DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is effective as of the Effective Date (as defined in Section 30 below), by and between the CITY OF GLENDALE, an Arizona municipal corporation (the “City”), and the MATH AND SCIENCE SUCCESS ACADEMY, INC., an Arizona nonprofit corporation (“Developer”). The City and Developer are collectively referred to herein as the “Parties” or may singularly be referred to as a “Party”.

WHEREAS, the City is authorized pursuant to Article I, Section 3 of its Charter and A.R.S. §§ 9-500.05 and 9-500.11 to enter into development agreements with businesses or landowners located in the City; and

WHEREAS, Developer plans to develop certain real property generally located at 4520 West Glendale Avenue, Glendale, Arizona 85301, as more fully described in the legal description and map attached to this Agreement as Exhibit “A” (the “Property”); and

WHEREAS, Developer desires to make certain improvements to the Property for new development and to expand the current employment opportunities at the Property (the “Project”) which will benefit the City; and

WHEREAS, the Property was vacant land and is currently under construction; and

WHEREAS, the City and Developer acknowledge that this Agreement constitutes a "Development Agreement" within the meaning of A.R.S. §9-500.05; and

WHEREAS, this Agreement is entered into for public purposes and is in the public interest of the residents of the City; and

WHEREAS, the City is willing to participate in the Project on the terms and conditions specified below.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions, the City and Developer agree as follows:

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AGREEMENT

1. Condition Precedent. The obligations in this Agreement are contingent upon Developer (i) constructing the Project, and (ii) obtaining all necessary approvals from any third parties including, but not limited to, the Arizona State Board for Charter Schools. The City is not required to perform any obligations described in this Agreement until the City Council has approved this Agreement at a duly held meeting of the City Council.

2. Scope of the Project. The Project consists of the construction of a new approximately 182,000 SF Academy of Math and Science charter school, as well as associated private and public infrastructure.

3. Developer Obligations.

3.1. Public Infrastructure. At no cost to the City, Developer will design, construct and dedicate to City the infrastructure set forth in Exhibit “B” (the “Public Infrastructure”).

3.2. Certificate of Occupancy. Prior to the issuance of any certificate of occupancy, including any temporary certificate of occupancy for those items identified below, and as required in the approved traffic impact analysis prepared by Southwest Traffic Engineers and dated November 16, 2018 (“Traffic Impact Study”), Developer shall be responsible for the design, construction and dedication of and all costs related to the design and construction and dedication of:

3.2.1. Prior to the issuance of any public temporary certificate of occupancy, right turn deceleration lanes with the minimum storage lengths as required in the Traffic Impact Study;
3.2.2. Prior to the issuance of any public temporary certificate of occupancy, traffic signal pole and associated equipment relocation on the northeast corner of 45th Avenue and Glendale Avenue;
3.2.3. Prior to the issuance of a final certificate of occupancy, flashing yellow arrows (FYA) including mast arms and signal heads for eastbound and westbound traffic at 45th Avenue and Glendale Avenue. If this work is not completed prior to the need for a public temporary certificate of occupancy, City of Glendale off-duty traffic officers are required during arrival and dismissal until the FYA is completed;
3.2.4. Prior to the issuance of any public temporary certificate of occupancy, a westbound far side bus bay at 45th Avenue and Glendale Avenue;
3.2.5. Prior to the issuance of any public temporary certificate of occupancy, restriping 45th Avenue with required turn lanes/two-way left turn lane;
3.2.6. Prior to the issuance of any public temporary certificate of occupancy, parking restrictions on 45th Avenue; and
3.2.7. Prior to the issuance of the final certificate of occupancy, a reduced speed school zone on Glendale Avenue along the frontage of the project.

3.3. Off-Duty Officers. Prior to the issuance of any certificate of occupancy, including any temporary certificate of occupancy, Developer shall retain a minimum of two off-duty City
of Glendale police officers to control traffic to and from the school during peak drop-off and pick-up periods for up to the first two (2) weeks of school of the first school year (2019-2020). The number of days Developer shall engage officers may be decreased for the first school year based upon observations of the safety of the traffic circulation as determined at the sole discretion of the City Traffic Engineering Staff. The City Traffic Engineer must approve the reduction of police officers and/or days in writing. Developer shall engage a minimum of two off-duty police officers for the first week of every subsequent school year, unless the City Traffic Engineering staff requires additional police officer presence in writing.

3.4. **Distinct School Schedules.** Developer shall maintain a school schedule that includes a minimum of two separate and distinct commencement and dismissal schedules for different grade levels (for example one dismissal schedule for Grades K thru 2 and one for Grades 3 thru 8) on regularly scheduled school days. Student enrollment in the two separate and distinct schedules shall be roughly equal in number but in no event shall the difference in the student enrollment be greater than fifteen (15) percent between the two distinct enrollment schedules. The scheduled commencement and dismissal times shall be separated by a minimum time of thirty (30) minutes. If the traffic queue obstructs a through lane on Glendale Avenue, Developer will need to implement mitigation measures including more staggered times as agreed by both Parties. Additionally, should there be any changes in state requirements regarding the school calendar and/or operating hours, the Parties will work collaboratively to address any traffic issues that may arise from such changes.

3.5. **Early Release.** Developer shall notify the City of all early dismissal days and if traffic queues in the through lanes of Glendale Avenue because of school traffic for any period of time on three consecutive days, the Developer shall implement mitigation measures, which may include up to two off duty police officers on early dismissal days as determined by the City. Early dismissal days will be reviewed every year. Submission of the school’s annual calendar to the City Traffic Engineer is deemed sufficient notification for the purpose of this section.

3.6. **Student Enrollment Limit.** Except as set forth in this Section 3.2, Developer shall limit the number of enrolled students to a maximum of 1,400 students, which shall also be the maximum number enrolled of students allowed on the School’s campus during any school day. Any requested increase to the student enrollment above 1,400 students shall require the written consent of the City and shall require Developer to pay for a revised traffic impact study, but in no event shall the total student enrollment ever exceed 1,800 students. City shall approve the student enrollment increase, which approval cannot be unreasonably withheld, conditioned or delayed, based upon the revised traffic impact study that takes into account the increased student enrollment. If indicated in the revised traffic impact study, Developer shall construct and provide for all additional traffic mitigation measures in addition to the measures previously required.

3.7. **Communication Plan.** Developer shall develop an on-going communication plan in cooperation with the City to inform parents and enrollees of issues and requirements surrounding on-site and off-site parking, queuing, pedestrian crossing and other public health and safety matters.
3.8. **Safe Walking Plan.** Developer shall develop a safe walking plan including use of crossing guards at 45th Avenue and Glendale Avenue. Developer shall communicate this plan with the parents of students who intend to walk to school to.

3.9. **On-Site Parking and Internal Drives.** Developer shall construct the on-site parking lot and internal drives consistent with the traffic circulation plan submitted to the City as part of the Traffic Impact Analysis completed by Southwest Traffic Engineers dated November 16, 2018. The plan requires one-way, traffic flow through the site from the northeastern driveway on 45th Avenue to a student loading/unloading area on the south side of the building. Modifications to the number of lanes, number of loading areas, and travel path through the site may be implemented as needed to contain the vehicle queue on the Property and will be communicated to the City Traffic Engineer. If, as a result of delay caused by school traffic queueing beyond the entrance to the Property, one or more vehicles are found to be idling and waiting in the through lanes of Glendale Avenue for any period of time on three consecutive days, Developer shall work with the City to develop a modified plan to minimize the queue lengths and implement the plan within a period of two weeks. This plan may include changing the School’s start and dismissal times or other measures to prevent any vehicle queuing from extending onto the through lanes of Glendale Avenue.

3.10. **School Event Parking.** Developer shall be responsible for securing any required off-site parking facilities to accommodate parking for all school events such as back to school night, sporting events, concerts, plays, etc. Developer shall provide copies of any agreements to the City. Developer shall communicate to parents regarding whether parking in adjacent neighborhoods for all school events, including drop off or pick up, is allowed or disallowed. Developer shall provide the City a copy of any parking agreement between Developer and the owner of the off-site parking facility.

4. **City Obligations.**

4.1. **Traffic Counts.** Upon completion of the Project, City shall randomly conduct traffic observations/counts at the Property to determine whether the school traffic is queueing onto Glendale Avenue. The City shall inform Developer at least three days prior to the day(s) the traffic observations/counts will be conducted so that the Developer may be present for observation.

4.2. **Onsite Circulation.** City shall meet with Developer to discuss any proposed changes to the onsite circulation for student drop-off or pickup in order to reach mutual agreement on the implementation of proposed changes; provided, however, if Developer is in compliance with the original, approved onsite circulation and conditions of this agreement, City may not take any punitive action against Developer for failure to reach a mutual agreement on any changes. If the parties cannot reach a mutual agreement through negotiations, the parties agree to endeavor first to settle the dispute by mediation pursuant to Section 9(c).

4.3. **Traffic Circulation Communication Plans.** City shall review the parking and traffic circulation communication plans and agreements.

4.4. **School Enrollment Limit Increase.** City shall review any requested increase to Developer’s enrollment limit as well as review any revised traffic impact study provided by
Developer in order to reach an agreement on a potential increase on the maximum number of enrolled students. City shall approve the student enrollment increase, which approval cannot be unreasonably withheld, conditioned or delayed, based upon the revised traffic impact study that takes into account the increased student enrollment.

5. Construction Standards for Infrastructure Improvements. Except as otherwise expressly provided in this Agreement, all Public Infrastructure required to be designed, constructed, and/or installed in connection with the development of the Property shall be designed and constructed in accordance with the ordinances, rules, regulations, and policies of the City in effect when the Public Infrastructure is constructed.

6. Dedication and Acceptance of Public Infrastructure. Upon satisfactory completion of the Public Infrastructure, Developer shall promptly dedicate and convey to the City such Public Infrastructure, free and clear of all liens and encumbrances, and at no cost to the City. Promptly after completing the Public Infrastructure, Developer shall notify the City in writing that such portion of the Public Infrastructure has been completed and provide the City with "as-built" drawings and plans of the completed Public Infrastructure. After receipt of the notice, the City Engineer or his/her designee shall inspect the completed Public Infrastructure identified in the written notice to determine whether such Public Infrastructure has been constructed in accordance with the applicable standards as defined in this Agreement and the approved plans and specifications for such Public Infrastructure. Upon completion of the inspection and review of the "as-built" drawings, the City shall deliver written notice to Developer either: (a) approving the construction of the Public Infrastructure or portions of such Public Infrastructure and agreeing to accept the conveyance of the completed Public Infrastructure; or (b) providing a punch list of specific items that are not in accordance with the applicable standards and/or the plans and specifications that are to be corrected by Developer. Developer shall make all valid corrections to the Public Infrastructure as soon as reasonably possible, as agreed upon by the City and the Developer. So long as the Public Infrastructure is constructed in accordance with the applicable standards and plans and specifications, as verified by the City Engineer or his/her designee, following an inspection that all punch list items have been timely completed, and accurate "as built" drawings and plans of the completed Public Infrastructure have been provided to the City, the City shall accept the Public Infrastructure or portions of such Public Infrastructure, which acceptance shall not be unreasonably delayed, through the issuance of an acceptance of dedication. The Public Infrastructure shall be deemed complete when accepted by the City Engineer or his/her designee as provided for herein. Upon acceptance by the City, the Public Infrastructure shall become public facilities and property of the City; the City shall be solely responsible for all subsequent maintenance, replacement or repairs; and (except for matters covered by express warranties provided to the City as set forth in Section 7 below). With respect to any claims arising prior to acceptance of the Public Infrastructure by the City, Developer shall bear all risk of, and shall indemnify the City and its officials, employees and City Council members, against any claim arising prior to the City’s acceptance of the Public Infrastructure from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Infrastructure, except to the extent caused by the negligence or willful acts or omissions of the City or its officials, employees and City Council members, agents or representatives. With respect to any claims arising after acceptance of the Public Infrastructure by the City, the City shall bear all risk of, and shall indemnify Developer and
its directors, officers, employees and agent, against any claim arising after the City’s acceptance of the Public Infrastructure from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Infrastructure, except to the extent any claims arise from any defect or other cause that could not reasonably have been discovered by the City at the time the City accepts the Public Infrastructure or caused by the negligence or willful acts or omissions of Developer or its directors, officers, employees and agent.

7. **Indemnity: Risk of Loss.**

(a) **Indemnity by Developer.** Developer shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorney’s fees, experts’ fees and court costs associated) which arise from or relate in any way to any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer’s obligations under this Agreement. The provisions of this Section 7, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives. Developer shall have no defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of the City, its employees, contractors, subcontractors, agents or representatives. The indemnity obligations of Developer shall survive the expiration or termination of this Agreement for a period of one (1) year from the date the City accepts the Public Infrastructure.

(b) **Indemnity by the City.** The City shall pay, defend, indemnify and hold harmless Developer and its directors, officers, employees, agents and contractors, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorney’s fees, experts’ fees and court costs associated) which arise from or relate in any way to any act or omission by the City, or its City Council members, officers and employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City’s obligations under this Agreement. The provisions of this Section 7, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of Developer, its directors, officers, employees, agents, contractors, subcontractors or representatives. The City shall have no defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of Developer, its directors, officers, employees, agents, contractors, subcontractors or representatives. The indemnity obligations of the City shall survive the expiration or termination of this Agreement for a period of one (1) year from the date the City accepts the Public Infrastructure.

(c) **Risk of Loss.** Developer assumes the risk of any and all loss, damage or claims to any portion of the Public Infrastructure unless and until title to the Public Infrastructure is transferred to the City. At the time title to the Public Infrastructure is transferred to the City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to the City any unexpired warranties relating to the design, construction and/or composition of such Public Infrastructure. Acceptance of the Public Infrastructure shall be conditioned on the
City’s receipt of a one (1) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to the City, provided however that such warranty or warranties may be provided by Developer’s contractor or contractors directly to the City and are not required from Developer, and that any such warranties shall extend from the date of completion of any Public Infrastructure, any component thereof, or the work of any specific trade or contractor, as applicable.

8. **Insurance.** Upon written request by the City at any time from the Effective Date to the expiration of the Term (as defined in Section 30 below), Developer will provide the City with certificates of insurance showing that Developer is carrying, or causing its prime contractor to carry, builder’s risk insurance and commercial general liability insurance with limits of not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) general aggregate, which shall include coverage for bodily injury, property damage and/or death arising from the activities of the Developer and its prime contractor, and worker’s compensation insurance policies in amounts required by statute. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least ten (10) days advance written notice of cancellation to the City (as provided in Acord Form 25), and will name the City as an additional insured on such policies.

9. **Cooperation and Alternative Dispute Resolution.**

   (a) **Representatives.** To further the cooperation of the Parties in implementing this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Developer. The initial representative for the City shall be its Transportation Director as designated by the City Manager or his designee (“City Representative”) and the initial representative for Developer shall be Steven Hykes or his designee from time to time (the “Developer Representative”). The City’s and Developer’s 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.

   (b) **Impasse.** The City acknowledges and agrees that it is desirable for Developer to proceed rapidly with the implementation of this Agreement and the development of the Property. Accordingly, the Parties agree that if at any time Developer believes an impasse has been reached with the City staff on any issue affecting the Property, Developer shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section 9. If there is an issue where a final decision cannot be reached by the City staff, the City Representative shall give Developer a final administrative decision within seven (7) days after Developer’s request for an expedited decision. Both the City and Developer agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

   (c) **Mediation.** If there is a dispute hereunder and which the Parties cannot resolve between themselves according to the provisions of Section 9(b), 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 Developer. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Developer 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 Developer. 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.

10. **Developer's Representations.** Developer represents and warrants that it is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Arizona, and its execution, delivery and performance of this Agreement is and has been duly authorized.

11. **City Representations.** The City represents and warrants that (i) its execution, delivery and performance of this Agreement has been duly authorized and entered into in compliance with the City's codes, ordinances, regulations and rules; (ii) no further action needs to be taken in connection with such execution and delivery; and (iii) this Agreement is valid and enforceable against City in accordance with its terms, and the individual(s) executing this Agreement on behalf of the City is (are) authorized and empowered to bind the City.

12. **Default.**

12.1. **Events Constituting Developer's Default.** Developer shall be deemed to be in default under this Agreement if Developer breaches any material obligations required to be performed by Developer hereunder, and such breach continues for a period of thirty (30) days after receipt of written notice thereof from City; provided that if the nature of the breach is such that the same cannot reasonably be cured within the thirty (30) day period, Developer shall not be deemed to have committed an event of default if Developer shall commence to cure the default within such thirty (30) day period after the City's notice and thereafter rectify and cure said failure within one hundred twenty (120) additional days.

12.2. **Events of Default by City.** The City shall be deemed to be in default under this Agreement if City breaches any obligations required to be performed by the City hereunder and such breach continues for a period of thirty (30) days after receipt of written notice thereof from Developer; provided that if the nature of the breach is such that the same cannot reasonably be cured within the thirty (30) day period, the City shall not be deemed to have committed an event of default if the City shall commence to cure the default within such thirty (30) day period after the Developer's notice and thereafter rectify and cure said failure within one hundred twenty (120) additional days.
12.3. Remedies. In the event either party is in default under this Agreement, then subject to the provisions of Section 9, the non-defaulting party shall have all remedies available to it at law or in equity.

GENERAL PROVISIONS.

13. Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, and may be terminated by the City in accordance with such provisions.

14. Notices. Any and all notices, approvals, consents, or other communications required or permitted by this Agreement shall be given in writing and will be deemed to have been duly delivered upon personal delivery or upon delivery or the first attempted delivery if by United States certified mail, postage prepaid, return receipt requested or a nationally recognized overnight courier services (e.g., FedEx and UPS) addressed as follows:

The City: City of Glendale
ATTN: City Manager
5850 W. Glendale Avenue
Glendale, Arizona 85301

With a copy to: City of Glendale
ATTN: City Attorney
5850 W. Glendale Avenue
Glendale, Arizona 85301

Developer: Math and Science Success Academy, Inc.
ATTN: Chief Financial Officer
3448 North First Avenue
Tucson, Arizona 85719

With a copy to: Warren Charter Law, PLC
ATTN: Terry D. Warren, Esq.
7702 East Doubletree Ranch Road, Suite 300
Scottsdale, Arizona 85258

Notice of address may be changed by either party by giving notice to the other party in writing of a change of address. Such change will be deemed to be effective upon delivery as set forth above. Notices by a Party may be given by legal counsel to or the authorized agent of such Party.

15. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding business day which is not a Saturday, Sunday or legal holiday.
16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties.

17. **No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Parties. No person or entity shall be a third-party beneficiary to this Agreement, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of the Developer under this Agreement.

18. **Section Headings.** The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

19. **Entire Agreement.** This Agreement, together with the attached Exhibits, constitutes the entire Agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties, oral or written pertaining to the subject matter of this Agreement.

20. **No Agency or Partnership.** Neither the City nor Developer is acting as the agent of the other with respect to this Agreement, and this Agreement shall not be deemed to create a partnership, joint venture or other business relationship between the City and the Developer.

21. **No Waiver.** No waiver by either Party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Developer 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.

22. **Choice of Law, Venue, Attorney’s Fees, and Limitations of Damages.** Any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the laws of the State of Arizona. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. In any dispute under this Agreement that is not resolved under **Section 9**, the successful Party shall be entitled to collect from the other Party its reasonable attorneys’ fees and other costs as determined by a Court of competent jurisdiction. The Parties agree that the only remedies available in the event of a breach or default of this Agreement are specific performance and declaratory relief, and that under no circumstances shall monetary damages, whether characterized as actual, consequential or otherwise, be awarded in the event of a breach or default.

23. **Fair Interpretation.** The terms and provisions of this Agreement represent the result of negotiations between the Parties, each of which has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the terms and provisions of this Agreement shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any
rule of law that ambiguous or conflicting terms be resolved against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

24. **Further Documentation.** The Parties agree 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.

25. **Amendment.** No change or addition is to be made to this Agreement except by written amendment executed by the City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to “Agreement” or “Development Agreement” shall mean this Agreement as amended by any subsequent, duly processed amendment. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the “Original Agreement.” When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

26. **Time is of the Essence.** Time is of the essence with regard to the performance of all of the Parties’ obligations under this Agreement.

27. **Assignment; Binding on the Property.** The rights of Developer under this Agreement may be transferred or assigned, in whole or in part, by written instrument to any subsequent owner of all or any portion of the Property upon written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notice of any transfer or assignment in accordance with this Section 27 shall be provided to the City at least fifteen (15) days before such transfer or assignment. Subject to the provisions of this Section 27, as provided in A.R.S. § 9-500.05(D), the burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties hereto and their permitted successors in interest and assigns, except as provided below. Developer’s rights and obligations hereunder may only be assigned to a person or entity that has an interest in the Property or a portion thereof and only by a written instrument, recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations.

28. **Severability.** If any portion of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severed from this Agreement, and the remaining terms of this Agreement shall remain effective; provided that if either Party is materially prejudiced by such severance, the Parties shall promptly negotiate in good faith to amend this Agreement so that it is consistent with the Parties’ original intent and enforceable with regard to the severed provision.

29. **Approval by City Council.** This Agreement is subject to approval by the City Council at a formal meeting of the same. By execution below, the City acknowledges that the City Council approved this Agreement at a duly held meeting of the City Council.
30. **Term.** The term of this Agreement shall be effective upon the execution by both Parties and shall continue until the responsibilities of the Parties have been completed and the Property is no longer being used as a traditional public or public charter school.

31. **Exhibits and Recitals.** All exhibits attached to this Agreement and recitals set forth at the beginning of this Agreement are incorporated herein by reference as though fully set forth in this Agreement, and the Parties acknowledge that the recitals are true and accurate.

32. **Consents and Approvals.** The City and Developer shall at all times act reasonably with respect to any and all matters which require either Party to review, consent or approve any act or matter hereunder.

33. **Nonliability of Officials, Partners and Employees.** No member, official or employee of the City will be personally liable to Developer, or any successor in interest, in the event of a default or breach by the City for any amount which may become due to Developer or successor, or on any obligation under the terms of this Agreement. No member, interest holder, stockholder, director, officer, manager, partner, advisor or employee of Developer will be personally liable to the City in the event of a default or breach by Developer under the terms of this Agreement.

[Signatures on Following Pages]
IN WITNESS WHEREOF, the Parties have hereunto set forth their respective entity names effective as of the day and date first written above.

CITY:

THE CITY OF GLENDALE,
an Arizona municipal corporation

By: _____________________________

Date: _____________________________

ATTEST:

By: _____________________________
City Clerk

APPROVED AS TO FORM:

________________________________
City Attorney

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this _______ day of ________, 2019,
by _____________________________, City __________________ of the City of Glendale, Arizona, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

________________________________
Notary Public

My commission expires:

________________________________
IN WITNESS WHEREOF, the Parties have hereunto set forth their respective entity names effective as of the day and date first written above.

DEVELOPER:

MATH AND SCIENCE SUCCESS ACADEMY, INC.,
an Arizona nonprofit corporation

By: ____________________________
Name: STEVEN HYKIS
Its: CFO

STATE OF ARIZONA )
COUNTY OF MARICOPA ) ss.

The foregoing instrument was acknowledged before me this ___ day of July, 2019, by STEVEN HYKIS, as the CFO of Math and Science Success Academy, Inc., an Arizona corporation, on behalf of said company.

Notary Public

My commission expires:
[Signature]

1/15/2023
EXHIBIT A

PERMITTED LEGAL DESCRIPTION
(Glendale Campus)

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER
OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 NORTH, RANGE 2
EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY,
ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 4;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE SOUTH
LINE OF SAID SECTION 4, A DISTANCE OF 1308.01 FEET TO THE SOUTHEAST
CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID
SECTION 4;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE SOUTH
LINE OF SAID SECTION 4, A DISTANCE OF 40.15 FEET;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 40.00
FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE NORTH
40 FOOT RIGHT OF WAY LINE OF GLENDALE AVE., A DISTANCE OF 613.89 FEET;

THENCE NORTH 00 DEGREES 25 MINUTES 27 SECONDS WEST ALONG THE WEST
LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 602.26 FEET;

THENCE NORTH 44 DEGREES 49 MINUTES 18 SECONDS EAST, A DISTANCE OF
14.08 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 57 SECONDS EAST ALONG A LINE 10
FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST
QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 438.14 FEET;

THENCE NORTH 00 DEGREES 12 MINUTES 47 SECONDS WEST ALONG A LINE 208
FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHWEST
QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF
10.00 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 57 SECONDS EAST ALONG THE NORTH
LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 178.00 FEET;
THENCE SOUTH 00 DEGREES 12 MINUTES 47 SECONDS EAST ALONG THE WEST 30 FEET RIGHT OF WAY LINE OF 45TH AVENUE, A DISTANCE OF 611.52 FEET;

THENCE SOUTH 44 DEGREES 53 MINUTES 37 SECONDS WEST A DISTANCE OF 14.12 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THE FOLLOWING DESCRIBED PROPERTY CONVEYED TO THE CITY OF GLENDALE BY DEEDRecorded August 09, 1988 as 88-391109, OF OFFICIAL RECORDS;


EXCEPT THE WEST 174 FEET THEREOF; AND

EXCEPT THE EAST 30 FEET THEREOF; AND

EXCEPT THE FOLLOWING DESCRIBED PROPERTY CONVEYED TO THE CITY OF GLENDALE BY DEED Recorded August 09, 1988 in 88-391110, OF OFFICIAL RECORDS;

EXHIBIT B

Developer Public Infrastructure:

As more particularly set forth in that certain Offsite Improvement Plans for AMS Glendale, prepared by 3 Engineering, under Project No. 1639 and No. 1639A, attached as follows and incorporated herein in its entirety by this reference.