

When recorded return to:
City Attorney
City of Glendale
5850 W. Glendale Avenue
Suite 450
Glendale, Arizona 85301

DEVELOPMENT AGREEMENT
STREETS IN-LIEU FEE: INDUSTRIAL
WEST GLENDALE SERVICE AREA

This Development Agreement (the **“Agreement”**) is made and entered into as of this _____ day of _____ 2021, by and between the City of Glendale, an Arizona municipal corporation (the **“City”**), and (NAME OF DEVELOPER). (NAME OF DEVELOPER) and the City are sometimes referred to collectively in the Agreement as the **“Parties”** or individually as a **“Party”**.

RECITALS

WHEREAS, (NAME OF DEVELOPER) is a private developer that owns property generally located at (PROJECT LOCATION) within Glendale’s boundaries and specifically in the West Glendale Service Area as related to Street Facilities; and

WHEREAS, Arizona Revised Statutes (A.R.S.) § 9-463.05 provides a framework for cities to assess, collect and administer development fees; and

WHEREAS, as required by law, the City retained the services of an outside consultant to complete an update of the City’s development impact fees for compliance with the requirements of A.R.S. § 9-463.05; and

WHEREAS, the report prepared by the outside firm of TischlerBise entitled *Land Use Assumptions, Infrastructure Improvements Plan and Development Fee Report, September 2019*, did not calculate a streets-related development impact fee for what the study called the West Glendale Service Area due to the unknown nature of development and the associated transportation infrastructure; and

WHEREAS, the report recommends the City may want to enter into development agreements with developers to collect payments to help cover the costs of street infrastructure improvements on a case-by-case basis; and

WHEREAS, the City has determined that due to the extensive growth and rapid rate of development applications in the West Glendale Service Area, it is necessary and appropriate to collect an in-lieu fee, formally called the Streets In-Lieu Fee (“SILF”) to ensure this new growth pays its proportionate share of street infrastructure improvements; and

WHEREAS, the City has determined that the \$634 per 1,000 square feet of industrial building fee currently utilized in the area known as the East Glendale Service Area in the TischlerBise study is appropriate for the West Glendale Service Area, and that the resulting projected fee revenue and expenditures would be similar; and

WHEREAS, (NAME OF DEVELOPER) will construct street improvements as depicted in **Exhibit “A”** (the “Street Improvements”) that will serve Developer’s property as well as other properties in the West Glendale Service Area; and

WHEREAS, in consideration of the public infrastructure to be built by (NAME OF DEVELOPER), the City will credit the cost of one 12-foot lane of arterial roadway constructed against the in-lieu fee owed by (NAME OF DEVELOPER) provided that developer is constructing a minimum of 2.5 lanes of arterial street improvements which constitutes the ultimate half-street improvements for the area; and

WHEREAS, no in-lieu fee credit will be given to Developer for street improvements that are necessary and customarily required for Developer’s project to function in a safe and satisfactory manner in regards to traffic; and

WHEREAS, in order to accomplish all these goals, the Parties wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions, the City and (NAME OF DEVELOPER) agree as follows:

AGREEMENT

1. Incorporation of Recitals. The recitals above are incorporated and made a part of this Agreement.

2. Arterial Street Improvements. The Developer will manage the construction of the Streets as follows:

(a) Scope of Work. Developer will design, construct, or cause to be constructed, (and will dedicate to the City the street improvements and associated right-of-way listed-LANGUAGE ADDED IF APPLICABLE) and described in **Exhibit A** to this Agreement, subject to the terms and conditions of this Agreement.

(b) Design, Bidding, Construction and Dedication. The Street Improvements will be designed, bid, constructed and will be dedicated in accordance with applicable laws, including without limitation all laws, rules, ordinances and standards of the City, as well as state and federal laws.

(c) Street Improvement Construction Documents and Permits. Construction documents for the Street Improvements shall be funded by the Developer and shall be prepared under the direction of and approved by the City. The infrastructure plans shall be consistent with all applicable ordinances, resolutions, regulations, guidelines, standards, adopted by the City that are in effect when the permits for the Street Improvements are issued.

3. Streets In-Lieu Fee Credit. (NAME OF DEVELOPER) understands and acknowledges that the Street Improvements are not currently included in any existing capital improvement plans ("CIP") and the City has no plans and no financial means to undertake the actions necessary to complete the Street Improvements. Therefore, for and in consideration of the completion of the Street Improvements to include 2.5 lanes of traffic for the adjacent half-street (5 lanes for full street) and recognition of the benefits received by the City from the Street Improvements, the City will credit the cost for one 12-foot lane of Street Improvements (two 12-foot lanes if full street is being constructed) by and through a credit toward the SILF that would be charged and assessed upon the industrial development project built by (name of developer). The SILF is calculated on the form attached as **Exhibit "B"**. The City will apply such credit to the SILF that would be charged and assessed upon the industrial development at the time (name of developer) pulls permits to construct the associated building(s). The credit is calculated on the form attached as **Exhibit "C"**. Such credits will not exceed the SILF as calculated in Exhibit B, except in the case when the Developer is constructing permanent Street Improvements adjacent to future phases of development. In this case, should the SILF credit exceed the SILF calculated for the specific phase, then a credit may be carried over and credited to the SILF associated with a future building. The SILF credit would be applied at the time permits are issued for the future building. Should the Developer fail to pull permits for a subsequent building(s) within 36 months of the Effective Date of this Agreement, the SILF credit is forfeited.

4. Adjustment of Unit Fees and Prices. The City may evaluate the Unit Fee on the SILF Calculation Form and the Unit Price on the SILF Credit Form and make adjustments as the market dictates. Any adjustments causing the Unit Fee or Unit Price to deviate more than 20% from the original numbers shall cause this Agreement to be presented to City Council for approval.

5. Development Impact Fees. This Agreement is only for the purpose of establishing and calculating an in-lieu fee related to streets. In addition to the SILF, (NAME OF DEVELOPER) will pay all development impact fees according to the Glendale City Council-approved Development Impact Fee Schedule in existence at the time structures are permitted.

6. Incorporation of Exhibits. All exhibits attached and referred to in this Agreement are incorporated and made a part of this Agreement.

7. Amendment of the Agreement. This Agreement may be amended or canceled, in whole or in part, only by a written agreement or amendment fully executed by the Parties.

8. No Third-Party Beneficiaries. This Agreement is made and entered into for the

sole protection and benefit of the Parties. Nothing contained in this Agreement shall be construed to make any non-party to this Agreement a third-party beneficiary of this Agreement.

9. Assignment. (NAME OF DEVELOPER) may not assign their rights and/or obligations under this Agreement (jointly or severally) without the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding this provision, (NAME OF DEVELOPER) has the right to assign and/or transfer their rights and obligations under this Agreement to (a) any business entity, company or affiliate that is directly or indirectly owned or controlled by Project Applicant; or (b) any third-party purchaser acquiring all or any part of the respective properties. In the event any of the Parties sell any of the real property associated with the Street Improvements covered under this Agreement to a third party, the selling Party will ensure that the obligations of this Agreement are fulfilled, either by the selling Party or the third-party purchaser, if necessary.

10. Notices. Any notices required or permitted to be given pursuant to this Agreement may be delivered in person or mailed, certified mail, return receipt requested to the following addresses:

To City:
City of Glendale
Attention: City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

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

To (NAME OF DEVELOPER)
[Please complete]

With copy to:

11. Governing Law. This Agreement is governed by the laws of the State of Arizona.

12. Venue. Any action arising from this Agreement, which includes by way of example, but not limitation, any action to enforce or interpret any provision of this Agreement, shall be commenced and maintained in a court of competent jurisdiction located within Maricopa County, Arizona, and the Parties irrevocably waive any right to object to such venue.

13. Conflicts. (NAME OF DEVELOPER) acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on the City's behalf is also an employee, agent or consultant of any other Party to this Agreement.

14. Cooperation and Alternative Dispute Resolution.

(a) Representatives. To further the cooperation of the Parties in implementing this Agreement, each Party will designate and appoint a representative to act as a liaison between the City and its various departments and the other Parties. The representatives of each Party will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

(b) Impasse. The City acknowledges and agrees that it is desirable for the Parties to proceed rapidly with the implementation of this Agreement and the development of the Property. Accordingly, the Parties agree that if at any time any Party believes an impasse has been reached with the City staff on any issue, that Party has the right to immediately appeal to the City's representative for an expedited decision pursuant to this Section. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give the appealing Party a final administrative decision within seven (7) days after the Party's request for an expedited decision.

(c) Mediation. If there is a dispute hereunder which the Parties cannot resolve between, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association ("AAA") but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and the involved Parties. The matter in dispute shall be submitted to a mediator mutually selected by the involved Party/Parties and the City. If the Party/Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the Parties shall request that the Presiding Judge of the Superior Court in and for the County of Maricopa, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years' experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and the involved Parties. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and

shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238.

15. Miscellaneous. This Agreement shall be interpreted, applied, and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either Party, as both Parties have been involved in the drafting of its provisions. This Agreement constitutes the entire agreement of the Parties concerning the matters contained herein and supersedes all prior negotiations, understandings, and agreements concerning such matters. No provision of this Agreement may be waived or modified except by an amendment signed by the Party against whom such modification or waiver is sought.

16. Severability. In the event that any phrases, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

17. Cooperation and Further Acts. The Parties shall act reasonably with respect to any and all matters which require either party to review, consent or approve any act or matter herein.

18. Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

19. Term. The term of this Agreement shall commence upon the date the last Party signs this Agreement and shall end at the earlier of (a) three (3) years from the Effective Date; or (b) the date the Agreement is terminated in a writing signed by the Parties or by an order of a court of competent jurisdiction.

20. Lender Consent. No Party shall encumber or take any action to cause its respective property to be encumbered with a lien or encumbrance superior or prior to the terms, covenants and provisions of this Agreement. If, at the present, or at any other time or times, all or any part of the respective properties of the Parties is or becomes encumbered by a lien or encumbrance superior or prior to the terms, covenants and provisions of this Agreement, then such Party, its successors or assigns, shall either obtain an appropriate consent and subordination from the lienholder or take such action as may be necessary to remove and discharge such prior lien or encumbrance. Without limiting the generality of the foregoing, each Party shall timely pay any and all real property taxes and assessments levied against or allocable to its respective property.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the Parties have caused this Agreement to be duly executed as follows:

CITY OF GLENDALE, ARIZONA,
an Arizona municipal corporation,

Kevin Phelps
City Manager

ATTEST:

Julie Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael Bailey, City Attorney

(NAME OF DEVELOPER)

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

State of _____)

County of _____)

This instrument was acknowledged before me on this ____ day of _____, 2021, by _____
_____. In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A
Street Improvements

EXHIBIT B
Street In-Lieu Fee Calculation Form
(Industrial)

SILF CALCULATION FORM

**STREETS IN LIEU FEE (SILF)
CALCULATION FOR INDUSTRIAL DEVELOPMENTS**

WEST GLENDALE SERVICE AREA



Project Name:	
Owner's Name:	
APN#:	
Address:	
Development Services Project #:	
Building Square Footage¹:	
Unit Fee	\$634/1000 square feet of industrial building
Amount of SILF Credit if applicable	
Carryover Credit from Previous Phase² (please note date and contract # of credit)	
Total SILF Credit (add 2 lines above)	

¹Square footage should only apply to buildings currently being permitted. Buildings in future phases will require a new agreement and SILF calculation.

²If more than 36 months has passed since Effective Date of Agreement authorizing credit, then Carryover Credit is no longer valid.

SILF Calculation

$$\frac{\text{Industrial Building Square Footage}}{\text{Footage}} \times \$634/1000 \text{ SF} = \text{SILF}$$

SILF to be paid by applicant:

$$\text{SILF} - \text{Total SILF Credit} = \text{SILF Owed}$$



If SILF Owed is a negative number then the applicant DOES NOT owe SILF for this phase of development. If the developer will construct additional buildings in a future phase, then enter the amount below:

Carryover Credit = _____

Prepared by:

Building Official or designee

Date

Approved by:

Transportation Director

Date

Approved by:

City Manager or designee

Date

EXHIBIT C

Street In-Lieu Fee Credit Form

(Industrial)

SILF CREDIT FORM
STREETS IN LIEU FEE (SILF)
CREDIT FOR INDUSTRIAL DEVELOPMENTS
WEST GLENDALE SERVICE AREA



Project Name:	
Owner's Name:	
APN#:	
Address:	
Development Services Project #:	
Arterial Street Frontage¹:	
Unit Price of Credit	\$95/linear foot of arterial roadway constructed

¹Developer must construct 2.5 lanes for half-street or 5 lanes for full street, if full street then multiply frontage by 2, credit must correspond to associated right-of-way permits.

SILF Credit Calculation

$$\frac{\text{Length of Arterial Street Constructed}}{\text{X}} \quad \text{X} \quad \$95/\text{LF} \quad = \quad \frac{\text{SILF Credit}}{\text{}}$$

Prepared by:

City Traffic Engineer

Date

Approved by:

Transportation Director

Date

Approved by:

City Manager or designee

Date

EXHIBIT D

Legal Description of Development Property

EXHIBIT E
Development Site Plan