



**CITY COUNCIL
AGENDA BILL**

**AB 1173
February 22, 2011
Regular Business**

Agenda Item: 9a
Proposed Action & Subject: Discussion/possible action concerning execution of a transfer agreement between the City of Sedona and the Arizona Department of Transportation setting forth the terms for transfer of that portion of State Route 89A between approximately the “Y” roundabout and Red Rock High School including a small portion of SR 179 from the “Y” to Ranger Road.

Department	City Manager – Tim Ernster
Time to Present	5 Minutes
Total Time for Item	2 Hours
Other Council Meetings	October 12, 2010, November 23, 2010, December 14, 2010, January 11, 2011, January 13, 2011, January 19, 2011, February 9, 2011.
Exhibits	A. Intergovernmental Agreement (To be Distributed Under Separate Cover)

City Attorney Approval	Reviewed 2/14/11. M. Goimarac	Expenditure Required	
			\$ N/A
City Manager's Recommendation	Take action to either approve or deny the Route Transfer of SR 89A in West Sedona	Amount Budgeted	
			\$ 0
		Account No. (Description)	N/A
		Finance Approval	<input type="checkbox"/>

SUMMARY STATEMENT

Background: On May 25, 2010, the City Council passed a resolution opposing continuous roadway lighting on SR 89A in West Sedona by the Arizona Department of Transportation (ADOT) and instead supported roadway improvements “that provide the highest level of daytime and nighttime roadway safety.”

In response to the City Council’s action, John Halikowsky, Director of ADOT, sent a letter to the City, dated July 8, stating that unless the City agreed to a Route Transfer of SR 89A, ADOT would proceed with the installation of the continuous roadway lighting. Furthermore, the Director of ADOT established a deadline of August 15, 2010 for the City Council to adopt a resolution directing City staff to negotiate in good faith for a possible Route Transfer or ADOT would proceed with the installation of the continuous roadway lighting. Mr. Halikowsky also established a deadline of January 15, 2011 for the City to make a decision regarding a possible route transfer.

On August 10, 2010, the City Council passed a resolution directing staff to negotiate in good faith with the Arizona Department of Transportation for a possible Route Transfer of SR 89A in West Sedona. This action was in response to Mr. Halikowsky's letter. In November 2010, the City requested an extension of the January 15, 2011 deadline and ADOT approved an extension to February 28, 2011 in order to provide sufficient time for the City to complete a community education and input process.

The City Council must make a decision on February 22nd in order to comply with ADOT's deadline for a signed agreement by the end of February.

Since August 2010, the City Council has studied the ramifications of the Route Transfer, disseminated information to the public, and held numerous public meetings to solicit community feedback. Opinion polls and surveys have been conducted to gauge public sentiment.

If the City Council approves the Route Transfer, staff recommends that the following steps be taken within the next sixty days in order to assure that the terms of the intergovernmental agreement are met, and to assure that the City is moving forward in a timely manner with alternative safety improvements:

1) Adoption of guidelines for managing SR 89A funds. If the City Council approves the route transfer, all of the funds provided by ADOT must be spent in the Route Transfer Corridor on transportation projects. In order to assure that the City complies with this requirement, it is recommended that guidelines be adopted by City Council for determining how the ADOT funds, provided as part of the Route Transfer Agreement will be managed and spent. The guidelines would include but not be limited to investment policies, future contributions to the restricted SR 89A O&M accounts, process for authorizing expenditures, annual evaluations of budget requirements, and other pertinent policies to assure that the funds were spent prudently and in accordance with the Intergovernmental Agreement. The City Council approval could either be in the form of an ordinance or as adopted guidelines.

2) Selection of a Transportation Design Consultant. If the City Council approves the Route Transfer, it is important that the City act as expeditiously as possible to contract with a Transportation Design Consultant to begin the process of developing a specific design concept for alternative safety improvements on SR 89A in West Sedona. This would include the community involvement process.

If the City Council denies the approval of the Route Transfer, then staff would recommend that the denial also include a request to ADOT to work with the City on studying and implementing other appropriate safety improvements to enhance daytime safety.

Board/Commission Recommendation: Applicable - Not Applicable

The Planning and Zoning Commission considered this issue on February 1, 2011 and by a 4-0 vote, moved to recommend to the City Council that the Commission supports the proposed route transfer of SR 89A for the following long range planning reasons:

- The Route Transfer of SR 89A would allow the City of Sedona to determine its own destiny in any future comprehensive redevelopment planning process for the West Sedona SR 89A corridor.

- The route transfer of SR 89A would allow the City of Sedona to have greater control over the future look and character of SR 89A.

Alternative(s): The City Council can either approve the Route Transfer or deny approval of the Route Transfer. No other viable options are available to Council.

MOTION

I MOVE TO: approve the proposed Route Transfer Agreement between ADOT and the City of Sedona which will result in the ultimate ownership and responsibility of that portion of Highway 89A in West Sedona designated in the agreement as the "transfer segment" being transferred to the City of Sedona. I further move to authorize the Mayor to execute this agreement in behalf of the City.

If the first motion fails, then:

I MOVE TO: deny approval of the proposed Route Transfer agreement between the City and ADOT for the transfer of SR 89A in West Sedona, with the knowledge and understanding that as a result, ADOT will follow through with its expressed intentions to install continuous roadway lighting on Highway 89A in West Sedona in conformity with alternative 29B-R1, approved by the previous City Council on February 14, 2010. In conjunction with this motion, I further move to urge ADOT to work with the city to study and implement other appropriate roadway improvements to enhance daytime safety.

TRANSFER AGREEMENT

This Transfer Agreement (the "Agreement") is entered into _____, 2011, between the City of Sedona, an Arizona municipal corporation (the "City") and the State of Arizona acting through the Arizona Department of Transportation, as defined in ARIZ. REV. STAT. § 28-331 *et seq.* ("ADOT"). The City and ADOT will be referred to herein individually as "Party" or collectively as "Parties".

RECITALS

A. The City is authorized to enter into this Agreement by virtue of Arizona Revised Statutes ("ARIZ. REV. STAT.") § 28-7209 and action taken by the City Council on February 22, 2011.

B. ADOT is authorized to enter into this Agreement by virtue of ARIZ. REV. STAT. §§ 28-7209 and 28-334.

C. ADOT owns and operates State Routes 89A and 179 within the corporate limits of the City (the "Transfer Segment") as described and depicted in Exhibit A and attached hereto and incorporated herein by reference.

D. The Transportation Board, as set forth in ARIZ. REV. STAT. § 28-101 *et seq.*, (the "Board") desires to transfer ownership, control and maintenance responsibilities of the Transfer Segment to the City, and the City wishes to accept the ownership, control and maintenance responsibilities of the Transfer Segment pursuant to the terms of this Agreement. The Board has taken certain actions prior to the execution of this Agreement, but the transfer shall not be deemed to be effective until the Transfer Date as defined in Section 1.2 below.

E. ARIZ. REV. STAT. § 28-7209(A)(2) requires that before the Board transfers ownership and control of the Transfer Segment, the Board must give the City four years advance notice of the planned transfer, unless the City waives the right to the advance notice.

F. ARIZ. REV. STAT. § 28-7209(B) requires that before the Board transfers ownership and control of the Transfer Segment, the pavement before such transfer must "be in such a condition that additional surface treatment and major maintenance of the highway are not required for at least five years, unless the board and the affected jurisdiction agree to waive the requirements of this subsection" (the "Pavement Condition Requirement").

G. The Parties anticipate certain projects to be completed along the Transfer Segment in the future (the "Future Projects" as more particularly set forth in Article II



below), with the understanding that either or both State funds and Federal financial assistance may be used in whole or in part to fund such Future Projects.

H. ADOT may utilize funds from the Highway Expansion and Extension Loan Program (“HELP”) loan program (as described in ARIZ. REV. STAT. Title 28, Chapter 21, Article 5) to finance a portion of the amounts ADOT will pay the City under this Agreement. ADOT is solely responsible for applying for and repaying the HELP loan.

I. The Board has taken the following action in anticipation of this Agreement, conditioned on the Parties’ execution of this Agreement and ADOT and the City taking the actions designated in Section I of this Agreement:

1. Amended its fiscal year (FY) 2011 – 2015 Highway Construction Program, to include the following:

a. In FY 2011 – Program funding sufficient to pay 100 percent of all costs associated with the Andante Traffic Signal Project.

b. In FY 2011 – Program funding sufficient to pay 100 percent of all costs associated with the Pavement Preservation Project.

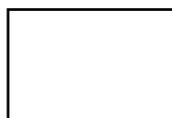
c. In FY 2011 – FY 2015 – Program all costs (including principal and interest) for the re-payment of a HELP loan in the aggregate principal amount of \$9,275,550.

2. Directed ADOT to develop all documents necessary to accomplish the transfer of the Transfer Segment to the City.

J. In order to accomplish the abandonment of the Transfer Segment to the City, the Parties have agreed to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the ADOT and the City hereby agree as follows:



Article I. Route Transfer

1.1 Acceptance of Transfer Segment. The City shall accept into its road system the Transfer Segment in “as-is” condition and shall by virtue of this agreement acquire all preexisting rights within the entire right-of-way comprising the Transfer Segment that currently belong to ADOT. The City shall execute all documents necessary to effectuate this route transfer. In consideration of the transfer of ownership, control and maintenance responsibility, the City shall receive from ADOT (A) compensation as described in Section 1.2 below and (B) contributions towards the Future Projects as set forth in Article II below.

1.2 ADOT Contributions to City; Ownership. ADOT shall pay the City \$10,650,550 on or before June 30, 2011. ADOT shall give the City 30 days notice of the date of payment. The first calendar day after the date of payment shall be the “Transfer Date.” If ADOT does not pay the City \$10,650,550 on or before June 30, 2011, (A) this Agreement shall be immediately terminated without further action by either Party, (B) ADOT shall continue to own, control and maintain the Transfer Segment and (C) neither Party will be responsible for constructing or financing the Future Projects.

1.3 City Control of Transfer Segment; Andante Exception. As of 12:01 a.m. on the Transfer Date, the City shall accept full ownership, control and maintenance responsibility over the Transfer Segment, with the exception of the project area for the Andante Traffic Signal Project (defined in Subsection 2.1(A) below), as depicted in Exhibit A attached hereto and incorporated herein by reference, which shall become the City’s responsibility as set forth in Section 1.4 below.

1.4 Andante Acceptance. Upon final construction acceptance by ADOT and the City of the Andante Traffic Signal Project, the City shall accept full ownership, control and maintenance responsibility over the project area for the Andante Traffic Signal Project, as depicted in Exhibit A.

1.5 Notice Waiver. In reliance upon ADOT’s obligations contained in this Agreement, the City waives the four year advance notice requirement set forth in ARIZ. REV. STAT. § 28-7209(A)(2).

1.6 Condition of Transfer Segment. In reliance upon ADOT’s obligations contained in this Agreement, the City waives the Pavement Condition Requirement of ARIZ. REV. STAT. § 28-7209(B).

1.7 City Account. The City shall place all State funds transferred to the City under this Agreement into a separate City account (the “City Account”). The City shall use all such funds (including investment earnings) solely for maintenance, operations, planning, design and construction (including the purchase of right-of-way) on the



Transfer Segment. Where the City is improving an intersection, the work may include a cross street to a distance not more than 100 feet from the right-of-way line of the Transfer Segment as it exists on the date of this Agreement. Should the intersection work need to extend beyond 100 feet, funds from the City Account may be used for work directly related to the intersection, subject to approval by the ADOT District Engineer.

1.8 Reporting. If requested in writing by ADOT, the City shall make a report to ADOT concerning the obligation and expenditure of all funds deposited within the City Account, with sufficient detail that ADOT can ascertain that the funds are being used for the purposes allowed under this Agreement.

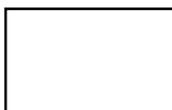
1.9 Audit. The City agrees to make its records available for review or audit by an ADOT representative upon reasonable request. The City may comply with this requirement by making the documents available at City offices during normal business hours.

Article II. Future Projects

2.1 Generally. The Parties agree that in addition to the compensation set forth in Article I above, ADOT will use its best efforts to finance the Future Projects set forth below. ADOT shall, prior to the Transfer Date and thereafter annually, provide the City with copies of the relevant pages from its Highway Construction Program to ensure that ADOT has programmed the Future Projects into its Highway Construction Program as contemplated by this Agreement.

A. Andante Traffic Signal Project. The Andante traffic signal project shall include installation of traffic signals for the intersection of Andante Drive and SR 89A, as depicted in Exhibit A (“Andante Traffic Signal Project”). ADOT will bear the full cost of the Andante Traffic Signal Project. ADOT will advertise the Andante Traffic Signal Project for construction no later than 60 days after the Transfer Date and will be solely responsible for awarding and administering the construction contract (the “ADOT Andante Contract”). The City shall not be a party to the ADOT Andante Contract; provided, however, that ADOT shall allow the City to review and comment upon the contract documents.

B. Pavement Preservation Project. The pavement preservation project includes improving the condition of the surface treatment of that portion of the Transfer Segment depicted in Exhibit A, to ADOT standards (the “Pavement Preservation Project”). ADOT shall advertise the Pavement Preservation Project for construction as soon as practicable after the Transfer Date, but no later than February 1, 2013. The City shall give ADOT any and all rights of entry necessary to perform the Pavement Preservation Project.



1. Funding. Subject to the availability of Federal aid funds or State funds (at ADOT's sole discretion) at the time ADOT commences with the Pavement Preservation Project, but in no event later than February 1, 2013, ADOT will bear the full cost (less the amount of the City's Federal match requirement in an amount not to exceed \$250,800 as described in Subsection 2.1(C)(2) below) for the Pavement Preservation Project. ADOT will advertise the Pavement Preservation Project for bids and award the contract to the contractor(s) (the "ADOT Pavement Preservation Contract"). ADOT will be solely responsible for administering the ADOT Pavement Preservation Contract. The City shall not be a party to the ADOT Pavement Preservation Contract; provided, however, that ADOT shall allow the City to review and comment upon the contract documents.

2. City Match. Upon written notice from ADOT, the City will pay \$250,800 to ADOT prior to the advertisement of the Pavement Preservation Project.

C. Transportation Enhancement Project. The City will develop a transportation enhancement project (the "Transportation Enhancement Project") for the Transfer Segment and provide ADOT with the plans for such project no later than June 30, 2015. In the event the City fails to provide ADOT with plans for the Transportation Enhancement Project by June 30, 2015, the Parties will have no future obligation to finance this project.

1. Funding. ADOT will use its best efforts to obtain an amount up to \$250,000 of Transportation Enhancement ("TE") project funds. If the City is unsuccessful in receiving up to \$250,000 of TE project funds, ADOT shall request the Board to fund \$250,000 from its "Projects of Opportunity" sub-program to fund the Transportation Enhancement Project. Subject to the approval of the Board, ADOT will advertise the Transportation Enhancement Project for bids and award the contract to the contractor(s) (the "ADOT TE Contract"). ADOT will be solely responsible for administering the ADOT TE Contract. ADOT's costs will be paid from the Project funds. The City shall not be a party to the ADOT TE Contract; provided, however, that ADOT shall allow the City to review and comment upon the contract documents.

2. City Match. The City will notify ADOT that it desires ADOT to support the approval of up to \$250,000 of TE funds no later than June 30, 2015. Upon written notice from ADOT, the City will pay \$14,250 to ADOT prior to the advertisement of Transportation Enhancement Project.

2.2 Contingent Remedies If Future Federal Funding Is Not Available.



A. Federal Funding Through ADOT. The Parties acknowledge that work on the Future Projects will likely not be required for several months or years. The Parties also acknowledge that ADOT currently intends to use Federal aid highway funds to accomplish some or all of the work. The Parties also understand that any use of Federal aid highway funds will have to be approved by the Board and the Federal Highway Administration (“FHWA”) at such future time before the projects are advertised. The Parties further acknowledge that the City has certain obligations to perform certain activities and to notify ADOT and the Board of its desire to commence a Future Project within pre-determined time limits as enumerated in Article II of this Agreement. ADOT can make no representations that these funds will be available or approved for such use, other than its representation that it will make its best efforts to obtain the Federal aid funding.

B. Equitable Adjustment. If the Federal funding for a Future Project is not approved by the Board or FHWA (unless such disapproval is due to specific omission or actions taken by the City, on its own volition, which have made the work ineligible for Federal aid funding), the Parties agree to an equitable adjustment to the obligations set forth in this Agreement as follows.

1. Substituted Funds. ADOT may, at its sole discretion, substitute other legally available funds in lieu of the Federal aid funds within 60 days of a demand by the City.

2. Initial Notice of Deficiency. If ADOT does not make other funds available, the City shall file a notice of deficiency (“Initial Notice of Deficiency”) with ADOT identifying:

- a. the Future Project(s) in dispute;
- b. the actions the Board needs to take to facilitate the completion of the Future Project(s); and
- c. a demand that the ADOT petition the Board to take those actions necessary to facilitate the completion of the identified Future Project(s) or take the Transferred Segment back into the State Highway System. ADOT shall have 30 days to file such a petition with the Board from the time it receives such Initial Notice of Deficiency.

3. Cure. If, within 30 days of ADOT’s petition, the Board agrees to take those actions necessary to facilitate the completion of the identified Future Project(s), then the Parties agree that this Agreement will continue to be in full force and effect as contemplated herein.



4. Accept Transfer Segment. If the Board agrees to take the Transfer Segment into the State Highway System, the City shall return, within 60 days of notification of the Board's decision, any remaining unobligated funds in the City Account to ADOT; provided that the City will retain the investment earnings in the City Account plus \$1,125,000, which amounts shall be considered the liquidated damages due to the City for the Board's refusal to fund its portion of the Future Projects. The Parties agree that "unobligated funds" shall mean funds that were not used by the City on the ownership, control or maintenance of the Transfer Segment at the time the Board refuses to fund the Future Projects. In such an event, after the City's repayment all other duties and obligations contemplated under this Agreement will be considered by ADOT and the City as satisfied, with the exception of Sections 1.8 and 1.9, which will remain in full force and effect for five years after the repayment is made.

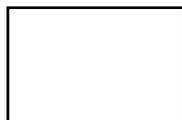
5. Deficiency Payments. If the Board within 90 days after receipt of the Initial Notice of Deficiency by ADOT does not either take those actions necessary to facilitate the completion of the identified Future Project(s) or agree to take the Transfer Segment into the State Highway System, then after receipt of a second notice of deficiency (the "Final Deficiency Notice") from the City, ADOT shall make the following payments ("Deficiency Payments") to the City as liquidated damages:

(a) Andante Traffic Signal Project. The difference between the then current engineering construction cost estimate and the construction cost actually paid by ADOT on the Andante Traffic Signal Project.

(b) Pavement Preservation Project. The difference between the then current engineering construction cost estimate and the construction cost actually paid by ADOT on the Pavement Preservation Project, less any match funds not yet paid to ADOT by the City.

(c) Transportation Enhancement Project. The difference between the engineering construction cost estimate (not to exceed \$250,000) and the construction cost actually paid by ADOT on the Transportation Enhancement Project, less any match funds not yet paid to ADOT by the City.

6. Independent Calculation. Deficiency Payments shall be determined for each Project separately and independently.



7. Resolution of Deficiency Disputes. If ADOT disagrees with the issuance of a Final Deficiency Notice from the City, the Parties agree to resolve the disagreement pursuant to Section 5.9 of this Agreement.

Article III. Remedies Upon City’s Failure to Prepare Future Projects

3.1 Notice of Potential Default. In the event that the City has failed to take any action contemplated under Article II for a Future Project, ADOT may file with the City a notice of potential default (“ADOT Notice of Potential Default”), outlining the matter not completed and actions the City needs to take to facilitate the completion of the Future Project.

3.2 Cure of Potential Default. If, within 60 days of the receipt of the ADOT Notice of Potential Default, the City has taken the actions outlined in such ADOT Notice of Potential Default, such ADOT Notice of Potential Default shall be deemed satisfied, and ADOT shall provide the City with a written acknowledgment of same. ADOT agrees that the City may cure any default with respect to funding any portion of a Future Project by taking steps necessary to provide alternative funding (i.e., calling for a bond election to fund a project in the absence of federal funding).

3.3 Final Default Notice. If, after 60 days following the City’s receipt of the Notice of Potential Default, the City has failed to take the actions indicated, ADOT shall be entitled to issue a final default notice (the “ADOT Final Default Notice”). Upon receipt by the City of the ADOT Final Default Notice:

A. ADOT Relieved of Responsibility. ADOT and the Board shall be relieved of any financial or other responsibility related to the Future Project(s) referenced in the ADOT Final Default Notice.

B. City Default Payments. The City shall pay ADOT the estimated Federal match amount related to the Future Project(s) referenced in the ADOT Final Default Notice in amounts not to exceed: \$250,800 for the Pavement Preservation Project, or \$14,250 for the Transportation Enhancement Project.

3.4 Mediation. If the City disagrees with the issuance of an ADOT Final Default Notice from ADOT, the Parties agree to resolve the disagreement pursuant to Section 5.9 of this Agreement.

Article IV. Remedies Upon Other Default under this Agreement

4.1 Notice of Potential Default. In the event that either Party defaults on its obligations under this Agreement, except for a deficiency or default as provided in Articles II and III above, the other Party may file with the alleged defaulting Party a notice of potential default (the “Notice of Potential Default”), outlining the matter(s) not



completed and actions the alleged defaulting Party needs to take to cure the Potential Default.

4.2 Cure of Potential Default. If, within 120 days of the receipt of the Notice of Potential Default, the defaulting Party has taken the actions outlined in such Notice of Potential Default, such Notice of Potential Default shall be deemed satisfied, and the other Party shall provide the defaulting Party with a written acknowledgment of same.

4.3 Final Default Notice. If, after 120 days following ADOT’s receipt of the City Notice of Potential Default, the defaulting Party has failed to take the actions indicated, the other Party shall be entitled to issue a final default notice (the “Final Default Notice”). Disputes concerning the Final Default Notice will be resolved as set forth in Section 5.9 below.

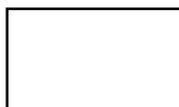
Article V. Miscellaneous Provisions

5.1 Indemnification.

A. Related to Lighting, Signage and Maintenance. To the extent permitted by law, after the Transfer Date, the City shall indemnify, defend and save and hold harmless ADOT for, from and against any and all claims, losses, liability, costs or other expenses related to the Transfer Segment (including, but not limited to, reasonable attorneys’ fees) (hereinafter collectively referred to as “Claims”) arising out of bodily injury of any person (including death), property damage and other Claims (including, but not limited to claims of derivative or vicarious liability) relating to, or in any way including, lighting conditions, signage and roadway maintenance along the Transfer Segment.

B. Related to Pre-Existing Design and Future Projects. The Parties agree that, with respect to any Claims arising out of bodily injury of any person (including death), property damage and other Claims (including, but not limited to claims of derivative or vicarious liability) relating to, or in any way including, (1) design defects for portions of the Transfer Segment designed and constructed prior to the Transfer Date or (2) ADOT’s work with respect to the Future Projects, neither Party shall be indemnified or held harmless by the other Party. The Parties agree that each Party shall be responsible for its own negligence. The provisions of this Subsection 5.1(B) shall be in effect for a period of five years, beginning on the Transfer Date.

C. Related to Certain Matters after Five Years. To the extent permitted by law, from and after five years after the Transfer Date, the City shall indemnify, defend and save and hold harmless ADOT for, from and against any and all claims, losses, liability, costs or other expenses related to the Transfer Segment (including, but not limited to, reasonable attorneys’ fees) (hereinafter referred to as “Claims”) arising out



of bodily injury of any person (including death), property damage and any other Claims (including, but not limited to claims of derivative or vicarious liability); including claims, allegations or findings that ADOT is or was negligent.

5.2 Contingent Funding. The obligations of ADOT and the City under the terms of this Agreement are contingent upon the existence and availability of legally available funds that may be used for the purposes of this Agreement. In the case such funds are not available, the Parties shall meet and confer to arrive at an equitable adjustment pursuant to Article II of this Agreement.

5.3 Budget Law. Every obligation of ADOT and the City under this Agreement is predicated upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by either party at the end of the period for which the funds are available or modified by mutual agreement between ADOT and the City. No liability will accrue to the ADOT or the City in the event this provision is exercised, and ADOT and the City will not be obligated or liable for any future payments or for any damages as a result of termination under this Subsection.

5.4 Applicable Safety Standards. Nothing in this Agreement shall be construed as a statement or opinion of either the City or ADOT that any portion of the Transfer Segment fails to meet applicable safety standards at the time of this Agreement.

5.5 No Joint Exercise of Powers. The Parties acknowledge that this Agreement does not constitute a joint exercise of powers.

5.6 Additional Agreements. The Parties acknowledge that additional agreements between the Parties will be necessary to effectuate the construction of the Future Projects as contemplated in this Agreement, and the Parties agree to enter into such agreements.

5.7 Additional Documents. The Parties agree to prepare and complete such other documents that may be necessary to effectuate the provisions of this Agreement.

5.8 Right of Way, Utility Relocation. On the Andante Traffic Signal Project and the Pavement Preservation Project ADOT shall be responsible for any right of way acquisition, relocation, and utility relocation at ADOT's expense. Other than the Andante Traffic Signal Project and the Pavement Preservation Project, the City shall be responsible, at the City's expense, for all right-of-way acquisition, relocation, and utility relocations on and after the Transfer Date.

5.9 Disputes. Any disputes under this Agreement shall be first referred to mediation. If the dispute is not resolved through mediation, a dispute shall be referred to



the Maricopa County Superior Court. The Parties waive any potential objection to venue or jurisdiction in the Maricopa County Superior Court.

5.10 No Employee/Agent/Joint Venture. Neither Party to this Agreement shall be deemed to be the employee or agent of the other Party to the Agreement. This Agreement does not create a partnership or joint venture.

5.11 Severability. The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement, except where the overall intent of the Parties requires an adjustment to other terms or conditions.

5.12 Final Agreement. This Agreement is intended by the Parties as a final and complete expression of their agreement. No course of prior dealings between the Parties shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

5.13 Statutory Termination. This Agreement may be cancelled in accordance with ARIZ. REV. STAT. § 38-511.

5.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Sedona
 102 Roadrunner Drive
 Sedona, Arizona 86336
 Attn: Tim Ernster, City Manager

With copy to: City of Sedona
 102 Roadrunner Drive
 Sedona, Arizona 86336
 Attn: Mike Goimarac, City Attorney

With copy to: Gust Rosenfeld, P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire, Esq.



If to ADOT: Arizona Department of Transportation
Director's Office
206 South 17th Avenue
Phoenix, Arizona 85007
Attn: Director

With copy to: Arizona Attorney General's Office
1275 West Washington Street
Phoenix, Arizona 85007
Attn: Chief Counsel, Transportation Section

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

5.15 E-verify Requirements. Each Party agrees to comply with A.R.S. § 41-4401 in contracting with private entities to perform work in furtherance of this Agreement.

5.16 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, both Parties certify that they do not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable.

[SIGNATURES ON FOLLOWING PAGE]



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

CITY OF SEDONA

STATE OF ARIZONA
Department of Transportation

By _____
Rob Adams, Mayor

By _____
John Halikowski
Director of the Department of
Transportation

ATTEST:

Randy Reed, City Clerk

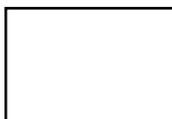


EXHIBIT A
TO
TRANSFER AGREEMENT
BETWEEN
CITY OF SEDONA
AND
ARIZONA DEPARTMENT OF TRANSPORTATION

[Transfer Segment]

(See following page.)



Exhibit A

