



Arizona Department of Transportation

Office of the Director

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janice K. Brewer
Governor

John S. Halikowski
Director

John A. Bogert
Chief of Operations

John McGee
Executive Director
for Planning & Policy

April 7, 2011

Mr. Tim Ernster
City Manager
City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336

City Attorney's Office
Sedona, Arizona

APR 12 2011

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Dear Mr. ~~Ernster~~:

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It is with sincere regret that I must inform you that the Arizona Department of Transportation (ADOT) will not transfer \$10,650,550 (Payment) to the City of Sedona (City) on April 11, 2011 as indicated in my letter to you dated March 11, 2011.

As you are aware, the Transfer Agreement (the Agreement) dated March 7, 2011 between the City and ADOT, stipulates that the City shall (with the exception of the Andante signal project segment) "...accept full ownership, control and maintenance responsibility over the Transfer Segment..." at 12:01 a.m. on the Transfer Date. The Transfer Date is defined as the next calendar day after the date of the Payment.

You have made us aware that a group called "Let the People Vote on 89A" has filed referendum petitions that would challenge the actions taken by the City Council on February 22, 2011. You have indicated that it could be several weeks before the City knows for certain whether or not enough valid signatures were obtained to meet the requirements of the referendum. You have indicated that the City has yet to set a date for a public vote on the referendum, if a sufficient number of signatures are determined to be valid. And finally, you have indicated that the City does not intend to take any legal action to challenge the legitimacy of this potential referendum.

As you are aware, City Attorney Mike Goimarac has expressed in an email sent to our attorney, Mr. Joe Acosta, his opinion that the possibility of a referendum prevents the City from taking any actions to honor the March 7, 2011 Agreement with ADOT. Mr. Goimarac also states that he believes the referendum does not necessarily prevent ADOT from making Payment to the City, but does prevent the City from assuming ownership and operational control of the road after the Payment is made.

Since the sole reason for the Payment is for the City to assume control over the road, the inability of the City to give written assurance to ADOT that it is ready, willing and able to fully comply with the terms of the Agreement, in spite of the referendum filing, makes it unreasonable for ADOT to move forward with its Payment obligation until this matter is resolved.

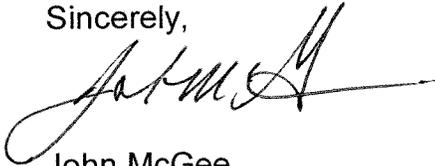
Mr. Tim Ernster
City Manager
Page 2

ADOT and the State Transportation Board have shown good faith in their willingness to abide by the terms of the Transfer Agreement. The State Transportation Board has taken all actions necessary to comply with the Agreement. Within the past two weeks the Department has advertised both the Pavement Preservation Project, and the Andante Signal Project. ADOT has had a check cut for \$10,650,550 to present to the State Treasurer for a wire transfer (per your instructions) on April 11. However, given the fact that the City's legal counsel believes the City cannot honor the terms of the agreement, ADOT cannot wire those funds to the City at this time.

If the City is able to resolve the issues described above to the satisfaction of ADOT, by giving the Department adequate, written assurance that the City can, and will, accept full ownership, control and maintenance responsibility over the Transfer Segment in accordance with the specific provisions of the Agreement, then ADOT will once again use its best efforts to fund this obligation and fulfill its terms under the Agreement. Such assurance must be received by ADOT no later than May 30, 2011, so that ADOT can fulfill its 30 day notice requirement for the Payment.

Until such assurances are received, ADOT cannot move forward with the Payment.

Sincerely,



John McGee
Executive Director for Planning and Policy
ADOT

cc: The Honorable Mayor Rob Adams
Mike Goimarac, Attorney, City of Sedona
John S. Halikowski, Director
Bill Feldmeier, Chairman
Bobbie Lundstrom, Vice-Chairwoman
Felipe Zubia, Board Member
Victor Flores, Board Member
Steve Christy, Board Member
Kelly Anderson, Board Member
Hank Rogers, Board Member
Joe Acosta, Jr., Assistant Attorney General
John Harper, Flagstaff District Engineer
Audra Merrick, Flagstaff Development Engineer
Jennifer Toth, Assistant Director, Multimodal Planning Division
Matthew Burdick, Assistant Director, Communication and Community Partnerships