

WHEN RECORDED, RETURN TO:

Patricia J. Boland
City of Phoenix
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611

**DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF PHOENIX, ARIZONA AND
ECHO CANYON ESTATES HOMEOWNERS ASSOCIATION FOR THE
CONVEYANCE OF REAL
PROPERTY TO THE CITY OF PHOENIX AND
FOR THE CONSTRUCTION OF IMPROVEMENTS
TO THE ENTRY ROADS TO CAMELBACK
MOUNTAIN AND ECHO CANYON ESTATES.**

City of Phoenix Contract No. 135336--0

This Agreement ("Agreement") is entered into as of the 24th day of January 2013, by and between the City of Phoenix, an Arizona municipal corporation, ("City") and the Echo Canyon Property Owners Association ("EC-HOA"), an Arizona non-profit corporation, (City and EC-HOA are collectively the "Parties").

RECITALS

A. Currently, Echo Canyon Parkway ("Parkway") is a shared public roadway with access to both the Echo Canyon Estates Neighborhood ("EC Neighborhood") and public access to Echo Canyon Park ("Park") and the north side of Camelback Mountain. This dual-functioning Parkway results in traffic congestion, inefficient traffic and pedestrian circulation, inconvenience to park-goers and to the residents of the EC Neighborhood, and compromised emergency access.

B. The City Parks and Recreation Department ("Department") and the City Parks and Recreation Board ("Board") would like to make a series of improvements to Echo Canyon Park including additional automobile parking spaces, water fountains, restrooms, bus drop-off areas, an improved trailhead, an informational facility and trails – all of which are depicted on Exhibit A which is attached hereto and incorporated herein by this reference. In addition to the above-mentioned improvements, one of the major components of Exhibit A is a two-road solution that separates the public traffic going to the trailhead for Camelback Mountain from a

private entrance to the EC Neighborhood. The Department, the Board and the EC HOA all support the design characteristics of the two- roadway solution as depicted on Exhibit A. The new private roadway serving the EC Neighborhood will be named Echo Canyon Parkway ("New Parkway") and the newly-constructed trailhead will be called Echo Canyon Trailhead ("Trailhead").

C. The EC-HOA owns land immediately east of the existing Parkway which is depicted on Exhibit B attached hereto and incorporated herein by this reference ("HOA Land"). The implementation of the two-road solution and the numerous improvements depicted on Exhibit A will require that the HOA Land be incorporated into the Park boundaries. The EC-HOA has agreed to deed this land to the City and, in return, the City will abandon the area depicted on Exhibit C attached hereto and incorporated by this reference which is in the general location of the existing Parkway ("Abandoned Land"). The private entrance to the EC-HOA Neighborhood will be located on the Abandoned Land and the "trade" of the HOA Land for the Abandoned Land will allow the City to build all the improvements depicted on Exhibit A ("Improvements").

D. The conveyance of the HOA Land to the City is dependent on the City's abandonment of the Abandoned Land to the EC-HOA and the City's agreement to construct the Improvements consistent with the attached Exhibits.

E. The Parties hereto acknowledge that this Agreement constitutes a "Development Agreement" within the meaning of Arizona Revised Statutes ("A.R.S."), §9-500.05 and that, in accordance therewith, it will be recorded against the EC-HOA's interest in the HOA Land in the Office of the Maricopa County Recorder to give notice to all persons of its existence and of the Parties' intent that the burdens and benefits contained herein be binding on and inure to the benefit of the Parties and all their successors in interest and assigns.

AGREEMENT

Now, therefore, in consideration of the mutual agreement set forth herein, it is understood and agreed by the Parties as follows:

1. The City will apply for, process and support an abandonment of the Abandoned Land. Upon the successful abandonment of the Abandoned Land, the City will convey the Abandoned Land to the EC-HOA, at no cost to the EC-HOA, and, simultaneously, the EC-HOA will convey the HOA Land to the City at no cost to the City
2. The City will construct the New Parkway, which will be for the exclusive use of the homeowners and guests of the EC Neighborhood, (except for the occasional use by emergency vehicles). After construction of the New Parkway is completed, maintenance of the New Parkway will be the exclusive responsibility of the EC-HOA.

3. The City will construct a wall, with a minimum height of five (5) feet, on the property line to separate the New Parkway and the Trailhead as depicted on Exhibit A. Landscaping, which per the attached Exhibit shows a minimum of sixteen (16) feet of landscaping, will be installed on each side of the wall by the City of Phoenix. The landscape plan for the west side of the wall must be reviewed, commented upon and approved by the EC-HOA, which approval may not be unreasonably withheld or substantially increase the cost of the installation of the landscaping. The EC-HOA may install additional landscaping beyond what is installed by the City on the west side of the wall if so desired by the EC-HOA and if consistent with any applicable city code or standards. After installation, the landscaping on the west side of the wall will be maintained exclusively by the EC-HOA.
4. The New Parkway will be roughly in the same location as the existing Parkway and will not have a public sidewalk.
5. No Improvements constructed by the City will increase drainage onto the EC Neighborhood.
6. Clear and distinct signage designed to prevent confusion for motorists seeking access to either the New Parkway or the Trailhead will be installed by the City. The City will consult and receive input and approval, which approval may not be unreasonably withheld or substantially increase the cost of the signs or their installation, from the EC HOA regarding signage at the intersection of McDonald Drive and the New Parkway. Any signage installed by the EC HOA will be approved through any applicable city permitting process. The EC-HOA may upgrade the quality of the signage proposed by the City, at the EC-HOA's sole expense. The EC-HOA shall have the right to review and approve any proposed signage on the Echo Canyon Parkway.
7. The design of the Trailhead will include a turnaround/traffic circle at the entrance of the public parkway to allow motorists to exit the Trailhead before reaching the Ranger Guard House.
8. The Trailhead will have a gated entrance controlled by the City. The City will install approximately 134 total parking spaces. The Trailhead design will include a pedestrian walkway along the west side of the Trailhead from McDonald Drive to the Park.
9. The New Parkway will include a new turn-around area at the actual entrance into the EC Neighborhood. The design of this turn-around area will be consistent with Exhibit A and reviewed and approved by the EC HOA, which approval may not be unreasonably withheld and may not be inconsistent with Exhibit A.
10. The design for the New Parkway will include an auxiliary emergency vehicle access on the south side of the turn-around for the New Parkway at the location

depicted on Exhibit A to allow emergency vehicles to gain access from the New Parkway to the Trailhead. Gates will be installed at the south end of the new auxiliary emergency vehicle access to prevent Park users from inadvertently accessing the New Parkway as they exit the Park. These gates will be designed so that emergency vehicles will be able to open them remotely and this access will be used solely to provide emergency services.

11. The design of the Trailhead will include a shuttle bus drop-off and emergency vehicle staging area at its eastern end as depicted on Exhibit A.
12. The City or its designee will draft all engineering and architectural plans for the Improvements and will allow the EC HOA to review the plans when said plans are 30% complete, 60% complete and 90% complete to ensure their consistency with Exhibit A.
13. The City will maintain Echo Canyon as a hiking and climbing area and not as an area for special events.
14. The hours of operation for the Park are established by the Board and are currently from sunrise until sunset. The Board will not amend the hours of operation for the Park except at a public meeting after reasonable notice to the EC-HOA. The City will ensure that the gate to the Park, which is depicted on Exhibit A, will be closed and locked by the City except during the hours of operation. The lighting plan for the Park and the Trailhead must be consistent with the City's Dark Sky Ordinance.
15. The City and EC-HOA agree that in making the promises contained in this Agreement that certain benefits and advantages will accrue to both Parties as a result of the performance of this Agreement and that, therefore, this Agreement is being entered into in reliance upon the mutual benefits afforded each of the Parties.
16. Any legal actions instituted pursuant to this Agreement must be filed in the County of Maricopa, State of Arizona. In any legal action, the prevailing party in such action will be entitled to reimbursement by the other party for all costs and expenses of such action, including reasonable attorneys' fees as may be fixed by the court.
17. The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement.
18. If any legal action is commenced by EC-HOA against the City, service of process on the City will be made by personal service upon the City Clerk of the City of Phoenix, 200 West Washington Street, 15th Floor, Phoenix, Arizona 85003-1611, or in such other manner as may be provided by law. If any legal action is

commenced by the City against EC-HOA, service of process will be made on the EC-HOA in such manner as provided by law.

19. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by such defaulting party.
20. All notices, demands, or other writings in this Agreement provided to be given, made, or sent by any party hereto to other Parties will be deemed to have been fully given, made, or sent when made in writing and personally delivered (which shall include delivering by recognized courier service, such as Fed Ex, United Parcel Service, and the like) or deposited in the United States mail postpaid, registered or certified, and addressed as follows:

If to City. Parks and Recreation Department
 Attention: Parks and Recreation Director
 200 W. Washington Street, 16th Floor
 Phoenix, Arizona 85003-1611
 Fax: 602 495-3606
 Office: 602 262-6862

then copy to: City Clerk
 City of Phoenix
 200 West Washington Street, 15th Floor
 Phoenix, Arizona 85003-1611
 Fax: 602.495.5847
 Telephone: 602.262.6558

If to EC-HOA: Echo Canyon Property Owners Association
 c/o The Osselaer Company
 532 E. Maryland Avenue, Suite F
 Phoenix, AZ 85012

The address to which any notice, demand, or other writing may be given, made or sent to any party may be changed by written notice as above provided.

21. No member, official, or employee of the City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law. All Parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

22. EC-HOA warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers, and attorneys.
23. No member, official or employee of the City will be personally liable to EC-HOA, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to EC-HOA or successor, or on any obligation under the terms of this Agreement.
24. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies, including but not limited to rights and remedies existing at common law.
25. If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
26. The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.
27. This Agreement may be executed in up to two (2) duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or EC-HOA, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.
28. Nothing contained in this Agreement creates any partnership, joint venture, or agency relationship between the City and EC-HOA. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.
29. City and EC-HOA each agree to execute and deliver all documents and take all actions reasonably necessary to implement and enforce this Agreement.

- 30 In the event of default under any provision of this Agreement, the nondefaulting party shall have all remedies available to it at law or in equity.
31. References are made in this Agreement to specific sections of the Arizona Revised Statutes. Any such references mean the statute in effect on the date of the execution of this Agreement and any subsequent renumbering or reordering of those provisions.
32. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, EC HOA certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Iran or Sudan.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained on the day and year first written above.

Echo Canyon Property Owners Association

By: [Signature]

Its: ED WHITE
President



#1019955v1

"CITY"

CITY OF PHOENIX, a municipal corporation
DAVID CAVAZOS, City Manager

By: [Signature]
James P. Burke
Its Parks and Recreation Acting Director

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
ACTING City Attorney

2013 JAN 24 AM 8:39

- 7 - CITY CLERK DEPT.

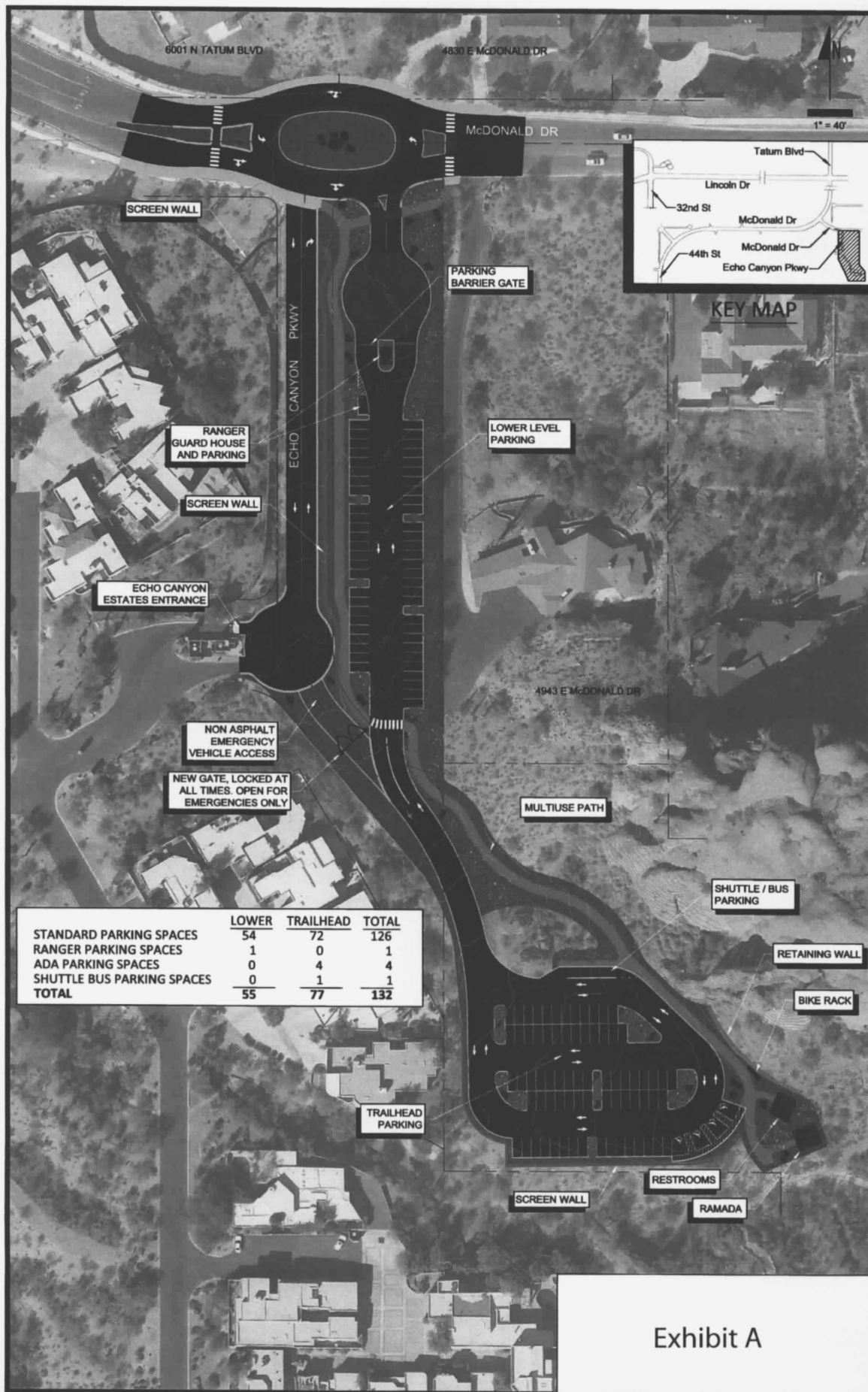


Exhibit A

Exhibit B



Parcel:	172-04-115	Report Date:	10/10/2012
Owner:	ECHO CANYON PROPERTY OWNERS ASSOC	Unique Location Characteristics:	
Property Address:	5855 N ECHO CANYON CIR, PARADISE VALLEY, AZ 85253	Lot Size:	50,369
Local Jurisdiction:	PHOENIX	Main Living Area:	
MCR:	146-40	Construction Year:	
Subdivision Name:	ECHO CANYON	Improvement Class:	
Lot:		Bath Fixtures:	
Elementary School:	SCOTTSDALE UNIFIED SCHOOL DISTRICT	Parking:	
High School:	SCOTTSDALE UNIFIED #48	Pool:	No
2013 FCV:	\$500	Last Sale Price/Sale Date:	\$0 /

Disclaimer: The data contained in this database is deemed reliable but not guaranteed. This information should be used for informational use only and does not constitute a legal document for the description of these properties. Every effort has been made to insure the accuracy of this data; however, this material may be slightly dated which would have an impact on its accuracy. The Maricopa county Assessor's Office disclaims any responsibility or liability for any direct or indirect damages resulting from the use of this data.

Exhibit C

