

# Letter Head LPA

## Conditional Right of Way Request Sample

### Memorandum

To: (Name of ADOT PM), ADOT Project Manager

From: (Name ROW Representative for LPA), Project Manager

Cc: (Name of ADOT LPA Coordinator), ADOT; Layne Patton, FHWA

Date:

**RE: CONDITIONAL RIGHT OF WAY CLEARANCE**

Project Name: AVENDIA RIO SALADO

Project Description: (Sample Broadway Road 27th Avenue to 30<sup>th</sup> Avenue)

Federal & State Project ID No.: (Sample HPS-0(055); SS606 01R)

This segment of the project is for road widening along Broadway Road from 27th Avenue to 1 Avenue, which requires New Real Property Interest from XX parcels. The City of XXXXXX was authorized to proceed with the project as a CMAR on September 19, 2013. At this time, a Conditional Right of Way Clearance was granted to the City of Phoenix for construction activities along portions of the Avendia Rio Salado Project ("ARS").

The City of Phoenix and the contractor for the CMAR, Kiewit, have weekly meetings to discuss construction schedules and the progress of the Right of Way acquisitions. Kiewit is provided an update on Right of Way activity along Segment 2 at the weekly meetings. Further, Kiewit understands parcels not in possession by the City of Phoenix are not available for construction activities.

The contract for GMP 3, which covers Segment 2 of ARS, clearly defines any parcels the City does not have possession as of the NTP date. Further, the language states the City and Kiewit cannot enter into any property until such a time that the City obtains possession and the Right of Way has been cleared of all personal property that has been deemed eligible for relocation benefits in accordance with Federal Regulations. The attached Right of Way map showing the status of each of the parcels along Segment 2, as well as highlighting the parcels the City does not have in possession.

Construction is scheduled to begin at 1 Avenue and proceed west along the north side of the centerline. At 27th Avenue construction will shift to the south side of the centerline and continue east back to 1h Avenue.

In accordance with 23 CFR 635.309(c)(3), the City of Phoenix reports that although all necessary rights of way have not been fully acquired, it will be in the public interest to issue the contract and Notice to Proceed on Segment 2 on or before April 8, 2015.

Project: AVENDIA RIO SALADO, Segment 2

Project No. (Federal & State): HPS-0(055); SS606 01R

# Letter Head LPA

## Conditional Right of Way Request Sample

The City will incur delay claims of approximately \$2,500 a day if a Notice to Proceed is not issued on Segment 2 by April 8, 2015. The added expense would cause further budget constraints to a project that is already has an extremely limited budget.

Following is a table showing the parcel, ownership and respective acquisition status:

Parcel No.	Owner	Type of Acq.	FWO	Cond. Filed	Escrow Closed/OIP	Pass. Date	Relo. Req.	Relo. Compl.	Avail. for Constr at NTP
8435	Merid, Romeo	Fee (Unencumbered), Fee (Encumbered) and TCE	9/19/13	7/7/14	9/29/14	9/29/14	Yes	Yes	Yes
8436	Villagomez, Jose & Petra	Fee (Unencumbered) , Fee (Encumbered) and TCE	9/24/13	6/24/14	8/21/14	8/21/14	Yes	Yes	Yes
8437	Martin, Scott	Fee (Unencumbered) , Fee (Encumbered) and TCE	10/9/13	11/7/14	4/8/15	4/8/15	Yes	Yes	Yes
8438	Hertel, Phillip	Fee and TCE	10/29/13	6/18/14	9/16/14	9/16/14	Yes	Yes	Yes
8439	John Fischl Trust	Fee (Unencumbered), Fee (Encumbered) and TCE	9/18/13	6/3/14	10/23/14	10/23/14	No	N/A	Yes
8440	KPH LLC	Fee (Unencumbered), Fee (Encumbered) and TCE	12/23/13	6/25/14	9/29/14	9/29/14	Yes	Yes	Yes
8441	Hasanoff, Hyriye	Fee (Unencumbered), Fee (Encumbered) and TCE	10/2/13	7/8/14	7/31/14	7/31/14	Yes	Yes	Yes
8442	Bekirov, Aysel & Ramadan	Fee (Unencumbered), Fee (Encumbered) and TCE	10/2/13	9/14/14	10/6/14	10/6/14	Yes	Yes	Yes

# Letter Head LPA

## Conditional Right of Way Request Sample

8443	SPC Investments LLLP	Fee (Unencumbered), Fee (Encumbered) and TCE	3/25/13	10/15/13	8/27/14	8/27/14	Yes	Yes	Yes
8444	George, Del & Betty	Fee (Unencumbered), Fee (Encumbered) and TCE	4/16/13	10/11/13	2/21/14	2/21/14	Yes	Yes	Yes
8445	EZ Assets LLC	Fee (Unencumbered), Fee (Encumbered) and TCE	3/8/13	N/A	5/13/14	10/21/14	Yes	No	Yes
8446	Toma, Zia & Toma, Roni (2 men)	Fee and TCE	9/4/13	N/A	5/8/14	3/9/15	Yes	Yes	Yes
8447	Lorna Vista MHP LLC	Fee	3/29/13	N/A	4/21/14	10/16/14	No	N/A	Yes
8448	Chi, George & Gladys	Fee (Unencumbered), Fee (Encumbered) and TCE	9/18/13	6/25/14	8/4/14	8/4/14	Yes	Yes	Yes
8449	Hernandes, Francisco	Fee (Unencumbered), Fee (Encumbered) and TCE	9/11/13	N/A	5/21/14	7/29/14	No	N/A	Yes
8450	29 Buckeye LLC	Fee (Unencumbered), Fee (Encumbered) and TCE	4/1/13	N/A	3/22/14	5/1/14	No	N/A	Yes
8451	Mark Forti Trust	Fee (Unencumbered), Fee (Encumbered) and TCE	3/23/13	11/18/13	1/17/14	1/17/14	Yes	Yes	Yes
8452	Shumway, Roger & Patricia	Fee and TCE	3/21/13	N/A	8/13/13	10/17/13	No	N/A	Yes
8453	Nebb's Recycling LLC	Fee and TCE	3/13/13	9/16/13	12/5/13	12/5/13	Yes	Yes	Yes
8454*	Lathgani, Moe	Fee and TCE	8/20/13	1/6/15	OSC 4/29/15		Yes	Yes	No

# Letter Head LPA

## Conditional Right of Way Request Sample

8455	MRM Investments LTD Ptnp	Fee and TCE	8/26/13	N/A	5/30/14	7/2/14	Yes	Yes	Yes
8456	4 Jet Num LLC- Circle K	Fee (Unencumbered) , Fee (Encumbered) and TCE	8/2/13	N/A	3/5/14	3/21/14	No	N/A	Yes
8457/8609	1827 W. Broadway LLC (Brian Jackson)	Fee and TCE	8/2/13	3/20/14	5/5/14	5/5/14	Yes	Yes	Yes
8458*	Stockdale Office Partners	Fee (Unencumbered) , Fee (Encumbered) and TCE	5/3/13	6/19/14	See notes		No	N/A	No
8459/9080	Parlier 1945 Inc	Fee and TCE	9/25/13	N/A	6/25/14	8/18/14	No	N/A	Yes
8460	Lylyk Trust	Fee and TCE	4/22/13	6/4/14	7/30/14	7/30/14	Yes	Yes	Yes
8461	Antonio Lopez	Fee (Unencumbered) , Fee (Encumbered) and TCE	4/23/13	6/10/14	8/5/14	8/5/14	Yes	Yes	Yes
8462	Elias Guadron	Fee (Unencumbered) , Fee (Encumbered) and TCE	4/11/13	7/2/14	10/8/14	10/8/14	Yes	Yes	Yes
8463	MRM Investments LTD Ptnp	Fee and TCE	4/15/13	10/22/13	1/10/14	1/10/14	Yes	Yes	Yes
8464	MVW Development	Fee (Unencumbered) , Fee (Encumbered ) and TCE	10/5/13	N/A	8/7/14	9/5/14	Yes	Yes	Yes
8465	AZ Imports, Bekirov , Ansel & Ramadan	Fee (Unencumbered) , Fee (Encumbered) and TCE	10/2/13	N/A	8/6/14	10/6/14	No	N/A	Yes
8466	Taytur Leasing	Fee (Unencumbered) , Fee (Encumbered) and TCE	3/6/14	N/A	4/30/14	7/31/14	No	N/A	Yes

# Letter Head LPA

## Conditional Right of Way Request Sample

8467	Dumont Vici Rogers Trust	Fee (Unencumbered), Fee (Encumbered) and TCE	5/9/13	N/A	6/27/14	9/19/14	No	N/A	Yes
8468/8432	MVW Development	Fee (Unencumbered), Fee (Encumbered) and TCE	10/9/13	N/A	7/21/14	8/1/14	No	N/A	Yes
8469	DRS	Fee (Unencumbered), Fee (Encumbered) and TCE	9/26/13	6/26/14	8/27/14	8/27/14	Yes	Yes	Yes
8470	MVW Development Co. II & III LP	Fee (Unencumbered), Fee (Encumbered) and TCE	10/9/13	N/A	7/21/14	8/1/14	Yes	Yes	Yes
8471	MVW Development Co. III LP	Fee (Unencumbered), Fee (Encumbered) and TCE	4/11/14	N/A	8/7/14	9/5/14	Yes	Yes	Yes
8596	Wil Hunt I LLC	Fee and TCE	4/16/13	N/A	9/16/14	4/21/14	No	N/A	Yes
8598	Paul E. & Charlotte Campbell	Fee and TCE	4/18/13	N/A	8/15/13	12/31/13	No	N/A	Yes
8599	BN Holdings LLC	Fee and TCE	9/6/13	6/5/14	8/6/14	8/6/14	No	N/A	Yes
8600	Maria R. Garcia	Fee and TCE	3/28/13	N/A	5/20/14	7/31/14	No	N/A	Yes
8601	Miguel C. & Maria R. Garcia	Fee and TCE	3/28/13	N/A	5/20/14	7/31/14	No	N/A	Yes
8602	Maria R. Garcia	Fee and TCE	3/28/13	N/A	5/20/14	7/31/14	No	N/A	Yes
8603	Elias J. Buadron	Fee and TCE	5/1/13	N/A	9/15/13	3/25/14	No	N/A	Yes
8604/8605	Earl J. Braxton	R/W Easement and TCE	9/30/13	N/A	1/28/15	3/31/14	No	N/A	Yes
8606/8607	1847 W. Broadway LLC (Brian Jackson)	Fee and TCE	5/17/13	10/18/14	5/21/14	5/21/14	No	N/A	Yes

# Letter Head LPA

## Conditional Right of Way Request Sample

8608	1827 W. Broadway LLC (Brian Jackson)	Fee and TCE	8/20/13	2/25/14	6/13/14	6/13/14	Yes	Yes	Yes
8834	Western Block Enterprises	Fee and TCE	11/12/13	N/A	1/18/14	2/28/14	No	N/A	Yes
8431/8434	Hambicki Investment Prop. LLC	Fee and TCE	3/11/13	N/A	9/13/13	10/2/13	No	N/A	Yes
9079	Parlier 1945, Inc	Fee, Slope Easement and TCE	10/1/13	N/A	7/25/14	8/18/14	No	N/A	Yes
9080	Parlier 1945, Inc	Fee and TCE	9/25/13	N/A	7/25/14	8/18/14	No	N/A	Yes

**\*Parcel 8458-** Original offer presented 5/3/13. It was later determined business signage is in the new R/W and a revised offer was presented on 9/16/13 to include compensation for relocating the signage. OSC hearing was August 27, 2014. At the OSC hearing opposing counsel requested an evidentiary hearing, which delayed possession. At the evidentiary hearing opposing counsel challenged public use, further delaying possession because the court requested arguments from both sides. At the beginning of January, 2015, after receiving arguments from both sides on the issue of public use, the court ruled in the City's favor granting the City possession of the property. After speaking with City Law Department about this case to determine when the court was going to sign the OIP on February 23, was informed that opposing counsel appealed courts prior ruling stating they did not have an opportunity to present oral arguments to the court. Prior to court granting OIP, the court agreed to allow opposing counsel to present oral argument. Oral arguments were presented to the court on February 19, 2015. The court has 60 days to rule on this case from that date. City Law staff believes the court granted the oral argument to opposing counsel so there would be no chance to appeal the case in the future, and is confident the court will uphold its prior ruling in the City's favor. Further, because of the location of this parcel, if necessary, the Streets Department is considering removing the parcel from the project if it were to hold up getting the conditional clearance. There is no relocation on this parcel.

On the week of 3/23/15, the court provided ruling and denied the opposing counsel's appeal. City's attorney has requested the court to move forward with granting the OIP, waiting on confirmation/granting of OIP from court as of 3/27/15.

**\*Parcel 8454-** First written offer was made on 8/20/13 to the property owner. Due to a change in cost to cure compensation a revised offer was presented on 6/4/14. The file was submitted to the City Law Department 30 days later, but due to the property owner being in

# Letter Head LPA

## Conditional Right of Way Request Sample

bankruptcy a case could not be file until the bankruptcy court lifted the stay. The bankruptcy court issued a stay in early January , 2015 and the City filed its condemnation case on 1/6/15, with an OSC hearing on 2/13/15. The property owner has been working with City staff on relocation matters and all personal property will be removed from the R/W prior to the NTP on February 28, 2015 . At City's scheduled OSC hearing on 2/13/15 it was determined the wrong legal description was recorded with the original Lis Pendens on 1/6/15. The City had to amend the Lis Pendens, which was done on 2/18/15, to correctly identify the property being condemned. A new OSC hearing has been scheduled for 4/29/15. All personal property has been relocated outside of the new R/W.

If you have any question, please call me at 602-262-6844 .

Sincerely,

XXXXXX XXXXX  
Real Estate Project Manager  
City of Phoenix

ADOT Approval:

\_\_\_\_\_  
LPA ROW Coordinator

Date:\_\_\_\_\_

FHWA Concurrence :

\_\_\_\_\_  
Layne Patton

Date:\_\_\_\_\_