

**CITY CLERK
ORIGINAL**

C-8951
05/27/2014

CITY OF GLENDALE, ARIZONA

**SPECIAL WARRANTY DEED
REAL PROPERTY EXCHANGE
AGREEMENT**

(Agreement C-8951)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)

EN0701144-4-1-1--
mcdevitttr

When recorded, return to:

Office of the City Clerk
City of Peoria
8401 West Monroe
Peoria, Arizona 85345

SPECIAL WARRANTY DEED

For valuable consideration, the City of Glendale, an Arizona municipal corporation, ("GRANTOR") does hereby convey to CITY OF PEORIA, an Arizona municipal corporation the ("GRANTEE"), the following described real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto ("the Property")

See Exhibit "A" attached hereto and incorporated herein (the "Property").

SUBJECT ONLY TO current taxes, assessments, reservation in patents and all easements, rights of way, encumbrances, liens, covenants, conditions and restrictions as may appear of record

And GRANTOR hereby binds itself and its successors to warrant and defend the title to the Property, as against all acts of GRANTOR and no other, subject to the matters set forth above

EXEMPT FROM AFFIDAVIT AND FEES PURSUANT TO A R S § 11-1134, A 3

Special Warranty Deed
103rd Ave - Glendale to Peoria
Page 2

DATE: 5/28/14

GRANTOR: City of Glendale, an Arizona municipal corporation

By: *B. Fischer*

Its: City Manager

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this date, before me, a Notary Public, personally appeared Brenda S. Fischer known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

The foregoing instrument was acknowledged before me this 29 day of May, 2014, by Brenda S. Fischer

Alicia Muller
Notary Public

My Commission Expires:
November 14, 2015

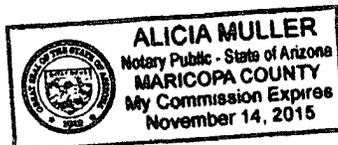


Exhibit "A"

The East Forty (40) feet of the that part of the Southwest quarter of Section 32, Township 3 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

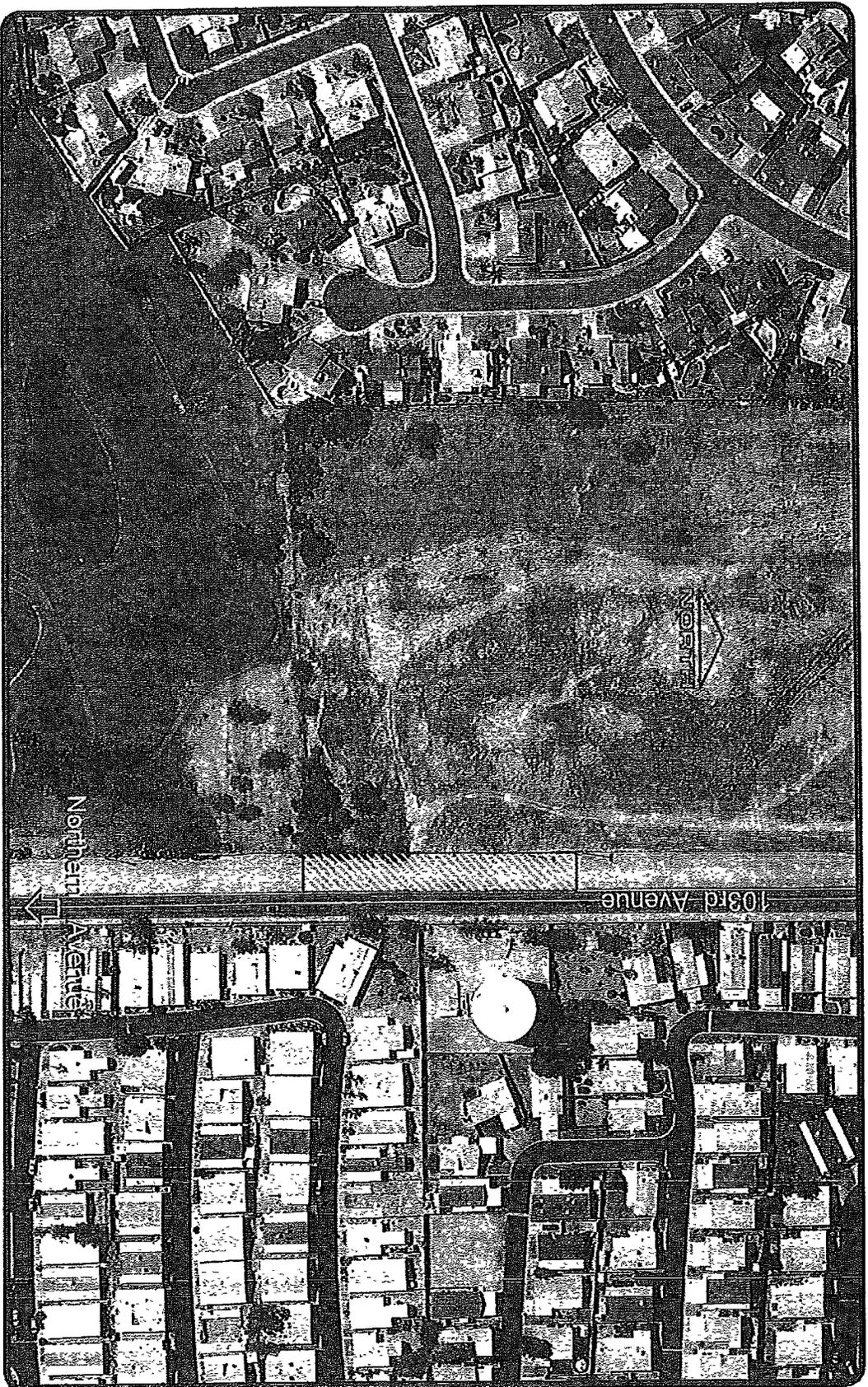
BEGINNING at the center of said Section 32, Township 3 North, Range 1 East;

Thence South 00 degrees 23 minutes 31 seconds West along the East line of said Southwest quarter, Section 32, Township 3 North, Range 1 East a distance of 310.50 feet;

Thence South 87 degrees 20 minutes 22 seconds West a distance of 539.46 feet to a point on the East line of COUNTY MEADOWS UNIT THREE, as recorded in Book 191 of Maps, page 25, records of Maricopa County, Arizona;

Thence North 00 degrees 19 minutes 32 seconds West along the East line of said COUNTY MEADOWS UNIT THREE, a distance of 332.45 feet to the Southwest corner of Tract "C", of COUNTY MEADOWS UNIT TWO, as recorded in Book 185 of Maps, page 39, records of Maricopa County, Arizona;

Thence North 89 degrees 40 minutes 28 seconds East along the South line of said Tract "C", of COUNTY MEADOWS UNIT TWO, a distance of 542.90 feet to the POINT OF BEGINNING.



**SPECIAL WARRANTY DEED
RIGHT OF WAY
TO CITY OF PEORIA**



**REAL PROPERTY
EXCHANGE AGREEMENT**

DATE: May 27, 2014

PARTIES:

City of Peoria, an Arizona municipal corporation
8401 West Monroe
Peoria, Arizona 85345
Attention: Andy Granger, City Engineer
("Peoria")

City of Glendale, an Arizona municipal corporation
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Attorney
("Glendale")

RECITALS

- A. Glendale owns certain undeveloped real property known as County Assessor Parcel No. 142-61-002J, generally located along 103rd Avenue between Northern and Olive Avenues in Glendale.
- B. Peoria desires to improve 103rd Avenue between Northern and Olive Avenues and has requested that Glendale cede the east forty (40) feet of the Parcel 142-61-002J, consisting of approximately 12,440 square feet, more particularly described on Exhibit A attached hereto and made a part hereof by this reference (the "Glendale Property"). In exchange, Peoria will provide Glendale with certain enhancements and improvements to its remaining real property.
- C. Glendale and Peoria desire to exchange interests in the Property on the terms and conditions set forth in this Property Exchange Agreement ("Agreement").
- D. The value of the exchanged interests along the improved 103rd Avenue and the Glendale property are substantially equal.

AGREEMENT

In consideration of the mutual promises and covenants set forth in this Agreement, the parties agree to exchange their interests regarding Property on the terms and conditions set forth below.

1. EXCHANGE TERMS & CONDITIONS.

(a) Upon approval of its City Council, Glendale shall convey the east 40 feet of Parcel No. 142-61-002J by Special Warranty Deed, as described in Exhibit A, to the City of Peoria as part of Peoria's road-widening project.

(b) Pending its City Council approval, as necessary, and in exchange for the Glendale real property, Peoria shall:

- Design and construct the 103rd Avenue west half street roadway improvements between Northern and Olive Avenues, in accordance with, at minimum Maricopa Association of Government (MAG) Standards.
- Design and construct a decorative wrought iron fence and access gate along the easterly and northerly boundaries of the City of Glendale parcel to replace the existing chain link fence. The design and construction of the gate and fence must meet Glendale standards and approval. Such approval shall not be unreasonably withheld. The new fence will be built on Glendale property and will be owned and maintained by the City of Glendale.
- Design and install an access gate for use by Glendale to enter and exit the vacant parcel; Glendale will be invited to participate in designing and determining the location of the gate.
- Peoria staff will also participate in Glendale's future design efforts to allow storm water from the Glendale parcel to outfall into the 103rd Avenue storm drain system.

(c) In order for Peoria to undertake the work as provided in subparagraph (b) above, Glendale agrees to provide to Peoria a Temporary Construction Easement (which is attached to this Agreement as Exhibit B) to certain other real property owned by Glendale. The Glendale property that is the subject of the Temporary Construction Easement is legally described in Attachment 1 (Legal Description TCE) to Exhibit B.

2. SPECIAL WARRANTY DEED; PROPERTY CONDITIONS.

Upon City Council approval, at the close of escrow, Glendale shall convey title to the east 40 feet of Parcel No. 142-61-002J, as described on the attached Exhibit A, to Peoria by Special Warranty Deed, in form and substance satisfactory to Peoria, such deed subject to no defects, exceptions, easements, encumbrances, covenants, conditions, restrictions, mining claims or liens.

The City of Peoria is aware and acknowledges that the entire parcel was once used as a "wildcat" landfill site that the City of Glendale cannot guarantee the landfill site to be suitable for roadway purposes. Peoria shall be responsible for any geotechnical or subsidence issues that might occur.

3. TITLE POLICIES AND SURVEY.

No title policy or survey is required for this exchange of municipal interests.

4. PEORIA'S REPRESENTATIONS AND WARRANTIES.

(a) Action. All actions on the part of Peoria which are required for the execution, delivery and performance by Peoria of this Agreement and each of the documents and agreements to be delivered by Peoria at the closing have been duly and effectively taken;

(b) Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be executed by Peoria constitutes a legal, valid and binding obligation of Peoria, enforceable against Peoria in accordance with its terms;

(c) Litigation. Peoria is not a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for or by any court or governmental board, commission, agency, department or officer, arising from or relating to the Parcel No. 142-61-002J or to the past or present operations and activities of Peoria upon or relating to this Property;

5. CITY'S REPRESENTATIONS AND WARRANTIES.

Glendale makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the date of this Agreement, and will be true and accurate upon execution of this Agreement, and which shall survive the exchange of Property interests:

(a) Action. All actions on the part of Glendale which are required for the execution, delivery and performance by Glendale of this Agreement and each of the documents and agreements to be executed and delivered by Glendale have been duly and effectively taken;

(b) Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Glendale constitutes a legal, valid and binding obligation of Glendale, enforceable against Glendale in accordance with its terms;

(c) Litigation. Glendale is not a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for or by any court or governmental board, commission, agency, department or officer, arising from or relating to the Glendale Property or to the past or present operations and activities of Glendale upon or relating to the Glendale Property;

(d) Environmental Matters. Glendale has not been advised that either Glendale or the Glendale Property is in material violation of applicable environmental law, regulation, ordinance or order of any government entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Federal Clean Water Act, as amended, the Federal Clean Air Act, as amended, the Federal Toxic Substances Control Act,

as amended, and any regulations promulgated thereunder, or any other federal, state, or local laws relating to contamination of or adverse effects on the environment. In addition, Glendale has not been advised that the Glendale Property or any underlying groundwater contains any material concentrations of regulated substances, hazardous substances, hazardous materials, toxic substances, or similar substances, residues, and waste. Should any such environmental issues arise (as listed above) after the execution of this Agreement and related documents, Glendale and Peoria shall work together to resolve any such issues.

6. COMMISSIONS.

The parties represent and warrant to each other that there has not been and shall be no broker or representative acting for either party in this transaction that is entitled to a fee or commission in connection with the transactions contemplated by this Agreement. Glendale and Peoria shall each indemnify, defend and hold the other party harmless for, from and against any and all claims arising from any claim by any broker, agent or finder for fee or commissions earned as a result of the transactions contemplated hereunder because of any act of Glendale or Peoria, respectively.

7. INDEMNITY.

Without limiting the specific indemnities provided for in this Agreement, each party to this Agreement agrees to indemnify each other party and hold it harmless for, from, and against, all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to the breach by such indemnifying party of any obligation hereunder, or the inaccuracy of any representation or warranty made by such indemnifying party herein, or in any instrument delivered pursuant thereto, or in connection with the transactions contemplated hereby. In addition, Peoria hereby covenants and agrees to indemnify and hold Glendale harmless for, from and against any and all claims, damages, costs and expenses (including attorneys' fees) relating in any way to the Peoria widening project along 103rd Avenue, even though now unknown and unsuspected; and Glendale hereby covenants and agrees to indemnify and hold Peoria harmless for, from and against any and all claims, damages, costs and expenses (including attorneys' fees) relating in any way to the Glendale Property and accruing prior to the close of escrow, even though now unknown and unsuspected.

8. BINDING EFFECT.

The provisions of this Agreement are binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, executors, administrators, successors and assigns.

9. ATTORNEYS' FEES.

If any action is brought by either party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

10. WAIVERS.

No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

11. GOVERNING LAW.

This Agreement shall be subject to, and construed according to, the laws of the State of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction.

12. TIME.

Time is of the essence of this Agreement.

13. NOTICES.

Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to Peoria and Glendale at the addresses set forth on the first page of this Agreement or at such other address as a party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery, or five (5) calendar days after the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail.

14. FURTHER DOCUMENTATION.

Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

15. TIME PERIODS.

Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

16. AMENDMENTS.

Any amendments or modifications to this Agreement must be in writing, executed by both parties, and are subject to City Council approval, as necessary. This Agreement constitutes

the entire agreement of the parties and supersedes any negotiations, discussions, undertakings, correspondence or informal agreements of the parties.

17. INTERPRETATION.

Both parties have been represented by counsel in negotiating and approving this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed in favor of, or against, either party, regardless of which party may have drafted or proposed any of its provisions or terms.

18. ORIGINALS.

This Agreement is executed in triplicate and each executed copy shall be considered an original.

CITY OF GLENDALE,
an Arizona municipal corporation



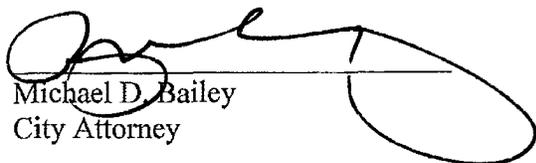
By: Brenda S. Fischer
Its: City Manager

ATTEST:



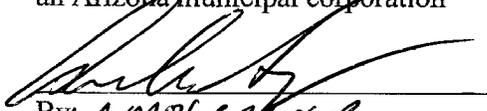
Pam Hanna
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

CITY OF PEORIA,
an Arizona municipal corporation



By: *ANDREW GRANBER*
Its: *ENGINEERING DIRECTOR*

ATTEST:

Linda Blas
for City Clerk



APPROVED AS TO FORM:

Cynthia Idomgor
City Attorney, *Steve Kemp*

Exhibit "A"

The East Forty (40) feet of the that part of the Southwest quarter of Section 32, Township 3 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the center of said Section 32, Township 3 North, Range 1 East;

Thence South 00 degrees 23 minutes 31 seconds West along the East line of said Southwest quarter, Section 32, Township 3 North, Range 1 East a distance of 310.50 feet;

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