

**CITY CLERK
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C-9477
12/03/2014

CITY OF GLENDALE, ARIZONA

**PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

(Zanjero Pass)

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

When recorded, return to:
Gammage & Burnham, P.L.C.
2 North Central Avenue, 15th Floor
Phoenix, Arizona 85004
Attention: Manjula M. Vaz

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

This Pre-Annexation and Development Agreement (“Agreement”) is entered into by and between the CITY OF GLENDALE, Arizona, an Arizona municipal corporation (“City”), and MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NUMBER ONE, a political subdivision of the State of Arizona (“Owner”) (collectively “Parties”).

RECITALS

A. The Owner owns approximately 179.74 acres of land (“Property”) which is located in unincorporated area of Maricopa County, Arizona. The Property is legally described and depicted on Exhibit A.

B. The City wishes to encourage the reasonable development of vacant lands in the west area of the City, wishes to secure residential populations in the west area of the City as a way to maintain the long-term financial interests of the City, and wishes to provide adequate commercial opportunities in support of such residences. The City believes that annexation of the Property into the City and development of the Property in accordance with this Agreement will result in furthering these goals.

C. The Owner believes that annexation of the Property into the City and development of the Property pursuant to the terms of this Agreement will result in significant benefits to the Property and to the future residents, including greater certainty concerning the City’s regulatory treatment of the Property and assurances regarding infrastructure affecting the Property.

D. The City and the Owner agree that the development of the Property in general conformance with the proposed preliminary plat, the first page of which is set forth on Exhibit B (the “Plan”), will help to further the goals of the City and the Owner. The Plan generally depicts 491 detached, single family residential

lots, approximately 8.18 acres of commercial land, roads and open space on the Property.

E. The Parties desire that the Property now be annexed into the City, then rezoned and platted in general conformance with Exhibit B.

F. A.R.S. §9-500.05 authorizes the City to enter into a development agreement with the Owner for the purpose of establishing: (i) the terms of the Agreement; (ii) the permitted uses and development standards for the Property; (iii) the density and intensity of uses and the restrictions applicable to development of structures on the Property; (iv) the conditions, terms, restrictions and requirements for annexation of the County Property by the City; (v) the conditions, items, restrictions and requirements for public infrastructure on the Property, and the funding of said public infrastructure; and (vi) providing for other matters relating to the development of the Property.

G. The Parties have previously entered into a Pre-Annexation Development Agreement for Loop 303 Phase I Utility Group, Maricopa County Recorder No. 20120989588, recorded October 31, 2012 (“Loop 303 Agreement”).

H. The Owner held a pre-application meeting with the City Planning Department on February 21, 2013 to initiate rezoning of, and a preliminary plat for, the Property in the City. The Owner made extensive revisions to its proposal in response to detailed staff comments, and then the Owner submitted a minor general plan amendment, rezoning and preliminary plat application to the City on September 11, 2013 (the “Rezoning Case”). The City staff has reviewed the Rezoning Case and has found it to be responsive to City comments and direction.

I. Pursuant to the City’s public participation requirements in the City’s Zoning Ordinance, the Owner held public meetings regarding the Rezoning Case on August 21, 2013 and September 28, 2013.

J. Pursuant to the Loop 303 Agreement, the Owner submitted its request for the Property to be annexed to the City on September 30, 2013 (the Annexation Request”).

K. The Owner wishes the City to proceed with processing of the Annexation Request and the Rezoning Case with due speed and without delay.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm, and agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as though fully restated herein.

2. Relation to Loop 303 Agreement. The Parties acknowledge continuing validity of the Loop 303 Agreement, and state their intent that this Agreement is meant to be supplemental to the Loop 303 Agreement. In the event of any conflict between this Agreement and the Loop 303 Agreement, this Agreement shall control because of its limited scope and focus on specific issues.

3. Infrastructure and Services.

a. Wastewater. The Loop 303 Agreement establishes the general manner in which wastewater services shall be provided to the Property and obligates the Owner to make arrangements with a private utility provider to provide wastewater services to the Property. The City will not provide wastewater services to the Property.

b. Water. The Owner has made arrangements with the same private utility provider to provide potable water services to the Property. The City will not provide water services, potable or otherwise, to the Property.

c. Police. The City affirms that once the Property is annexed into the City, the City shall provide police services to the Property, which service the City may provide through a third party as long as said service is provided in a manner generally consistent with service currently provided in the area through the Maricopa County Sheriff's Office. The City further affirms that neither annexation, zoning, platting nor development of the Property as set forth in Exhibit B shall trigger any requirement for financial contributions to the City by the Owner or occupants of the Property, for the dedication of land to the City by the Owner or occupants of the Property, or for the development of any structures or other physical facilities, including but not limited to police stations or substations, in order for the City to provide police services to the property.

d. Fire and Medical Rescue. The City affirms that once the Property is annexed into the City, the City shall provide fire and medical rescue services to the Property which service the City may provide through a third party as long as said service is provided in a manner generally consistent with service currently provided in the area by Rural/Metro

Corporation. The City further affirms that neither annexation, zoning, platting nor development of the Property as set forth in Exhibit B shall trigger any requirement for financial contributions to the City by the Owner or occupants of the Property, for the dedication of land to the City by the Owner or occupants of the Property, or for the development of any structures or other physical facilities, including but not limited to fire stations or substations, in order for the City to provide fire and medical rescue services to the property.

- e. Streets. The Owner shall construct all streets, sidewalks, and related improvements within the Property to City standards, and then shall dedicate all such infrastructure to the City. Subject to normal City inspection and acceptance, the City agrees that it shall thereafter maintain all streets, sidewalks and related improvements within the Property.
- f. Parks and Open Spaces. The Owner shall improve all parks and open spaces and related improvements within the Property, and then shall dedicate all such infrastructure to the Homeowner Association(s). The Owner acknowledges that the Homeowner Association(s) shall thereafter maintain all parks and open spaces within the Property, and that the City shall not be responsible for such maintenance.

4. Residential Impact Fees.

- a. Current Ordinance. The City has an impact fee ordinance, currently codified at Chapter 28, Article 6 of the City Code. The City acknowledges that at this time, the City's residential impact fee program does not extend to the Property. Specifically, the western edge of the City's residential impact fee program is at 115th Avenue, which separates what the City terms the West 101 Area, which does have residential impact fees, and the West 303 Area, where the Property is located and does not have residential impact fees. In other words, if the Property were to be developed at this time consistent with Exhibit B, the Property would pay no impact fees.
- b. In-Lieu Fees. The Parties acknowledge and agree that regardless of the City's current impact fee ordinance, described above, development of the Property will create a demand for some City services, and therefore warrants

payment of a fee. The Parties agree that the Property will pay a fee to the City of \$1,888.00 per residential dwelling unit, which shall be due and payable individually for each lot at such time a building permit is pulled to construct a home on a lot. The City shall not charge, and the Property shall not pay, any other current or future municipal impact fee, but shall pay all other standard City fees, including but not limited to plan review and building permit fees.

- c. Water and Wastewater. The City further acknowledges that because the Owner is securing wastewater and water from non-City sources, the Owner is exempt from any water or wastewater impact fee, in general accordance with Section 28-130 of the City Code.

5. Public Hearing Schedule.

- a. Annexation and Rezoning. The Parties acknowledge that the Annexation Request and the Rezoning Case require public hearings and agree to use their best efforts to annex and rezone the property in accordance with the schedule set forth in Exhibit C.
- b. Subsequent Submittals. In the event the City approves the Rezoning Case, and the Owner makes subsequent submittals to the City for Final Plat approval, grading and drainage, construction drawings and other administrative approvals, the City agrees that it will expedite review of any and all such submittals.

6. Notices. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified United States Mail, postage pre-paid, return receipt requested to:

The City: City of Glendale
 5850 West Glendale Avenue
 Glendale, AZ 85301
 Attn: City Manager

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

Owner: Maricopa Water Conservation District No. 1
P.O. Box 900
Waddell, AZ 85355
Attn: General Manager

With copy to: Gammage & Burnham, PLC
2 North Central, 15th Floor
Phoenix, AZ 85004
Attn: Manjula M. Vaz

Or to such other address or addresses as may hereafter be specified by notice given by any of the above for itself to the others. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) delivery to the address of the party, addressed to the party; or (c) if given by certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

7. General Provisions.

7.1 Cooperation. To further the cooperation of the Parties in implementing this Agreement, the City and the Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the "City Representative") shall be the Planning Director Jon Froke and the initial representative for the Owner shall be its project manager Dave Maguire (the "Owner Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

The City acknowledges and agrees that it is desirable for the Owner to proceed in a timely manner with the implementation of this Agreement and the development of the Property and that, accordingly, the City will follow its standard review processes and timetables for inspections, approvals, and other City actions, except as specified above in Section 5 of this Agreement, and will not purposely delay the development of the Property.

7.2 Default. Failure or unreasonable delay by the Owner or the City to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within 30 days after written notice thereof from the other Party (the

“Cure Period”), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said 30 day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. In the event a breach is not cured within the Cure Period, the non-defaulting Party shall have all rights and remedies which may be available under law or equity.

7.3 Dispute Resolution: Mediation: Litigation. The Parties will use the following procedure to address any dispute arising under this Agreement (a “Dispute”).

7.3.1 Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute (“Notice of Dispute”). The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter, and 2) direct communication between the executives. If the Dispute has not been resolved within fourteen (14) days from the Notice of Dispute, the Parties will proceed to mediation.

7.3.2 Mediation. The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party (“Notice of Mediation”). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will have an executive with authority to settle the Dispute at the mediation.

7.3.3 Litigation. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction as provided in Section 7.17 of this Agreement, “Governing Law; Choice of Forum.”

7.4 Good Standing; Authority. Each of the Parties represents and warrants to the other (a) that it is duly formed and validly existing under the laws of Arizona; and (b) that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.

7.5 Recordation. The City shall record the text of this Agreement in its entirety in the Official Records of Maricopa County, Arizona, not later than 10 days after its full execution, along with complete copies of Exhibits A, B, and C. The Clerk of the City shall maintain originals of all other Exhibits on file for public review in accord with normal public record keeping practices.

7.6 Future Effect. This Agreement shall run with the land and for the benefit of the Property. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns; provided, however, that the Owner may, upon 10 days written notice to the City, assign its respective rights and obligations hereunder, in whole or in part, to a person or entity that has acquired title to the Property or a portion thereof, by a written instrument recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations. In the event of a complete assignment of all of its rights and obligations, the assigning Party shall be relieved of any further liability under this Agreement, however any liability existing prior to the assignment of any rights and obligations shall become the joint responsibility of both the assignor and assignee.

7.7 Term. This Agreement shall be effective upon recordation (the "Effective Date"). This Agreement shall automatically terminate twelve and one half (12 1/2) years after the Effective Date. However, regardless of termination, the City shall not discontinue applicable municipal services to the Property, once commenced, except as permitted by applicable law.

7.8 Termination Upon Sale of Public Lots. Except as otherwise provided herein, the City and the Owner hereby acknowledge and agree that this Agreement is not intended to, and shall not create conditions or exceptions to title, when sold to end purchasers or users. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot (a "Public Lot") which has been finally subdivided and leased (for a period of longer than one year) or sold to an end purchaser or user thereof, and thereupon such Public Lot shall be released from and no

longer shall be subject to or burdened by the provisions of this Agreement. The Owner acknowledges that this Section of the Agreement has no impact on the continuing obligation of the Homeowners Associations(s) to maintain parks and open spaces within the Property as detailed above in Section 3(f) of this Agreement.

7.9 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the Owner and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder, specifically including but not limited to all other parties (aside from the Owner and the City) to the Loop 303 Agreement.

7.10 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or the Owner of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

7.11 Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to achieve the practical benefits of the arrangements contemplated by this Agreement. Otherwise, either Party may terminate this Agreement. If any applicable law or court of competent jurisdiction prohibits or excuses the City or the Owner, as applicable, from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the City or the Owner, as applicable, to take such action at its discretion, if such a construction is permitted by law.

7.12 Further Documentation. Each Party agrees in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

7.13 Fair Interpretation. Both Parties have been represented by counsel in the negotiation and drafting of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.

7.14 Heading; Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

7.15 Computation of Time. In computing any period of time under this Agreement the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday observed by the City of Glendale, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or such legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Arizona time) on the last day of the applicable time period provided herein.

7.16 Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the parties hereto. Within 10 days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County.

7.17 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

7.18 Attorneys' Fees. In the event of a breach by any Party and commencement of a subsequent legal action in a court of law, the prevailing Party in any such dispute shall be entitled to reimbursement of reasonable attorneys' fees and court costs, including, but not limited to, the costs of expert witnesses and costs of transcript preparation.

7.19 No Owner Representations. Nothing contained herein shall be deemed to obligate the Owner to commence or complete any part or all of the development of the Property or any planning in connection with such development (including Infrastructure expenditures); provided, however, that any development of the Property undertaken by the Owner shall be done in accordance with this Agreement as may be amended from time to time.

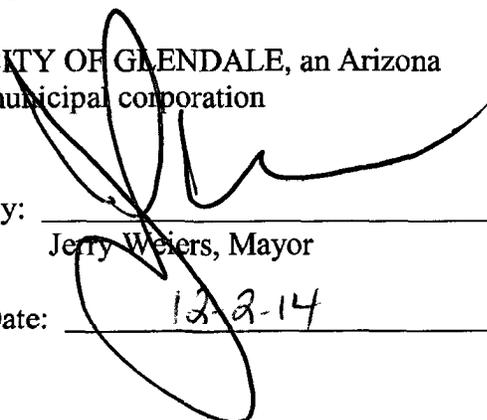
7.20 Entire Agreement. This Agreement together with all Exhibits attached hereto (which are incorporated herein by this reference) constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as provided herein.

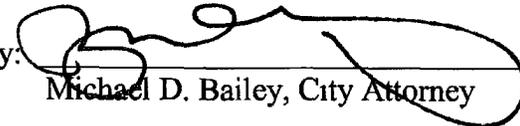
CITY:

CITY OF GLENDALE, an Arizona
municipal corporation

By: 
Jerry Weiers, Mayor

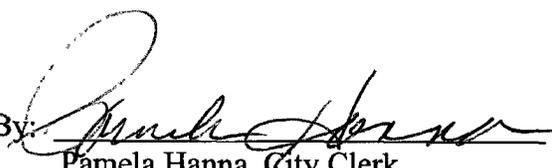
Date: 12-2-14

Approved as to Form:

By: 
Michael D. Bailey, City Attorney

Date: 12-1-14

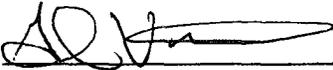
Attested by:

By: 
Pamela Hanna, City Clerk

Date: 12/03/14

OWNER:

**MARICOPA COUNTY MUNICIPAL
WATER CONSERVATION DISTRICT
NUMBER ONE, a political subdivision of
the State of Arizona**

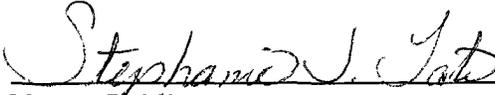
By: 
Its: Glen Vortherms, General Manager
Date: November 26, 2014

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this 26th day of
November, 2014, by Glen Vortherms,
the General Manager of Maricopa County Municipal Water Conservation
District Number One.



STEPHANIE J TATE
Notary Public - Arizona
Maricopa County
Expires 04/30/2018


Notary Public

4/30/2018
My Commission Expires

LIST OF EXHIBITS

Exhibit A	Property
Exhibit B	Plan
Exhibit C	Annexation and Rezoning Schedule

EXHIBIT "A"

ANNEXATION DESCRIPTION "Zanjero Pass"

That property known as "Zanjero Pass Parcel 1-3 Phase 2-4" as shown in Book 979, Page 26 of Official Records of Maricopa County, AZ., being located in the West Half of Section 26, T.3N., R.2W., of the G.&S.R.M., Maricopa County, AZ., further described as follows:

Beginning at an Iron Pipe accepted as the Southwest Corner of said section 26 from which a Rebar accepted as the South Quarter corner of said section bears South 89°59'27" East, 2639.08 feet;

Thence North 00°23'32" East, 2632.93 feet along the west line of said final plat and said west half of section 26 to an Aluminum Cap accepted as the West Quarter corner of said section;

Thence continuing along said west lines North 00°23'32" East, 989.02 feet to the northwest corner of said plat for Zanjero Pass;

Thence along the north line of said plat North 89°59'57" East, 2642.94 feet to the northeast corner thereof;

Thence South 00°27'16" West, 2,306.50 feet along the east line of said plat also being the east line of said west half section 26;

Thence North 89°58'45" West, 1320.26 feet along a portion of said final plat boundary;

Thence South 00°25'24" West, 1316.97 feet along a portion of said final plat boundary to a point on the south line of said section 26;

Thence North 89°57'27" West, 1319.54 feet along said south line also being the south line of said final plat to the **POINT OF BEGINNING**.

Containing 179.74 Acres more or less and being subject to any easements, restrictions, or rights of way of record.

The description shown hereon was written to the centerline of all adjacent roads per our understanding of the request of the City of Glendale, AZ.

Prepared by: HilgartWilson
1661 East Camelback Road
Suite 275
Phoenix, AZ 85016
Job no. 1066
June 10, 2013





SITE DATE TABLE

PARCEL	LOT COUNT	LOT SIZE	
		MIN. (SF)	MIN. WIDTH (FT)
1 (COMMERCIAL)	-	-	-
2	145	6,500	55
3	131	7,000	60
4	138	8,000	70
5	77	10,000	80
TOTAL	491		

PROJ.NO : 1066
 DATE : NOV 2014
 SCALE : 1"=500'
 DRAWN BY : JDL
 CHECKED BY : TB

ZANJERO PASS
 ("THE PLAN")
 GLENDALE, ARIZONA
EXHIBIT "B"


HILGARTWILSON
 2141 E HIGHLAND AVE, STE 250
 PHOENIX, AZ 85016
 P. 602.490.0535 / F. 602.368.2436

Exhibit C

Zanjero Pass Project Schedule

October / November 2014. The applicant should resume and complete the Citizen Participation process and file their Citizen Participation Final Report.

October 14, 2014. At their voting meeting the City Council conducted a public hearing on the blank annexation petition.

October 2014. A Pre Annexation Development Agreement (PADA) has been prepared and is in draft form. All parties are reviewing the PADA and comments from Glendale will be returned the week of October 20th.

November 24, 2014. All parties will work together on having the PADA scheduled for City Council consideration.

January 15, 2015. All parties will work together on having the three land use applications (minor general plan amendment, rezoning request and preliminary plat) be scheduled for Planning Commission consideration.

February 10, 2015. The Ordinance adoption for the annexation process along with the land use applications will be scheduled for City Council consideration. The preliminary plat does not need to go to City Council unless appealed.