interpretation as cited by SRU is that the riparian corridor is defined as the floodway. Even this definition may be more generous than reality since Oak Creek does not flood regularly enough nor with enough intensity to support riparian ecosystems much beyond the stream edges. Even one of SRU's own authoritative reference sources⁷ notes that "Although we have a better understanding of the importance of riparian areas, there is no universal definition accepted by the scientific and/or regulatory community." P&Z concurred that buildings located out of the floodway and one foot above the 100 year floodplain were consistent with the staff interpretation.

3. SRU argues that all structures should be relocated outside the 500 year floodplain.

Response: SRU argues that a flood event greater than a 100 year occurrence or a blockage of Oak Creek under the SR 179 bridge will cause a six feet rise in floodwaters at the project site. This will not be the case. ADOT hydrology modeling for the SR 179 bridge showed that floodwaters which can not pass under the bridge will be diverted around the west bridge abutment. A large enough diversion would wash out SR 179 and cut a new channel into Tlaquepaque and Los Abrigados⁸. ADOT has

6 Photos in the CFA are properly labeled as "Examples of Lodging Accommodations", and were included for illustration purposes only. Photos are not regulatory mandates.

7 University of Arizona "Understanding Arizona's Riparian Areas" page 4. (Page 31 of SRU 137 page appeal.)

8 ADOT modeling revealed that Tlaq and Los Ab would be under ten feet of flood water in a 500 year event.

repeatedly stated that SR 179 was not built to be a dike in this area; it is built on alluvial materials and will wash out and function as an overflow and thus minimize increases in upstream flood elevations.

SRU argues for a new standard based on a hypothetical event that even if it did occur, would not result in the claimed flood elevations at the project site. The CFA and LDC require that all permanent structures be located out of the [100 year] floodway. Any structures within the 100 year floodplain must be elevated one foot above this level. Staff and P&Z appropriately applied this criteria in their development review.

SRU makes a minor argument that this project will not generate less traffic than medium density residential.

Response: Cynthia Lovely⁹ has repeatedly stated just the opposite, based on generally accepted trip generation manuals. Medium density residential on this project site in the heart of Sedona's tourist district would likely be STRs (mini-hotels) and generate more traffic than the proposed project with accommodations and associated amenities designed to keep guests on site.

Summary

SRU argues for a more restrictive interpretation of the CFA than is currently codified in the LDC. Staff and P&Z applied the appropriate LDC criteria in approving this project.

⁹ Cynthia is a senior planner for the City and was the contact person responsible in whole or part for the CP, CFA and LDC.

Thomas/Wagner appeal (“Wagner”)

The Wagner appeal lists the following five topics in support of their filing. Subjects and topics are summarized for brevity; Roman numeral numbering below is the same as appellants for clarity.

- I. P&Z did not apply review criteria in CP and LDC Section 8.3E(5)
- II. Potable water demand estimate incomplete
- III. Staff report critique
- IV. Public noticing deficiencies
- V. Inappropriate engagement

I. P&Z did not apply review criteria in CP and LDC Section 8.3E(5)

Response: LDC Section 8.3E(5) contains numerous subsections which reference *consistency* with the CP and CFA. Most notably, the first sentence in this section (8.3E(5)a) states the following:

“Unless otherwise specified in this Code, City review and decision-making bodies shall review all development, subdivision and rezoning applications submitted pursuant to this article for compliance with the general review criteria stated below.”

The key words are “**Unless otherwise specified in this Code...**” which serves as notice to a reader that any specific criteria contained in the LDC will have precedence over a general goal or vision in the CP or CFA or a different interpretation as argued by both SRU and Wagner. P&Z and staff properly used the specific criteria outlined in the LDC whereas SRU and Wagner argue that the project is not consistent with *their* interpretations of the visions in the CP and CFA.

The numerous subsections under Section 8.3E(5) basically require a development to minimize impact on the immediate neighborhood, the environment, significant adverse fiscal impact to the City and comply with regulations for utilities and infrastructure such as water, sewer, fire protection, roads, etc. As noted in their report to P&Z, staff believes that this development will comply with these conditions.

It is puzzling that Wagner, who profess to representing multi-generational families who have owned and maintained residential properties on Bear Wallow Lane for decades¹⁰, have waited until this time to argue for different criteria for development projects. Both P&Z and Council have conducted countless public meetings¹¹ prior to approving the current renditions of the CFA, the LDC, and the OC zoning district. Moreover, the City even offered to waive the application fees for property owners in the CFA as an incentive to rezone to the OC district with its more desirable community benefits¹². Appellants have had ample opportunities, in fact years, to advocate for changes to the review criteria for development projects. Both the SRU and Wagner appeals are backdoor attempts to convince Council to reinterpret the CP and CFA to fit their agendas rather than the proper venue, i.e. seek amendments.

¹⁰ Wagner appeal, page 6 of 33.

¹¹ The first CFA planning group meeting was June 25, 2015. Staff reports contain more history of subsequent public meetings on the CP, CFA, LDC, amendments, and rezonings.

¹² Benefits include protect Oak Creek, create open space, improve circulation, preserve history.

II. Potable water demand estimate incomplete

Wagner argues that the information provided to P&Z is insufficient to support project approval.

Response: Subject to confirmation by the responsible engineer, the simple answer is that the engineers have only submitted an estimate. This estimate may well be revised again after more design work which will commence after project approval. Notably, the water utility, Arizona Water Company, has provided a will serve letter for the project, albeit with an increased water main on Schnebly Hill Road. As a sidenote, the initial estimate of 300 gallons per day per hotel room may be significantly overstated since this site has water rights which will offset the irrigation component of that estimate.

III. Staff report critique

Response: As noted previously, staff believes that they received assurances from the appropriate parties concerning the many topics (suggested by the appellants as being deficient) to recommend approval for this project. These topics include zoning, density, traffic, parking, fire safety, public services and facilities, etc. It would be reasonable to expect City staff to request updates to these assurances as appropriate prior to issuing building permits.

As examples, Wagner argues that the traffic impact analysis (TIA) has not been “certified” by “...the City engineer or other authorizing agency...”¹³ Or that the fire district has not provided updated comments. These are minor issues that will be addressed during the building permitting phase.

Worth a separate response is the Wagner contention that they have not been properly noticed. LDC requires that property owners within 300 feet of the project receive mailings. Staff assert that both the City mailings and the developer mailings comply with this code requirement. Bear Wallow residents are outside this boundary. In fact, an 11.44 acre RV park separates the Bear Wallow residents from this project site. Since neither appellant Lauren Thomas nor appellant Christine Wagner furnished a home address on Bear Wallow Lane, it is not possible to calculate precisely their distance from the project site. Thomas listed a Scottsdale address and Wagner listed a California address as contacts.

The final comments by appellants to their critique of the staff report is quite revealing. Appellants state that both the CFA checklist and LDC checklists are “...of no consequence and, as such, will not be addressed at this time.” Clearly, appellants want to replace the project approval criteria which has been approved by the community with their own self-serving narratives.

IV. Public noticing deficiencies

Response: Staff will need to confirm that the noticing requirements in the LDC have been met. As a resident in this neighborhood, I received both mailings and emails and observed public notice signs posted on the property prior to the P&Z meetings.

Appellant Wagner's concerns with public noticing and in fact, her primary factor in filing this appeal, is that her comments, both oral and written, have been ignored as per appellant's filing¹⁴:

13 Thomas/Wagner appeal. Page 21 of appeal; page 22 of pdf attachment.

14 Thomas/Wagner appeal. Section labeled “Appellant Standing”. Page 5 of appeal; page 6 of pdf attachment.

"Many of the Appellants' concerns presented herein were previously provided to the Developer Applicant, the Development Department and to the Planning Commission, most recently through the submittal of written and oral public comments that were provided on or before the Planning Commission's Development Review Hearing on April 16, 2024, only to fall on deaf ears. As such, this appeal has been submitted for review by the Sedona City Council for its thoughtful consideration." (Underlining added for emphasis.)

There are several possible explanations as to why public officials ignore comments from the public. (1) Sheer volume of communications may make it impractical to respond individually. (2) Public officials are not obligated to respond to all constituents' communications. (3) P&Z and Council do not generally respond to comments made in the public forum portion of their meetings. (4) In this instant case, P&Z members may not have agreed with the request, or did not believe that they had the authority to take the requested action, or that such action might infringe on private property rights¹⁵.

A developer is a private entity and free to respond as they deem appropriate. This developer has been fairly receptive to accommodating requests from the neighborhood, including specific requests from the Bear Wallow residents to relocate the more commercial aspects of the development to the south end of the project site. Recognize that the staff and P&Z will advise a developer whenever a comment from the public should be considered in order to secure project approval or building permits.

V. Inappropriate engagement

Appellants are of the opinion that the seating of the developer and staff at the same table at P&Z meetings is a crowning example of collusion.

Response: Unbelievable. Perhaps there is a vortex energy cell under Council chambers that allows persons seated at this table to communicate spiritually in addition to sharing audio-visual equipment...

Summary

Appellants SRU and Wagner have filed appeals, a form of lawsuit, with Council claiming that P&Z erred in approving this project because such approval did not align with appellants' interpretations of the abstract visions in the Sedona Community Plan and the Schnebly Hill Community Focus Area Plan.

Arizona courts have ruled that claims for legal action can not be based on general plans because they are not self-executable; they must be based on more specific documents such as codes or ordinances.

Appellants based their claims on abstract plans that are not actionable and thus should be dismissed. P&Z properly applied the specific criteria in the current Sedona Land Development code in approving this project. Council should reaffirm P&Z approval.

To change the criteria used by P&Z to evaluate future projects, appellants should seek to codify their interpretations of the CP, CFA, and LDC via amendments¹⁶.

¹⁵ Sedona Community Plan 2013, page ii. Private property rights are protected by both the State and U.S. Constitutions that prohibit the taking of any property without just compensation and due process of law. This Community Plan will be interpreted and applied in accordance with the law and will respect the private property rights of all citizens that are protected by the State and U.S. Constitutions.

¹⁶ Amendments which infringe on private property rights will be vigorously opposed by stakeholders.



**CITY COUNCIL
AGENDA BILL**

**AB 3073
June 25, 2024
Regular Business**

Agenda Item: 8b

Proposed Action & Subject: Discussion/possible action regarding approval of an Agreement for Sharing of Information Regarding Water Consumption and Water Service Disconnection with Arizona Water Company.

Department	City Attorney/Finance
Time to Present	5 min
Total Time for Item	15 min
Other Council Meetings	February 13, 2024
Exhibits	A. Data Sharing and Water Service Disconnection Agreement. B. Joint Application for Approval of Water Information Sharing Agreement and Water Service Disconnection.

Finance Approval	Reviewed RMS 6/17/24	Expenditure Required	
City Attorney Approval	Reviewed 6/18/24 KWC		\$ 3,539 (annually) + \$1,000 (one-time)
City Manager's Recommendation	Recommend approval ABS 6/17/24		Amount Budgeted
		\$ 0	
		Account No. 10-5222-01-6225 (Description)	

SUMMARY STATEMENT

Background:

During the February 13, 2024 Council meeting regarding the Call of the Election for the Arizona Water Company Franchise Agreement for the July 30, 2024 Primary Election, Councilors expressed interest in securing an agreement with Arizona Water Company for sharing water consumption data.

During the evaluation of a data sharing agreement, staff recognized the potential value of also pursuing water service disconnection for past-due wastewater accounts to be used as a last resort. Subject to Arizona Water Company agreement, the Agreement attached as Exhibit A can be used to accomplish both goals.

Agreement:

The Agreement allows for the sharing of AWC water usage data of properties in Sedona. Consumption data could also be used to inform future wastewater rates. AWC does charge for

consumption data based on the number of customers. There are a total of 7,078 AWC customers in the Sedona system. There is a one-time startup cost of \$1,000 and the annual cost is \$.50 per customer thereafter. The cost to the City will be about \$3,539 annually.

Additionally, the agreement allows the City to request AWC shut off the water for City wastewater accounts that are more than 90 days delinquent. The City Wastewater billing currently has 40 accounts with balances over 90 days. The total dollar amount for these outstanding accounts is \$76,600. Being able to shut-off water services, will increase collection of the past-due wastewater amounts. Ideally, the City will never need to actually shut off water accounts and the threat alone will be sufficient to bring accounts into compliance.

Next Steps:

If the agreement is approved by Council, the City and AWC will execute the agreement and fill out and submit the attached Application (Exhibit B) and submit it to the Arizona Corporation Commission. If approved by the Arizona Corporation Commission, the data sharing could begin in August or September.

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

Board/Commission Recommendation: Applicable - Not Applicable

Alternative(s): None

MOTION

I move to: approve the Agreement for Sharing of Information Regarding Water Consumption and Water Service Disconnection with Arizona Water Company and authorize the City Attorney to execute the Joint Application for Approval of Water Information Sharing Agreement and Water Service Disconnection with the Arizona Corporation Commission.

AGREEMENT FOR SHARING OF INFORMATION REGARDING WATER CONSUMPTION AND WATER SERVICE DISCONNECTION

This Agreement For Sharing of Information Regarding Water Consumption and Water Service Disconnection ("Agreement") is made and entered into as of the ____ day of _____, 2024, by and between Arizona Water Company, an Arizona corporation ("Arizona Water"), and the City of Sedona (the "City"). Arizona Water and the City are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

A. Arizona Water provides public water utility service ("Water Service") to certain residents of the City (collectively, the "Water Customer") under a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission ("Commission"), and the City provides sewer, solid waste, and stormwater utility services (collectively "Sewer Services") to certain residents within its borders, some of whom are also Water Customers.

B. For purposes of this Agreement, a Water Customer who is also a customer of the City for Sewer Services is referred to as a "Shared Customer."

C. The City has requested that Arizona Water provide information to the City regarding water consumption by the Shared Customers in order to assist the City in billing for Sewer Services to Shared Customers.

D. The City has also requested to enter into an agreement with Arizona Water to disconnect water service to Shared Customers who fail to timely pay the City for Sewer Services.

E. Arizona Water and the City desire to enter into this Agreement specifically setting forth the respective duties, obligations, responsibilities, and liabilities of the Parties regarding the sharing of water consumption information and disconnecting water service.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, Arizona Water and the City agree as follows:

1. Sharing of Information Regarding Water Consumption.
 - 1.1. Determination of Shared Customers. In order to allow Arizona Water to determine the Shared Customers, no later than October 1 of each year this Agreement is in effect, the City will provide Arizona Water with a map of

the City's Sewer Services area located within Arizona Water's Water Service area.

1.2. Consumption Information. Once a month, Arizona Water will provide the following water consumption information for the Shared Customers (the "Consumption Information") to the City by email on a date the Parties mutually agree to:

- i. Account number
- ii. Customer name
- iii. Parcel number (APN) as assigned by the County Assessor's Office (where available)
- iv. Service address
- v. Meter size
- vi. Meter serial number
- vii. Class of service
- viii. Water usage
- ix. Newly established and final billed accounts (including account number, customer name, service address, and date)

1.3. Payment of Costs. The City will pay Arizona Water's costs to provide the Consumption Information, as follows:

- i. The City will pay to Arizona Water a one-time establishment charge of \$1,000, payable within 30 days of receiving an invoice from Arizona Water.
- ii. The City will pay Arizona Water an annual administrative fee of \$0.50 per Shared Customer, as determined on December 31 of the preceding year, payable within 30 days of receiving an invoice from Arizona Water.

1.4. Confidentiality. The City acknowledges and agrees that it is authorized to use the Consumption Information only for purposes of its own Sewer Services billing and that the City is not authorized to use any of the Consumption Information for any other purpose. The City agrees it will

maintain the confidentiality of all Consumption Information except as may be required by law and, the City will not disclose, distribute, or publish to any third party such Consumption Information without the prior written permission of Arizona Water. In the event the City is compelled by law, subpoena, court order, or administrative order to disclose any Consumption Information, the City will promptly notify Arizona Water and will cooperate with Arizona Water prior to disclosure so that Arizona Water may take action to protect the Consumption Information from disclosure.

2. Water Service Disconnection and Reconnection.

- 2.1. Disconnection Requests and Disconnections. The City may request that Arizona Water disconnect Water Service to a Shared Customer (a "Disconnection Request") who is liable to the City for overdue Sewer Services charges ("Delinquent Shared Customer") at the premises where the applicable Delinquent Shared Customer receives Water Service from Arizona Water and Sewer Service from the City (the "Disconnection Premises"). Each Disconnection Request constitutes the City's representation that it has complied with all disconnection requirements set forth in this Agreement and by the Commission, that the applicable Shared Customer is then a Delinquent Shared Customer, and that the Shared Customer has been provided the notice described in section 2.2. The City will send Disconnection Requests to Arizona Water by email no more than once a month, no later than 12:00 p.m., on a day or date (e.g. the second Monday of each month) the Parties agree to from time to time in writing. Arizona Water will perform disconnections Monday through Thursday, excluding holidays, and will complete disconnections within six business days of receiving a Disconnection Request from the City and in compliance with the terms of this Agreement and any requirements imposed by the Commission. In no event will disconnection of Water Service be carried out on a Friday. If Arizona Water is not able to meet the above-mentioned time requirements, Arizona Water will promptly notify the City by email no later than 5 p.m. on the day Arizona Water receives the Disconnection Requests. The City will then work with Arizona Water to determine an acceptable timeline to complete the disconnection process.

Upon Arizona Water's receipt of a Disconnection Request, Arizona Water will:

- i. Shut off the water source to the Disconnection Premises as set forth in this section;
- ii. Notify the City by email of the date Water Service was disconnected to the Disconnection Premises;

- iii. Keep a record for five years of the Disconnection Requests and Water Service disconnections under this Agreement.

2.2. Pre-Requisites and Notice To Shared Customers Prior To Disconnection.

Prior to sending a Disconnection Request to Arizona Water:

- i. The Shared Customer must be at least 90 days delinquent in payment of Sewer Service charges;
- ii. The City will offer a payment plan to the Shared Customer and the Shared Customer must reject or default on the payment plan;
- iii. The City will notify the applicable Delinquent Shared Customer, in writing by mail and by posting notice using one of the two forms set forth in Exhibit A (the "Delinquency Notice") at the Disconnection Premises that Water Service by Arizona Water will be disconnected no less than 10 days after the date of the Delinquency Notice because of the Delinquent Shared Customer's delinquent Sewer Services bill with the City. The City will not send a Disconnection Request to Arizona Water sooner than 10 days after the City has mailed and posted the Delinquency Notice.

2.3. Charges For Disconnection. The City will pay a Disconnect Fee and a Monthly Lost Revenue Fee for each Disconnection Request sent to Arizona Water, as follows:

- i. A Disconnection Fee of \$100.00 per Delinquent Shared Customer.
- ii. A Monthly Lost Revenue Fee equal to the average bill for the meter size and class of service for the Delinquent Shared Customer's service area as determined in Arizona Water's last rate case for that service area. Arizona Water will pro-rate this charge for partial months.

The Disconnect Fee and Monthly Lost Revenue Fee will be consideration for Arizona Water disconnecting Water Service to the applicable Delinquent Shared Customer. Arizona Water will not charge the Shared Customer a disconnect or any other fee for disconnecting Water Service in accordance with this Agreement unless Arizona Water already may terminate Water Service to the Delinquent Shared Customer pursuant to its Tariff TC-243, Terms and Conditions, at the time that Arizona Water receives a Disconnection Request from the City, in which case Arizona Water will not charge the City a Disconnect Fee to disconnect Water

Service to the Delinquent Shared Customer. On a monthly basis, Arizona Water will invoice the City for Disconnect Fees incurred during the preceding calendar month, and such invoices will be payable within 30 days of receipt.

- 2.4. Reconnection of Water Service. Upon the City's receipt of payment in full from a disconnected Delinquent Shared Customer, or upon a disconnected Delinquent Shared Customer's entry into a payment plan with the City, the City will promptly notify Arizona Water by email. Upon receipt of such notice:
 - i. Arizona Water will reconnect Water Service to the Disconnection Premises in accordance with Arizona Water's normal procedures and timelines, as set forth in Arizona Water's tariffs, including without limitation Tariff TC-243, and the rules and regulations of the Commission.
 - ii. If the City requests reconnection after 2:00 pm, the City will pay Arizona Water's standard after hours reconnection fee if Water Service is reconnected to the Disconnection Premises after 5:00 pm. Arizona Water will invoice the City for such charges monthly, which invoice will be due and payable within 30 days.
 - 2.5. No Other Obligations. The City expressly acknowledges and agrees that Arizona Water will have no other obligations or responsibilities under this Agreement with respect to the Delinquent Shared Customers, including without limitation collection services, other than those expressly set forth in this Agreement.
3. Regulatory Matters.
- 3.1. Acknowledgements and Regulatory Requirements. The City understands, acknowledges, and agrees that:
 - i. Arizona Water is an Arizona public service corporation (as that term is defined in the Arizona Constitution and relevant law and regulations) and, as such, is subject to rules, regulations, and orders of the Commission, including, but not limited to, A.A.C. R14-2-410.A.2;
 - ii. Pursuant to A.A.C. R14-2-410.A.2, Arizona Water is precluded from disconnecting Water Service as the result of a customer's failure to pay for services or equipment not regulated by the Commission;

- iii. The City's Sewer Services are not regulated by the Commission, therefore Arizona Water must obtain from the Commission a waiver from the restrictions under A.A.C. R14-2-410.A.2 in order to proceed as contemplated in this Agreement;
- iv. Arizona Water must submit for the approval of the Commission a tariff, which sets forth the obligations of Arizona Water under this Agreement;
- iv. Arizona Water must account for the applicable and reasonable costs incurred for preparing and submitting an application and a tariff to the Commission for approval, including the costs of any required public or customer notices;
- v. Within 30 days after the Commission approves this Agreement and the tariff, Arizona Water will invoice the City for the total costs incurred by Arizona Water for the required application, notice and tariff, and such billing will include documentation such as receipts, time sheets or staff hourly rates, to substantiate amounts billed to City. The City will pay such invoice within 30 days of receipt; and
- vi. Upon Arizona Water's submission of an application and tariff, the Commission may stay effectiveness of the tariff until such time, if ever, as the Commission issues a written order approving this Agreement.

3.2. Application For Commission Approval. Upon the execution of this Agreement by the Parties, Arizona Water will:

- i. Request from the Commission a variance under A.A.C. R14-2-410.A.2 to allow the Parties to implement this Agreement; and
- ii. Submit for Commission approval a tariff to allow the Parties to implement this Agreement.

The City will reasonably cooperate and assist Arizona Water, at no cost to Arizona Water, in connection with obtaining the variance and approval described in this section.

3.3. No Obligation Without Commission Approval. Based upon the foregoing, the City agrees that Arizona Water will have no obligations under this Agreement unless and until the Commission grants the requested variance

and tariff. The provisions of this section supersede all other provision of this Agreement.

4. Miscellaneous Provisions.

- 4.1. The City will, to the fullest extent permitted by law, indemnify, defend, and hold Arizona Water harmless from and against all claims, losses, liability, costs, or expenses, including reasonable attorney's fees, (collectively, "claims") arising out of the disconnection of Water Service to Delinquent Shared Customers and Disconnection Premises and/or the City's receipt and use of the Consumption Information Arizona Water provides to the City under this Agreement, except to the extent any claims arise out of the negligence of Arizona Water, its employees or representatives. If meter damages are caused by a Shared Customer as a result of Water Service disconnection solely at the request of the City, the City will pay the cost to repair and/or replacement of the meter. Arizona Water may invoice the City for such meter repair or replacement costs, and the City will pay such invoices within 30 days of receipt.
- 4.2. Notwithstanding other term of this Agreement to the contrary, Arizona Water will have no obligation under this Agreement to shut off Water Service to any multi-unit structure sharing a common service line.
- 4.3. Arizona Water may by notice to the City modify all charges set forth in this Agreement once a year in December to ensure that Arizona Water collects all costs associated with providing Consumption Information to the City and all costs associated with Water Service disconnection.
- 4.4. This Agreement will remain in effect indefinitely; provided, however, that either Party may terminate this Agreement at any time and for any or no reason upon 60 days' prior written notice to the other Party.
- 4.5. Neither the City nor Arizona Water will be liable for any loss or damage due to failure or delay in rendering any service or performing any obligation required under this Agreement resulting from any cause beyond their reasonable control including, but not limited to acts of God, acts or omissions of civil or military authority, acts or omission of contractors or suppliers, fires, floods, epidemics, quarantine restrictions, severe weather, strikes, embargoes, wars, political strife, riots, delays in transportation, or delays or shortages in fuel, power, materials, or labor shortages. In addition, Arizona Water will in no event be liable to the City for any lost Sewer Service revenue claimed by the City as the result of Arizona Water's failure to disconnect Water Service to any Delinquent Shared Customer or

Disconnection Premises or as a result of any delay in Arizona Water's disconnecting such Water Service.

- 4.6. The failure of either Party to enforce the provisions of this Agreement at any time will not constitute a waiver of such provisions in any way and will not limit the right of the City or Arizona Water to avail themselves of such remedies as either may have for any breach or breaches of such provisions. The waiver of any specific provisions or requirements of this Agreement will not constitute a waiver of any other provision or requirement. Any waiver of any specific provision or requirement of this Agreement must be in writing and signed by the Party to be bound by such waiver.
- 4.7. This Agreement contains the entire agreement between Arizona Water and the City with respect to its subject matter. This Agreement supersedes all previous written and verbal agreements regarding such subject matter. Any amendment, revision, modification, termination, or rescission of this Agreement must be in writing and signed by both Parties.
- 4.8. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns only. There are no third party beneficiaries to this Agreement.
- 4.9. Any provision of this Agreement that is determined to be prohibited or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions.
- 4.10. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- 4.11. This Agreement will be construed and enforced in accordance with the laws of the State of Arizona, without giving effect to its conflicts of laws provisions.
- 4.12. Any notice, written request, or communication given pursuant to the provisions of this Agreement must be in writing and sent by email or certified United States mail and will be deemed to be delivered on the date of emailing or if mailed by overnight mail, and on the third day after mailing by certified mail, and must be addressed as follows:

To the City: City of Sedona
 Attn: Anette Spickard, City Manager
 102 Roadrunner Drive
 Sedona, Arizona 86336-3710

Phone: 928-204-7127
Email: aspickard@sedonaaz.gov

With a copy to: City of Sedona
Attn: Kurt Christianson, City Attorney
102 Roadrunner Drive
Sedona, Arizona 86336-3710
Phone: 928-204-7200
Email: kchristianson@sedonaaz.gov

To Arizona Water: Arizona Water Company
Attention: President
3805 North Black Canyon Highway
Phoenix, Arizona 85015
Email: mail@azwater.com

or to such other addresses as each Party may, from time to time, specify by notice to the other.

- 4.13. Jurisdiction and venue of all actions and claims over which the Commission does not have jurisdiction will lie in Maricopa County, Arizona.
- 4.14. All claims against either Party, including those over which the Commission has jurisdiction, must first go to non-binding mediation.
- 4.15. This Agreement is subject to the provisions of A.R.S. §38-511.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

**CITY OF SEDONA, ARIZONA, an
Arizona municipal corporation**

**ARIZONA WATER COMPANY,
an Arizona corporation**

By: _____
Scott M. Jablow, Mayor

By: _____
Fredrick K. Schneider, President

Date: _____

Date: _____

ATTEST:

By: _____
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

By: _____
Kurt Christianson, City Attorney

EXHIBIT A

Forms of Delinquency Notice

The Disconnect Fee and Monthly Lost Revenue Fee

[Date]

[Insert Customer Name]
[Address]
[Address]

Re: Delinquency Notice and Notice of Water Service Disconnection for Failure to Pay Sewer Service Bill

Dear [Insert Customer Name]:

As of the date of this notice, payment of your sewer bill had not been received. Your bill is now more than 90 days past due and you have ignored or rejected a payment plan or defaulted on a payment plan.

The City of Sedona ("City") has entered into an agreement, approved by the Arizona Corporation Commission that allows the City to request Arizona Water Company to disconnect your water service when you fail to pay your sewer bill.

We are sending you this written notice to make you aware that the City will request Arizona Water Company to disconnect your water service no less than 10 days after mailing this notice. If this happens, to reestablish your water service, the following must occur:

- 1) You must pay your sewer service bill including any late charges in full or enter into a payment plan to pay your sewer service bill in full; and
- 2) You may be required to pay to the City all costs Arizona Water Company charges to disconnect your water service. This may include a \$100 disconnection fee, a monthly lost revenue fee equal to the average water bill for Arizona Water Company's customers, and for after hour reconnections Arizona Water Company's standard after hours reconnection fee.

After all required items are satisfied, Arizona Water Company will reconnect your water service.

The City's offices are open Monday through Friday (excluding holidays) from 7:00 am – 6:00 pm Mountain Standard Time. To avoid water service disconnection, please contact _____ immediately at (***) ***-**** or by email at ****@****.***.

Sincerely,

[Name]
[Title]
The City of Sedona

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2
3 **COMMISSIONERS**

4 JIM O'CONNOR - Chairman
5 LEA MARQUEZ PETERSON
6 ANNA TOVAR
7 KEVIN THOMPSON
8 NICK MYERS

9 IN THE MATTER OF THE APPLICATION
10 OF ARIZONA WATER COMPANY FOR
11 APPROVAL OF (1) AGREEMENT FOR
12 SHARING OF INFORMATION
13 REGARDING WATER CONSUMPTION
14 AND WATER SERVICE DISCONNECTION
15 WITH THE CITY OF SEDONA, A
16 MUNICIPAL PROVIDER OF
17 WASTEWATER SERVICE; AND (2)
18 WATER SERVICE DISCONNECTION
19 TARIFF AT VARIANCE WITH A.A.C. R14-
20 2-410(A)(2).

DOCKET NO. W-01445A-23-XXXX

**JOINT APPLICATION FOR
APPROVAL OF WATER
INFORMATION SHARING
AGREEMENT AND WATER
SERVICE DISCONNECTION
TARIFF**

21 Arizona Water Company, an Arizona corporation ("Arizona Water") hereby
22 requests approval of: (1) an Agreement for Sharing of Water Information Regarding
23 Water Consumption and Water Service Disconnection ("Agreement"); and (2) Arizona
24 Water's proposed Water Service Disconnection Tariff, which is at variance with Arizona
25 Administrative Code ("A.A.C.") R14-2-410(A)(2) and therefore requires Arizona
26 Corporation Commission ("Commission") approval.

27 **I. Introduction**

28
1. Arizona Water is a public service corporation subject to regulation by the
Commission. Pursuant to Decision Nos. ***** (Date) and ***** (Date), Arizona Water
holds a Certificate of Convenience and Necessity ("CC&N") in the area of Sedona,
Arizona, and provides water service to approximately 106,000 customers located
throughout the State of Arizona, with approximately **** water utility service customers
located in Sedona, Arizona (collectively "Water Customers").

1 2. The City of Sedona ("Sedona") is an Arizona municipality that provides
2 sewer, solid waste, and stormwater utility services (collectively "Sewer Services") to
3 certain residents within its borders, some of whom are also Water Customers ("Shared
4 Customers").

5 3. Arizona Water's business office is located at 3805 N. Black Canyon
6 Highway, Phoenix, Arizona 85015. The person responsible for overseeing and directing
7 the conduct of this Application on behalf of Arizona Water is Nick Y. Liu, Vice President
8 – Rates and Revenues. Mr. Liu's mailing address is 3805 North Black Canyon Highway,
9 Phoenix, Arizona 85038-9006; his telephone number is (602) 240-6860; and his e-mail
10 address is nliu@azwater.com. **All case filings, correspondence, data requests and/or
11 other requests for information should be emailed to Mr. Liu.**

12 4. Sedona's business address is located at 102 Roadrunner Drive, Sedona,
13 Arizona 86336-3710. The person responsible for overseeing and directing the conduct
14 of this Application on behalf of Sedona is Kurt Christianson. Mr. Christianson's mailing
15 address is 102 Roadrunner Drive, Sedona, Arizona 86336-3710; his telephone number is
16 928-204-7200; and his e-mail address is kchristianson@sedonaaz.gov. **All case filings,
17 correspondence, data requests and/or other requests for information should be
18 emailed to Mr. Christianson.**

19 **II. Application**

20 5. Sedona has requested that Arizona Water provide information to Sedona
21 regarding water consumption by the Shared Customers to assist Sedona in billing for
22 Sewer Services to Shared Customers.

23 6. On [Date], Arizona Water and Sedona signed the Agreement attached as
24 **Exhibit 1**. In order to hold Arizona Water and its other customers harmless from the
25 termination of water service to shut-off sewer utility service that it not being paid for, the
26 Agreement provides for:
27
28

1 a. The regular sharing of consumption information by Arizona Water
2 with Sedona for Shared Customers;

3 b. Compensation by Sedona to Arizona Water for the administrative
4 costs associated with the sharing of consumption information and with water service
5 termination and reconnection; and

6 c. The indemnification of Arizona Water from and against all claims,
7 losses, liability, costs, or expenses, including reasonable attorney's fees, arising out of the
8 disconnection of water service to delinquent Shared Customers and disconnection
9 premises and/or the City's receipt and use of the consumption information that Arizona
10 Water provides to the City under this Agreement, except to the extent any claims arise
11 out of the negligence of Arizona Water, its employees or representatives.

12 7. Arizona Administrative Code R14-2-410(A)(2) prohibits disconnection of
13 one class of utility service for "[f]ailure of the customer to pay for services or equipment
14 which are not regulated by the Commission." In order for the Agreement to become
15 effective, a variance from A.A.C. R14-2-410(A)(2) is necessary.

16 8. Arizona Water also proposes a Water Service Disconnection Tariff that
17 authorizes Arizona Water to enter into the Agreement through which Arizona Water will
18 (1) provide Sedona consumption information for the Shared Customers, and (2)
19 disconnect water service to an Arizona Water customer for that customer's nonpayment
20 for Sewer Services provided by Sedona. Arizona Water's proposed form of tariff is
21 attached as **Exhibit 2**. Upon Commission approval, the tariff will assist Sedona in the
22 collection of delinquent sewer bills through termination of water service.

23 9. The Commission has approved similar agreements and tariffs in the past.
24 *See, e.g.,* EPCOR Water Arizona Inc., Decision No. 73879 (May 8, 2013); Sahuarita
25 Water Company, Decision No. 73562 (January 6, 2016); EPCOR Water Arizona Inc.,
26 Decision No. 75514 (April 22, 2016); Rose Valley Water Company, Decision No. 77285
27 (July 19, 2019); Arizona Water Company, Decision No. 77992 (May 5, 2021); and
28

1 Arizona Water Company, Decision No. 78939 (May 9, 2023). The Commission has also
2 previously approved agreements and tariffs solely for termination of water service (*see*
3 EPCOR Water Arizona Inc., Decision Nos. 66998 (May 24, 2004) and 68917 (August
4 29, 2006)), and solely for sharing of information regarding water consumption (*see*
5 Chaparral City Water Company, Decision No. 75709 (August 19, 2016)).

6 WHEREFORE, based on the foregoing, Arizona Water and Sedona respectfully
7 request that the Commission approve this Application and issue an order authorizing:

8 A. The Agreement for Sharing of Water Information Regarding Water
9 Consumption and Water Service Disconnection attached as Exhibit 1;

10 B. A variance from A.A.C. R14-2-410(A)(2), which prohibits disconnection
11 of water service by Arizona Water to delinquent sewer customers of Sedona;

12 C. The Water Service Disconnection Tariff that will allow Arizona Water to
13 share water customer information and to disconnect water service for nonpayment of
14 Sewer Service for Shared Customers, attached as Exhibit 2; and

15 D. Any additional relief as the Commission deems just and proper.

16 RESPECTFULLY SUBMITTED this _____ day of June, 2024.

17 ARIZONA WATER COMPANY

18
19 By _____

20 E. Robert Spear
21 Vice President and General Counsel
22 3805 North Black Canyon Hwy
23 Phoenix, Arizona 85015-5351

24 and

25 Meghan H. Grabel
26 Elias J. Ancharski
27 Osborn Maledon, PA
28 2929 North Central Ave. 21st Floor
Phoenix, Arizona 85012
Attorneys for Arizona Water Company

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Approved By: _____
Kurt W. Christianson
City Attorney
City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336
(928) 204-7200

Copy efiled this _____ day of June,
2024, with:

<https://efiling.azcc.gov>
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing emailed
this _____ day of June, 2024 to:

Tom Van Flein
Legal Division Chief Counsel/Division Director
ARIZONA CORPORATION COMMISSION
1200 W Washington
Phoenix, Arizona 85007

Briton Baxter
Ranelle Paladino
Co-Directors, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007



**CITY COUNCIL
AGENDA BILL**

**AB 3066
June 25, 2024
Regular Business**

Agenda Item: 8c
Proposed Action & Subject: Discussion/possible direction regarding future agenda items.

Department	City Manager
Time to Present	2 Minutes
Total Time for Item	5 Minutes
Other Council Meetings	Included in City Council regular meeting agenda packets as of May 14, 2024
Exhibits	Exh A. Future Agenda Items

Finance Approval	Reviewed RMS 6/17/24	<table border="1"> <tr> <td colspan="2">Expenditure Required</td> </tr> <tr> <td>\$</td> <td>N/A</td> </tr> <tr> <td colspan="2">Amount Budgeted</td> </tr> <tr> <td>\$</td> <td>N/A</td> </tr> <tr> <td>Account No.</td> <td>N/A</td> </tr> <tr> <td>(Description)</td> <td></td> </tr> </table>	Expenditure Required		\$	N/A	Amount Budgeted		\$	N/A	Account No.	N/A	(Description)	
Expenditure Required														
\$	N/A													
Amount Budgeted														
\$	N/A													
Account No.	N/A													
(Description)														
City Attorney Approval	Reviewed 6/18/24 KWC													
City Manager's Recommendation	For discussion and direction only. ABS 6/17/24													

SUMMARY STATEMENT

Background: Council requested a document showing future agenda items be added to the Council packet going forward. Attached as Exh. A is the Future Agenda Items document for review and discussion, and possible direction purposes.

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 only.

Date	Day	Time	Type	Topic	Agenda Section	Requestor	Estimated Total Time
PENDING ITEMS							
				Discussion regarding the PSPRS Policy		Council	
06/25/24	Tuesday	2:00 p.m.	Executive Session				
				Discussion and consultation with the City Attorney for legal advice and to consider the City's position and instruct its attorneys regarding contemplated litigation and/or to avoid litigation regarding Oak Creek Heritage Lodge Appeal. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(3) & (4).	Special	Christianson	2 hours
06/25/24	Tuesday	4:00 p.m.	Special Meeting				
				SS II & Fairfield Community CFDs Budget Adoption	Special	Cook	10 min
06/25/24	Tuesday	4:15 p.m.	Special Meeting				
				AB 3065 Public hearing/discussion/possible action regarding approval of a Resolution adopting the City of Sedona's Budget for Fiscal Year 2024-25.	Special	Stanley/McGann	15 min
06/25/24	Tuesday	4:30	Regular Meeting				
				AB 3080 Approval of amendment of contract with Abdo Financial Services, LLC for Interim Finance Director services.	Consent	Spickard	NA
				AB 3057 Approval of an amended Construction Mnager at Risk (CMAR), Construction Services contract for the Uptown Sedona Parking Garage Project with McCarthy Building Companies, Inc. in an amount not-to-exceed \$17,545,098.	Consent	Christianson/ Welch	NA
				AB 3061 Public hearing/discussion/possible action regarding an appeal of the Planning and Zoning Commission's April 16, 2024, approval of a development review application for the Oak Creek Heritage Lodge located at 65-195 Schnebly Hill Road & 20 Bear Wallow Lane. PZ23-00004 (DEV), APPE24-00001, APPE24-00002	Regular	Meyer	2 hours

				AB 3073 Discussion/Possible Action regarding approval of an Agreement for Sharing of Information Regarding Water Consumption and Water Service Disconnection with Arizona Water Company.	Regular	Christianson	15 min
				AB 3066 Discussion/possible action regarding future meeting and agenda items.	Regular	Spickard	5 min
06/26/24	Wednesday	3:00 p.m.	Special Meeting				
				None	NA	NA	NA
07/09/24	Tuesday	4:30	Regular Meeting				
				AB 3078 Approval of a Resolution appointing the City of Sedona Finance Director as Chief Fiscal Officer of the City for the purpose of submitting the annual expenditure limitation report to the Arizona Auditor General's Office.	Consent	West	NA
				AB 3082 Approval of a Resolution approving a Settlement Agreement with the Forest Road Condominium Association, Inc. to settle claims arising out Forest Road Connection Project and to resolve ongoing litigation in the eminent domain matter of City of Sedona vs. Forest Road Condominium Association, et al., Coconino County Superior Court Case No. CV202200175.	Consent	Christianson	NA
				AB 3084 Approval of three-year maintenance contract for City landscaping.	Consent	Farhat	NA
				AB 3083 Approval of the renewal of a Memorandum of Agreement (MOA) between Yavapai County and City of Sedona for 9-1-1 Bill Payment Procedures.	Consent	Loeffler	NA
				AB 3063 Discussion/possible action regarding the approval of a Construction Contract for Dry Creek Road alignment SIM-11m project.	Regular	Phillips	30 min
				AB 3054 Discussion/possible action regarding the approval of a revised Development Agreement with MK Company, Inc. including a long-term land lease and gap financing of \$7.75 million for the development of the Sunset Lofts.	Regular	Boone	40 min
				AB 3066 Discussion/possible action regarding future meeting and agenda items.	Regular	Spickard	5 min
07/10/24	Wednesday	3:00 p.m.	Special Meeting				

				HOLD - Traffic Update	Special	PD/PW	1 hour
				AB 3077 Discussion/possible action regarding the use of 401 Jordan for Housing	Special	Boone	1 hour
7/23/2024	Tuesday	4:30 p.m	Regular Meeting	Council Recess, No Council Meeting	Regular		
7/24/2024	Wednesday	4:30 p.m	Special Meeting	Council Recess, No Council Meeting	Special		
8/13/2024	Tuesday	4:30	Regular Meeting				
				AB 3071 Public Hearing #1 on draft Development Impact Fees Land Use Assumptions (LUA) and Infrastructure Improvement Plan (IIP).	Regular	Spickard	
				AB 3072 Public Hearing regarding a 3.6% Wastewater rate increase.	Regular	Stanley/McGann	
				AB 3081 Public hearing/discussion/possible action regarding proposed revisions to the Sedona Land Development Code. The proposed revisions include revisions to the Urban Agriculture Section (LDC Section 3.4.D(2)) to comply with recently adopted state legislation and a change to purpose statements of the M1 and M2 districts (LDC Sections 2.11.A & 2.12.A) to accurately reflect the permitted uses. Case Number: PZ24-00007 (LDC) Applicant: City of Sedona.	Regular	Meyer	15 min
				AB 3075 Discussion/possible action regarding the Small Grant Evaluation Citizen Work Group recommendations for Fiscal Year 2025 Small Grants Program in the amount of \$xxx.	Regular	Spickard	1.5 hour
				Tentative Canvass Election	Regular	Cook	
				AB 3066 Discussion/possible action regarding future meeting and agenda items.	Regular	Spickard	5 min
08/14/24	Wednesday	3:00 p.m.	Special Meeting				
				AB 3076 Presentation/discussion regarding tourism visitor data.	Special	Browne	1 hour
				AB 3025 Presentation/discussion regarding the findings and recommendations of the Airport Assessment.	Special	Dickey	1 hour
8/27/24	Tuesday	4:30	Regular Meeting	No Council Meetings, Council at LACT Conference			
8/28/2024	Wednesday	3:00 p.m.	Special Meeting	No Council Meetings, Council at LACT Conference			