



City Council Report

Date: October 19, 2009
To: City Council
Through: Jack Friedline, Deputy City Manager
From: Beth Huning, City Engineer
Craig K. Crocker, Property Acquisition Supervisor
Subject: Consider the use of eminent domain to acquire property necessary for the Arizona Ave/Country Club Bus Rapid Transit Project, Germann Road to Broadway Road.
Project No. 08-002-001
Council District # 3, #4



Purpose and Recommendation

The purpose of this report is to consider staff's recommendation to authorize the use of eminent domain to acquire the land and land rights necessary for the Arizona Avenue/Country Club Bus Rapid Transit (BRT) Project-Germann Road to Broadway Road.

Background

The City of Mesa's portion of this project will provide seven BRT shelter locations for the Arizona Avenue/Country Club Drive BRT route. These locations are in Mesa and located between Broadway Road and Guadalupe Road. This new bus system called the LINK will be the second arterial street based BRT route to be operated in the City of Mesa and Maricopa County. It is part of an extension to the METRO Light Rail Transit (LRT) system and is intended to be operational by July of 2010. The LINK will extend from Sycamore Station in the City of Mesa through portions of Mesa, Gilbert and Chandler to Tumbleweed Park in City of Chandler. It will act as an extension of the METRO LRT system, which began service with the Mesa Main Street LINK on December 27, 2008.

This project will be paid for by Valley Metro using a portion of \$15 million from the American Recovery and Reinvestments Act (ARRA).

Discussion

There are six properties from which rights-of-way and easements are needed for this project. Real Estate Services began appraising properties in July 2009, and sent written offers to five owners in September and October 2009. The sixth property the new right-of-way at the NE corner of Country Club and Southern is being redesigned and a new legal description and appraisal updated. We have made contact with the property owner and met with them in person. A site plan and project schedule has been provided to them. A written offer will be hand delivered when we have received the revised appraisal. There are no total takes or building remodels for any of the properties within this project. The majority of the land needed for this project is small sections of additional right-of-way and easements required to accommodate the new shelter locations and bus pullout improvements as outlined in the attached Exhibits A and B.

Since these station sites are within Mesa, Valley Metro has asked that Mesa acquire the needed property. Valley Metro will provide the funding for acquisition. These roles and responsibilities are defined in the Inter-Governmental Agreement (IGA) also included for approval on this council agenda.

Valley Metro has asked that the acquisition process be expedited because the project is being funded by ARRA monies and they are time critical as noted in the attached letter from David Boggs, Valley Metro Director.

Eminent domain authority is being requested for these six properties. Real Estate Services is in contact with each property owner and has discussed the project and the eminent domain process. In addition to our discussions, the attached letter explaining the eminent domain process has been sent to each of the property owners affected by this action. The six properties have received offers and are currently in negotiations.

Construction of the BRT Shelters in Mesa is scheduled to begin in January 2010 and the construction contract is being managed by Valley Metro. Due to the sometimes lengthy court process times, it is necessary for City Council to authorize the use of eminent domain in order to ensure that required rights-of-way and easements are under City control prior to the start of construction. Staff will continue to negotiate settlements with the property owners during the eminent domain process. This process allows the City to obtain an order of immediate possession so that work can begin, while price negotiations continue.

Alternative

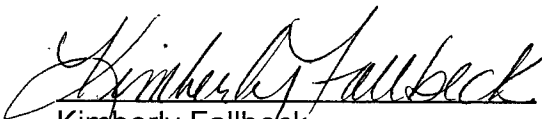
An alternative is to not authorize the use of eminent domain to acquire the remaining land and land rights necessary for this project. If the use of eminent domain is not authorized the Contractor will not be able to begin construction as scheduled.

Fiscal Impact


The recommendation for the authorization of the use of eminent domain does not have a fiscal impact on the overall cost of the project.

Concurrence

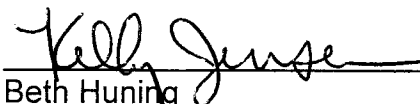
The Engineering and Transportation Departments concur with this recommendation.



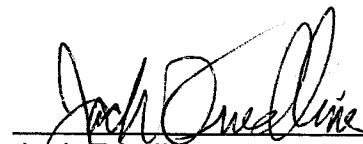
Kimberly Fallbeck
Real Estate Specialist II



Craig K. Crocker
Property Acquisition Supervisor

for 

Beth Huning
City Engineer



Jack Friedline
Deputy City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THAT FEE TITLE, EASEMENTS OR OTHER INTERESTS IN AND POSSESSION OF CERTAIN REAL PROPERTY BE ACQUIRED BY THE CITY OF MESA UNDER THE POWER OF EMINENT DOMAIN AS A MATTER OF PUBLIC NECESSITY FOR THE ARIZONA AVE/COUNTRY CLUB BUS RAPID TRANSIT PROJECT.

WHEREAS, the certain real property hereinafter described is necessary to construct improvements along both sides of Country Club Drive from Baseline Road to Broadway Road.

WHEREAS, before the improvements can be constructed, it is necessary that fee simple title to certain real property be vested in the City of Mesa; and that the City of Mesa acquire easements in, over, under and across portions of certain real property identified in Section One herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That it is deemed necessary and essential that in order to construct the improvements for Arizona Ave/Country Club Bus Rapid Transit Project, it is necessary for the City of Mesa to acquire fee simple title to a portion of the real property depicted on attached Exhibit "A", and permit the contractors to enter upon adjacent lands so work related to the project such as grading, landscaping, irrigation, fences, walls, utility relocations or other improvements can be completed.

Section 2: That it is necessary for the City of Mesa to obtain Temporary Construction Easements, and other easements that may be deemed necessary in, over, under and across portions of the real property depicted on the attached Exhibit "A" for the completion of the Arizona Ave/Country Club Bus Rapid Transit Project.

Section 3: That the City Attorney of the City of Mesa is hereby authorized and directed to acquire title in fee simple and any necessary easements to portions of the property depicted in Exhibit "A" in the name of the City of Mesa under the Power of Eminent Domain, and the City Attorney is further authorized and directed to do and perform all acts necessary to acquire title and interests in and to said real property in the name of the City of Mesa for said public purposes.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this _____ day of _____, 2009.

APPROVED:

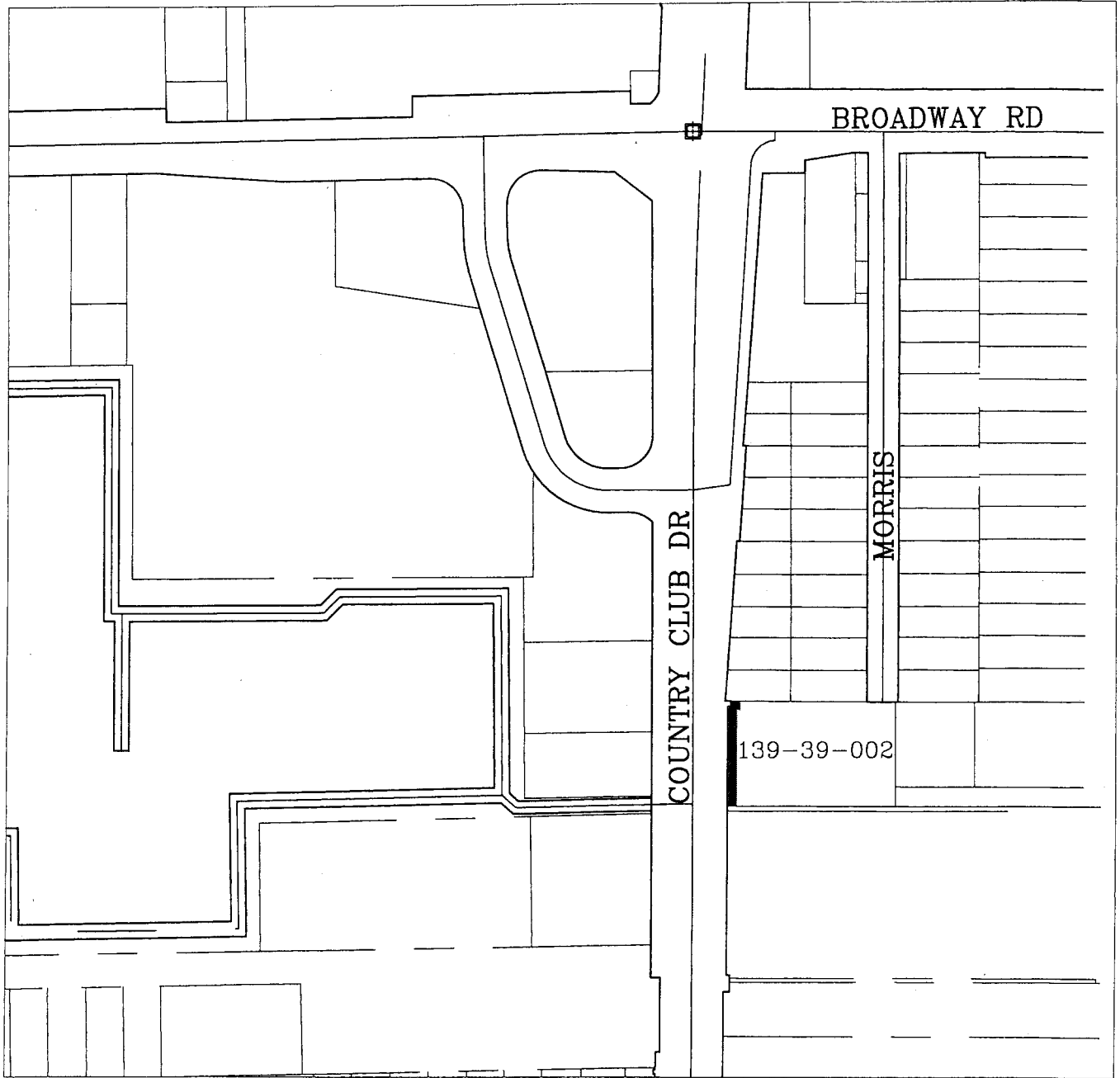
Mayor

ATTEST:

City Clerk



EXHIBIT "A"
SHEET 1 OF 4



DATE SAVED: 9/29/09 1:\08-002-001 ARIZONA AVE-COUNTRY CLUB DR BRT (RPTA PROJECT)\CAD\COUNCIL MAP1.DWG

LEGEND

 REAL ESTATE AQUISION REQUIRED

PROJECT LOCATION MAP
ARIZONA AVE / COUNTRY CLUB BRT
GERMANN TO BROADWAY RD
PROJECT NO. 08-002-001





EXHIBIT "A"
SHEET 2 OF 4



LEGEND

 REAL ESTATE AQUISION REQUIRED

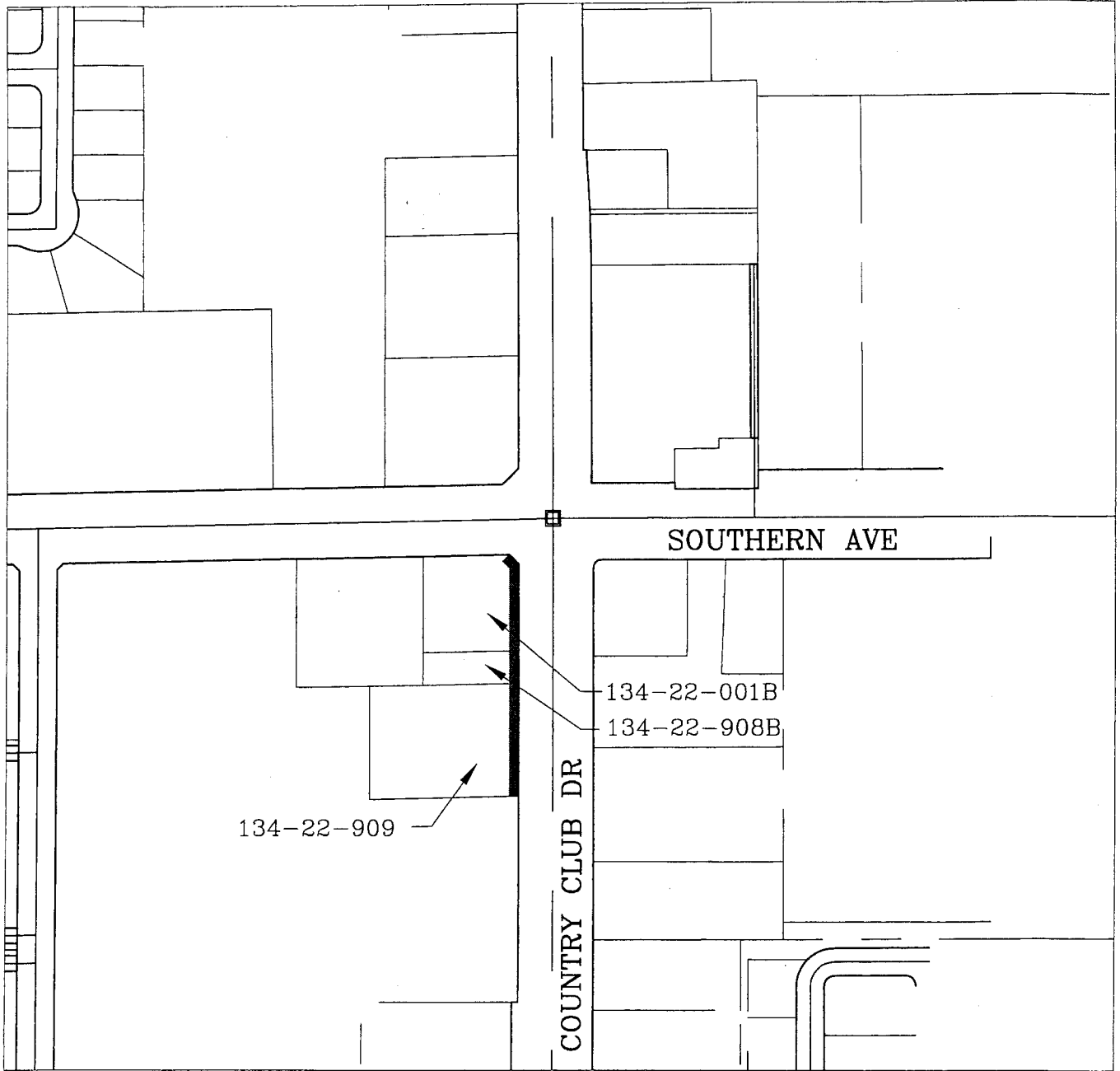
PROJECT LOCATION MAP
ARIZONA AVE / COUNTRY CLUB BRT
GERMANN TO BROADWAY RD
PROJECT NO. 08-002-001



DATE: 9/29/08 I:\08-002-001 ARIZONA AVE-COUNTRY CLUB DR BRT (RPTA PROJECT)\CAD\COUNCIL MAP2.DWG



EXHIBIT "A"
SHEET 3 OF 4



LEGEND

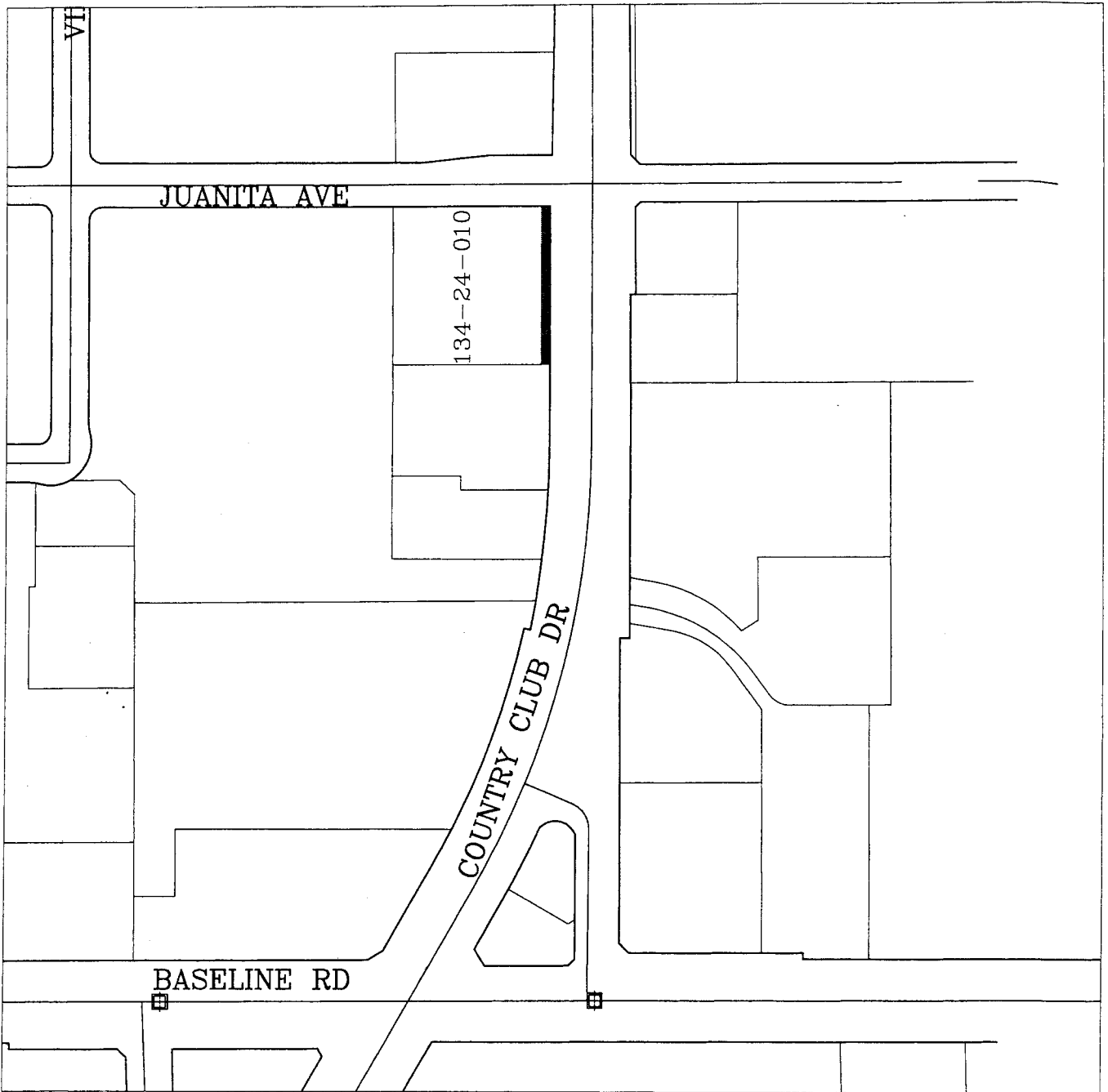
 REAL ESTATE ACQUISITION REQUIRED

PROJECT LOCATION MAP
ARIZONA AVE / COUNTRY CLUB BRT
GERMANN TO BROADWAY RD
PROJECT NO. 08-002-001





EXHIBIT "A" SHEET 4 OF 4



LEGEND

 REAL ESTATE ACQUISITION REQUIRED

PROJECT LOCATION MAP ARIZONA AVE / COUNTRY CLUB BRT GERMANN TO BROADWAY RD

PROJECT NO. 08-002-001



EXHIBIT "B"
Country Club "BRT" Shelter Project

Number	APN	Res/Com.	Owner	Address	Type	Take	Comments	Offer Amount
1	134-24-010	C-3	RI CSI, LLC	1810 S. Country Club Drive	Circle Kw/Gas	ROW TCE	Negotiating	\$ 10,850.00
2	134-22-001B	C-2	PLS Property Management of AZ LLC	1210 S. Country Club Drive	Check Cashing	ROW TCE	Negotiating	\$ 22,050.00
3	134-22-908B	C-2	PDG America Properties LLC		Parking lot	ROW TCE	Negotiating	\$ 15,350.00
4	134-22-909	C-2	McDonald's Corporation	1250 S. Country Club Drive	McDonald's	ROW TCE	Negotiating	\$ 13,560.00
5	139-44-009A	C-3	Nguyen Country Club Properties LLC	1151 S. Country Club Drive	7-11, Church's Chicken, Furniture Store	ROW TCE	Negotiating	\$ 197,610.00
6	139-39-002	C-3	Cherokee Acquisition Corporation	529 S. Country Club Drive	Budget Truck Rentals	ROW TCE	Negotiating	\$ 7,840.00

TCE = Temporary Construction Easement
ROW = Right-of-way

September 29, 2009

*CERTIFIED MAIL

*VIA E-MAIL

<<Property Owner>>

<<Address>>

City, ST Zip Code>>

Re: Arizona Ave/Country Club BRT Project,
Germann Road to Broadway Road,
Project No. 08-002-001

Location: <<Property Address>>

Tax Parcel No. <<xxx-xx-xxx>>

Dear <<Property Owner>>

As you know, the City of Mesa has offered to purchase a portion of your property for the upcoming Arizona Ave/Country Club BRT Project. The projects contractor will begin construction of the new shelters in January 2010. This means the contractor will require access onto your property starting in January 2010. With only 3 months until construction, the City of Mesa is asking for your assistance in reaching a timely settlement through negotiations.

As with any major street project, there is a point in time when we must anticipate using eminent domain to obtain possession of the rights-of-way and easements needed for the project. In order to meet the current construction schedule, City of Mesa staff intends to request authority to use eminent domain from the City Council of the City of Mesa at its October 19, 2009 meeting. You are welcome to attend this public meeting that will be held at the upper level City Council Chambers located at 57 East 1st Street, Mesa, AZ. The meeting begins at 5:45 p.m.

This action will not affect the value of your property, nor will it affect the City's desire to reach a settlement that is mutually agreeable.

It is the City's intent to continue negotiating with you during the court process with full expectations that a settlement will be reached. The City of Mesa is committed to serving you and welcomes the opportunity to continue negotiations. In the event a settlement is not successfully concluded, Mesa will begin the court process to obtain the property through an immediate Possession Hearing.

If you have any questions regarding this process, please feel free to contact me at (480) 644-2521. My email address is Kim.fallbeck@mesaaz.gov.

Sincerely,

Kimberly A. Fallbeck
Real Estate Services Specialist II



302 N. First Avenue Suite 700 Phoenix, AZ 85003
ValleyMetro.org T 602.262.7433 F 602.495.0411 TTY 602.261.8208

October 7, 2009

Mr. Chris Brady
City Manager
City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85211

Re: Right-of-Way Requirements for Arizona Avenue (Country Club) Bus Rapid
Transit Project

Dear Mr. Brady:

The Regional Public Transportation Authority (RPTA) doing business as Valley Metro is about to commence the second Bus Rapid Transit (BRT) project having nearly completed the first such project on Main and Power streets in Mesa. The new project is along Arizona Avenue and Country Club Drive in the cities of Mesa, Chandler and Gilbert. The project is federally funded as an American Recovery and Reinvestment Act (ARRA or stimulus) project.

Competitive construction bids for the project were received early in September. The bid pricing was excellent and our Board is scheduled to award the construction project October 22, 2009. A very critical element of the project is the procurement of right-of-way adjacent to the street in order to accommodate the BRT stations. These stations are of a unique design and considerably larger than a normal bus stop. They are designed to provide the transit customer with an experience similar to the service provided by the light rail system. For this reason the RPTA would like to encourage the City of Mesa to expedite the acquisition of the needed right-of-way. Normally, more time could be allocated to right-of-way acquisition, but because of the tight time table we must adhere to meet the accelerated ARRA schedule and to take advantage of the excellent bidding atmosphere, we request that the City make available to staff, the use of eminent domain, as a last resort.

Mr. Chris Brady
October 7, 2009
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The right-of-way is extremely critical at the intersection of Southern Avenue and Country Club Drive in the City of Mesa. As you are well aware this is an extremely busy intersection for both automobiles and transit vehicles. The RPTA would be grateful for any effort the City of Mesa could expend to insure the timely acquisition of the right-of-way in this area.

We have always been extremely pleased with the cooperation we have received from the City of Mesa in our previous combined efforts and we would like to offer any assistance we could to assist you and the City in this critical task. Since the RPTA does not have the ability to acquire right-of-way needed we are dependent on our partner cities to insure this happens.

Please contact me if you have any further questions or need additional assistance. Thank you in advance for your and the City's cooperation.

Sincerely,



David A. Boggs
Executive Director