

**CITY CLERK
ORIGINAL**

**C-10603
01/12/2016**

Development Agreement

BY THIS DEVELOPMENT AGREEMENT (the "Agreement") entered into as of this 27 day of January, 2016, City of Glendale, an Arizona municipality ("Glendale") and Legacy Traditional School - Glendale, an Arizona non-profit corporation ("Legacy") agree as follows:

RECITALS

- A. Legacy desires to construct and operate a charter school (the "School") on certain property located at the northeast corner of 67th Avenue and Thunderbird Road in the City of Glendale (the "Property");
- B. Legacy agrees to implement certain operational measures to provide safe and efficient traffic coordination for the School.

NOW, THEREFORE, for and in consideration of the above recitals, which by this reference are incorporated herein and form part of this Agreement, and of the representations, mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

- 1. **Purpose.** The purpose of this Agreement is to establish guidelines for School traffic coordination and staggered student pick-up schedule. Therefore, this Agreement sets forth (i) the obligations and commitments of Legacy related to the employment of off-duty Glendale (or another municipality's) police officers to assist with traffic circulation and coordination for the first two weeks of Legacy School year 2016/2017, and (ii) the implementation of a staggered pick up.

- 2. **Definitions**

"Agreement" means this agreement between Glendale and Legacy.

"Applicable Law" means any and all Glendale, county, state, federal or other statutes, regulations, executive orders, ordinances, codes or other laws applicable to the design, construction, operation, maintenance and use of the School.

"Glendale" means the City of Glendale, Arizona, an Arizona municipal corporation.

"Maximum Enrollment" means the total number of students enrolled in the school on an average daily membership ("ADM") basis. The Maximum Enrollment at the School is one thousand two hundred eighty (1,280) students. (ADM enrollment is the number used by the State for funding purposes. ADM enrollment takes into account half-day students. For example, if one kindergarten student attends only during morning hours, and a different kindergarten student attends only during afternoon hours, the combined two (2) students would count as one (1) single enrolled student for ADM purposes.)

“Off-Duty Police” means a municipal law enforcement officer hired by Legacy.

“Party” and “Parties” mean Glendale and Legacy and their permitted successors and assigns.

“Property” means the real property described on Exhibit A.

“Stacking” means one or more vehicles intended to access the School for afternoon student pick up that are idling and waiting for any period of time in the through lanes of those portions of 67th Avenue or Thunderbird Road directly fronting or contiguous to the Property. This definition does not include the storage portion deceleration lane on either 67th Avenue or Thunderbird Road (i.e., it is acceptable for cars to idle and stack in the deceleration lanes). However, vehicles idling and waiting to access the School in the taper portion of the deceleration lanes on 67th Avenue or Thunderbird Road are considered as stacking in the through lanes, on the street as these vehicles will cause friction to the through lanes.

3. Agreements of Legacy.

3.1 Off-duty Police Assistance.

3.1.1 Legacy will employ at least one (1) Glendale (or another municipality’s) Off-Duty police officer(s) to assist with traffic circulation and coordination for the first two weeks of the 2016/2017 School year (which commences on the first day all students are attending class).

3.1.2 Employment of Off-Duty Police officers by Legacy will be extended in increments of two weeks unless Stacking does not occur for five consecutive school days (as determined by Glendale and Legacy) during any two-week period.

3.2 Staggered Pick-up

3.2.1 Legacy will implement a 30-minute staggered afternoon student pick up for the 2016/2017 Legacy school year.

3.2.2 The staggered pick up time will be evaluated by Legacy and Glendale during the first two weeks of the 2016/2017 Legacy school year. If cars are not Stacking for five consecutive school days during the two-week period (as observed and determined by Glendale and Legacy), the 30-minute stagger is deemed sufficient for after-school pick-up operations and will continue for the remainder of the school year and all subsequent school years, assuming enrollment at the School does not exceed the Maximum Enrollment.

3.2.3 A 40-minute staggered schedule time will be implemented unless Stacking does not occur for five consecutive school days (as observed and determined by

Glendale and Legacy) during the two-week period following the initial two week period (in which the 30-minute stagger was in effect).

3.2.4 Before any change to a 40-minute schedule is made, representatives from Legacy and Glendale shall meet on-site at the end of the two-week period following the initial two week period to observe conditions together and mutually agree on the need for the revised schedule.

3.2.5 In the event the 40-minute schedule does not prevent Stacking from occurring on five consecutive school days in a two-week period (as determined by Glendale and Legacy), the School will either (1) increase the staggered schedule by five minutes, or (2) add a third stagger, or (3) add off-site queuing, or (4) employ an Off-duty Police Officer, or (5) reduce enrollment at the beginning of the following school year, or (6) implement some other solution to address the Stacking as mutually agreed by the School and Glendale. The School will continue to implement such solutions until no Stacking occurs for five consecutive school days in a two-week period (as determined by Glendale and Legacy). Legacy and School will implement the solution that prevents Stacking from occurring on five consecutive school days in a two-week period for the remainder of the 2016/2017 school year.

3.2.6 Each subsequent School year will commence with a 30-minute staggered pick up time and will follow the processes identified in Section 3.2 through 3.2.5. if additional measures or changes are required.

4. **Permits and Withholding Certificate of Occupancy.** The Parties acknowledge that construction documents for the School are being reviewed by the City, and if approved, will culminate in the issuance of building permits. In the event that permits are issued prior to the City Council adoption of this Agreement, the Parties mutually agree to withhold the Certificate of Occupancy for the School unless this Agreement is adopted by the Glendale City Council. The Parties also acknowledge and agree that Legacy and the School will not acquire any vested rights as a result of the issuance of building permits or any other permits related to this project prior to the adoption of this Agreement (if any) by the Glendale City Council.

5. **Default.**

5.1 **Default.** Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement within the cure periods provided in this Section 5.1 after written notice thereof from the other Party shall constitute a default under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within thirty (30) days of delivery of written notice to the defaulting party, the non-defaulting Party shall have all rights and

remedies available at law or in equity (except as otherwise expressly limited herein); provided, however, if such default is non-monetary and cannot reasonably be cured within such thirty (30) days period, then the breaching party shall have such additional time to cure the default as is reasonably required so long as the breaching party is diligently acting to cure such default.

6. **General:**

6.1 **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Glendale or Legacy of the breach of any covenant 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.

6.2 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

6.3 **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this agreement are hereby acknowledged and incorporated herein and the parties hereby confirm the accuracy thereof.

6.4 **Further Acts.** Each of the Parties hereto shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

6.5 **Successors and Assigns.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. § 9-500.05(D), except as provided below. Without limiting the foregoing, the Parties acknowledge and agree that Legacy may assign and delegate any or all of its rights and obligations hereunder.

6.6 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

6.7 **Amendment.** This Agreement may not be amended nor may any provision hereof be waived except by a written amendment executed by both Glendale and Legacy. Within ten (10) days after any approved amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Maricopa County, Arizona.

6.8 **Order of Priority.** In the event of any conflict or inconsistency between the Applicable Rules and the provisions of this Agreement, the Applicable Rules shall have priority.

6.9 **Limited Severability.** The Parties each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Rules. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable

(or is construed as requiring Glendale to do any act in violation of any Applicable Rules or other applicable legal requirement, such provision shall be deemed severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as was intended by the original provisions hereof, and the Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

6.10 **Captions.** The captions appearing herein are for convenience only, are not a part of this Agreement, and do not limit or amplify any terms or provisions herein. The terms and provisions hereof shall apply without regard to the number or gender of words and expressions used herein.

6.11 **Governing Law and Construction.** This Agreement shall be construed in accordance with and governed by the laws of the State of Arizona. Any term or provision of this Agreement now or hereafter declared invalid or unenforceable under any law, order, ordinance or requirement of any governmental authority, whether now in force or enacted or promulgated in the future, or otherwise invalid, shall be deemed stricken from this Agreement to the extent of such invalidity or unenforceability, without impairing the validity of the remainder of this Agreement. This Agreement has been drafted and/or negotiated by each and all of the parties hereto and, therefore, any rules of construction, interpretation or the like, whether with respect to ambiguities or otherwise shall not be applied in favor of any party hereto.

6.12 **Attorneys' Fees.** Should litigation, or other form of formal conflict resolution, such as, but without limitation, mediation and arbitration, be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys' fees shall be paid to the prevailing Party. Nothing herein shall preclude nonbinding arbitration if the Parties so elect in the event of a dispute hereunder.

6.13 **Covenants Running With Land; Inurement.** The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property.

6.14 **Good Faith of Parties.** Except where any matter is expressly stated to be in the unfettered discretion of a Party, the Parties must act in good faith in all matters relating to the performance of this Agreement or in considering any requested extension of time or other matters, will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

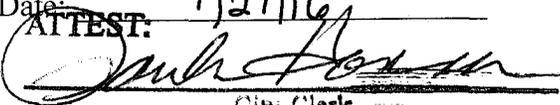
6.15 **Notices.** All notices, demands and communications of any kind which either party to this Agreement may be required or desires to serve upon the other shall be in writing and served to the Glendale and to School by personal service or by leaving a copy of such notice, demand or communication at the appropriate address indicated below, whereupon such service shall be deemed complete, or by mailing a copy thereof by certified or

registered mail certified with return receipt requested and postage paid, such services to be deemed complete on the day of actual delivery as shown by the addressee's receipt or at the expiration of the third day after mailing, whichever first occurs. Either party may change its address from time to time by giving written notice to the other:

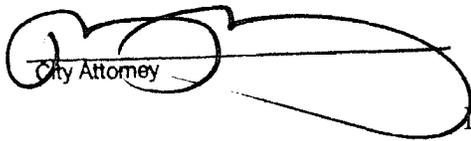
Glendale: City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attn: City Attorney

Legacy: Legacy Traditional School – District Office
3201 S Gilbert Road
Chandler, AZ 85286
Attn: Brandon Jones

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and at the place first written above.

Glendale: 
By: _____
Its: ACTING CITY MANAGER
Date: 1/21/16
ATTEST: 
City Clerk

Approved as to form


City Attorney

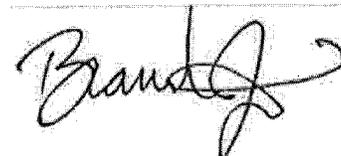
Legacy: 
By: _____
Its: CEO
Date: December 23, 2015

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION: LOT 1A

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 3 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE MARKING THE SOUTHWEST QUARTER OF SAID SECTION 7, FROM WHICH A BRASS CAP IN HANDHOLE MARKING THE WEST QUARTER OF SAID SECTION 7 BEARS NORTH 01 DEGREES 02 MINUTES 10 SECONDS EAST, FOR A MEASURED DISTANCE OF 2620.09 FEET;

THENCE NORTH 01 DEGREES 02 MINUTES 10 SECONDS EAST, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, FOR A DISTANCE OF 335.13 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 17 SECONDS EAST, FOR A DISTANCE OF 65.01 FEET, TO A POINT 65.00 FEET EAST OF SAID WEST LINE, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE NORTH 01 DEGREES 02 MINUTES 10 SECONDS EAST, PARALLEL WITH SAID WEST LINE, FOR A DISTANCE OF 629.96 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 18 SECONDS EAST, FOR A DISTANCE OF 565.13 FEET;

THENCE SOUTH 01 DEGREES 02 MINUTES 10 SECONDS WEST, PARALLEL WITH SAID WEST LINE, FOR A DISTANCE OF 900.08 FEET, TO A POINT 65.00 FEET NORTH OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7;

THENCE NORTH 89 DEGREES 57 MINUTES 18 SECONDS WEST, PARALLEL WITH SAID SOUTH LINE, FOR A DISTANCE OF 164.39 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 53 SECONDS EAST, FOR A DISTANCE OF 270.08 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 17 SECONDS WEST, FOR A DISTANCE OF 396.08 FEET, TO A POINT 65.00 FEET EAST OF SAID WEST LINE, SAID POINT BEING THE **POINT OF BEGINNING**.