

City of Glendale Council Meeting Agenda

February 28, 2012 – 7:00 p.m.

City Council meetings are telecast live at 7:00 p.m. on the second and fourth Tuesday of the month. Repeat broadcasts are telecast the second and fourth week of the month – Wednesday at 2:30 p.m., Thursday at 8:00 a.m., Friday at 8:00 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 1:30 p.m. on Glendale Channel 11.

Welcome!

We are glad you have chosen to attend this City Council meeting. We welcome your interest and encourage you to attend again.

Form of Government

The City of Glendale has a Council-Manager form of government. Legislative policy is set by the elected Council and administered by the Council-appointed City Manager.

The City Council consists of a Mayor and six Councilmembers. The Mayor is elected every four years by voters city-wide. Councilmembers hold four-year terms with three seats decided every two years. Each of the six Councilmembers represent one of six electoral districts and are elected by the voters of their respective districts (see map on back).

Council Meeting Schedule

The Mayor and City Council hold Council meetings to take official action two times each month. These meetings are held on the second and fourth Tuesday of the month at 7:00 p.m. Regular meetings are held in the Council Chambers, Glendale Municipal Office Complex, 5850 W. Glendale Avenue.

Agendas may be obtained after 4:00 p.m. on the Friday before a Council meeting, at the City Clerk's Office in the Municipal Complex. The agenda and supporting documents are posted to the city's Internet web site, www.glendaleaz.com

Questions or Comments

If you have any questions about the agenda, please call the City Manager's Office at (623) 930-2870. If you have a concern you would like to discuss with your District Councilmember, please call (623) 930-2249, Monday - Friday, 8:00 a.m. – 5:00 p.m.

Public Rules of Conduct

The presiding officer shall keep control of the meeting and require the speakers and audience to refrain from abusive or profane remarks, disruptive outbursts, applause, protests, or other conduct which disrupts or interferes with the orderly conduct of the business of the meeting. Personal attacks on Councilmembers, city staff, or members of the public are not allowed. It is inappropriate to utilize the public hearing or other agenda item for purposes of making political speeches, including threats of political action. Engaging in such conduct, and failing to cease such conduct upon request of the presiding officer will be grounds for ending a speaker's time at the podium or for removal of any disruptive person from the meeting room, at the direction of the presiding officer.

How to Participate

The Glendale City Council values citizen comments and input. If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a blue Citizen Comments Card located at the back of the Council Chambers and give it to the City Clerk before the meeting starts. The Mayor will call your name when the Citizen Comments portion of the agenda is reached. Because these matters are not listed on the posted agenda, the City Council may not act on the information during the meeting but may refer the matter to the City Manager for follow-up.

Public Hearings are also held on certain agenda items such as zoning cases, liquor license applications and use permits. If you wish to speak or provide written comments about a public hearing item on tonight's agenda, please fill out a gold Public Hearing Speakers Card located at the back of the Council Chambers and give it to the City Clerk before the meeting starts. The Mayor will call your name when the public hearing on the item has been opened.

When speaking at the Podium, please state your name and the city in which you reside. If you reside in the City of Glendale, please state the Council District you live in and present your comments in five minutes or less.



**** For special accommodations or interpreter assistance, please contact the City Manager's Office at (623) 930- 2870 at least one business day prior to this meeting. TDD (623) 930-2197.**

**** Para acomodacion especial o traductor de español, por favor llame a la oficina del adminsitrador del ayuntamiento de Glendale, al (623) 930-2870 un día hábil antes de la fecha de la junta.**

Councilmembers

Norma S. Alvarez - Ocotillo District
H. Philip Lieberman - Cactus District
Manuel D. Martinez - Cholla District
Joyce V. Clark - Yucca District
Yvonne J. Knaack – Barrel District



MAYOR ELAINE M. SCRUGGS

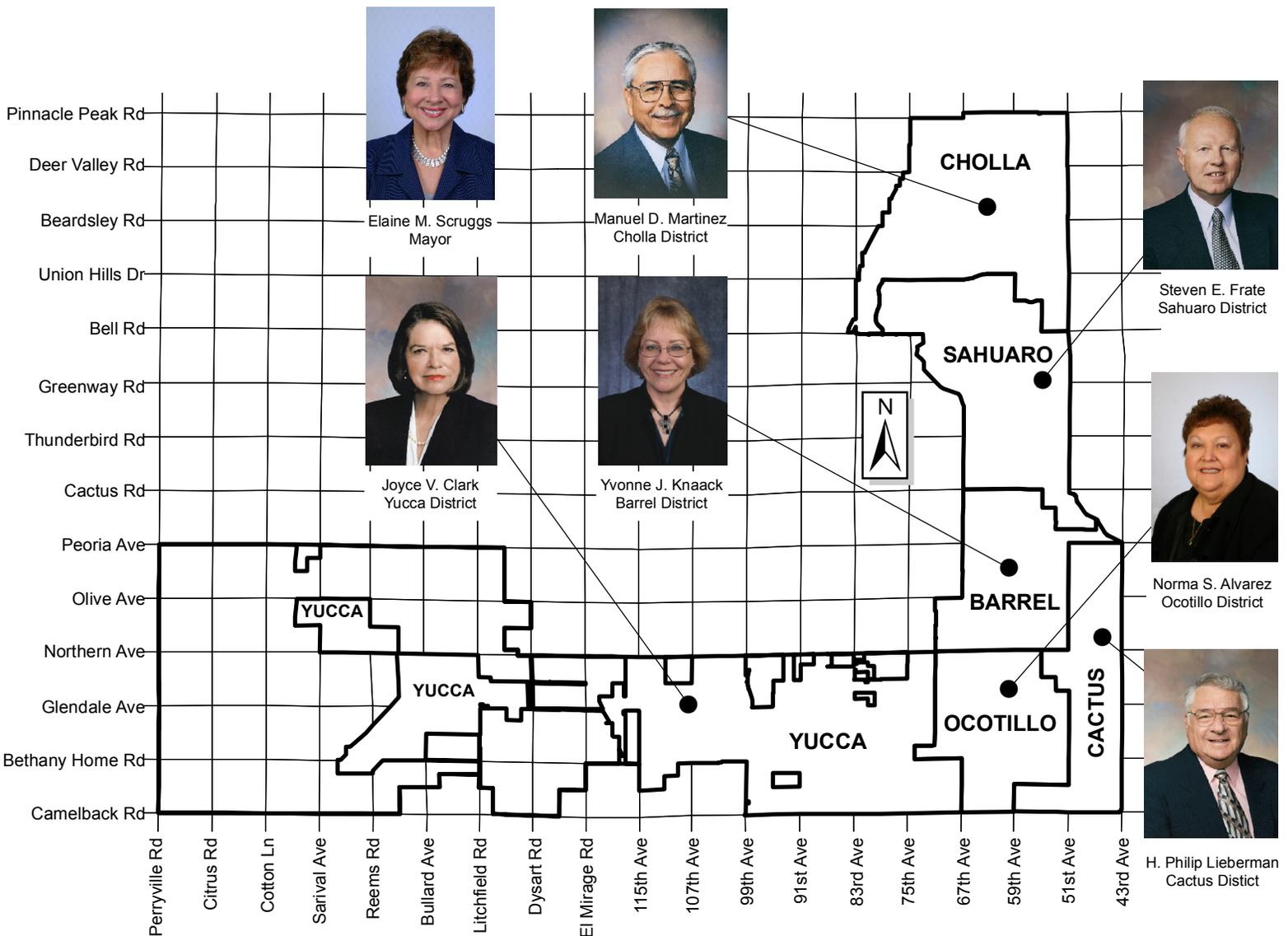
Vice Mayor Steven E. Frate - Sahuaro District

Appointed City Staff

Ed Beasley – City Manager
Craig Tindall – City Attorney
Pamela Hanna – City Clerk
Elizabeth Finn – City Judge



Council District Boundaries





**GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
February 28, 2012
7:00 p.m.**

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

APPROVAL OF THE MINUTES OF February 14, 2012

BOARDS, COMMISSIONS AND OTHER BODIES

**BOARDS, COMMISSIONS AND OTHER BODIES
PRESENTED BY: Councilmember Joyce Clark**

CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. If you would like to comment on an item on the consent agenda, please come to the podium and state your name, address and item you wish to discuss.

**1. LIQUOR LICENSE NO. 5-3457, CIRCLE K STORE #3441
PRESENTED BY: Susan Matousek, Revenue Administrator**

CONSENT RESOLUTIONS

**2. TRANSPORTATION ENHANCEMENT GRANT
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
RESOLUTION: 4546**

**3. INTERGOVERNMENTAL AGREEMENT WITH SALT RIVER PROJECT FOR
ELECTRICAL SERVICE AT 67TH AND MARYLAND AVENUES
PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer
RESOLUTION: 4547**

4. RIGHT-OF-WAY LICENSE AGREEMENT WITH SALT RIVER PROJECT FOR 95TH AVENUE, NORTH OF MISSOURI AVENUE

PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer

RESOLUTION: 4548

RESOLUTIONS

5. INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PEORIA FOR SOLID WASTE DISPOSAL SERVICES

PRESENTED BY: Stuart Kent, Executive Director, Public Works

RESOLUTION: 4549

6. DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING

PRESENTED BY: Jim Colson, Deputy City Manager

RESOLUTION: 4550

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

CITIZEN COMMENTS

If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a Citizen Comments Card located in the back of the Council Chambers and give it to the City Clerk before the meeting starts. The City Council can only act on matters that are on the printed agenda, but may refer the matter to the City Manager for follow up. Once your name is called by the Mayor, proceed to the podium, state your name and address for the record and limit your comments to a period of five minutes or less.

COUNCIL COMMENTS AND SUGGESTIONS

ADJOURNMENT

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- (ii) discussion or consideration of records exempt by law from public inspection (A.R.S. §38-431.03 (A)(2));
- (iii) discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03 (A)(3));
- (iv) discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. §38-431.03 (A)(4));
- (v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- (vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

APPROVAL OF THE MINUTES OF February 14, 2012

BOARDS, COMMISSIONS AND OTHER BODIES

BOARDS, COMMISSIONS AND OTHER BODIES

Purpose: This is a request for City Council to approve the recommended appointments to the following boards, commissions and other bodies that have a vacancy or expired term and for the Mayor to administer the Oath of Office to those appointees in attendance.

Board of Adjustment

Jeff Blake – Chair	Mayoral	Appointment	02/28/2012	06/30/2012
Cathy Cheshier – Vice Chair	Cholla	Appointment	02/28/2012	06/30/2012

Citizens Bicycle Advisory Committee

Garrett Simpson – Vice Chair	Barrel	Reappointment	03/05/2012	03/05/2013
------------------------------	--------	---------------	------------	------------

Commission on Persons with Disabilities

Joan Brainard Pinson	Barrel	Reappointment	02/28/2012	02/27/2014
Karin Kellas	Barrel	Reappointment	02/28/2012	02/27/2014
Shirley Galvez – Chair	Yucca	Appointment	02/28/2012	02/26/2013
Raymond Yaeggi – Vice Chair	Cactus	Appointment	02/28/2012	03/22/2013

Parks and Recreation Advisory Commission

Robert Portillo – Vice Chair	Yucca	Appointment	02/28/2012	02/26/2013
------------------------------	-------	-------------	------------	------------

Recommendation: Make appointments to the boards, commissions and other bodies and administer the Oaths of Office.

CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. If you would like to comment on an item on the consent agenda, please come to the podium and state your name, address and item you wish to discuss.

1. LIQUOR LICENSE NO. 5-3457, CIRCLE K STORE #3441

Purpose: This is a request for City Council to approve a location-to-location transferable series 9 (Liquor Store - All Liquor) license for Circle K Store #3441 located at 4303 West Glendale

Avenue. The Arizona Department of Liquor Licenses and Control application (No. 09070190) was submitted by Kim Kenneth Kwiatkowski.

Background: The location of the establishment is 4303 West Glendale Avenue in the Cactus District. The property is zoned C-3 (Heavy Commercial). The population density within a one-mile radius is 24,403. This series 9 is a location-to location transferrable license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
06	Bar - All Liquor	3
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	4
10	Liquor Store - Beer and Wine	9
12	Restaurant	3
	Total	20

The City of Glendale Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

Public Input: No public protests were received during the 20-day posting period.

Recommendation: Based on information provided under the background, it is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

CONSENT RESOLUTIONS

2. TRANSPORTATION ENHANCEMENT GRANT

Purpose: This is a request for City Council to adopt a resolution authorizing the application for, and acceptance of, a 2012 Transportation Enhancement grant from the Arizona Department of Transportation (ADOT). Grant funds will be used to design and construct a one-quarter-mile segment of the multi-use pathway along New River.

Background: Transportation Enhancement is a federal program that provides funding for design and construction of pedestrian and bike trails. ADOT administers this federal program and requires a resolution from the applicant city to ensure that, if approved, the city will be responsible for the matching funds, design and construction of the project in a timely manner.

Upon Council approval, a Transportation Enhancement grant application will be submitted to ADOT in order to secure funding for design and construction of a one-quarter-mile segment of the multi-use pathway in the area of 75th Avenue and Hillcrest Boulevard. This missing segment will connect two existing multi-use pathways on the east bank of New River, and will complete Glendale's portion of the New River Pathway. In addition to the concrete pathway, two bridges

will be constructed over existing drainage canals at either end of this segment, and an at-grade connection to Hillcrest Boulevard will complete the path.

Community Benefit: This project will allow expanded use of planned and existing New River multi-use pathways in Glendale, and provide continuity of pathways throughout the West Valley and central Phoenix.

Public Input: This project is included in the Glendale Onboard Transportation Program and the Glendale Transportation Plan. If selected for Transportation Enhancement funding, project-specific informational public meetings will be held for the citizens and businesses in the area.

Budget Impacts & Costs: The grant request totals \$745,201. There is a \$45,044 financial match required. Funds for the financial match and ongoing maintenance will be funded in the GO Transportation Program.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
X					\$745,201

Account Name, Fund, Account and Line Item Number:

A specific project account will be established in Fund 1650, the Transportation Services grant fund, once the grant agreement is formally executed.

Recommendation: Waive reading beyond the title and adopt a resolution authorizing the application for, and acceptance of, a 2012 Transportation Enhancement Grant from the Arizona Department of Transportation to design and construct a one-quarter-mile segment of the multi-use pathway along New River .

3. **INTERGOVERNMENTAL AGREEMENT WITH SALT RIVER PROJECT FOR ELECTRICAL SERVICE AT 67TH AND MARYLAND AVENUES**

Purpose: This is a request for City Council to adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with Salt River Project (SRP) in the amount of \$2,650 for the design, construction and installation of electrical facilities that provide power to the traffic signal controller at the intersection of 67th and Maryland Avenues.

Background: During recent capital improvement projects on 67th Avenue from Camelback Road to Grand Avenue, SRP overhead power distribution lines and facilities were relocated underground to accommodate road improvements. The relocation of these facilities has provided the opportunity to upgrade the existing electrical service to power the traffic signal controller at the intersection of 67th and Maryland Avenues. The minimum design fee charged by SRP is \$2,650; the scope of this project falls within that fee structure.

Budget Impacts & Costs: Funding is available in the FY 2011-12 capital improvement plan. There are no additional operations and maintenance expenses associated with this project.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
	X		X		\$2,650

Account Name, Fund, Account and Line Item Number:
67th Avenue – Camelback to Grand, Account No. 2000-68909-550800, \$2,650

Recommendation: Waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with Salt River Project in the amount of \$2,650 for the design, construction and installation of electrical facilities that provide power to the traffic signal controller at the intersection of 67th and Maryland Avenues.

4. RIGHT-OF-WAY LICENSE AGREEMENT WITH SALT RIVER PROJECT FOR 95TH AVENUE, NORTH OF MISSOURI AVENUE

Purpose: This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a right-of-way license agreement with Salt River Project (SRP) for use of 95th Avenue between Missouri Avenue and the north property line of the Pendergast West subdivision (approximately 280 feet north of San Miguel Avenue).

Background: SRP is installing a new irrigation pipeline within 95th Avenue. In order to preserve rights for the presence of city facilities and continued public use of the road, SRP is granting a right-of-way license to the city over this segment of 95th Avenue.

Recommendation: Waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a right-of-way license agreement with Salt River Project for use of 95th Avenue between Missouri Avenue and the north property line of the Pendergast West subdivision (approximately 280 feet north of San Miguel Avenue).

RESOLUTIONS

5. INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PEORIA FOR SOLID WASTE DISPOSAL SERVICES

Purpose: This is a request for City Council to adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the City of Peoria (Peoria) for solid waste disposal services.

Background: In an effort to seek new opportunities, the City of Glendale is offering solid waste disposal services to Peoria through an IGA. The agreement is mutually beneficial to both parties in that it secures tonnage with guaranteed annual revenue for the Glendale landfill, and it provides Peoria with an alternate disposal location for greater flexibility and efficiencies while routing solid waste collection vehicles. Additionally, the proposed annual tonnage will have no significant impact on the life of the landfill with current projections at close to forty years.

Peoria proposes to deliver 5,000 to 10,000 tons of solid waste each year to the Glendale landfill. For this tonnage amount, Peoria will pay a disposal rate of \$25.00 per ton through June 30, 2012. The rate will be adjusted on July 1, 2012 through June 30, 2013 to \$26.50 per ton, and to \$28.00 for the period of July 1, 2013 through June 30, 2014. The pricing terms include a discounted rate of \$3.50 per ton less than the disposal rates listed above for disposing of 30,000 tons or greater at the Glendale landfill during the term of the agreement. Landfill disposal rates are determined and evaluated annually with assistance from a solid waste rate model provided by R.W. Beck, a solid waste management consultant, and the proposed Peoria IGA disposal rates are consistent with the rate model.

Upon Council approval, the IGA will become effective immediately and will continue thereafter until June 30, 2014. The agreement contains an option that will permit the City Manager, at his discretion, to extend the term for two additional three-year periods, on the terms and conditions acceptable to both Glendale and Peoria. The Peoria City Council approved this agreement on January 3, 2012.

Community Benefit: The waste received from Peoria will result in increased revenues and will maintain low cost solid waste disposal operations for Glendale residents.

Budget Impacts & Costs: Gross revenue from landfill tonnage received through this agreement is projected to be approximately \$125,000 in FY 2011-12, and the revenue will be deposited into Landfill Revenue Account 2440-02440-480600.

Recommendation: Waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with the city of Peoria for solid waste disposal services; and further authorizing the City Manager, at his discretion, to extend the term in accordance with the provisions of the intergovernmental agreement.

6. DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING

Purpose: This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a Development Agreement for Multi-Family Housing with the Norwood Village Apartments, LLC, and Gorman & Company, Inc., (Gorman) to utilize Neighborhood Stabilization (NSP) III funding for the acquisition and rehabilitation of Norwood Village Apartments, a 115 unit multi-family foreclosed property, located at 6738 North 45th Avenue.

Background: In November 2011, the City of Glendale conducted a request for proposal process, which resulted in Gorman being selected for \$1,800,000 of NSP III funding. The total project is anticipated to represent an investment of \$16,900,00 in the Centerline Area.

Gorman has developed a portfolio of over 50 properties in six states, representing over 3,500 housing units, many of which involved acquisition and rehabilitation. In 2010, Gorman partnered with the non-profit, Arizona Bridge to Independent Living (ABIL), on the development of the Glendale Enterprise Lofts located at 6839 North 63rd Avenue. ABIL will be used as a consultant during the rehabilitation to consult on handicap accessibility of the units.

Gorman will acquire Norwood Village Apartments, a garden-style community built in 1971, which is located on 5.19 acres and will rehabilitate 115 multi-family units. This property was foreclosed upon by Fannie Mae in the recent past. Gorman will partner with ABIL and Catholic Charities to provide accessible units and onsite services for families. These services include before-and-after school programs, computer classes, financial literacy, and parenting classes to residents.

Previous Council/Staff Actions: In March 2011, Council formally adopted an amendment to the Community Revitalization Annual Action Plan accepting the NSP III funds from the U.S. Department of Housing and Urban Development (HUD) and allocated \$1,800,000 to the acquisition and rehabilitation of foreclosed multi-family properties, targeting the Centerline Area.

Community Benefit: The acquisition and redevelopment of this foreclosed multi-family property will help stabilize the neighborhood and improve the quality of life for the residents of the existing apartment units. The units will be completely rehabilitated and additional onsite amenities will provide the families with a community room, onsite playground, and interior and exterior modernization of the units. Some two bedroom units will be converted to accessible three bedroom units, addressing an unmet housing need as identified by Gorman through a recent marketing study.

Public Input: HUD requires cities to solicit comments through their public participation plan. On December 16, 2010, during a public meeting, the Community Development Advisory Committee (CDAC) reviewed and approved the eligibility of the NSP III funding. Public Notice was published in the Glendale Star on December 23, 2010 and December 30, 2010 informing the public about the amendment to the Community Revitalization Annual Action Plan, the five locations in which to view the amendment, and the 15-day public comment period.

The public comment period began on January 7, 2011 and ended January 24, 2011. On January 19, 2011, CDAC conducted a public hearing on the Annual Action Plan to accept the NSP III funds, and the proposed eligible uses. No public comments were received.

Budget Impacts & Costs: This development will be publicly and privately funded. Stimulus funding is being provided through NSP III with the rest of the funding being comprised from Low Income Housing Tax Credits, and other private financing. The anticipated project budget is \$16,900,000. The NSP III funding portion, which is administered by the City of Glendale, is \$1,800,000.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
			X		\$1,800,000

Account Name, Fund, Account and Line Item Number:

Neighborhood Stabilization Program III, Account No. 1311-30910-518200, \$1,800,000

Recommendation: Waive reading beyond title and adopt a resolution authorizing the City Manager to enter into a Development Agreement for Multi-Family Housing Development with Norwood Village Apartments, LLC, and Gorman & Company, Inc.

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

CITIZEN COMMENTS

If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a Citizen Comments Card located in the back of the Council Chambers and give it to the City Clerk before the meeting starts. The City Council can only act on matters that are on the printed agenda, but may refer the matter to the City Manager for follow up. Once your name is called by the Mayor, proceed to the podium, state your name and address for the record and limit your comments to a period of five minutes or less.

COUNCIL COMMENTS AND SUGGESTIONS

ADJOURNMENT

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- (ii) discussion or consideration of records exempt by law from public inspection (A.R.S. §38-431.03 (A)(2));
- (iii) discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03 (A)(3));
- (iv) discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. §38-431.03 (A)(4));
- (v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- (vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).



**MINUTES OF THE
GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
February 14, 2012
7:00 p.m.**

The meeting was called to order by Mayor Elaine M. Scruggs, with Vice Mayor Steven E. Frate and the following Councilmembers present: Norma S. Alvarez, Joyce V. Clark, Yvonne J. Knaack, and H. Philip Lieberman.

Councilmember Manuel D. Martinez was absent.

Also present were Ed Beasley, City Manager; Horatio Skeete, Assistant City Manager; Craig Tindall, City Attorney; and Pamela Hanna, City Clerk.

Mayor Scruggs called for the Pledge of Allegiance and the observance of a moment of silence.

COMPLIANCE WITH ARTICLE VII, SECTION 6(c) OF THE GLENDALE CHARTER

A statement was filed by the City Clerk that the 6 resolutions to be considered at the meeting were available for public examination and the title posted at City Hall more than 72 hours in advance of the meeting.

APPROVAL OF THE MINUTES OF THE JANUARY 24, 2012 CITY COUNCIL MEETING

It was moved by Clark, and seconded by Lieberman, to dispense with the reading of the minutes of the January 24, 2012 Regular City Council meeting, as each member of the Council had been provided copies in advance, and approve them as written. The motion carried unanimously.

CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion.

Mr. Ed Beasley, City Manager, read agenda item numbers 1 through 3 and Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 4 through 6 by number and title.

Councilmember Clark requested that item number 3 be heard separately.

1. LIQUOR LICENSE NO. 5-0288, ZANZIBAR AFRICAN RESTAURANT

This is a request for City Council to approve a new, non-transferable series 12 (Restaurant) license for Zanzibar African Restaurant located at 9250 North 43rd Avenue. The Arizona Department of Liquor Licenses and Control application (No. 12078969) was submitted by Omoshola A. Egbesemi.

The location of the establishment is 9250 North 43rd Avenue in the Cactus District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 23,496. This series 12 is a new license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
06	Bar - All Liquor	10
07	Bar - Beer and Wine	2
09	Liquor Store - All Liquor	2
10	Liquor Store - Beer and Wine	5
12	Restaurant	7
	Total	26

The City of Glendale Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

No public protests were received during the 20-day posting period.

Based on information provided under the background, it is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

2. LIQUOR LICENSE NO. 5-1926, LENCHO'S FAMILY STYLE MEXICAN RESTAURANT

This is a request for City Council to approve a new, non-transferable series 12 (Restaurant) license for Lencho's Family Style Mexican Restaurant located at 6601 West Bethany Home Road, Suite A12-13. The Arizona Department of Liquor Licenses and Control application (No. 12078965) was submitted by Erica Alicia Gaytan.

The location of the establishment is 6601 West Bethany Home Road, Suite A12-13 in the Ocotillo District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 33,406. This series 12 is a new license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
--------	------	----------

06	Bar - All Liquor	3
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	4
10	Liquor Store - Beer and Wine	12
12	Restaurant	2
	Total	22

The City of Glendale Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

No public protests were received during the 20-day posting period.

Based on information provided under the background, it is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

3. LIQUOR LICENSE NO. 5-4855, WAL-MART NEIGHBORHOOD MARKET #4213

This request was heard separately.

CONSENT RESOLUTIONS

4. ACCEPTANCE OF STOP VIOLENCE AGAINST WOMEN GRANT

This is a request for City Council to adopt a resolution authorizing the City Manager to accept a STOP Violence Against Women grant on behalf of the City Prosecutor's Office in the approximate amount of \$148,812 from the Arizona Governor's Office for Children, Youth, and Families.

The City Prosecutor's Office takes on approximately 10,000 new cases annually. These misdemeanor offenses range from relatively minor traffic violations to DUIs, thefts and domestic violence (DV) offenses. Out of the aforementioned 10,000 cases, roughly 17% of those are DV related.

Funding from this grant will be used to hire a special Misdemeanor DV Prosecutor and DV Advocate for a term of one year. This funding would allow the City Prosecutor's Office to dedicate a special unit exclusively to prosecuting DV offenses. A DV Prosecutor and DV Advocate will allow the Prosecutor's Office to initiate practices that will aim to increase conviction rates by providing victims' access to a special prosecutor, thereby enhancing the victims' understanding of the criminal process and court proceedings.

This is the first time that the City Prosecutor's Office has applied for this STOP Violence Against Women grant. The Police Department, however, has received funding from this grant source starting as early as 2000 with the last acceptance by Glendale City Council on January 25, 2011 in the amount of \$68,558.

The program proposes to hire two full-time contract employees. The amount of the grant will cover the full salaries and benefits to those two employees with a 25% in-kind contribution being provided by the City through support staff services as well as operating expenses and supplies. The operating expenses and supplies consists of items such as legal research expenses, telephone charges, postage and office equipment and supplies necessary for the two employees to perform their assigned duties.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
X					\$148,812

Account Name, Fund, Account and Line Item Number:

A specific project account will be established in Fund 1840, the city’s grant fund, once the grant agreement is formally accepted.

The recommendation is to waive reading beyond the title and adopt a resolution authorizing the City Manager to accept a STOP Violence Against Women grant in the approximate amount of \$148,812 from the Arizona Governor’s Office for Children, Youth, and Families; and further authorize the City Manager to accept the grant renewable option for two additional twelve month contracts, contingent upon the availability of funds.

Resolution No. 4540 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF A “STOP VIOLENCE AGAINST WOMEN” GRANT OFFER IN THE APPROXIMATE AMOUNT OF \$148,812 FROM THE ARIZONA GOVERNOR’S OFFICE FOR CHILDREN, YOUTH AND FAMILIES ON BEHALF OF THE GLENDALE CITY PROSECUTOR’S OFFICE.

5. WATER TRANSPORTATION AGREEMENT AMENDMENT

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into Amendment Number One to the Water Transportation Agreement with Salt River Valley Water Users’ Association, commonly known as Salt River Project (SRP).

Since 1991, the city and SRP have had a perpetual Water Transportation Agreement. The current Water Transportation Agreement enables the city to use SRP infrastructure to transport non-SRP water supplies to city water treatment and storage facilities. This allows the city to better maintain service delivery and reliability during SRP water shortages by maximizing available water supplies and infrastructure use.

An amendment is needed to update the city facilities covered under the agreement. The amendment adds the city’s Oasis Water Campus to the list of city facilities eligible to receive non-SRP water through SRP’s water delivery infrastructure, including underground pipelines. The Oasis Water Campus was built after the current agreement was adopted.

The Water Transportation Agreement provides the city significant and cost effective operational flexibility to effectively manage and utilize its non-SRP water resources on an as-needed basis.

Under the current agreement, the city paid \$37,867 to SRP for the delivery of non-SRP water to the city's water storage facilities in FY 2010-11.

The amended agreement allows for additional charges by SRP to transport non-SRP water to the Oasis Water Campus. Since SRP water shortages are not currently projected, the city has no immediate plans to transport non-SRP water to the Oasis Water Campus and no immediate increase in cost is anticipated. In the event that the city has to transport non-SRP water to the Oasis Water Campus, the costs will be absorbed by the Water Services operating budget (Raw Water Usage, Account No. 2400-17230-518200).

The recommendation is to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into Amendment Number One to the Water Transportation Agreement with Salt River Valley Water Users' Association.

Resolution No. 4541 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NUMBER ONE TO THE WATER TRANSPORTATION AGREEMENT WITH SALT RIVER VALLEY WATER USERS' ASSOCIATION.

6. CONTRACT CHANGE ORDER NO. 5 WITH THE CITY OF PHOENIX FOR THE EXTENSION OF FEDERAL TRANSIT ADMINISTRATION GRANT AZ-90-X080

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into Contract Change Order No. 5 to the intergovernmental agreement (IGA) with the City of Phoenix for Federal Transit Administration (FTA) grant funds for transit services under FTA grant AZ-90-X080.

Federal grant funds are programmed for the City of Glendale transit projects in the Maricopa Association of Government's approved Transportation Improvement Program. The City of Phoenix is designated as the regional recipient of FTA grants, and distributes the funds to cities in this region.

FTA grant AZ-90-X080 provided federal funding for the purchase of replacement vehicles, transit vehicle maintenance expenses, and the acquisition of computer system hardware. This IGA will extend the contract to March 31, 2012, allowing Glendale to receive full reimbursement of \$594,160 in FTA funds.

All projects were completed prior to the grant's expiration date of July 1, 2011. This formal extension is required to file and complete the reimbursement process to Glendale.

On June 12, 2007, Council approved an IGA with the City of Phoenix for Federal Transit Administration grant funds for transit services under FTA grant AZ-90-X080. All subsequent

extensions on October 5, 2009; December 28, 2009; June 17, 2010; and March 3, 2011 extended the term of the agreement.

Transportation services and programs provide a benefit to Glendale residents and visitors. These grant funds will help to provide the continuation of quality and reliable services.

Expenditures for all projects in the grant total \$742,700. The amount of federal funds in this grant award is \$594,160. The grant requires a 20% match totaling \$148,540. The Regional Public Transportation Authority will provide \$96,000 towards the local match for the purchase of the vehicles. The remaining local match of \$52,540 is available in the Transportation Services capital and operating budgets.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
X	X	X	X		\$52,540

Account Name, Fund, Account and Line Item Number:

Dial-A-Ride, Account No. 1660-16530-532400, \$20,805

Fixed Route, Account No. 1660-16540-532400, \$6,935

Transit Support Capital, Account No. 2210-65014-551400, \$24,800

The recommendation is to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into Contract Change Order No. 5 to the intergovernmental agreement with the City of Phoenix for Federal Transit Administration grant funds for transit services under FTA grant AZ-90-X080.

Resolution No. 4542 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF CONTRACT CHANGE ORDER NO. 5 TO THE INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR FEDERAL GRANT PASS THROUGH FUNDING FOR GLENDALE’S TRANSIT SERVICES.

7. EQUITABLE SHARING AGREEMENT WITH UNITED STATES DEPARTMENT OF JUSTICE

This is a request for City Council to adopt a resolution authorizing the ratification of an agreement with the United States Department of Justice (DOJ) for the equitable sharing of Racketeering Influenced Corrupt Organizations (RICO) assets.

RICO allows the government to legally use the proceeds from criminal enterprises forfeited by individuals or organizations and utilize them in approved law enforcement operations. The funds are not forfeited unless authorized through the courts after due process. Participation in this agreement allows the Police Department to receive a portion of the RICO assets seized on criminal cases worked in conjunction with federal agencies.

On October 28, 2008, Council approved intergovernmental agreements with the DOJ and Maricopa County Attorney's Office for the equitable sharing of RICO assets seized on criminal cases worked by the Police Department. City participation in this program with DOJ predates 1992.

Participation in equitable asset sharing enables the Police Department to continue to target large-scale operations to suppress drug importation and sales in the city. It promotes close cooperation between federal agencies and the Police Department, while penalizing drug traffickers by seizing their illicit assets and charging them criminally.

The recommendation is to waive reading beyond the title and adopt a resolution authorizing the ratification of an agreement with the United States Department of Justice for the equitable sharing of Racketeering Influenced Corrupt Organizations assets.

Resolution No. 4543 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, RATIFYING THE ENTERING INTO OF THE EQUITABLE SHARING AGREEMENT AND CERTIFICATION WITH THE DEPARTMENT OF JUSTICE ON BEHALF OF THE GLENDALE POLICE DEPARTMENT.

It was moved by Frate and seconded by Knaack, to approve the recommended actions on Consent Agenda Item Nos. 1 and 2 and 4 through 7, including the approval and adoption of Resolution No. 4540 New Series, Resolution No. 4541 New Series, Resolution No. 4542 New Series, and Resolution No. 4543 New Series; and to forward Liquor License Applications No. 5-0288 for Zanzibar African Restaurant, and No. 5-1926 for Lencho's Family Style Mexican Restaurant to the State of Arizona Department of Liquor Licenses and Control, with the recommendation for approval. The motion carried unanimously.

3. LIQUOR LICENSE NO. 5-4855, WAL-MART NEIGHBORHOOD MARKET #4213

Susan Matousek, Revenue Administrator, presented this item.

This is a request for City Council to approve a person-to-person, location-to-location transferable series 9 (Liquor Store - All Liquor) license for Wal-Mart Neighborhood Market #4213 located at 5050 North 83rd Avenue. The Arizona Department of Liquor Licenses and Control application (No. 09070500) was submitted by Clare Hollie Abel.

The location of the establishment is 5050 North 83rd Avenue in the Yucca District. The property is zoned SC (Shopping Center). The population density within a one-mile radius is 23,082. This series 9 is a person-to-person, location-to-location transferable license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
--------	------	----------

06	Bar - All Liquor	3
09	Liquor Store - All Liquor	2
10	Liquor Store - Beer and Wine	2
	Total	<u>7</u>

The City of Glendale Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

No public protests were received during the 20-day posting period.

Based on information provided under the background, it is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

Councilmember Clark asked to comment on this item. She stated there was no Wal-Mart Neighborhood Market Place currently at this location. She explained that plans are being developed for this market; however, her constituents prefer another kind of grocery store since there were many Wal-Marts in the area already. Therefore, as the Councilmember for that area, she was compelled to vote against this item.

Mayor Scruggs said she had a card here indicating that Ms. Clair Able, representative for the applicant, is present. She asked if Ms. Able would like to come forward?

Ms. Clair Able, applicant's representative, stated she would be happy to answer any questions.

Mayor Scruggs commented that this is interesting. So Councilmember Clark says there is no store there. Is that correct?

Ms. Able stated she was correct. The store is slated to open in 2014. She said they had acquired this liquor license from Basha's; however, the license had been inactive for a period of time and they needed to make it active and transfer it officially to Wal-Mart.

Mayor Scruggs asked if Wal-Mart then gets the clock restarted on the liquor license at three years, yes.

Ms. Able responded yes.

Councilmember Knaack asked if the bigger Wal-Marts have series nine licenses. Ms. Able noted that all Wal-Marts in Maricopa County have them.

Vice Mayor Frate asked if the site was posted for a liquor license. Ms. Able replied yes.

Mayor Scruggs asked, and Ms. Able, if this is denied here, which doesn't have any effect whatsoever in what the state will do, but if it goes through and this is denied, would Wal-Mart, with its many locations, use the application they purchased from Food City someplace else?

Ms. Able stated if the license were to be denied here, they will proceed to the state liquor board hearing and argue their case there. If the liquor license is denied there, that will be the end of it for Wal-Mart.

Mayor Scruggs asked if they could just go to some other place they have a store?

Ms. Able stated that if they withdrew the application they might have that opportunity, but this license was purchased for this specific location in order to proceed with their plans.

Mayor Scruggs asked the Council if there were any other questions and thanked Ms. Able.

It was moved by Clark and seconded by Scruggs, to forward Liquor License Application No. 4855 for Wal-Mart Neighborhood Market #4213 to the Arizona Department of Liquor Licenses and Control with the recommendation of denial. Ayes: Clark, Scruggs, and Lieberman. Nays: Alvarez, Frate, and Knaack. The motion failed on a tie vote.

Mayor Scruggs stated that she was not going to support this application and the reason she wasn't going to support it is that while the Council hears that Wal-Mart is going through the process of developing their plans so they can open in January of 2014, that's two years away. And what it appears that this does is to tie up that property so that another grocery store would not be able come in because grocery stores all want to sell liquor. So if there is a liquor license on this piece of property with Wal-Mart, then another interested grocery store wouldn't be able to come in and also get a liquor license. Wal-Mart has a long history of tying up properties and she didn't feel comfortable that Wal-Mart wanted to tie the license to this property so that they can start the three year clock over again. In the meantime, there might be an opportunity for a store that meets what the neighborhood wants to come in if they have the same opportunity to bring a liquor license with them. So that's why she was going to support denial.

Vice Mayor Frate noted that Wal-Mart had gone through the correct process and everything was in order. He added they had no grounds to deny their application even if someone might feel uncomfortable about this situation because by law they qualify.

Mayor Scruggs responded that she didn't believe that. If Wal-Mart had a physical building there then she would say "Councilmember Clark I'm sorry your residents do not like this kind of store and I'm going to support it". They don't have a physical building; all they have is a plan – which is that they want to open in January of 2014. The Mayor continued that she had many years of experience where Wal-Mart didn't live up to what they say they are going to do, so she felt comfortable with the denial.

Councilmember Alvarez stated she will vote to support this application. She explained that in the past, Wal-Mart has been a good business partner with Glendale. She noted the Wal-Mart on 55th and Northern has providing the city much revenue. She remarked there might be the same number of people who do want it in their neighborhood because of its affordability.

Councilmember Clark commented on the process the neighborhood had gone through when this was first suggested. She explained most did not want this kind of grocery store and also fought

the drive-thru addition to this store. She reiterated it was clear this was not what the neighborhood wanted. Therefore, she feels comfortable with voting against this application.

Councilmember Alvarez remarked that in this economy, she welcomes this development. She reiterated that Wal-Mart has been a good business partner and she welcomes the sales tax revenue the city will receive.

Councilmember Knaack commented on the previous controversy surrounding other Wal-Marts such as on 67th and Peoria as well as the one on 51st and Olive and they both are very well used by the surrounding neighborhoods. She added that not many grocery stores are building stores at the moment and if Wal-Mart Market Place is willing to build one in a very much needed area, she will support it.

Mayor Scruggs commented that she wanted to restate her position. She thinks Wal-Mart Neighborhood Markets are just fine. She said you can buy just about anything in those markets, it's not like they are not full service – they are pretty good. She has been in a few of them – big Wal-Marts - she goes all the time. What this is based on is Wal-Mart's history of holding a piece of property hostage. And she referred to the property that is now going to be a Winco. Wal-Mart bought that property – this is the former Costco building on Bell Road at about 57th Avenue. Wal-Mart bought that property quietly and held it for a few years and then came out and said they wanted to build a Super Center, which was directly across the street from their Wal-Mart that they already had on the south side of Bell Road between 57th and 59th Avenue. And then they said “we can't build a Super Center there, we want a Super Center and we can't expand that. And that caused quite a bit of disruption in the community – they really went to town – spreading disinformation and misinformation and how the City Council were inept because they had let that building sit empty so long. When the truth of the matter was that Costco as a corporation will only do business with certain businesses. There were others interested in going in there, but you see Kimco was still paying – Costco still had to pay Kimco the same exact rent for another ten to twelve years after they had moved to their bigger store further west on Bell Road. So Kimco was just happy as a clam because they were getting their monthly payments and they didn't have to do any maintenance on the building or anything else. In the mean time Wal-Mart was running around stirring up the neighbors and saying that the property was going to stay empty forever and we should allow them to go in.

Mayor Scruggs continued that the city did a lot of research and it seems Wal-Mart owned well over 400 properties where they had moved from one location to another location very close maybe across the street, maybe within a quarter mile very, very close and left the first location empty. It was a long difficult discussion and in the end their application to build on the Costco side was denied and guess what – they expanded their existing site on the south side of Bell Road into a Super Center, just as the plans had shown they could when they first built that center in the first place. The city had all the plans here – the city showing it could be expanded. But what would have happened – if Wal-Mart would have moved to the north side and left the south side hostage because they owned that land and they will not let anyone else go in that's in competition with them and of course they're in just about any business there is. So what she is seeing over here is a situation where they are not ready to build the building. They're giving a time frame out – two years, but maybe there would be another retailer that would want to come

in and build, but as long as that liquor license is sitting here, another retailer would not come to it. Mayor Scruggs continued that she sees it as an effort by Wal-Mart to hold that land hostage and she didn't think that's good for the community. So she has different reasons than Councilmember Clark has, but she is still going to oppose approval and she wanted it to be known why. She didn't think this was fair, she just didn't.

Councilmember Lieberman noted he was undecided at the moment. He wished there was a store already built at that location which would have made things easier. He commented on several businesses that make it a practice to hold on to land properties until it suits their interest. He made a reference to Lund Cadillac situation as being similar in nature. However, Wal-Mart stores do bring a lot of revenue to the city and right now they really need it. He stated he will change his vote to approve this application. He explained he rarely votes against Councilmember Clark, however believes this was good for Glendale at the moment. He remarked that not everyone admits to shopping Wal-Mart, but the parking lots are always full to capacity.

Mayor Scruggs said she wanted to revisit the Lund Cadillac thing a moment. She believed the development agreements had expired and if somebody came in and said they wanted to build a Wal-Mart there – she would probably vote for that. So she didn't want anybody to think that Council handed out money to Lund Cadillac - and the agreement has long past expired so there is no money that's going to go there. And yeah, she shops at Wal-Mart too – and they have a little bit of a problem in their parking lot at 59th and Northern and she called Chief Conrad about that and hopefully he's taking care of the situation they have going on out there, but she'll still go back there and shop again.

Councilmember Clark remarked that if there were no Wal-Marts in the area, Councilmember Lieberman would have a point. However, there are two within 1½ miles of that location. Therefore they do have several Wal-Marts in the area. Councilmember Lieberman noted that might be true but this company will go to the state liquor license whether they approve it or not. Councilmember Clark stated she was just following her constituent's wishes.

It was moved by Clark, and seconded by Knaack, to forward Liquor License Application No. 4855 for Wal-Mart Neighborhood Market #4213 to the Arizona Department of Liquor Licenses and Control with the recommendation of approval. The motion carried with Clark and Scruggs voting nay.

BIDS AND CONTRACTS

8. RENTAL AGREEMENT WITH EMPIRE SOUTHWEST, LLC

Steve Conrad, Police Chief, presented this item.

This is a request for City Council to authorize the City Manager to enter into three rental agreements with Empire Southwest, LLC for the rental of heavy equipment by the Glendale Police Department in an amount not to exceed \$90,000.

Rental of this equipment will allow the Police Department to search for the remains of a victim in a homicide investigation. The rental equipment rates are based on rental agreements with Empire Southwest, LLC. The rental of heavy equipment is based on the declaration of an emergency by the Police Chief.

Funding is available in the FY 2011-12 RICO funds for the rental of heavy equipment. Final cost is dependent on the length of use which is unknown at this time; however, the cost should not exceed \$90,000.

The recommendation is to authorize the City Manager to enter into three rental agreements with Empire Southwest, LLC for the rental of heavy equipment by the Glendale Police Department in an amount not to exceed \$90,000.

Councilmember Lieberman asked if some of that equipment was already on site and was it being used. Chief Conrad replied yes. He explained they had declared this an emergency situation and with the city attorney's approval, they were able to move forward and enter into these three agreements. He added they were now asking for Council's approval. Councilmember Lieberman stated he understood the pressure and events that necessitated this emergency and was in full approval of renting the equipment.

Councilmember Clark wished them good luck in their search effort in order to bring the family closure and some peace. Chief Conrad thanked her for encouraging words. He communicated that they had well over 100 law enforcement personnel involved as well as staff from field operations.

Councilmember Knaack said she believes the police department and the city has done everything they possibly could from the day the investigation began until now. Unfortunately, they now have this task to take on. She added there was nothing to question as to what the police department has done from the start. She thanked them for all the work being done.

It was moved by Clark, and seconded by Lieberman, to authorize the City Manager to enter into three rental agreements with Empire Southwest, LLC for the rental of heavy equipment by the Glendale Police Department in an amount not to exceed \$90,000. The motion carried unanimously.

RESOLUTIONS

9. INTERGOVERNMENTAL AGREEMENTS WITH THE CITY OF PHOENIX FOR FEDERAL TRANSIT ADMINISTRATION GRANT FUNDS

Jamsheed Mehta, AICP, Executive Director, Transportation Services, presented this item.

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into five intergovernmental agreements (IGAs) with the City of Phoenix for acceptance of Federal Transit Administration grant funds for transit services.

The City of Glendale secured \$1,344,767 in federal transit grant funds. The City of Phoenix is the designated agent for all federal funds in this region, and these five IGAs with Phoenix will provide reimbursement towards capital and operating expenses, thereby reducing the cost to Glendale for transit services. The five grant awards are described as follows.

Federal grant AZ-90-X109 will be used for capital purchases and on-going maintenance. This grant will provide \$526,365 to fund the replacement of two Dial-A-Ride buses and transit vehicle maintenance expenses.

Federal Grant AZ-95-X009 will provide \$38,152 to fund vehicle maintenance expenses.

Federal grants AZ-37-X008 and AZ-37-X014 are two Job Access and Reverse Commute (JARC) grants that will provide \$770,000 for public transportation services to address the unique transportation challenges faced by low-income persons seeking to obtain and maintain employment. These grant funds will pay for a share of the existing Route 59 – 59th Avenue and Route 70 – Glendale Avenue transit services, thereby reducing the cost to the city.

Federal grant AZ-57-X013 is a New Freedom grant that will provide \$10,250 for a supplemental taxi service as transportation alternative for the elderly and persons with disabilities. The supplemental taxi service will accommodate paratransit riders travelling up to one mile outside Glendale city limits. This will help to reduce the number of paratransit service transfers between Glendale and adjacent cities.

Transportation services and programs provide a benefit to Glendale residents and visitors. These grant funds will provide operating assistance and improvements that will promote the continuation of quality and reliable services.

The total cost for all projects associated with these grants is \$2,258,915. The grants will provide \$1,344,767 in federal funds towards these costs and will require a local match of \$914,148. The Regional Public Transportation Authority will provide \$70,251 towards the local match for the purchase of the vehicles. Glendale’s portion of the remaining local match is \$843,897 and is available in the Transportation Services capital and operating budgets.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
X	X		X		\$843,897

<p><u>Account Name, Fund, Account and Line Item Number:</u> Dial-A-Ride, Account No. 1660-16530-532400, \$63,647 Fixed Route, Account No. 1660-16540-532400, \$780,250</p>

The recommendation is to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into five intergovernmental agreements with the City of Phoenix for acceptance of Federal Transit Administration grant funds for transit services.

Councilmember Clark asked if this was similar to another program the city already had only this program was for persons with disabilities. Mr. Jamsheed Mehta, AICP, Executive Director, Transportation Services, replied she was correct. The other program is called the Taxi Subsidy Program that was initiated about six years ago which is limited to those who have repetitive medical related trips. However, this new pilot program is for those who qualify for ADA transit service to go over at least one mile into the adjacent city without requiring the adjacent city's transit service. Councilmember Clark expressed her approval of this item. She asked if anything was known as to the bus strike situation. Mr. Mehta explained he did not have anything new to report.

Resolution No. 4544 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF FIVE INTERGOVERNMENTAL AGREEMENTS WITH THE CITY OF PHOENIX FOR ACCEPTANCE OF PASS-THROUGH GRANT FUNDING FOR TRANSIT SERVICES.

It was moved by Frate, and seconded by Knaack, to pass, adopt and approve Resolution No. 4544 New Series. The motion carried unanimously.

10. INTERGOVERNMENTAL AGREEMENT FOR INTELLIGENT TRANSPORTATION SYSTEMS EQUIPMENT

Jamsheed Mehta, AICP, Executive Director, Transportation Services, presented this item.

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the Maricopa County Department of Transportation (MCDOT) for installation of intelligent transportation system (ITS) equipment along Bell Road.

Transportation Services currently manages and operates an ITS on arterial roadways throughout the city. The system allows staff to remotely monitor and adjust traffic signal timing, observe traffic through closed circuit television (CCTV) cameras, and provide information to motorists through electronic dynamic message signs (DMS). In 2008, the city completed a project to establish communications to all the signals along Bell Road along with installation of cameras at key locations. Since then, additional cameras have been installed at other intersections along the corridor.

This joint project with MCDOT will install ITS equipment along Bell Road in the City of Glendale and in the county. Specifically, Glendale will receive two message signs for westbound traffic in advance of 59th and 75th Avenues, along with a CCTV camera at the intersection of 69th Avenue and Bell Road. The local match for this project will be split between the city and MCDOT.

Deployment of ITS equipment will continue to allow staff to efficiently manage traffic. Bell Road is the heaviest traveled arterial street in the city and the DMS will provide motorists approaching the Arrowhead Towne Center area with advance information on traffic conditions.

The total cost of this project is anticipated to be \$500,000. Federal Congestion Mitigation and Air Quality funds in the amount of \$382,200 are available for this project which requires a local match of \$117,800. MCDOT will provide approximately \$38,874 towards the local match. Glendale's portion of the remaining local match is \$78,926 and is available in the FY 2011-12 capital improvement plan. Ongoing operating and maintenance costs will be absorbed by the Intelligent Transportation Systems operating budget.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
	X		X		\$78,926

Account Name, Fund, Account and Line Item Number:

Smart Traffic Signals, Account No. 2210-65005-550800, \$78,926

The recommendation is to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with the Maricopa County Department of Transportation for installation of ITS equipment along Bell Road.

Vice Mayor Frate asked if the size of the sign was similar to the signs by the arena on Glendale Avenue. Mr. Jamsheed Mehta, AICP, Executive Director, Transportation Services, stated they were very similar to those in the entertainment district. Vice Mayor Frate believes this will help, especially during the holiday season when you need to know how traffic was progressing.

Mayor Scruggs asked if these were overhead signs, adding that she was trying to picture it.

Mr. Mehta replied yes. He added these were signs you typically see on a freeway.

Mayor Scruggs commented that the signs will be at 69th and where else?

Mr. Mehta stated they will install the camera at 69th Avenue. The locations identified are both on Bell Road on 59th and before 75th Avenue.

Mayor Scruggs commented that it will be helpful as Vice Mayor Frate said, especially around the holidays and everything but is this going to then give the city the new situation of neighborhood cut through traffic because people will want to be avoiding Bell Road because the sign tells them they have a twelve minute wait to get through the intersection of 75th?

Mr. Mehta explained the idea is for motorists to take advantage of the next arterial street opening. The signs have been placed in advance of the approaching arterial street one mile north or south depending on their location to avoid traffic congestion.

Mayor Scruggs asked if they are at 59th and they see the sign, they can hop off at 67th, right?

Mr. Mehta explained what the motorist will see in advance to help them avoid traffic problems.

Mayor Scruggs commented that it could be quite a mess with folks trying to get on the 101 – it backs up a long way. She continued so the idea is to put them on an arterial, not through neighborhoods. Mr. Mehta responded yes.

Resolution No. 4545 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR THE BELL ROAD DYNAMIC MESSAGE SYSTEM (DMS) PROJECT IN THE CITY OF GLENDALE.

It was moved by Knaack, and seconded by Clark, to pass, adopt and approve Resolution No. 4545 New Series. The motion carried unanimously.

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

It was moved by Frate, and seconded by Knaack, to hold a City Council Workshop at 1:30 p.m. in Room B-3 of the City Council Chambers on Tuesday, February 21, 2012, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. It was further moved to hold a Special City Council Workshop on Tuesday, February 28, 2012, at 1:30 p.m. to be followed by an Executive Session pursuant to A.R.S. 38-431.03. The motion carried unanimously.

MOTION TO EXCUSE COUNCILMEMBER MARTINEZ

It was moved by Frate, and seconded by Knaack, to excuse Councilmember Martinez from tonight's Council meeting. The motion carried unanimously.

CITIZEN COMMENTS

Manuel Cruz, a Yucca resident, asked to comment on the budget workshop earlier today. On the subject of outsourcing maintenance on public vehicles, he believes it might pose certain security risks. He also believes it was disrespectful to want to sell the cemetery. He hopes to see more transparency in meetings and less Executive Sessions.

Ken Jones, an Ocotillo resident, noted the many articles in different news outlets warning the city about continuing their fight to keep the Coyotes. He wondered what it would take for the city to finally change direction and stop spending city tax payer money on a losing cause. He wants to see a plan B communicated to the public. He discussed the many Executive Sessions the city of Glendale has each year compared to other cities, which only have a handful. He noted that cities do better when they discuss and operate in the open. He asked Vice Mayor Frate why there were so many Executive Sessions in their city.

Anthony Kern, a Sahuaro resident, commented on the budget meeting held earlier today. He explained the time of 1:30 p.m. was not conducive to people that work during the day and want to attend the meetings. He suggested changing the times to early evening or Saturday to bring

more people into the meetings. He further requests that citizens are allowed to make comments or suggestions during the budget workshops. He reported on the recent newspaper articles warning the public of an increase in crime in Glendale. He requested the Council make funding for fire and police an important issue at the budget workshop and allow for additional police officers. He remarked that a Councilmember recently suggested they set aside \$25 million for the Coyotes, which would only add to the soaring debt. He requested the city stop spending money on useless ventures and instead put the money where the city needs it most and stop giving it away to multimillion dollar organizations.

Andrew Marwick, a Phoenix resident, commented on the small amount of traffic in the Entertainment District in Glendale and the amount of businesses that have closed in the area. He contrasted Scottsdale Road and the 101 area where there was gridlock most of the time. He remarked on the benefits of having a casino in Glendale, which seems to help the Scottsdale area. He approves the building of a casino in Glendale and believes this will greatly benefit the city.

Arthur Thruston, a Cactus resident, remarked on the wonderful holiday season and how everyone got along. However, recently, bad news was reported that Glendale cannot sell their bonds. He commented on the many lawsuits, bad management and money shortages the city of Glendale has encountered. He stated the city has a lot of problems and was really in trouble. He hopes the Council gets a new beginning and starts making better decisions that will help the city of Glendale. He noted he does not fault anyone because they all make mistakes. He believes this was a fantastic Council and also respects Mr. Beasley greatly; however, they need to get to work to make this year a success.

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Alvarez reiterated her suggestion to have citizen comments at the beginning and not at the end of the meeting. She thanked the people in charge of Dial-a-Ride for helping her get around when she injured her leg. She stated it was an excellent service which makes things much easier for people in need.

Councilmember Clark noted for the people who were regular speakers at the evening meetings that a little knowledge was a very dangerous thing. She added this did not necessarily apply to everyone speaking tonight or the regulars. However, sometimes, they really believe the press and she will tell them that they will be disabused of that notion the first time they are written about and it's inaccurate. Then they will not be so fast to believe everything they read or hear in the press. She wishes that instead of berating everything about the city including the Council, that those very same people who get up and tell the Council they are no good jerks that don't know what they are doing would instead offer some kind of solution to the problem. On another matter, she was glad to announce they were in the midst of an environmental assessment to hopefully welcome the F-35 to Luke Air Force Base. She asked everyone to support Luke's effort. She wished everyone a very Happy Valentine's Day as well as a Happy Birthday to Arizona.

Councilmember Lieberman thanked everyone who writes and sends letters. He asked them to include their phone number as well as their district. He encouraged everyone to get involved in their city government. He invited everyone to a meeting on Thursday night at the Glendale

Elementary School District office starting at 6:30 pm. Police Chief Conrad will be the guest speaker. He commented on Arizona's 100 Birthday.

Vice Mayor Frate invited everyone to his Neighborhood Meeting on Wednesday the 15th of February from 5:30 to 7:30 p.m. at the Arrowhead Town Center. There will be information on the new prescription cards as well as how to support Luke Air Force Base. In response to a question from a speaker in regards to why he always includes having an Executive Session, the reason was because by law it has to be posted, although they don't always have them. He noted it was a formality and it does not mean they always do it. He reminded everyone to watch children around water. He wished Happy Birthday to his granddaughter, Lauren who turns four today.

Councilmember Knaack stated that in response to a comment made by a speaker, the Council has not approved an additional \$25 million in the budget for the Coyotes and doesn't know where that came from. She explained that the budget meetings are attended by all the departments and city staff as well as the Council. These meetings are televised and in addition people can also stream them from the internet and anyone who wants to watch the meeting has the opportunity. She remarked the last time the city had open workshop meetings there was more staff present than were citizens. She believes the city and Council have made every effort to reach out to the public as well as always being accessible. She said case in point is the Water/Sewer Task Force has only received 28 applications to date out of a city of 260,000 people. She wonders where all the people who complain about the city and how it was run are. She commented that the Legislative Link is a wonderful program however there are only 100 people signed up. She hopes more people get involved and help with solutions. She thanked Mr. Mehta and staff for the countdown pedestrian signs. She wished everyone a Happy Valentine's Day.

Mayor Scruggs thanked the Steigers for being present and for submitting applications for the Water/Sewer Task Force. She said the Council was surprised at the residents' lack of interest in this subject that so many of them had referred to in the past. Mayor Scruggs wished Arizona a Happy Birthday and everyone a Happy Valentine Day. She closed the meeting thanking everyone for their attendance.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:30 p.m.

Pamela Hanna - City Clerk



Council Communication

Business-Voting Agenda

02/28/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Councilmember Joyce Clark

SUBJECT: **BOARDS, COMMISSIONS AND OTHER BODIES**

Purpose

This is a request for City Council to approve the recommended appointments to the following boards, commissions and other bodies that have a vacancy or expired term and for the Mayor to administer the Oath of Office to those appointees in attendance.

Board of Adjustment

Jeff Blake – Chair	Mayoral	Appointment	02/28/2012	06/30/2012
Cathy Cheshier – Vice Chair	Cholla	Appointment	02/28/2012	06/30/2012

Citizens Bicycle Advisory Committee

Garrett Simpson – Vice Chair	Barrel	Reappointment	03/05/2012	03/05/2013
------------------------------	--------	---------------	------------	------------

Commission on Persons with Disabilities

Joan Brainard Pinson	Barrel	Reappointment	02/28/2012	02/27/2014
Karin Kellas	Barrel	Reappointment	02/28/2012	02/27/2014
Shirley Galvez – Chair	Yucca	Appointment	02/28/2012	02/26/2013
Raymond Yaeggi – Vice Chair	Cactus	Appointment	02/28/2012	03/22/2013

Parks and Recreation Advisory Commission

Robert Portillo – Vice Chair	Yucca	Appointment	02/28/2012	02/26/2013
------------------------------	-------	-------------	------------	------------

Recommendation

Make appointments to the boards, commissions and other bodies and administer the Oaths of Office.


 Ed Beasley
 City Manager



CITY OF GLENDALE

Council Communication

Business-Voting Agenda

02/28/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Susan Matousek, Revenue Administrator

SUBJECT: **LIQUOR LICENSE NO. 5-3457, CIRCLE K STORE #3441**

Purpose

This is a request for City Council to approve a location-to-location transferable series 9 (Liquor Store - All Liquor) license for Circle K Store #3441 located at 4303 West Glendale Avenue. The Arizona Department of Liquor Licenses and Control application (No. 09070190) was submitted by Kim Kenneth Kwiatkowski.

Background

The location of the establishment is 4303 West Glendale Avenue in the Cactus District. The property is zoned C-3 (Heavy Commercial). The population density within a one-mile radius is 24,403. This series 9 is a location-to location transferrable license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
06	Bar - All Liquor	3
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	4
10	Liquor Store - Beer and Wine	9
12	Restaurant	3
	Total	20

The City of Glendale Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

Public Input

No public protests were received during the 20-day posting period.

Recommendation

Based on information provided under the background, it is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.



Ed Beasley
City Manager



Attachment Memorandum

DATE: 02/28/2012

TO: Ed Beasley, City Manager

FROM: Susan Matousek, Revenue Administrator

SUBJECT: LIQUOR LICENSE NO. 5-3457, CIRCLE K STORE #3441

1. Finance Department Memorandum
2. Liquor License Map



Finance Department
Memorandum

DATE: February 28, 2012
TO: Ed Beasley, City Manager
FROM: Susan Matousek, Revenue Administrator
SUBJECT: **LIQUOR LICENSE NO. 5-3457, CIRCLE K STORE #3441**

REQUEST: Location-to-Location Transferable

LICENSE: Series 9 (Liquor Store - All Liquor)

LOCATION: 4303 West Glendale Avenue

DISTRICT: Cactus

ZONED: C-3 (Heavy Commercial)

APPLICANT: Kim Kenneth Kwiatkowski

OWNER: Circle K Stores, Inc.

DETAILS OF REQUEST:

1. The population density is 24,403 persons within a one-mile radius.
2. The business is over 300 feet from any church or school.
3. This series 9 is a location-to-location transferrable license, therefore, the approval of this license will increase the number of liquor licenses in the area by one.
4. Circle K Store #3441 has an estimated opening date of August 1, 2012.

CITIZEN PARTICIPATION TO DATE:

No protests were received during the 20-day posting period, November 21 through December 11, 2011.

REVIEW/ANALYSIS:

In accordance with A.R.S. § 4-201(G), the applicant bears the burden of showing City Council that public convenience requires that the best interest of the community will be substantially served by the issuance of a license. Council, when considering a location-to-location transferable series 9 license, may take into consideration the location.

The City of Glendale Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

PLANNING DEPARTMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

STAFF RECOMMENDATION:

It is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

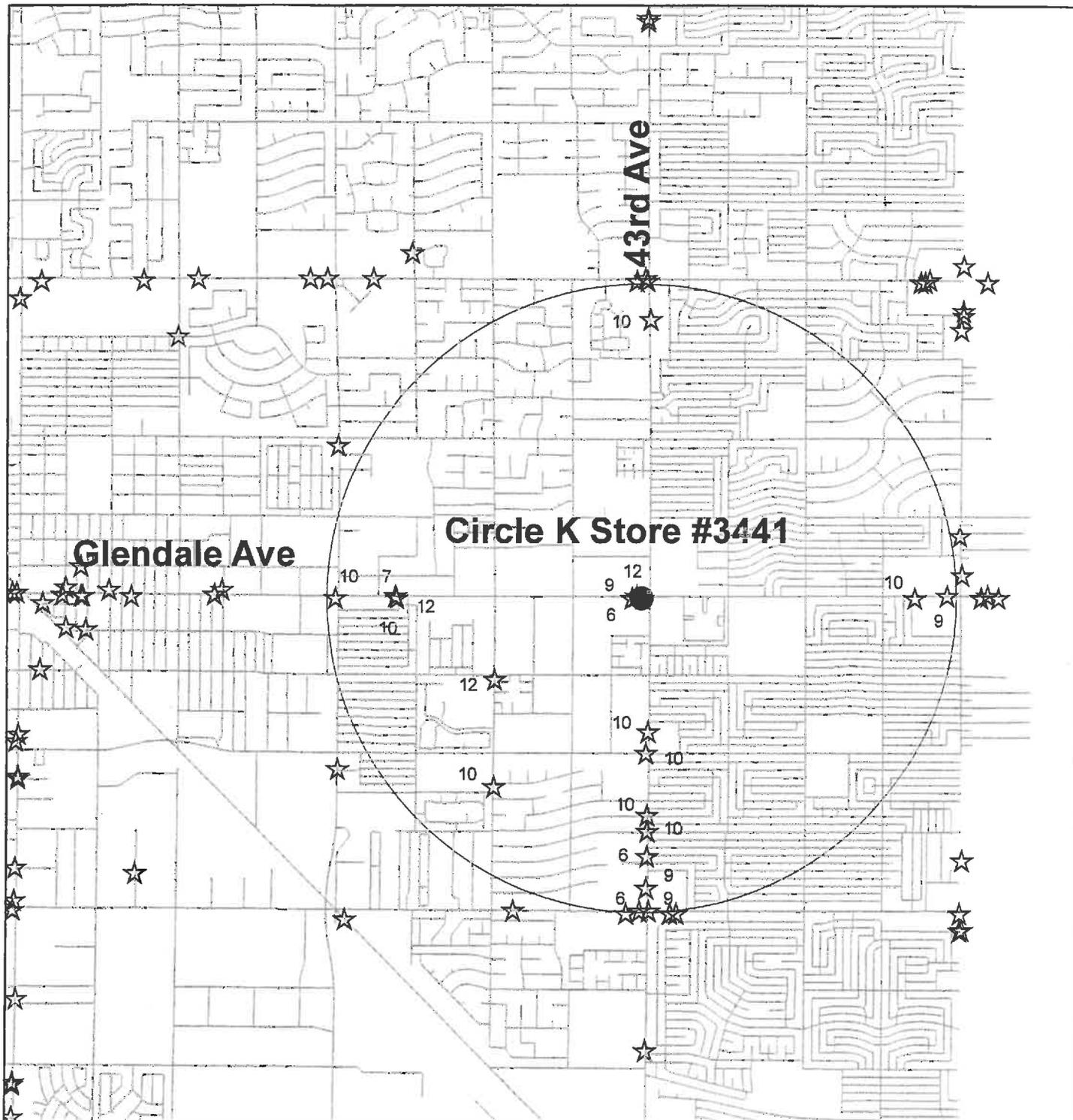
REVIEWED BY:



Revenue Administrator

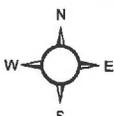


Executive Director-Financial Services



BUSINESS NAME: Circle K Store #3441
LOCATION: 4303 W. Glendale Avenue **ZONING:** C-3
APPLICANT: Kim Kenneth Kwiatkowski **APPLICATION NO:** 5-3457

**SALES TAX AND LICENSE DIVISION
 CITY OF GLENDALE, AZ**



RESOLUTION NO. 4546 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE APPLICATION AND ACCEPTANCE OF A TRANSPORTATION ENHANCEMENT GRANT FROM THE ARIZONA DEPARTMENT OF TRANSPORTATION TO DESIGN AND BUILD A MULTI-USE PATHWAY ON THE EAST BANK OF NEW RIVER NORTH OF HILLCREST BOULEVARD.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Council of the City of Glendale hereby authorizes the application and acceptance of the Transportation Enhancement Grant from the Arizona Department of Transportation to design and build a multi-use pathway on the east bank of New River, north of Hillcrest Boulevard in the City of Glendale.

SECTION 2. That the City of Glendale has 5.7% matching funds in the amount of \$45,044 for said project if the grant is awarded by the Arizona Department of Transportation and that the City of Glendale will pay for all cost overruns incurred on the project and for continued maintenance of the project.

SECTION 3. That the City of Glendale has funds for a scoping document, environmental, right-of-way and utility clearances, design, and Arizona Department of Transportation fee review for said project if the grant is awarded by the Arizona Department of Transportation.

SECTION 4. That construction of the project will be ready for advertisement in three years from the date of approval and award of the project and that the City of Glendale will reimburse the Arizona Department of Transportation and the Federal Highway Administration for all federal funds used if the project is cancelled by the City of Glendale.

SECTION 5. That the City Manager (Ed Beasley) or his designee is hereby authorized and directed to act as an agent of the City of Glendale to conduct all negotiations, execute and submit any and all necessary documents including, but not limited to, applications, Joint Project Agreements, amendments, billing statements and any other document necessary for the completion of the aforementioned project.

SECTION 6. That if the application is approved and awarded, the grant is then hereby accepted on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

g_transp_adot.doc



CITY OF GLENDALE

Council Communication

Business-Voting Agenda

02/28/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services

SUBJECT: **TRANSPORTATION ENHANCEMENT GRANT**

Purpose

This is a request for City Council to adopt a resolution authorizing the application for, and acceptance of, a 2012 Transportation Enhancement grant from the Arizona Department of Transportation (ADOT). Grant funds will be used to design and construct a one-quarter-mile segment of the multi-use pathway along New River.

Background

Transportation Enhancement is a federal program that provides funding for design and construction of pedestrian and bike trails. ADOT administers this federal program and requires a resolution from the applicant city to ensure that, if approved, the city will be responsible for the matching funds, design and construction of the project in a timely manner.

Upon Council approval, a Transportation Enhancement grant application will be submitted to ADOT in order to secure funding for design and construction of a one-quarter-mile segment of the multi-use pathway in the area of 75th Avenue and Hillcrest Boulevard. This missing segment will connect two existing multi-use pathways on the east bank of New River, and will complete Glendale's portion of the New River Pathway. In addition to the concrete pathway, two bridges will be constructed over existing drainage canals at either end of this segment, and an at-grade connection to Hillcrest Boulevard will complete the path.

Community Benefit

This project will allow expanded use of planned and existing New River multi-use pathways in Glendale, and provide continuity of pathways throughout the West Valley and central Phoenix.

Public Input

This project is included in the Glendale Onboard Transportation Program and the Glendale Transportation Plan. If selected for Transportation Enhancement funding, project-specific informational public meetings will be held for the citizens and businesses in the area.

Budget Impacts & Costs

The grant request totals \$745,201. There is a \$45,044 financial match required. Funds for the financial match and ongoing maintenance will be funded in the GO Transportation Program.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
X					\$745,201

Account Name, Fund, Account and Line Item Number:

A specific project account will be established in Fund 1650, the Transportation Services grant fund, once the grant agreement is formally executed.

Recommendation

Waive reading beyond the title and adopt a resolution authorizing the application for, and acceptance of, a 2012 Transportation Enhancement Grant from the Arizona Department of Transportation to design and construct a one-quarter-mile segment of the multi-use pathway along New River .



Ed Beasley
City Manager

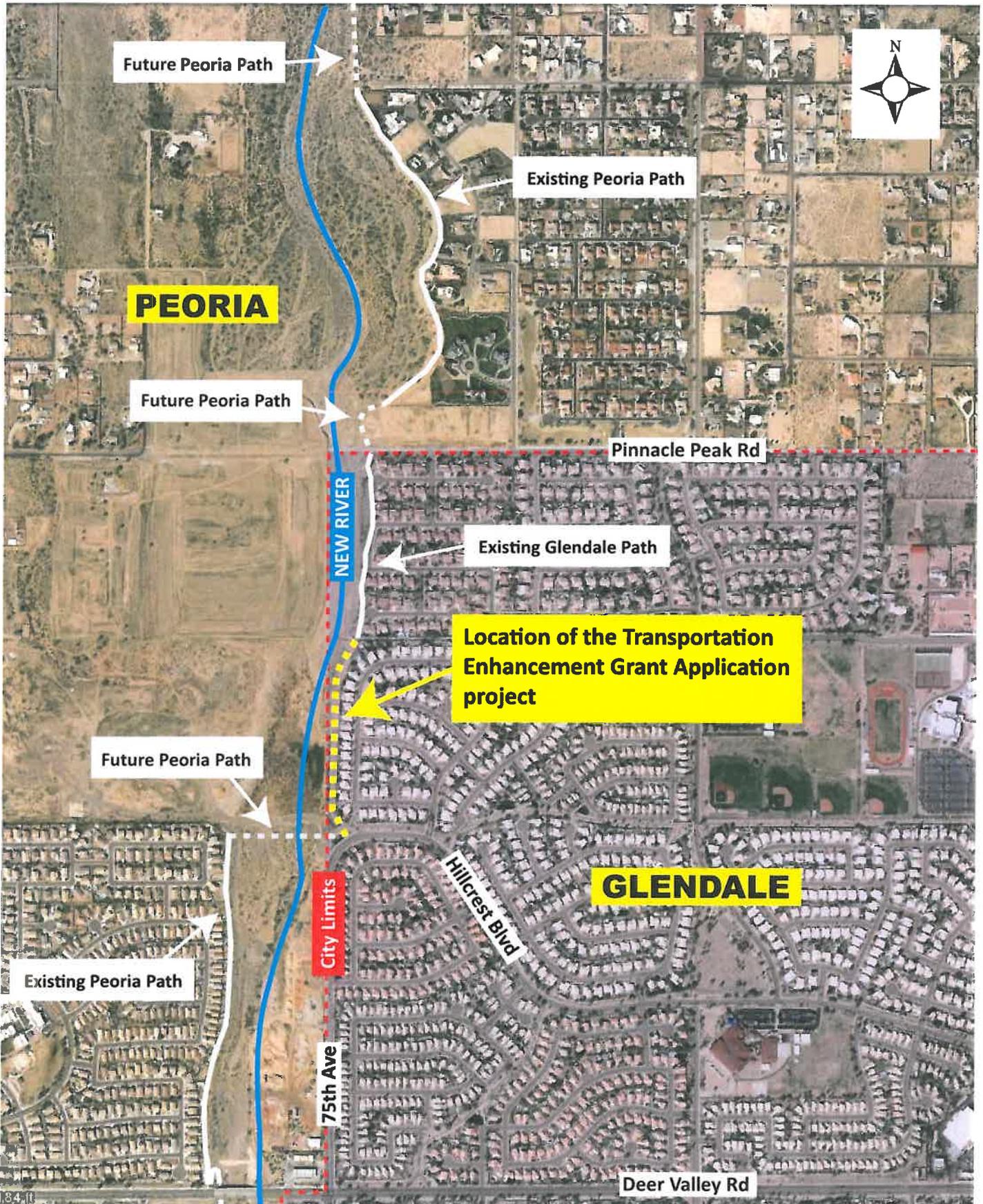


Attachment Memorandum

DATE: 02/28/2012
TO: Ed Beasley, City Manager
FROM: Jamsheed Mehta, AICP, Executive Director, Transportation Services
SUBJECT: TRANSPORTATION ENHANCEMENT GRANT

1. Resolution
2. Map

Location Map



RESOLUTION NO. 4547 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT ENTITLED, "CITY OF GLENDALE DISTRIBUTION DESIGN AND CONSTRUCTION CONTRACT" WITH SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT FOR A NEW TRAFFIC SIGNAL CONTROLLER AT THE INTERSECTION OF 67TH AND MARYLAND AVENUES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that an intergovernmental agreement entitled, "City of Glendale Distribution Design and Construction Contract" with the Salt River Project Agricultural Improvement and Power District for a new traffic signal controller at the intersection of 67th and Maryland Avenues (Tracking # 81464432) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



CITY OF GLENDALE
Council Communication

Business-Voting Agenda

02/28/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer

SUBJECT: INTERGOVERNMENTAL AGREEMENT WITH SALT RIVER PROJECT FOR ELECTRICAL SERVICE AT 67TH AND MARYLAND AVENUES

Purpose

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with Salt River Project (SRP) in the amount of \$2,650 for the design, construction and installation of electrical facilities that provide power to the traffic signal controller at the intersection of 67th and Maryland Avenues.

Background

During recent capital improvement projects on 67th Avenue from Camelback Road to Grand Avenue, SRP overhead power distribution lines and facilities were relocated underground to accommodate road improvements. The relocation of these facilities has provided the opportunity to upgrade the existing electrical service to power the traffic signal controller at the intersection of 67th and Maryland Avenues. The minimum design fee charged by SRP is \$2,650; the scope of this project falls within that fee structure.

Budget Impacts & Costs

Funding is available in the FY 2011-12 capital improvement plan. There are no additional operations and maintenance expenses associated with this project.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
	X		X		\$2,650

Account Name, Fund, Account and Line Item Number:
 67th Avenue – Camelback to Grand, Account No. 2000-68909-550800, \$2,650

Recommendation

Waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with Salt River Project in the amount of \$2,650 for the design, construction and installation of electrical facilities that provide power to the traffic signal controller at the intersection of 67th and Maryland Avenues.



Ed Beasley
City Manager



Attachment Memorandum

DATE: 02/28/2012

TO: Ed Beasley, City Manager

FROM: Gregory Rodzenko, P.E., Acting City Engineer

SUBJECT: INTERGOVERNMENTAL AGREEMENT WITH SALT RIVER
PROJECT FOR ELECTRICAL SERVICE AT 67TH AND MARYLAND
AVENUES

1. Resolution
2. Agreement
3. Map



City of Glendale Distribution Design and Construction Contract

CUSTOMER IMPROVEMENTS
SRP - XCT 341
P.O. Box 52025
Phoenix, AZ 85072-2025

SRP Contact: Christopher Ybarra
Contact Phone: (602) 236-3762
Contact Fax:
Date: 01/23/2012

ATTN: Jim McMains
City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301

Salt River Project Agricultural Improvement and Power District, an agricultural improvement district organized and existing under the laws of the State of Arizona (SRP), and City of Glendale (Customer) enter into this contract (Contract) for the design and construction of electrical facilities for the following Customer project (Project):

Customer Project:	6698 W MARYLAND AVE TS	Job Order #:	
Location:	6698 W MARYLAND AVE TS	Tracking #:	81464432
Project Information:	SVC UG Commercial Install	Total Amps:	200
Square Footage:	Min: , Max:	Dev. Type:	PAC
Delivery Voltage(s):	200A 120/240V 1PH 3W	Originating Cost Center:	82515

This Contract includes the attached Terms and Conditions and describes the general obligations of SRP and Customer. Any changes, amendments, or modifications to this Contract must be in writing and signed by both parties. Customer understands that SRP will not begin design services until Customer signs and returns this contract and pays the Contribution in Aid of Construction (CIAC) fee below. If the job is cancelled or Customer fails to diligently proceed to completion (as described below), the portion of the CIAC fee that was not used (if any) may, at SRP's discretion, be refunded. Upon completion of the design services, SRP shall provide Customer a set of design drawings for the Project, which will contain construction details. Additional fees, if applicable, will be billed separately under an Addendum to this Contract signed by both parties.

Description	Amount
CIAC fee:	\$2,650.00
Comments:	200A service only fee

SRP shall not be required to perform inspections or begin any construction or installation work on the Project until Customer (i) accepts the design drawings by signing them, (ii) pays SRP the CIAC fee, and (iii) provides to SRP a copy of a deed or deeds evidencing ownership of all of the real property that is encompassed within or will be affected by the Project (the Real Property). If the deed(s) show that Customer is not the sole owner of all of the Real Property, Customer shall provide written documentation acceptable to SRP that establishes Customer's authority to act on behalf of each of the other owners in connection with the Project before SRP will begin any construction or installation work under this Contract. If Customer is unable to provide such documentation, and as a result SRP is required to modify its designs for the Project, Customer shall be responsible for paying in advance the estimated additional costs of the redesign work.

SRP may terminate this Contract if Customer fails to satisfy all Real Property-related conditions within forty-five (45) days, or if Customer fails to hold a preconstruction meeting with SRP within one hundred twenty (120) days, or if Customer fails to commence actual construction of the SRP facilities within one hundred eighty (180) days, after SRP provides the design drawings to Customer. SRP may also terminate this Contract if, in SRP's determination, Customer is not actively constructing the SRP facilities for the Project.

SRP's delivery of this Contract to Customer constitutes an offer to perform the design and construction services on the terms and conditions set forth in this Contract. Customer may accept this offer by signing this Contract (with no additions, deletions, or modifications) and returning it to SRP with the CIAC fee, payable by check or money order. This offer shall expire if Customer has not signed and returned this Contract to SRP with the CIAC fee on or before 02/22/2012.

If Customer changes the Project, or if there is any change to the information regarding the Project provided by Customer and relied upon by SRP, SRP will charge Customer and Customer shall pay for any additional costs incurred by SRP, including but not limited to redesign and engineering costs. Such costs may be retained by SRP from any funds previously collected from Customer, or billed directly to Customer, as appropriate.

Customer understands and agrees to the terms and conditions of this Contract. The undersigned represents and warrants that he or she has the authority to sign this Contract on behalf of Customer.



**City of Glendale Distribution Design and Construction Contract
Continued**

The individuals signing below on behalf of the parties hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of the parties, and that this Agreement is binding upon the parties:

"SRP":

THE SALT RIVER PROJECT, an Arizona Agricultural Improvement District

By: Chris Reynoso CPREYNOS@SRPNET.COM
Printed Name E-Mail Address

Its: _____

"Customer":

CITY OF GLENDALE, an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney



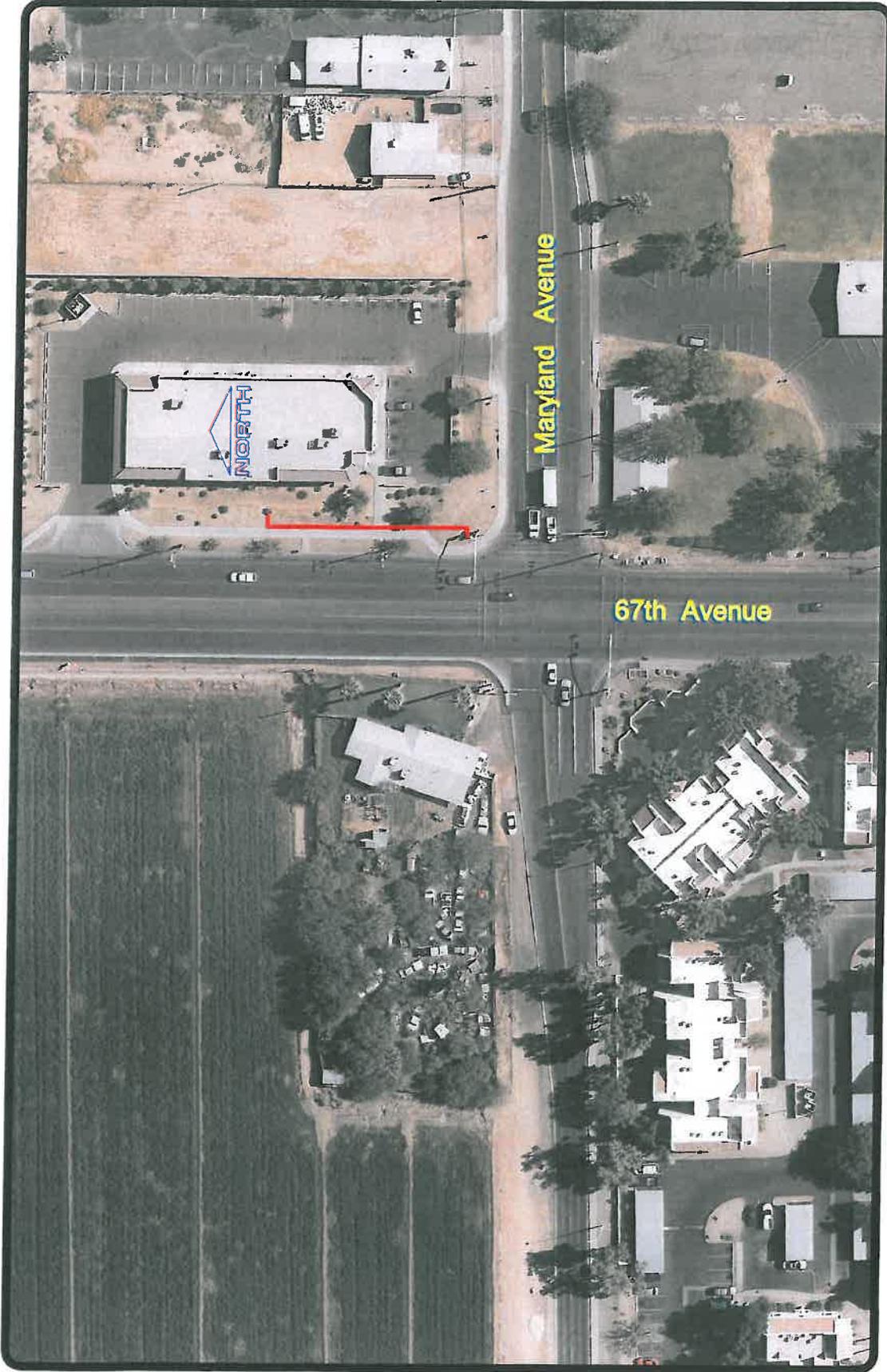
Terms and Conditions

1. The existing applicable SRP Rules and Regulations, as they may be amended or revised from time to time by SRP, and all terms and conditions thereof, are adopted and incorporated herein by reference as part of this Contract except as specifically modified herein. The Rules and Regulations can be found at <http://www.srpnet.com> and are on file at the principal offices of SRP.
2. SRP shall construct all electric facilities up to the point(s) of delivery, including any connections to electric, in accordance with the SRP Rules and Regulations and SRP construction specifications and practices.
3. CUSTOMER shall provide SRP all drawings and data requested by SRP that are pertinent to the design of the Customer Project. SRP shall review such drawings and data for compatibility with SRP facilities and shall have sole discretion in determining whether the CUSTOMER facilities may be used with SRP's facilities.
4. Customer shall provide SRP all requested easements, including any easements required from third parties, for SRP to access and maintain the electric facilities installed under this Contract, using SRP's standard form(s) of easement. Customer, at all times, shall permit SRP to access and maintain any SRP electric facility on Customer property. Customer understands and agrees that SRP shall have no obligation to provide electric service to the Project unless and until Customer has provided all such easements.
5. CUSTOMER shall require that any construction work performed by CUSTOMER or its contractor or subcontractor shall be in accordance with national and local building and safety codes, the SRP Electric Service Specifications and construction drawings, and the Electric Utility Service Entrance Requirements Committee.
6. CUSTOMER shall secure all required State, County, and local permits and approvals to receive electric service.
7. Unless otherwise agreed in writing by SRP, Customer shall perform, at Customer's sole expense, all trenching, provision and installation of conduit, backfilling and surveying with property pins and grade stakes ("Customer Work"). All Customer Work shall conform to SRP's standards. Customer shall forward all results of survey to SRP for review and approval. Upon Customer's request, SRP may provide survey services for the Project under a separate written agreement.
8. SRP shall not be responsible for, and Customer shall indemnify, defend and hold harmless SRP and members of its governing bodies, its officers, agents and employees, for, from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities ("Claims") arising out of or relating to Customer's performance of the Customer Work, including without limitation Claims arising out of the performance of Customer Work on property not owned by Customer.
9. Prior to SRP's installing any electric facility, the CUSTOMER shall install all water and sewer facilities and backfill. CUSTOMER shall not install any curb, sidewalk, paving, or any conflicting foundation within the development boundaries until SRP completes the installation of the electric facilities.
10. CUSTOMER shall permit SRP to inspect, at any time, any CUSTOMER provided facility. Any inspection by SRP shall not be deemed an approval of any CUSTOMER provided facility or a waiver by SRP of any right to enforce strict compliance with the terms and conditions of this Contract.
11. CUSTOMER, upon demand, shall reimburse SRP for the costs of relocation of facilities found to be installed at the wrong location or grade due to CUSTOMER requested changes in property lines, easement grade, and/or errors in staking, trenching, or survey.
12. If Customer's load grows to a total coincident demand of 6,740 kVA or greater, but less than 11,800 kVA, the load will be served from at least one dedicated SRP feeder circuit or a substation dedicated to serve only Customer. Any dedicated feeder circuit(s) or substations shall be provided by SRP at the sole expense of Customer. Notwithstanding the foregoing, Customer may elect to provide its own substation at Customer's sole expense. Any dedicated substation, whether provided by SRP or Customer, shall be owned, operated, and maintained by Customer or its agents at Customer's sole expense.
13. CUSTOMER shall indemnify, defend, and hold harmless SRP, the members of its governing bodies, and its directors, officers, employees, agents and contractors for, from and against any loss, damage, liability, cost, or expense incurred by SRP, members of its governing bodies, directors, officers, employees, agents or contractors arising out of any act or omission of CUSTOMER, or its directors, officers, employees, agents, contractors, or subcontractors. CUSTOMER's obligation under this section shall extend to defend SRP when SRP, or members of its governing bodies, directors, officers, employees, agents or contractors are allegedly concurrently negligent with CUSTOMER, its directors, officers, employees, agents, contractors, or subcontractors, but shall not extend to any liability caused by the sole negligence of SRP. CUSTOMER shall release SRP from any loss, damage, liability, cost, or expense incurred by CUSTOMER arising out of (i) any delay by SRP in performing, completing, or inspecting any work or (ii) any loss or damage to any installation prohibited by Section 9 caused by the negligent act or omission of SRP.
14. This Contract shall be interpreted, governed by and construed in accordance with the substantive and procedural laws of the State of Arizona, without regard to conflicts of law principles. SRP and CUSTOMER agree that any action, suit, or proceeding arising out of or relating to this Contract shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Maricopa County, Arizona, and the parties irrevocably submit to the jurisdiction and venue of such court. To the fullest extent permitted by law, SRP and CUSTOMER hereby irrevocably waive any and all rights to a trial by jury and covenant and agree that neither will request a trial by jury, with respect to any legal proceeding arising out of or relating to this Contract.
15. The title to all work performed by SRP, or performed by CUSTOMER at SRP's request and accepted by SRP, shall remain with SRP at all times.



**Terms and Conditions
(Continued)**

16. CUSTOMER shall meet with an SRP inspector before construction begins. **The meeting may be scheduled by calling Customer Improvements 602-236-0436 or the SRP Distribution Design Consultant.**
17. Security deposits for electrical service also may be required. Please call 602.236.8833 at least 30 days prior to the meter-set need-date.
18. SRP warrants, to the extent applicable: (i) under A.R.S. §41-4401, compliance with all federal immigration laws and regulations that relate to its employees; and (ii) compliance with A.R.S. §23-214(A), which requires registration and participation with the E-Verify Program. SRP certifies, to the extent applicable under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that it has no "scrutinized" business operations, as defined in the above referenced statutes, in Sudan or Iran.



**NORTHEAST CORNER 67TH & MARYLAND AVENUES
NEW SRP ELECTRICAL SERVICE**



RESOLUTION NO. 4548 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A RIGHT OF WAY LICENSE AGREEMENT WITH SALT RIVER PROJECT FOR THE USE OF 95TH AVENUE BETWEEN MISSOURI AVENUE AND THE NORTH LINE OF THE PENDERGAST WEST SUBDIVISION (APPROXIMATELY 280 FEET NORTH OF SAN MIGUEL AVENUE) FOR PUBLIC PURPOSES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Manager or his designee is hereby authorized to execute and deliver a Right of Way License agreement with Salt River Project for the use of 95th Avenue between Missouri Avenue and the north line of the Pendergast West subdivision (approximately 280 feet north of San Miguel Avenue) for public purposes, on file with the City Clerk.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



CITY OF GLENDALE

Council Communication

Business-Voting Agenda

02/28/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer

SUBJECT: **RIGHT-OF-WAY LICENSE AGREEMENT WITH SALT RIVER PROJECT FOR 95TH AVENUE, NORTH OF MISSOURI AVENUE**

Purpose

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a right-of-way license agreement with Salt River Project (SRP) for use of 95th Avenue between Missouri Avenue and the north property line of the Pendergast West subdivision (approximately 280 feet north of San Miguel Avenue).

Background

SRP is installing a new irrigation pipeline within 95th Avenue. In order to preserve rights for the presence of city facilities and continued public use of the road, SRP is granting a right-of-way license to the city over this segment of 95th Avenue.

Recommendation

Waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a right-of-way license agreement with Salt River Project for use of 95th Avenue between Missouri Avenue and the north property line of the Pendergast West subdivision (approximately 280 feet north of San Miguel Avenue).

Ed Beasley
City Manager



Attachment Memorandum

DATE: 02/28/2012
TO: Ed Beasley, City Manager
FROM: Gregory Rodzenko, P.E., Acting City Engineer
SUBJECT: RIGHT-OF-WAY LICENSE AGREEMENT WITH SALT RIVER
PROJECT FOR 95TH AVENUE, NORTH OF MISSOURI AVENUE

1. Resolution
2. License
3. Map

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT
Land Department/PAB350
P. O. Box 52025
Phoenix, Arizona 85072-2025

RIGHT OF WAY LICENSE

Maricopa County

R/W No. 109 Agt. PAR
W WAM C _____

KNOW ALL MEN BY THESE PRESENTS:

That for the consideration of One (\$1.00) Dollar and other valuable considerations, **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, Licensor, hereby grants to the **City of Glendale, an Arizona municipal corporation**, Licensee, a Right of Way License ("License") conveying the nonexclusive right and privilege to enter upon and use the following described certain real property ("Licensed Property") for roadway and landscaping, water and sewer lines, situated in the County of Maricopa, State of Arizona, to-wit:

See Exhibit A attached hereto and by reference made a part hereof.

This License is subject to the paramount rights of the United States of America ("USA") in and to the Licensed Property, federal reclamation law, and all agreements existing and to be made between and among the U.S.A., the Salt River Valley Water Users' Association ("Association") and Licensor regarding the management, care, operation and maintenance of the Reclamation Project.

The License herein granted shall be subject to the following additional conditions:

- 1) Licensor shall retain the prior right to construct, reconstruct, operate and maintain its existing and future irrigation, electrical and telecommunication facilities within the Licensed Property herein granted.
- 2) This License is nonexclusive and nothing herein shall be construed to prevent or restrict Licensor from granting other privileges to use the Licensed Property in a manner not inconsistent with Licensee's use of the Licensed Property in accordance with this License.

- 3) Licensor shall not be liable for any expense, cost or charge arising from Licensee's exercise of rights granted herein. Licensee shall reimburse Licensor for all costs and expenses incurred by Licensor to remove or relocate irrigation or electrical facilities and landscaping to accommodate the purposes for which this License is issued.
- 4) Prior to making any improvements or requesting any proposed alteration to existing structures within the Licensed Property, Licensee shall submit plans for Licensor's approval. Such approval shall not be unreasonably withheld.
- 5) To the extent not prohibited by law or expressly excepted herein, Licensee, its successors and assigns ("Indemnitors"), shall indemnify, release, and hold harmless Licensor, Association and the United States of America ("Indemnitees") and the directors, officers, employees, agents, successors and assigns thereof, against and from any damage, loss or liability caused in whole or in part by Licensee, regardless of whether caused in part by Indemnitees or any of them, and suffered by Indemnitees as a result of any claim, demand, lawsuit or action of any kind, whether such damage or loss is to person or property, arising out of, resulting from or caused by: (a) the acts or omissions of Licensee, its agents, contractors, officers, directors, or employees; (b) Licensee's use or occupancy of the Licensed Property for the purposes contemplated by this License, including but not limited to claims by third parties who are invited or permitted onto the Licensed Property, either expressly or impliedly, by Licensee or by the nature of Licensee's improvement or other use of the Licensed Property pursuant to this License; (c) Licensee's failure to comply with or fulfill its obligations established by this License or by law. Such obligation to indemnify shall extend to and encompass all costs incurred by Licensor in defending against such claims, demands, lawsuits or actions, including but not limited to attorney, witness and expert witness fees, and any other litigation related expenses. Indemnitors' obligation pursuant to this Section shall not extend to any damage, loss or liability as a result of any claim, demand, lawsuit or action of any kind, whether such damage, loss or liability is to person or property arising out of, resulting from or caused by the sole, exclusive acts or omissions of Indemnitees, their contractors, directors, officers, employees, agents, successors or assigns for which Licensor shall indemnify, release and hold harmless Indemnitors. Licensor's obligation to indemnify Indemnitors shall extend to and encompass all costs incurred by Indemnitors in defending against such claims, demands, lawsuits or actions, including but not limited to attorney, witness and expert witness fees, and any other litigation related expenses. The provisions of this Section shall survive termination of this License.
- 6) The License herein granted is subject to all prior licenses, leases, and easements of record.
- 7) Either party may terminate this License without cause upon not less than 360 days written notice.

IN WITNESS WHEREOF, **City of Glendale, an Arizona municipal corporation**, has caused its name to be executed by its duly authorized representative(s), this _____ day of _____, _____.

APPROVED AS TO FORM

LICENSEE:
City of Glendale, an Arizona municipal corporation,

City Attorney

By _____

Its _____

ATTEST:

City Clerk

STATE OF _____)

) ss

COUNTY OF _____)

The forgoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, as _____, **City of Glendale, an Arizona municipal corporation of the State of Arizona**, on behalf of such corporation.

Notary Public

My Commission Expires: _____

Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and (A)(3).

EXHIBIT "A"

All the area described in that Certain Quit Claim Deed from John W. Pendergast and Linnie A. Pendergast, his wife conveyed to the United States of America, dated July 10, 1937, recorded November 13, 1937 in Book 314 of Deeds, pages 497-498, records of Maricopa County, Arizona and being more particularly described as follows:

That certain ditch as now located and constructed through, over and across the South Half of the Northeast Quarter (S ½ NE ¼) of Section Sixteen (16), Township Two (2) North, Range One (1) East, Gila and Salt River Base and Meridian, together with sufficient land on each side of said ditch to permit of the economical operation and maintenance thereof, said ditch extending from the North to South boundaries of the S ½ of the NE ¼ of said Section 16, along and immediately East of the West line thereof.



**SALT RIVER PROJECT RIGHT OF WAY LICENSE
95TH AVENUE, NORTH OF MISSOURI AVENUE**

RESOLUTION NO. 4549 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT FOR LANDFILL DISPOSAL SERVICES WITH THE CITY OF PEORIA.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that an Intergovernmental Agreement between the City of Peoria and the City of Glendale for Landfill Disposal Services be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



CITY OF GLENDALE

Council Communication

Business-Voting Agenda

02/28/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager
PRESENTED BY: Stuart Kent, Executive Director, Public Works

SUBJECT: **INTERGOVERNMENTAL AGREEMENT WITH THE
CITY OF PEORIA FOR SOLID WASTE DISPOSAL
SERVICES**

Purpose

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the City of Peoria (Peoria) for solid waste disposal services.

Background

In an effort to seek new opportunities, the City of Glendale is offering solid waste disposal services to Peoria through an IGA. The agreement is mutually beneficial to both parties in that it secures tonnage with guaranteed annual revenue for the Glendale landfill, and it provides Peoria with an alternate disposal location for greater flexibility and efficiencies while routing solid waste collection vehicles. Additionally, the proposed annual tonnage will have no significant impact on the life of the landfill with current projections at close to forty years.

Peoria proposes to deliver 5,000 to 10,000 tons of solid waste each year to the Glendale landfill. For this tonnage amount, Peoria will pay a disposal rate of \$25.00 per ton through June 30, 2012. The rate will be adjusted on July 1, 2012 through June 30, 2013 to \$26.50 per ton, and to \$28.00 for the period of July 1, 2013 through June 30, 2014. The pricing terms include a discounted rate of \$3.50 per ton less than the disposal rates listed above for disposing of 30,000 tons or greater at the Glendale landfill during the term of the agreement. Landfill disposal rates are determined and evaluated annually with assistance from a solid waste rate model provided by R.W. Beck, a solid waste management consultant, and the proposed Peoria IGA disposal rates are consistent with the rate model.

Upon Council approval, the IGA will become effective immediately and will continue thereafter until June 30, 2014. The agreement contains an option that will permit the City Manager, at his discretion, to extend the term for two additional three-year periods, on the terms and conditions acceptable to both Glendale and Peoria. The Peoria City Council approved this agreement on January 3, 2012.

Community Benefit

The waste received from Peoria will result in increased revenues and will maintain low cost solid waste disposal operations for Glendale residents.

Budget Impacts & Costs

Gross revenue from landfill tonnage received through this agreement is projected to be approximately \$125,000 in FY 2011-12, and the revenue will be deposited into Landfill Revenue Account 2440-02440-480600.

Recommendation

Waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with the city of Peoria for solid waste disposal services; and further authorizing the City Manager, at his discretion, to extend the term in accordance with the provisions of the intergovernmental agreement.



Ed Beasley
City Manager



Attachment Memorandum

DATE: 02/28/2012

TO: Ed Beasley, City Manager

FROM: Stuart Kent, Executive Director, Public Works

SUBJECT: INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF
PEORIA FOR SOLID WASTE DISPOSAL SERVICES

1. Resolution
2. Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF PEORIA
AND
THE CITY OF GLENDALE FOR
LANDFILL DISPOSAL SERVICES

THIS INTERGOVERNMENTAL AGREEMENT FOR LANDFILL DISPOSAL SERVICES ("Agreement") is made and entered into on _____, 2012, between the City of Peoria, an Arizona municipal corporation ("Peoria") and the City of Glendale, an Arizona municipal corporation ("Glendale"). Peoria and Glendale are referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

A. Peoria and Glendale intend to enter into this Agreement for Landfill Disposal Services. Peoria and Glendale are authorized and empowered by provisions of their respective city charters and Arizona Revised Statutes § 11-952 to enter into this Agreement.

B. Peoria and Glendale find it mutually beneficial for Glendale to provide landfill disposal services to Peoria.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Peoria and Glendale hereby agree as follows:

1. Definitions.

The capitalized terms contained in this Agreement and not otherwise defined shall have the meanings set forth below:

"Acceptable Waste" means household solid waste collected by the Parties in their respective service areas for disposal in the Landfill that is normally generated by business, industrial, and commercial establishments, which consists of (i) household wastes; (ii) commercial waste (originating from entities such as restaurants, stores, markets, theaters, hotels, and warehouses); (iii) institutional waste material originating in schools, hospitals, research institutions, and public buildings; (iv) small amounts of remodeling, demolition, roofing materials and other construction debris; (v) water treatment plant or wastewater sludge, capable of passing the mandated paint filter test, and delivered with an acceptable lab report (sample analysis according to appropriate waste testing protocol established by the Facility, as defined below); and (vi) friable and non-friable asbestos containing waste material. Acceptable Waste does not include any Hazardous Waste, Special Waste, Medical Waste, including "red bags," or Unacceptable Waste, as defined herein, or any other waste not normally accepted at the Facility, as such term is defined below.

"Applicable Laws, Rules, and Regulations" means the laws, statutes, regulations and rules enacted by the federal government or any agency thereof, the state or any political subdivision thereof, affecting the permitting, operation or use of the Facility (as defined below), as such laws, statutes, regulations and rules are now in effect or as adopted subsequently.

"Contract Year" means one fiscal year period of July 1 through June 30.

L CON 00312A

"Dollars" means United States dollars.

"Facility" means the Glendale Municipal Landfill located at 11480 West Glendale Avenue, Glendale, Arizona.

"Fiscal Year" means the City of Glendale's calendar for a fiscal year, currently July 1 through June 30.

"Force Majeure" means any act, event, or condition having a direct, material, adverse effect on the ability of the Facility to accept or dispose of Acceptable Waste, if such act, event, or condition is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement. Such acts, events, or conditions shall include, but shall not be limited to, the following:

- A. An act of God, lightning, earthquake, fire, severe weather conditions, epidemic, landslide, drought, hurricane, tornado, storm, explosion, partial or entire failure of utilities, flood, nuclear radiation, act of a public enemy, war, blockade, insurrection, riot, disturbance, labor strike or interruption, extortion, sabotage or similar occurrence or any exercise of the power of eminent domain, condemnation or other taking by the action of any governmental body on behalf of any public, quasi-public or private entity.
- B. The order, judgment, action, or determination of any court, administrative agency, or governmental body: (1) that adversely affects the (a) operation of the Facility, (b) the right or ability for the Facility to accept Acceptable Waste by road or (c) the right or ability of the Facility to dispose of the Acceptable Waste; or (2) resulting in the suspension, termination, interruption, denial or failure of renewal of issuance of any permit, license, consent, authorization, or approval necessary to the operation of the Facility, or acceptance, processing, transportation, or disposal of Acceptable Waste; unless, it is shown that such order or judgment is the result of the grossly negligent, willful, or intentional action or inaction of the Party relying thereon or is the result of grossly negligent or willful violation of Applicable Laws, Rules and Regulations, as replaced or amended, and provided further that the contesting in good faith of any such order or judgment shall not constitute or be construed as a grossly negligent, willful or intentional action or inaction of such Party.
- C. The denial of an application, failure to issue, or suspension, termination, or interruption in the issuance or renewal of any permit if such denial, suspension, termination, interruption, or failure is not also the result of a wrongful or negligent act or omission or a lack of reasonable diligence of the Party relying thereon; provided that, the contesting in good faith or the failure in good faith to contest any such denial, suspension, termination, interruption, imposition or failure shall not constitute or be construed as such a wrongful or negligent act or omission or lack of reasonable diligence.
- D. The failure of any subcontractor or supplier to furnish services, materials or equipment on the dates agreed to if such failure is caused by a Force Majeure, if and to the extent, and only so long as Glendale is not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment.

"Gate Rate" means the tipping fee for Acceptable Waste charged to a non-contract vehicle using the Landfill. The Gate Rate shall include any applicable taxes, fees, or levies, as replaced or amended, that the Landfill is required to pay for waste delivered to and accepted at the Landfill.

"Hard to Handle Waste" means waste requiring special handling such as the burial in an area away from the main working face of the Landfill, the breaking up of large materials as mobile homes or pieces of concrete, spools of wire and Hot Loads (as defined below).

"Hazardous Waste" means (A) any material or substance which, by reason of its composition or characteristics, is (1) toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq.*, as replaced or amended, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced or amended, or any laws of similar purpose or effect, and any rules, regulation, or policies thereunder, or (2) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954; (B) other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for transfer through, transportation by, or disposal from or to the Facilities; and (C) any material which would result in process residue being hazardous waste under (A) and (B) above.

"Hot Load" means any load of materials delivered to the Facility that is emitting smoke, fire or fumes, or may be in imminent danger of fire or explosion.

"Medical Waste" means any material or substance that, by reason of its composition or characteristics, is medical waste as defined by the Arizona Department of Environmental Quality.

"Special Waste" means any waste that is defined as a Special Waste under or pursuant to Arizona Revised Statutes § 49-851 *et seq.*, federal, or local laws or regulations, as replaced or amended.

"Tipping Fee" shall mean the total rate charged and adjusted by Glendale for disposal by Peoria at the Facility, as more fully set forth in Section 3.3 of this Agreement. The Tipping Fee shall include any applicable taxes, fees, or levies, as replaced or amended, that the Facility is required to pay for waste delivered to and accepted by the Facility.

"Ton" means two thousand (2,000) U.S. pounds.

"Unacceptable Waste" means that portion of solid waste that may not be disposed of at the Facility, such as, but not limited to: (A) explosives, radioactive materials, medical waste or infectious waste, tires (excluding tires delivered by Peoria residents as per Section 2.1 b), residential cesspool waste, sewage, and sludge; (B) motor vehicles, including major motor vehicle parts, and agricultural and farm machinery and equipment; (C) used oil; (D) materials that, in the reasonable judgment of Peoria and Glendale may present a risk to health or to safety, or has a reasonable possibility of adversely affecting the operation of the Facility such as Hot Loads; or (E) waste not authorized for disposal at any Facility by those entities having jurisdiction over any waste, the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste also includes any waste that is now or hereafter defined by federal/state law or by the disposal jurisdiction as radioactive waste, Medical Waste including "red bags," Special Waste, or Hazardous Waste.

2. Delivery of Acceptable Waste.

2.1 Acceptable Waste Delivered.

- A. Peoria shall use its reasonable best efforts to ensure that all materials delivered to the Facility shall constitute only Acceptable Waste. Glendale shall have the right to refuse to accept Unacceptable Waste at the Facility. Peoria will be charged the fees established in Section 3.3 below.

- B. Peoria residents will be charged the established rate in section 3.3 below for Acceptable Waste delivered in self-hauled loads to the Facility for disposal. All appliances containing Freon will be assessed a separate fee to cover the cost the Facility incurs for Freon removal. The fee is subject to change at any time to reflect the market cost of Freon removal.
- C. Waste tires delivered by Peoria residents will be accepted and assessed a waste tire handling fee of \$3.00 per tire in addition to the Tipping Fee. The tires must be from passenger vehicles or small non-commercial trucks, and shall not contain rims. Off-road vehicle tires will not be accepted. Peoria residents will be limited to the delivery of five waste tires every 90 calendar days. This waste tire handling fee is subject to change at any time to reflect the Facility cost of handling.
- D. Peoria and Glendale recognize that even though certain solid waste would constitute Acceptable Waste, it can be of such a quantity or character as to require special handling for disposal (Hard to Handle Waste). In the event Glendale identifies Acceptable Waste as Hard to Handle Waste, it shall notify Peoria of any additional charges related to disposal of same prior to disposal.
- E. Peoria and Glendale recognize that although waste tires with or without rims constitute Unacceptable Waste, they may on occasion be mixed with Acceptable Waste without Peoria's knowledge or intent. In such event, waste tires will be handled by the Facility. However, should the receipt of such unacceptable waste tires become an unreasonable burden on the Facility, both parties agree to make a reasonable effort to resolve the problem. Waste tires delivered by Peoria residents, as discussed above, are not included as Unacceptable Waste.

2.2 Weighing of Acceptable Waste.

- A. Each vehicle delivering Acceptable Waste shall have a vehicle identification number permanently indicated and conspicuously displayed on the exterior of the vehicle, which is readily visible by the weigh scale operators. Peoria shall provide a certified tare weight for each such identified vehicle. All incoming Acceptable Waste shall be weighed and recorded. From time to time, the Parties may require revalidation of the tare weight of any vehicle or re-weighing of unloaded trucks. Peoria, at no extra cost, shall have the right to monitor the weighing of all vehicles delivering Acceptable Waste to the Facility.
- B. Glendale shall maintain the weighing devices at the Facility for the purpose of providing its services hereunder. Glendale shall test and recalibrate the scales at least once each quarter, or more often if necessary or if required by the Arizona Department of Weights and Measures. Calibration records shall be available for inspection by Peoria.
- C. In the event the scales become temporarily inoperable due to testing or malfunction, Glendale shall estimate the weight of Acceptable Waste delivered to the Facility on the basis of truck volume and historical data obtained through operation of the Facility. These estimates shall serve as official records for the duration of the scale outage. Glendale shall use its best efforts to ensure that no such period of inoperability exists for more than five consecutive days, and in the aggregate not more than 15 days in any 30-day period.

- D. To expedite turnaround time at Facility, Peoria will use the automated, unattended scale system (commonly referred to as the Radio Frequency or RF Scale). Glendale will provide Peoria with a summary of all transactions on a monthly basis as specified in Section 3.1. Information on specific transactions or a daily report will be generated upon request.
- 2.3 **Vehicle Turnaround Time.** Each and every vehicle delivering Acceptable Waste to the Facility shall be able to enter the Facility, unload and exit the Facility within a period of not longer than 20 minutes, with the understanding that bad weather conditions, such as heavy rain, may cause delays beyond the control of the Facility. The average period of not longer than 20 minutes is based on the use of the unattended scale system and an average period of not longer than 8 minutes to unload the Peoria vehicles. Glendale shall provide experienced staff at the Facility to direct incoming drivers.
- 2.4 **Delivery Vehicles.** Acceptable Waste may be delivered to the Facility in a variety of vehicles including, but not limited to, side-loading collection trucks, rear-loading collection trucks, front-loading collection trucks, tractor-trailer vehicles, open top and closed roll-off containers, compactors, and other open or closed vehicles. The Facility shall be equipped to receive all vehicles that are lawfully used to transport Acceptable Waste.
- 2.5 **Hot Loads.** In the event that a Peoria vehicle dumps a Hot Load, Peoria agrees to pay the reasonable costs incurred by Glendale for the handling of that Hot Load, including costs related to response by public safety personnel as well as cleanup and disposal costs related to the material.
- 2.6 **Procedure for Handling Unacceptable Waste.** Unacceptable Waste detected before it is tipped at the Facility disposal area shall not be unloaded from the delivery vehicle. If Unacceptable Waste is detected after it has been unloaded, Glendale shall promptly set aside or isolate the material. Glendale will notify Peoria and provide Peoria with an opportunity to either remove the Unacceptable Waste within eight (8) working hours (provided the waste material does not pose an immediate danger) or instruct Glendale to contract for the removal of the material and invoice Peoria for the removal cost.

3. Statements, Records, and Auditing.

3.1 Monthly Reports, Weight Tickets, and Monthly Reconciliation.

- A. Glendale shall deliver to Peoria within ten working days after the end of the month, an electronic monthly report that shall specify the number of tons of waste received during the previous month. The report will provide a summary of the previous month's weight tickets for all waste received each day at the Facility, including transaction number, truck number, date, time, material type, net tons and total fee. Because the unattended scale system will be used by Peoria vehicles, weight tickets will be provided to drivers only upon request.
- B. Any weight that has been determined by estimate as described in Section 2.2(C) above shall be noted on all records of such weight.
- C. Peoria shall review each monthly report and/or billing statement and pay the fee required for tonnage delivered to the Facility during that month. Peoria will further pay for any additional tonnage based on the established rate in Section 3.3 below. Payment shall be received or remitted in accordance with Glendale remittance

terms, which currently is prior to the last business day of the month. These remittance terms may change to align with any change in business practices. Glendale must notify Peoria in writing regarding any changes to the remittance terms, and any changes will not take effect until at least 90 days after the notice is provided in a manner consistent with Section 13.11 of this Agreement.

3.2 Recordkeeping, Accounting and Auditing.

- A. Glendale shall keep and maintain complete and detailed records related to the delivery of Acceptable Waste and Unacceptable Waste and records providing the basis for the invoicing requirements under this Section including (1) tonnage of Acceptable Waste delivered by Peoria to the Facility and (2) quantities of Unacceptable Waste and the disposition of such material including the character of the waste, the date, time, and vehicle identification of each vehicle. Glendale shall further keep and maintain accurate and complete accounting records and vouchers evidencing all costs, receipts, payments and any other matter of accounting associated with their performance under this Agreement in accordance with generally accepted accounting principles.
- B. Peoria, or its audit representative, shall have the right at any reasonable time to inspect, copy and audit the records, accounting records, vouchers, and any source documents which serve as the basis for charges for Acceptable Waste tonnage (the "Accounting Records"). The Accounting Records shall be available for inspection and audit for a period of three years following the termination of this Agreement, or seven years from the date such Accounting Records were first created, whichever comes first.

3.3 Tipping Fees.

- A. The Tipping Fee for disposal services of 1-29,999 Tons of waste at the Facility shall be as follows:

Tipping Fee 1-29,999 Tons	Effective Date(s)
25.00	January 1, 2012 through June 30, 2012
26.50	July 1, 2012 through June 30, 2013
28.00	July 1, 2013 through June 30, 2014

This Tipping Fee includes the current \$0.25 per ton Arizona Department of Environmental Quality tax.

- B. The Tipping Fee for disposal services of 30,000-49,999 Tons of waste at the Facility shall be as follows:

Tipping Fee 30,000-49,999 Tons	Effective Date(s)
21.50	January 1, 2012 through June 30, 2012
23.00	July 1, 2012 through June 30, 2013
24.50	July 1, 2013 through June 30, 2014

This Tipping Fee includes the current \$0.25 per ton Arizona Department of Environmental Quality tax.

- C. Tonnage will be tracked as trucks pass through the scale and charged the appropriate Tipping Fee per tonnage category up to 29,999 tons as outlined in Section 3.3.A. above. Once Peoria delivers 30,000 tons or more of waste during a Contract Year, Glendale will administratively issue a credit for the tonnage below 30,000 tons. Moving forward for any tonnage over 29,999 tons during a Contract Year, the appropriate tipping fee per tonnage category of 30,000 to 49,999 tons as outlined in Section 3.3.B. above will be charged.
- D. As provided in Section 4.1 of this Agreement, the Tipping Fee shall be reviewed prior to extension of the term of this Agreement as set forth in Section 4.1 below. The Tipping Fee review will be conducted no later than six month prior to the termination of this Agreement, with Tipping Fee adjustments completed and effective on the first date of the renewal date.
- E. The Tipping Fee may be adjusted at any time to reflect any adjustments of, changes to, or additions to Federal, State, or County taxes, fees, or levies for waste accepted at the Facility.
- F. Water treatment plant or wastewater sludge, capable of passing the mandated paint filter test, and delivered with an acceptable lab report (sample analysis according to appropriate waste testing protocol established by the Facility), shall be deposited at the Tipping Fee established for Peoria per this Agreement. The sample analysis shall be conducted every six months.
- G. All appliances containing Freon and delivered by Peoria collection vehicles will be assessed a separate fee, in addition to the Tipping Fee, to cover the cost the Facility incurs for Freon removal. This fee is subject to change at any time to reflect the market cost of Freon removal.
- H. A Hard to Handle Waste fee of \$131.25 per ton will be charged for Hard to Handle Waste as defined in Section 1. This fee includes the current \$0.25 per ton Arizona Department of Environmental Quality tax.

4. Term and Termination.

4.1 Term of Agreement. The term of this Agreement shall begin on the effective date of January 1, 2012, and shall continue thereafter until June 30, 2014. This Agreement may be extended on terms and conditions acceptable to both Glendale and Peoria for two additional periods of three years each, unless terminated pursuant to Section 4.2 below.

4.2 Termination.

- A. Notwithstanding the provisions of Section 4.1 above, Peoria may terminate this Agreement without cause at the end of any Contract Year upon prior written notice to Glendale. Such written notice must be received no later than April 1 of the then-current Contract Year and termination will be effective midnight on June 30 of the then-current Contract Year.
- B. Glendale may terminate this Agreement, at any time, with 180 calendar days written notice to Peoria. There shall be no payment associated with the termination of this Agreement by Glendale.

- C. This Agreement is subject to the provisions of Arizona Revised Statutes § 38-511, as replaced or amended, and may be canceled, without penalty or further obligation, by either Party if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of either Party is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of any other Party to this Agreement in any capacity or consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

5. General Obligations.

- 5.1 **Operation and Maintenance of the Facility.** Glendale shall operate and maintain the Facility in a manner that is consistent with its obligations under this Agreement and is consistent with all Applicable Laws, Rules, and Regulations, as replaced or amended.
- 5.2 **Laws and Regulations.** Glendale shall, in the operation of the Facility and the performance of its obligations under this Agreement, comply with any and all Applicable Laws, Rules, and Regulations, as replaced or amended, during the term of this Agreement, which are applicable to the Parties, their respective employees, agents, or subcontractors, if any.

6. Facility Operations.

- 6.1 **Hours and Days of Operation.** The Facility must be operational to receive Acceptable Waste from 7:30 a.m. to 4:00 p.m., Monday through Friday, and on Saturday from 7:00 a.m. to 3:00 p.m., excluding City of Glendale holidays. Alternative holiday schedules may be established by mutual agreement of the Parties.
- 6.2 **Right to Inspect.** Peoria shall have the right to enter and inspect the Facility to observe operations during operating hours as long as: (A) such visits are conducted in a manner that does not cause unreasonable interference with operations; and (B) any person conducting such visits (1) complies with safety rules and regulations and (2) is escorted by a designated Facility employee.

7. Unacceptable Waste.

- 7.1 **Discovery of Unacceptable Waste.** If Glendale discovers Unacceptable Waste or waste that it suspects is Unacceptable Waste received from Peoria, Glendale shall:
 - A. Isolate, remove and set aside that portion of the load which it determines is or may be Unacceptable Waste.
 - B. Notify Peoria of the discovery of Unacceptable Waste within one hour of that discovery, unless that discovery occurs after 4:00 p.m., in which event notification shall be given by 9:00 a.m. of the next business day.
 - C. Gather, preserve, maintain and make available to Peoria all evidence demonstrating that the Unacceptable Waste was delivered by Peoria.
 - D. Test or arrange to have tested the suspected Unacceptable Waste to ascertain whether that waste is Unacceptable Waste.

E. Allow Peoria to (1) inspect such Unacceptable Waste within eight hours of notice to Peoria of the existence of such waste and (2) test the waste and examine all other evidence gathered by Glendale within 72 hours after the discovery of such waste. For purposes of any inspection conducted, Peoria shall have access to the Facility and/or any other site at which Unacceptable Waste is located, subject to the conditions set forth in Section 6.2 above.

7.2 Rejection of Unacceptable Waste. Glendale shall have the right to reject Unacceptable Waste after the load is unloaded at the Facility by giving notice to Peoria as set forth in Subsection 7.1(B) above. Unacceptable Waste shall be deemed accepted if not rejected.

7.3 Disposal of Unacceptable Waste. If Unacceptable Waste is discovered at the Facility and there is substantial proof that the Unacceptable Waste was delivered to the Facility by Peoria under this Agreement, Peoria shall (A) to the extent practicable, promptly remove and dispose of the Unacceptable Waste or (B) pay Glendale the actual reasonable cost for disposal of the Unacceptable Waste. Peoria shall also pay or reimburse Glendale for the actual reasonable cost of the inspection, testing, identifying and handling of the Unacceptable Waste.

7.4 Disposal of waste not deemed Unacceptable. If, after inspecting and/or testing the waste, Glendale discovers no Unacceptable Waste, or discovers that the Unacceptable Waste was not delivered to the Facility by Peoria, Glendale shall dispose of that waste at no additional cost to Peoria.

8. Representations and Warranties.

Glendale hereby represents and warrants to Peoria that:

- A. Glendale has the full power and authority to execute and deliver this Agreement to Peoria and carry out the transactions contemplated hereby.
- B. Glendale has taken all necessary action to execute, deliver and perform this Agreement.
- C. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein or Glendale's compliance with any of the terms and provisions of this Agreement do not or will not contravene any existing law, judgment, governmental rule, regulation or order applicable to or binding on it or any of its properties which, if violated, would have a material adverse effect on Glendale's obligations under this Agreement.
- D. The Facility is and will remain appropriately permitted or licensed to accept the Acceptable Waste and otherwise perform as required by this Agreement.
- E. Upon execution and delivery of this Agreement by Glendale, it will constitute a legal, valid and binding obligation of Glendale enforceable against it in accordance with the terms hereof.

9. Indemnification.

Each Party (as "indemnitor") agrees, to the extent permitted by law, to indemnify, defend, and hold harmless the other Party and its officers, employees, and elected or appointed officials (as

“indemnitee”) from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney’s fees (collectively referred to as “Claims”) arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims are caused by the negligence, misconduct, intentional act or other fault of the indemnitor, its officers, employees, contractors, elected or appointed officials. Glendale further agrees to indemnify, defend and hold harmless Peoria and its officers, employees and elected or appointed officials for, from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney’s fees arising out of Glendale’s failure to comply with all Applicable Laws, Rules, and Regulations.

10. Obligations during Force Majeure.

10.1 Notice Relating to Force Majeure. If any act or event of Force Majeure occurs which affects either Party’s ability to perform under this Agreement, the Party affected and relying thereon to excuse its performance hereunder shall give oral notice to the other as soon as reasonably practicable, and shall deliver to the other Party within 48 hours after such oral notice, written notice setting forth such information as may be available to it with respect to the nature, extent, effect, and anticipated duration of the act or event of Force Majeure.

10.2 Obligation of the Parties during an Event of Force Majeure. If such an act or event of Force Majeure occurs which has the effect of reducing the amount of Acceptable Waste that a Party can accept from or deliver to the other, both Parties shall be excused from performance during the existence of the Force Majeure upon written notice to the other Party claiming Force Majeure. A Force Majeure for which said notice has not been given shall be an unexcused delay. The effects of said Force Majeure shall be remedied with all reasonable dispatch, and said Party giving notice shall use best efforts to eliminate and mitigate the consequences thereof.

11. Immigration Law Compliance.

11.1 Each Party, and on behalf of any subcontracted party, warrants, to the extent applicable under Arizona Revised Statutes § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with Arizona Revised Statutes § 23-214(A) which requires registration and participation with the E-Verify Program.

11.2 Any breach of warranty under Section 11.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

11.3 Each Party retains the legal right to inspect the papers of any contracted party’s or subcontracted party’s employee who performs work under this Agreement to ensure each Party is compliant with the warranty under Section 11.1 above.

11.4 Each Party may conduct random inspections, and upon request or notice to other Party, either Party shall provide copies of papers and records demonstrating continued compliance with the warranty under Section 11.1 above. Each Party agrees to keep papers and records available for inspection during normal business hours and will cooperate in exercise of each Party’s statutory duties and not deny access to business premises or applicable papers or records for the purposes of enforcement of this Section 11.

11.5 Each Party agrees to incorporate into any subcontracts under this Agreement the same statutorily required obligations and expressly accrue those obligations directly to the benefit of either Party. Each Party also agrees to require any subcontracted party to incorporate into

each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the either Party.

- 11.6 The warranty and obligations under this section for each Party are continuing throughout the term of this Agreement or until such time as either Party determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 11.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
12. **Foreign Prohibitions.** Each Party certifies, to the extent applicable under Arizona Revised Statutes §§ 35-391 *et seq.* and 35-393 *et seq.*, that neither has "scrutinized" business operations (as defined in the preceding statutes) in Sudan or Iran.
13. **General Provisions.**
- 13.1 **Non-Assignment.** Neither Party shall assign, transfer, convey, subcontract, pledge or otherwise hypothecate this Agreement or its rights, duties or obligations hereunder or any part thereof without prior written consent of the other Party, which may be withheld in its reasonable discretion. Any assignment made in violation of this Section shall be void and of no force or effect and shall constitute a material breach of the Agreement.
- 13.2 **Headings.** All sections and descriptive headings of sections and subsections in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.
- 13.3 **Severability; Integration.** Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement constitutes and embodies the full and complete understanding and agreement of the Parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any Party hereto which is not embodied in this Agreement, and no Party hereto shall be bound by or liable for any alleged misrepresentation, promise inducement or statement of intention not so set forth.
- 13.4 **Indulgences Not Waivers.** Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. Payments by the respective Parties shall not constitute a waiver of contract rights.
- 13.5 **Construction.** This Agreement is intended to express the mutual intent of the Parties and, irrespective of the identity of the Party preparing this Agreement or any document or instrument referred to herein, no rule of strict construction against the Party preparing a document shall be applied.

- 13.6 No Other Parties To Benefit.** This Agreement is made for the sole benefit of the Parties hereto and their successors and assigns. Except as may be expressly provided herein, no other person or entity is intended to or shall have any rights of benefits hereunder, whether as third-party beneficiaries or otherwise.
- 13.7 Inurement.** This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.
- 13.8 Governing Law; Forum; Venue.** This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in the State or federal courts of the State of Arizona and each of the Parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.
- 13.9 Modification and Waiver.** No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the Parties hereto.
- 13.10 Laws and Regulations.** The Parties shall, in the operation of the Facility and the performance of their obligations under this Agreement, comply with any and all federal, state, and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to the Parties, their respective employees, agents, or subcontractors, if any.
- 13.11 Notices.** 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, (C) given to a recognized and reputable overnight delivery service, to the address set forth below, or (D) delivered by email transmission to the number set forth below:

To Peoria: City of Peoria
 Public Works Department
 9875 N. 85th Avenue
 Peoria, Arizona 85323
 ATTN: William Mattingly, Public Works-utilities Director
 Email: William.mattingly@peoriaaz.gov

With a copy to: City of Peoria
 City Attorney's Office
 9875 N. 85th Avenue
 Peoria, Arizona 85323
 ATTN: Steve Kemp, City Attorney
 Email: steve.kemp@peoriaaz.gov

To Glendale: City of Glendale
 Field Operations Department
 6210 W. Myrtle Avenue, Suite 111
 Glendale, Arizona 85301
 ATTN: Stuart Kent
 Email: SKent@glendaleaz.com

With a Copy to: City of Glendale
City Attorney
5850 W. Glendale Avenue, Suite 450
Glendale, Arizona 85301
Email: CTindall@glendaleaz.com

or 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 Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, registered or certified, properly addressed, with sufficient postage, (C) the following business days 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, or (D) when received by email during the normal business hours of the recipient. If a copy of a notice is also given to a party's counselor 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 counselor or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 13.12 Contact Person.** Upon execution of this Agreement, each Party shall provide and maintain with the other the following:
- A. The name and address to whom financial or accounting statements should be sent or of whom inquiries should be made.
 - B. The name and address of the person or persons to be contacted for day-to-day matters except for the matters listed above.
- 13.13 Non-Exclusive Agreement.** The Parties acknowledge that this is a non-exclusive Agreement and that Peoria and Glendale may contract with others to provide for services similar to those in this Agreement with respect to the Facility and the collection and delivery of Acceptable Waste.
- 13.14 Contractual Status.** Each Party is acting independent of the other Party under this Agreement and nothing herein is intended nor shall it be construed to create a joint venture or partnership between Peoria and Glendale, or to render either Peoria or Glendale liable for contractual or governmental obligations of the other including, without limitation, obligations to various agents and/or subcontractors, in any manner whatsoever, it being expressly agreed between the Parties that neither of them have any intention of assuming any contractual or other liability of the other by reason of the execution of this Agreement.
- 13.15 Remedies.** The Parties to this Agreement, in addition to the right of terminations provided pursuant to Section 4.2 of this Agreement, shall in the event of a material breach of any term of this Agreement have available all remedies provided by law or in equity for such breach, including expressly the right to an award of reasonable attorney's fees and court costs to the prevailing Party in connection with any dispute respecting any term of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

“PEORIA”

“GLENDALE”

By: Bob Barrett
Bob Barrett, Mayor

By: _____
Elaine M. Scruggs, Mayor

ATTEST:

ATTEST:

By: Wanda Nelson
Wanda Nelson, City Clerk

By: _____
Pamela Hanna, City Clerk



The foregoing agreement between the City of Peoria and the City of Glendale has been reviewed pursuant to Arizona Revised Statutes § 11-952, as amended, by the undersigned City Attorney who has determined that it is in the proper form and is within the powers and authority granted to the City of Peoria. No opinion is expressed as to the authority of any parties, other than the City of Peoria to enter into this Agreement.

Stephen M. Kemp
Stephen M. Kemp
Peoria City Attorney

The foregoing agreement between the City of Peoria and the City of Glendale has been reviewed pursuant to Arizona Revised Statutes § 11-952, as amended, by the undersigned City Attorney who has determined that it is in the proper form and is within the powers and authority granted to the City of Glendale. No opinion is expressed as to the authority of any parties, other than the City of Glendale to enter into this Agreement.

Craig Tindall
Glendale City Attorney

RESOLUTION NO. 4550 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF A DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING DEVELOPMENT UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM III WITH NORWOOD VILLAGE APARTMENTS, LLC AND GORMAN & COMPANY, INC.; AND DIRECTING THAT THE AGREEMENT BE RECORDED.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that a Development Agreement for Multi-Family Housing Development under the Neighborhood Stabilization Program III with Norwood Village Apartments, LLC and Gorman & Company, Inc. be entered into, which development agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the City Manager and the City Clerk are hereby authorized and directed to execute and deliver said development agreement on behalf of the City of Glendale.

SECTION 3. That the City Clerk is hereby directed to forward the development agreement for recording to the Maricopa County Recorder's Office within ten (10) days after the execution thereof.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



CITY OF GLENDALE

Council Communication

Business-Voting Agenda

02/28/2012

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Jim Colson, Deputy City Manager

SUBJECT: **DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING**

Purpose

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a Development Agreement for Multi-Family Housing with the Norwood Village Apartments, LLC, and Gorman & Company, Inc., (Gorman) to utilize Neighborhood Stabilization (NSP) III funding for the acquisition and rehabilitation of Norwood Village Apartments, a 115 unit multi-family foreclosed property, located at 6738 North 45th Avenue.

Background

In November 2011, the City of Glendale conducted a request for proposal process, which resulted in Gorman being selected for \$1,800,000 of NSP III funding. The total project is anticipated to represent an investment of \$16,900,00 in the Centerline Area.

Gorman has developed a portfolio of over 50 properties in six states, representing over 3,500 housing units, many of which involved acquisition and rehabilitation. In 2010, Gorman partnered with the non-profit, Arizona Bridge to Independent Living (ABIL), on the development of the Glendale Enterprise Lofts located at 6839 North 63rd Avenue. ABIL will be used as a consultant during the rehabilitation to consult on handicap accessibility of the units.

Gorman will acquire Norwood Village Apartments, a garden-style community built in 1971, which is located on 5.19 acres and will rehabilitate 115 multi-family units. This property was foreclosed upon by Fannie Mae in the recent past. Gorman will partner with ABIL and Catholic Charities to provide accessible units and onsite services for families. These services include before-and-after school programs, computer classes, financial literacy, and parenting classes to residents.

Previous Council/Staff Actions

In March 2011, Council formally adopted an amendment to the Community Revitalization Annual Action Plan accepting the NSP III funds from the U.S. Department of Housing and Urban Development (HUD) and allocated \$1,800,000 to the acquisition and rehabilitation of foreclosed multi-family properties, targeting the Centerline Area.

Community Benefit

The acquisition and redevelopment of this foreclosed multi-family property will help stabilize the neighborhood and improve the quality of life for the residents of the existing apartment units. The units will be completely rehabilitated and additional onsite amenities will provide the families with a community room, onsite playground, and interior and exterior modernization of the units. Some two bedroom units will be converted to accessible three bedroom units, addressing an unmet housing need as identified by Gorman through a recent marketing study.

Public Input

HUD requires cities to solicit comments through their public participation plan. On December 16, 2010, during a public meeting, the Community Development Advisory Committee (CDAC) reviewed and approved the eligibility of the NSP III funding. Public Notice was published in the Glendale Star on December 23, 2010 and December 30, 2010 informing the public about the amendment to the Community Revitalization Annual Action Plan, the five locations in which to view the amendment, and the 15-day public comment period.

The public comment period began on January 7, 2011 and ended January 24, 2011. On January 19, 2011, CDAC conducted a public hearing on the Annual Action Plan to accept the NSP III funds, and the proposed eligible uses. No public comments were received.

Budget Impacts & Costs

This development will be publicly and privately funded. Stimulus funding is being provided through NSP III with the rest of the funding being comprised from Low Income Housing Tax Credits, and other private financing. The anticipated project budget is \$16,900,000. The NSP III funding portion, which is administered by the City of Glendale, is \$1,800,000.

Grants	Capital Expense	One-Time Cost	Budgeted	Unbudgeted	Total
			X		\$1,800,000

Account Name, Fund, Account and Line Item Number:

Neighborhood Stabilization Program III, Account No. 1311-30910-518200, \$1,800,000

Recommendation

Waive reading beyond title and adopt a resolution authorizing the City Manager to enter into a Development Agreement for Multi-Family Housing Development with Norwood Village Apartments, LLC, and Gorman & Company, Inc.



Ed Beasley
City Manager



Attachment Memorandum

DATE: 02/28/2012
TO: Ed Beasley, City Manager
FROM: Jim Colson, Deputy City Manager
SUBJECT: DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING

1. Resolution
2. Development Agreement

WHEN RECORDED, RETURN TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

**DEVELOPMENT AGREEMENT FOR MULTI-FAMILY
HOUSING DEVELOPMENT
UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM III**

THIS DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING DEVELOPMENT UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM III ("Agreement") is entered this ____ day of _____, 20__ by and between the City of Glendale, an Arizona municipal corporation ("City"), and Norwood Village Apartments, LLC, a wholly owned subsidiary of Gorman & Company, Inc., a Wisconsin corporation authorized to do business in Arizona ("Gorman").

RECITALS

- A. The City has received an allocation of \$3,718,377 from the United States Government under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) of 2010 for the Neighborhood Stabilization Program ("NSP") that was originally established under the Housing Economic Recovery Act of 2008.
- B. The purpose of NSP is to address neighborhood destabilization created by foreclosed-upon homes and residential properties;
- C. Gorman is a corporation that provides community development, and affordable housing development and management services;
- D. The City allocated **\$1,800,000** in NSP funding for the development and/or preservation of affordable rental properties in its HUD-approved Community Development Block Grant ("CDBG") Consolidated Plan Substantial Amendment;
- E. The City selected Gorman through a competitive process to develop and/or preserve one hundred fifteen (115) multifamily living units ("Units," or individually a "Unit") for low-income households with incomes at or below 50 percent of Area Median Income ("AMI") ("Project"); and
- F. The City desires to enter into this Agreement and provide Gorman **\$1,800,000** in NSP funds to pay for the costs to acquire the Norwood Village housing development located at 6738 North 45th Avenue, Glendale, Arizona 85301 more specifically described in **Exhibit A** ("Property") and for development of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

- 1. **Scope of Service.**
 - 1.1 Activities. Gorman will be responsible for undertaking the activities described in this Agreement consistent with NSP requirements. *See* Scope of Work attached as **Exhibit B**. Gorman's scope of services shall include the following activities eligible under NSP:
 - a. Activity #1 Acquisition of Property.

- b. Activity #2 Renovation of existing units on Property.
- c. Activity #3 Rent Units in Project to Qualified Families.

1.2 NSP Objectives. Gorman certifies that the activities carried out under this Agreement will benefit individuals and households whose income does not exceed 50 percent of AMI or a pro rata basis of NSP to non-NSP funding. Specifically, it will rent the Units within the Property redeveloped with NSP funds to qualified families, which means individuals and/or households with incomes at or below 50 percent of AMI (“Qualified Families”). The objectives of the City and Gorman, in compliance with the requirements applicable to NSP are to acquire foreclosed-upon property, develop the Project on the Property, and rent the Units to Qualified Families (“NSP Objectives”).

1.3 Levels of Accomplishment – Goals and Performance Measures.

- a. Gorman agrees to provide the following levels of program services:

<u>Activity</u>	<u>Completion Date</u>
Acquisition of Property	March 2012
Renovation of existing units on Property	July 2013
Rent Units to Qualified Families	December 2013

- b. The deadlines included in these performance goals and measures are the same as those imposed on the City by HUD under the requirements of NSP. If these NSP deadlines are modified by Congress and by HUD, the City shall likewise modify deadlines for Gorman.

1.4 Performance Monitoring. The City will monitor the performance of Gorman against the goals and performance measures as stated above. Substandard performance as reasonably determined by the City will constitute non-compliance with this Agreement.

2. **Agreement Term.** This Agreement shall commence on the ____ day of _____, 20____ and shall remain in effect until a pro rata share of the one hundred fifteen (115) Units in the Property are rented to Qualified Families or a lesser of number of Units, as may be required by the City to meet its obligation to expend 25 percent of its NSP allocation under HERA to house households with incomes at or below 50 percent of AMI.

4. **Payment.**

4.1 It is expressly agreed and understood that the total amount to be paid by the City to Gorman is **\$1,800,000**. Gorman will expend the **\$1,800,000** to acquire the Property and for development of the Project. Prior to disbursement of any funds to Gorman, the City and Gorman will execute for the benefit of the City a Promissory Note; Loan Agreement; Declaration of Covenants, Conditions and Restrictions; Mortgage Agreement; and, if required by any other financing sources, a subordination agreement.

4.2 Any funds that are not expended or not expended in accordance with the applicable guidelines or restrictions set forth herein shall be returned promptly to the City.

4.3 Payments are contingent upon environmental review requirements. Upon the City’s request, Gorman will provide to the City information necessary to ensure compliance with environmental review requirements.

5. **Notices.**

5.1 Notices required by this Agreement shall be in writing and delivered by United States Postal Service (postage prepaid), commercial courier, or personal delivery or by facsimile or other

electronic means. Any notice delivered or sent as stated above is effective on the date of delivery, or if electronically, the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

- 5.2 Communication and details concerning this Agreement shall be directed to the following representatives:

To the City: City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: Gilbert Lopez, Revitalization Administrator
Phone: 623-930-3671
Fax: 623-435-8594

With a copy to: City of Glendale
City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

To Norwood Village: Norwood Village Apartments, LLC
2375 East Camelback Road, 6th Floor
Phoenix, Arizona 85016
Attention: Brian Swanton, Arizona Market President
Phone: 602-708-4889
Fax: 608-835-3922

To Gorman: Gorman & Company, Inc.
2375 East Camelback Road, 6th Floor
Phoenix, Arizona 85016
Attention: Brian Swanton, Arizona Market President
Phone: 602-708-4889
Fax: 608-835-3922

6. Special Conditions and Covenants.

- 6.1 The City and Gorman understand and affirm that this Agreement is made pursuant to the NSP program and agree to abide by requirements of that program. Those requirements are specified in: HERA, as amended by ARRA; the HUD Notice dated October 6, 2008, entitled "Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Under the Housing and Economic Recovery Act, 2008," published in 73 Fed. Reg. 194 ("HUD Notice"); and the regulations pertaining to the CDBG program, set forth in 24 C.F.R. Part 570, except to the extent that they are modified or superseded by HERA, as amended, and the HUD Notice. The requirements have also been clarified and elaborated upon by HUD in its responses to Frequently Asked Questions ("FAQs"), posted on HUD's NSP website at:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspfaq.cfm>.

- 6.2 The key NSP requirements applicable to this Agreement are as follows:

- a. *Income Requirements.* Gorman agrees that a percentage of Units in the Property developed pursuant to this Agreement will be rented to Qualified Families, which means families with incomes that are at or below 50 percent of AMI.
- b. *Affordability Requirements.* Gorman agrees that a percentage of Units in the Property will remain affordable to individuals and families whose incomes do not exceed 50 percent of AMI for the applicable affordability period (“Affordability Period”), which period shall be based upon the amount of NSP assistance provided in connection with a Property and shall be no less than the periods specified for rental housing assisted under the HOME Investment Partnership Act (“HOME”), as specified in 24 C.F.R. 92.252(e). Those requirements are as follows:

<u>Assistance (per unit)</u>	<u>Minimum period</u>
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years
New Construction	40 years

- (1) The requirement to house households with incomes at or below 50 percent of AMI shall commence upon the later to occur of occupancy of the Unit or the time the funds are committed for the Project.
- (2) Gorman further agrees that if NSP funds are used to assist a Property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 C.F.R. Part 92, the HOME affordability restrictions will be revived for the greater of the remaining period of HOME affordability or the Affordability Period specified above.

- c. *Principal Residence.* Gorman agrees that all Properties acquired, redeveloped, and rented by it pursuant to this Agreement will be rented for use as a principal residence and will be used as a principal residence during the Affordability Period. This requirement shall be implemented pursuant to the Declaration of Covenants recorded against the Property and included in the rental agreement for the Units.
- d. *Foreclosed Upon Property.* Gorman agrees that the Property purchased by it with funds provided pursuant to this Agreement will be “foreclosed upon” (“Property”). A Property has been “foreclosed upon” at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former owner under some type of foreclosure proceeding, in accordance with state or local law.

6.3 Discount on Purchase Price. Any purchase by Gorman of property with funds provided pursuant to this Agreement shall be at a discount from the current market appraised value of the Property, taking into account its current condition. “Current market appraised value” means the value of a property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 C.F.R. 24.103 and is completed within 60 days of an offer made for the Property by Gorman.

6.4 For mortgagee foreclosed properties, Gorman is required to seek to obtain the maximum reasonable discount from the mortgagee, taking into consideration the likely carrying costs of the mortgagee if it were to not sell the Property to the City or Gorman.

- 6.5 The minimum discount that will be permitted under this Agreement is one percent (see rules in HUD Notice re calculation of average discount).
- 6.6 Development Standards. Any construction on the Property acquired with funds provided pursuant to this Agreement shall be to the extent necessary to comply with, at a minimum, Housing Quality Standards as required by Section 8 of the U.S. Housing Act of 1937. In addition, all construction must comply with all other applicable laws, codes, and other requirements relating to housing safety, quality, and habitability.
- 6.7 Repayment. If the requirements contained in this Agreement are violated, Gorman shall be required to repay to the City all NSP funds expended with respect to the non-compliant Property; provided, however, the City agrees to provide Gorman with notice of any such violation and a ninety (90) day opportunity to cure the violation. For the income and affordability requirements contained in paragraphs 6.2(a) and 6.2(b), above, the repayment requirements and cure procedures are set forth in the NSP Declaration of Covenants.

7. **General Conditions.**

- 7.1 General Compliance. Gorman agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning CDBG including subpart K of these regulations, except (1) to the extent that those requirements are modified or superseded by the requirements of the NSP program; (2) to the extent that the requirements do not apply to a developer competitively procured by the NSP grantee; (3) Gorman does not assume the City's environmental responsibilities described in 24 C.F.R. 570.604, as City as grantee is responsible for environmental review under 24 C.F.R. Part 58; and (4) Gorman does not assume the City's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52 (subsidy layering review). Gorman also agrees to comply with applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. Gorman further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- 7.2 Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Gorman shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from payment or performances concerning Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as they may relate to Gorman.
- 7.3 Hold Harmless. Gorman shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of Gorman's performance or non-performance of the activities called for in this Agreement.
- 7.4 Workers' Compensation. Gorman shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.
- 7.5 Insurance. Gorman shall carry, at a minimum, the insurance coverage as required under Exhibit A to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and shall list the City as a certificate holder.
- 7.6 City Recognition. Gorman shall insure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Gorman will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

- 7.7 Amendments. The City or Gorman may amend this Agreement at any time provided that amendments make specific reference to this Agreement, are executed in writing and signed by a duly authorized representative of each organization. Amendments do not invalidate this Agreement, nor relieve or release the City or Gorman from its obligations under this Agreement.
- 7.8 Suspension or Termination. In accordance with 24 C.F.R. 85.43, the City may:
- a. Temporarily withhold payments pending correction of a deficiency.
 - b. Disallow the use of funds for all or part of the cost of the activity not in compliance.
 - c. Wholly or partly suspend or terminate this Agreement if Gorman materially fails to comply with any terms of this Agreement, which include, but are not limited to, the following:
 - (1) Failure of Gorman to fulfill its obligations under this Agreement by the deadlines described in Section 1.3 of this Agreement; or
 - (2) Improper use by Gorman of funds provided under this Agreement.
- 7.9 In accordance with 24 C.F.R. 85.44, this Agreement may also be terminated for convenience by either the City or Gorman, in whole or in part. The City or Gorman shall set forth in writing the reasons for termination, the effective date, and, in the case of partial termination, the portion to be terminated (“Termination Letter”). The City shall address its Termination Letter to HUD, and send a copy to Gorman. Gorman shall address its Termination Letter to the City, and send a copy to HUD.
- 7.10 If in the case of a partial termination by Gorman, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.
- 7.11 Upon termination, Gorman shall refund to the City all monies not approved for expenditure by the City at that time and Gorman shall refund to the City any other monies received pursuant to this Agreement but not expended or obligated at the time of termination.

8. **Administrative Requirements.**

8.1 Documentation and Record Keeping

- a. *Records to be Maintained.* Gorman shall maintain all records that are pertinent to the activities to be funded under this Agreement:
 - (1) Records required to determine the eligibility of activities under NSP requirements;
 - (2) Records required to document the acquisition, improvement, and use of real property acquired or improved with NSP funds;
 - (3) Records necessary to document compliance with the NSP affordability requirements.
- b. *Retention.* Gorman shall retain all records pertinent to the Agreement for a period of five (5) years after the rental of the last Unit to a Qualified Family, except that:
 - (1) Documents relating to compliance with the NSP affordability requirements must be retained for five (5) years after the Affordability Period terminates; and
 - (2) Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started

before the expiration of the applicable period, then the records must be retained until completion of the actions and resolution of all issues, or the expiration of the applicable period, whichever occurs later.

- c. *Renter Data.* Gorman shall maintain data demonstrating renter eligibility for services provided. The data shall include, but not be limited to, renter name, address, income level or other basis for determining eligibility, and description of service provided. Information shall be made available to City monitors or their designees for review upon request.
 - d. *Disclosure.* Gorman understands that renter information collected under this Agreement is private and the use or disclosure of information, when not directly connected with the administration of the City's or Gorman's responsibilities with respect to services provided under this Agreement, is prohibited by the Privacy Act, 5 USC § 552a and A.R.S. §§ 44-7601, 44-7701 and 44-1373 *et seq.*, or other applicable law, unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 - e. *Audits and Inspections.* Gorman records with respect to matters covered by this Agreement shall be made available to the City, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of relevant data. Any deficiencies noted in audit reports must be fully cleared by Gorman within 30 days after receipt by Gorman.
- 8.2 Progress Reports. Gorman shall submit regular Progress Reports to the City in the form, content, and frequency as required by the City.
- 8.3 Procurement. Gorman shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by policy as may be procured with funds provided herein.
- 8.4 Use and Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 C.F.R. Parts 84 and 24 C.F.R. 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:
- a. Gorman shall transfer to the City any NSP funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination of the Agreement.
 - b. Real property under Gorman's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet the NSP Objectives. If Gorman fails to use NSP-assisted real property under its control in a manner that meets NSP Objectives, Gorman shall pay the City an amount equal to the current fair market value of the Property less any for acquisition of, or improvement to, the Property. Reversion payments shall constitute program income to the City.
 - c. Equipment not needed by Gorman for activities under this Agreement shall be (a) transferred to the City for the NSP program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-NSP funds used to acquire the equipment.
9. **Relocation, Real Property Acquisition and One-for-One Housing Replacement.** Gorman agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 C.F.R. Part 24 and 24 C.F.R. 570.606(b); (b) the requirements of 24 C.F.R. 570.606(c) governing the Residential Anti-displacement

and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act; and (c) the requirements in 24 C.F.R. 570.606(d) governing optional relocation policies. It is not anticipated that persons will be displaced as a result of Gorman's acquisition and rehabilitation of foreclosed upon homes or residential properties, but in the event that such displacement does occur, Gorman shall provide relocation assistance to displaced persons as defined by 24 C.F.R. 570.606(b) (2), and any relocation expenditures shall be paid with NSP funds. The City and Gorman further agree to comply with applicable state requirements at A.R.S. § 11-961 *et seq.*, and any applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

10. **Personnel and Participant Conditions**

10.1 Civil Rights

- a. *Compliance.* Gorman agrees to comply with applicable civil rights laws, rules, and ordinances of the City and State of Arizona and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- b. *Non-discrimination.* Gorman agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. 570.607, as revised by Executive Order 13279, and applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974.
- c. *Land Covenants.* This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 C.F.R. 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Gorman shall cause or require a covenant running with the land to be inserted in the deed or lease for the transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of the land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce the covenants. Gorman, in undertaking its obligation to carry out the program assisted hereunder, agrees to take all measures necessary to enforce the covenant, and neither will Gorman discriminate.
- d. *Section 504.* Gorman agrees to comply with Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide Gorman with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

10.2 Affirmative Action

- a. *Approved Plan.* Gorman agrees that it will carry out, pursuant to any City specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The City shall provide its Human Relations Affirmative Action policy statement to Gorman to assist in the formulation of such program. Gorman shall submit a plan for an Affirmative Action Program for approval prior to the disbursement of funds under this Agreement.

- b. *Women- and Minority-Owned Businesses (W/MBE).* Gorman will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Gorman may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- c. *Access to Records re Affirmative Action.* Gorman shall furnish and cause each of its subcontractors to furnish information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein regarding Affirmative Action.
- d. *Notifications.* Gorman will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Gorman's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. *Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement.* Gorman will, in solicitations or advertisements for employees placed by or on behalf of Gorman; state that it is an Equal Opportunity or Affirmative Action employer.
- f. *Subcontract Provisions.* Gorman will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its subcontractors.

10.3 Employment Restrictions

- a. *Prohibited Activity.* Gorman is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, inherently religious activities, lobbying, political patronage, and nepotism activities.
- b. *Labor Standards.* Gorman agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Gorman agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and implementing regulations of the U.S. Department of Labor at 29 C.F.R. Part 5. Gorman shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Documentation shall be made available to the City for review upon request.
- c. *Less than 8 Units.* Gorman agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction,

renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with any Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 C.F.R. Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Gorman of its obligation, if any, to require payment of the higher wage. Gorman shall cause or require to be inserted in full, in all contracts subject to the regulations above, provisions meeting the requirements of this paragraph.

d. *"Section 3" Clause & Vicinity Hiring*

(1) Compliance. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 C.F.R. 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the City, Gorman and any of Gorman's subcontractors. Failure to fulfill these requirements shall subject the City, Gorman and any of Gorman's subcontractors, their successors and assigns, to those sanctions specified by any agreement through which Federal assistance is provided. Gorman certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

(2) Incorporation. Gorman further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

(3) Further Assurances. Gorman further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the NSP-funded Project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the Project or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very

low-income persons residing within the metropolitan area in which the CDBG-funded Project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs.

- (4) Certification. Gorman certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.
- (5) Notifications. Gorman agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (6) Subcontracts. Gorman will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Gorman will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not enter into any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

10.4 Conduct

- a. *Assignment.* Gorman will not assign or transfer any interest in this Agreement to any other entity without the prior written consent of the City. However, claims for money due or to become due to Gorman from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without approval. Notice of assignment or transfer shall be furnished promptly to the City.
- b. *Subcontracts.*
 - (1) Approval. Gorman shall be permitted to enter into subcontracts in the performance of this Agreement.
 - (2) Monitoring. Gorman will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of non-compliance.
- c. *Hatch Act.* Gorman agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- d. *Conflict of Interest.* Gorman agrees to abide by the provisions of 24 C.F.R. 84.42 and 570.611, which include (but are not limited to) the following:
 - (1) Gorman shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
 - (2) No employee, officer or agent of Gorman shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

- (3) No covered persons who exercise or have exercised any functions or responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract or subcontract with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, Gorman, or any designated public agency.
 - (4) Gorman also understands that this Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
- e. *Lobbying.* Gorman hereby certifies that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
 - (3) It will require that the certification language below be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly: This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- f. *Copyright.* If this Agreement results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.
- g. *Religious Activities.* Gorman agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 C.F.R. 570.200(j), such as worship, religious instruction, or proselytization.

- 10.5 NSP-Specific Certifications. Gorman certifies that Gorman has not been indicted for a violation under Federal law relating to an election for Federal office, nor does it employ an applicable individual, which means an individual who is (1) employed by Gorman in a permanent or temporary capacity; (2) contracted or retained by Gorman; or (3) acting on behalf of, or with the express or apparent authority of, Gorman; and who has been indicted for a violation under Federal law relating to an election for Federal office.

11. **Environmental Conditions.**

- 11.1 Air and Water. Gorman agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
- a. Clean Air Act, 42 U.S.C. 7401, *et seq.*;
 - b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
 - c. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 50, as amended.
- 11.2 Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), Gorman shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- 11.3 Lead-Based Paint. Gorman agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 C.F.R. 570.608, and 24 C.F.R. Part 35, Subpart B. Regulations pertaining to NSP-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that those properties may include lead-based paint. Notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the Property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.
- 11.4 Historic Preservation. Gorman agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

12. **Immigration Law Compliance.**

- 12.1 Gorman, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

- 12.2 Any breach of warranty under subsection 12.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 12.3 The City retains the legal right to inspect the papers of Gorman or any subcontractor employee who performs work under this Agreement to ensure that Gorman or any subcontractor is compliant with the warranty under subsection 12.1 above.
- 12.4 The City may conduct random inspections, and upon request of the City, Gorman shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection 12.1 above. Gorman agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section 12.
- 12.5 Gorman agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Gorman and expressly accrue those obligations directly to the benefit of the City. Gorman also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 12.6 Gorman's warranty and obligations under this Section 12 to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 12.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
13. **Foreign Prohibitions.** Gorman certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
14. **Severability.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
15. **Section Headings and Subheadings.** The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.
16. **Waiver.** The City's failure to act with respect to a breach by Gorman does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision does not constitute a waiver of that right or provision.
17. **Entire Agreement.** This Agreement, including Exhibits A and B, and which are fully incorporated into the Agreement by this reference, constitutes the entire agreement between the City and Gorman for the use of funds received under this Agreement. Except as stated above, this Agreement supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and Gorman with respect to this Agreement. If there is any conflict between the provisions of this Agreement, the provisions of this Agreement shall be applicable.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

CITY OF GLENDALE, an Arizona
municipal corporation

Ed Beasley, City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

NORWOOD VILLAGE APARTMENTS, LLC, an
Arizona foreign corporation

By:

Its:

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____ 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged him/herself to be the _____ of Norwood Village Apartments, LLC and that s/he as such official, being authorized to do so, executed the foregoing Agreement for and on behalf of Norwood Village Apartments, LLC for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires

GORMAN & COMPANY, INC., a Wisconsin corporation

Brian Swanton, Arizona Market President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____ 20__, before me, the undersigned Notary Public, personally appeared Brian Swanton, who acknowledged himself to be the Arizona Market President of Gorman & Company, Inc. and that he as such official, being authorized to do so, executed the foregoing Agreement for and on behalf of Gorman & Company, Inc. for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires

Exhibit A – Description of Property

Address: 6738 North 45th Avenue, Glendale, Arizona 85301

Legal Description:

PARCEL NO. 1:

TRACT "A," GRANADA VISTA, ACCORDING TO BOOK 134 OF MAPS, PAGE 42 AND CERTIFICATE OF CORRECTION RECORDED IN DOCKET 8965, PAGE 235, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

THAT PORTION OF THE ABANDONED ALLEY LOCATED TO THE WEST OF TRACT "A," GRANADA VISTA, ACCORDING TO BOOK 134 OF MAPS, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA, AS ABANDONED BY THE CITY OF GLENDALE ORDINANCE NO. 2019 RECORDED IN RECORDING NO. 98-0823776, LYING BETWEEN THE WESTERLY EXTENSION OF THE NORTH AND SOUTH LINES OF SAID TRACT "A."

Exhibit B – Scope of Work

(See Attached)



200 N. Main Street • Oregon, WI 53575

P: (608) 835-3900

F: (608) 835-3922

www.GormanUSA.com

REAL ESTATE DEVELOPMENT

MADISON MILWAUKEE MIAMI PHOENIX

SCOPE OF WORK

Norwood Village Apartments – Glendale, AZ

Gorman & Company, in partnership with Catholic Charities, will acquire and substantially rehabilitate the **Norwood Village Apartments**, a foreclosed multi-family development being sold by Fannie Mae located in the heart of Glendale's Centerline Redevelopment Area. This 115-unit project, built in 1971, is located on 5.19 acres of land just south of Glendale Avenue. Gorman will act as the lead developer. Catholic Charities will act as co-developer and on-site service provider. On-site services may include a before-and-after school program, computer training, parenting classes, financial literacy, and job placement services.

After acquisition with City of Glendale NSP3 funding, Gorman and Catholic Charities will rehabilitate the project to a LEED-Gold standard and increase accessibility for the physically disabled to the greatest extent feasible. Rehabilitation will be financed through 9% Low Income Housing Tax Credits and conventional debt. As part of the comprehensive rehabilitation, the property will be reduced in size from 115 units to 95 total units, including the conversion of 24 two-bedroom units into 12 three-bedroom units to better accommodate the demand for affordable housing from larger families with children. The project scope will also include the conversion of some rental units into community buildings for on-site resident services.

To acquire the property, Gorman & Company, Inc. will utilize a \$1.8 Million subordinate non-interest-bearing loan from the City of Glendale's NSP3 program, along with an acquisition bridge loan from the Raza Development Fund. To finance the substantial rehabilitation of the property, Gorman and Catholic Charities will apply for an allocation of Low Income Housing Tax Credits from the Arizona Department of Housing. The total rehabilitation cost of the project will not exceed \$9,909,200 and the total development cost of the project will not exceed \$16,922,695, resulting in approximately eleven (11) NSP-assisted units serving households at or below 50% of area median income.

When rehabilitation is complete, the development will serve households at or below 60%, 50% and 40% of area median income.

Acquisition is expected to be completed no later than July 1, 2012. If awarded tax credits in the 2012 allocation round, rehabilitation is expected to begin by November 1, 2012 and completed by December 31, 2013.