

DEVELOPMENT AGREEMENT MONUMENT ACADEMY

This Development Agreement ("Agreement") is entered into this 20 day of May, 2020 by and between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado (the "County"), whose address is 200 South Cascade Avenue, Colorado Springs, CO 80920, and the Monument Academy Foundation (the "Foundation"), whose address is 1150 Village Ridge Point, Monument, CO 80132. The County and the Foundation may be referred to herein individually as a "Party" and collectively as "Parties."

Recitals

WHEREAS, the Foundation has submitted a site development plan ("Plan") application to the County for the construction of a public charter school on property legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Site"); and

WHEREAS, the Foundation will be required to construct a number of public improvements in connection with development of the Site;

WHEREAS, the Parties wish to memorialize their mutual understandings regarding the timing of public improvement construction and the maintenance of such improvements.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Incorporation of Recitals. The Parties hereby incorporate by reference the above-stated Recitals into this Agreement as if fully set forth herein.
2. No Guarantee of County Approvals. The Foundation understands and agrees that by executing this Agreement, there is no assurance that the County will execute the same. If the County does not execute this Agreement, or fails to approve the Plan, this Agreement shall be of no effect. The Foundation further understands and agrees that this Agreement does not assure the Foundation that the County will approve, either administratively or through the Board of County Commissioners, any land use or development applications for the Site, including the currently pending Plan or any future zoning or subdivision applications, and that the County, by executing this Agreement, makes no express or implied promises or representations that it will do so.
3. Construction of Improvements. The Foundation hereby agrees to construct the improvements necessary to serve the school in accordance with

construction drawings and access permits approved by either the County or the Colorado Department of Transportation (“CDOT”), as applicable, including but not limited to the following:

- a. Jane Lundeen Drive and Pinehurst Circle, including sidewalks, curb and gutter;
- b. Improvements to Walker Road, including a roundabout at the intersection with Jane Lundeen Drive;
- c. Improvements to the intersection of State Highway 83 and Walker Road; and
- d. The right-in only intersection of State Highway 83 and Pinehurst Circle.

Construction of all necessary improvements shall be completed within one (1) year after approval of the construction plans for such improvements and issuance of the Notice to Proceed by the appropriate authority. Any utility easements within proposed or future County right-of-way shall be extinguished prior to future County acceptance of the right-of-way.

4. Access Permits and Traffic Impact Studies. The Foundation has submitted a final Traffic Impact Study (TIS) for the public charter school dated April 7, 2020 and the County has accepted it. The Foundation shall construct any recommended improvements not already included in paragraph 3 above in accordance with the timeline in the accepted TIS.

New driveway or access permit applications shall be submitted in the future, to the County or CDOT as appropriate, in accordance with the provisions of the El Paso County Engineering Criteria Manual (ECM). At such time, a determination will be made in accordance with ECM standards regarding whether submission of a TIS or other documentation is required.

Without limiting the general application of the preceding paragraph, the Foundation shall prepare and submit to the County a new access permit application each time any of the following occur: a) an increase in the number of students above the assumptions in the accepted TIS; b) an increase in the square footage of the school above the assumptions in the accepted TIS; or c) an ongoing change in the starting or ending times for any school grade by fifteen (15) minutes or more which would increase peak traffic volume beyond the assumptions in the accepted TIS. Upon County review and acceptance of the updated TIS, the Foundation shall, within six (6) months of such acceptance, implement any recommended traffic control measures not requiring the construction of improvements and obtain approved construction drawings for any recommended improvements, and shall, within six (6) months of construction drawing approval, complete construction of the recommended improvements.

If either the County or the Foundation is made aware of any unanticipated safety issue(s) arising from site-generated traffic and land uses, then the informed party shall promptly notify the other party of the specific issue(s). The Foundation and the County shall coordinate in good faith to determine whether such issues are attributable, or to

the degree that they are attributable, to site-generated traffic. If all or a portion of the issues are determined by the County Engineer as being caused by site-generated traffic, then the County Engineer, at his or her sole discretion, shall have the authority to require that the Foundation provide an updated TIS. The County Engineer shall also have the authority to require participation by the Foundation in immediately implementing traffic control measures and/or construction of improvements to alleviate the safety issue(s). Any requirement of the Foundation to participate in the implementation of such traffic control measures and/or construction improvements shall be based upon the proportionate impact caused by the site-generated traffic, as determined by the County Engineer.

5. Collateral. To secure and guarantee the construction of the improvements identified in paragraphs 3.a. and 3.b. above, the Foundation agrees to provide collateral to remain in effect at all times until such improvements are completed and either acknowledged as having been built to County standards or preliminarily accepted by the County, as applicable. Collateral shall be in the form of letter of credit issued by Integrity Bank in the amount of \$____, which amount is set forth in the Financial Assurance Estimate attached hereto as Exhibit B and incorporated herein by reference. The amount of such financial assurance shall be adjusted to reflect the amount of construction remaining at the time of posting such financial assurance and may be released by the County in accordance with standard practice.

6. Certificate of Occupancy. The Parties hereto specifically agree that County authorization is required prior to issuance of a certificate of occupancy for the public charter school by the Pikes Peak Regional Building Department.

7. County Approval of Certificate of Occupancy. In accordance with the Plan the County shall diligently pursue CDOT access permits for access to State Highway 83 at Pinehurst Circle and at Walker Road. Prior to County authorization of issuance of a certificate of occupancy one of the following three alternatives (a., b., or c.) shall be complied with:

- a. The Foundation will:
 - i. Provide the County with written confirmation from CDOT that the improvements to the intersection of State Highway 83 and Pinehurst Circle described in paragraph 3.d. above have been substantially completed and are anticipated to be accepted by CDOT;
 - ii. Substantially complete, as determined by the County Engineer, construction of the intersection of Jane Lundeen Drive at Walker Rd and of Jane Lundeen Drive and the portion of Pinehurst Circle shown on the Plan; OR install traffic control measures prohibiting any traffic from entering or exiting the intersection of Walker Road and Jane Lundeen Drive if construction has not been substantially completed to the satisfaction of the County, and

- iii. Complete all other improvements (e.g. landscaping, parking) depicted on the Plan prior to the start date of the School; or
- b. The Foundation will:
- i. Provide the County with written confirmation from CDOT that the improvements to the intersection of State Highway 83 and Pinehurst Circle described in paragraph 3.d. above have been substantially completed and are anticipated to be accepted by CDOT;
 - ii. Install traffic control measures approved by El Paso County prohibiting any traffic from entering or exiting the intersection of Walker Road and Jane Lundeen Drive,
 - iii. Construct the portion of Pinehurst Circle within Walden Preserve 2 Filing No. 4 in accordance with the approved construction drawings and grading and erosion control plan,
 - iv. Construct the remainder of Pinehurst Circle to a safe, stable condition in accordance with the approved Monument Academy Phase 1A Grading and Erosion Control (GEC) Plans dated October 2019. If the Foundation constructs the remainder of Pinehurst Circle only to this interim condition prior to issuance of the certificate of occupancy, it must also 1) obtain a determination from both the County Engineer and fire protection district that such interim access conditions are adequate, 2) comply with all MS4 permit conditions and obtain an ESQCP if necessary, and 3) obtain the necessary temporary access permit. If the Foundation paves any portion of Pinehurst Circle north of Filing No. 4 as part of the interim condition, the Foundation must provide a drainage letter to address water quality requirements, a revised GEC Plan if necessary, and all other plans and permits required pursuant to the County's MS4 Permit. The Foundation must comply with all County inspection requirements, including the payment of inspection fees. Copies any easements needed for public use of this interim access road shall be provided to El Paso County Planning and Community Development Department prior to County authorization of issuance of the certificate of occupancy, and
 - v. Complete all other improvements (e.g. landscaping, parking) depicted on the Plan prior to the start date of the School; or
- c. The Foundation agrees to notify the County at least 60 days prior to the start date of the School if it anticipates being unable to meet the requirements of either alternative (a) or (b) above in this Section 7. The phrase "start date of the School" shall be defined as the date of physical occupation of the School site by any School staff and/or students. The two Parties agree that if after diligent, good faith efforts the Foundation is unable to complete the requirements included within either alternative (a) or (b) and has provided such 60-day notice to the County, then the Foundation and the County agree to work together, in good faith, to establish a temporary alternative public access to serve the School. The Foundation acknowledges and accepts that

any such alternative public access approved by the fire protection district and the County may require the Foundation to implement increased measures specific to traffic control as well as routine maintenance of the access, as determined by the County Engineer, to ensure the safety of the traveling public, including the safety of the traveling public associated with existing County roads.

The Foundation agrees that the location and design of any temporary alternative public access will need to be approved by the County and the fire protection district and that a separate construction permit issued by the County will be required prior to the Foundation initiating construction of the access. The access shall not be opened for public use until and unless the County Engineer, or his or her designee, and fire protection district have inspected construction of the access and provided written approval and authorization for public use. The Foundation acknowledges and accepts that failure by the Foundation to comply with any or all of the above requirements for establishing a temporary alternative access may result in delay in obtaining final approval of such access.

The County agrees that the County Engineer, or his or her designee, shall inspect the construction of the access within two (2) working days of receiving a written request for inspection from the Foundation and will issue either a written approval and authorization of public use or a written denial based upon the condition of the access as constructed at the time of inspection within two (s) working days of the date of inspection.

The Foundation also agrees to complete all other improvements (e.g. landscaping, parking) depicted on the Plan prior to the start date of the School.

8. Onsite Road Maintenance. The Foundation shall maintain Jane Lundeen Drive and Pinehurst Circle until such time as the Site has been platted and the County has accepted such roads free of encumbrances into the County road maintenance system. If the condition of these onsite roads deteriorates prior to platting, the Foundation must repair or reconstruct them to bring them back up to County standards prior to County acceptance.

9. Offsite Road Maintenance / Reimbursement for Impact. If temporary use of Pinehurst Circle east of the Site is necessary, Pinehurst Circle shall be constructed to a stable, safe, interim condition. The Foundation shall maintain Pinehurst Circle offsite to include ongoing stabilization and dust control. Upon completion of the Walker Road improvements, the Foundation shall obtain County approval of an updated method of handling traffic (MHT) for the Site and install and maintain approved traffic control measures throughout the Site, including but not limited to those necessary to ensure that the use of Pinehurst Circle east of the Site by school traffic shall cease until it has been accepted by the County.

The Foundation shall reimburse the County for the costs of any additional maintenance and repair to certain residential roads which the County has documented as attributable to the increase in traffic on such roads from Monument Academy traffic. The Foundation shall reimburse the County within sixty (60) days of the County providing a written invoice or other documentation for such costs. The roads subject to the provisions of the paragraph are the portion of Pinehurst Circle located with Walden Preserve 2 Filing No. 4, Walden Way, the portion of Timber Meadow Drive between Needles Drive and Hodgen Road, and the portion of Pond View Place between Timber Meadow Drive and Cabin Hill Lane.

10. Limitation on Land Uses. The Foundation may not establish any uses on the Site other than a public charter school without first obtaining any necessary County approvals.

11. El Paso County Road Impact Fee. The Foundation acknowledges that development of the Site is subject to the provisions of the El Paso County Road Impact Fee Program ("Program"). The current Impact Fee for public/institutional uses is \$ \$3,372 per 1,000 square feet of Gross Floor Area, as that term is defined in the Program. Prior to approval of the Plan, the Foundation shall pay in full the Impact Fee due or shall enter into a written agreement with the County for such payment. The County also recommends that upon approval of the construction drawings for the improvements described in paragraph 3 above, the Foundation contact the Program Manager to determine if any such improvements are eligible for credits in the Program and whether a credit agreement is needed.

12. Authority. The undersigned hereby acknowledge and represent that they have the legal authority to bind their respective Party to this Agreement.

13. Entire Agreement. This Agreement represents the complete integration of all understandings between the Parties, is the entire agreement between the Parties, and no additional or different oral representations, promises, or agreements shall be binding on any of the Parties with respect to the subject matter of this Agreement, unless set forth in writing and signed by the affected Parties.

14. Changes or Modifications. No modification, amendment, novation, change or other alteration of this Agreement shall be valid unless agreed to by the affected Parties in writing and executed as an addendum to this Agreement.

15. Severability. If any paragraph, section, subsection, clause or phrase of this Agreement is, for any reason, held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.

16. Waiver. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.

17. No Third-Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against the County or the Foundation for any breach or other failure to perform this Agreement.

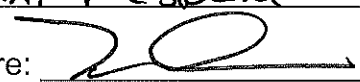
18. Successors and Assigns. The Foundation may not assign any of its rights or obligations under this Agreement to any party that is not a subsequent owner of the Site. The Parties agree that this Agreement touches and concerns the Site and shall run with the land.

19. Applicable Law. This Agreement shall be interpreted and enforced in accordance with the laws, rules and regulations of the State of Colorado and El Paso County. Venue shall be in the El Paso County District Court.

20. Recording. This Agreement shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

IN WITNESS WHEREOF, the Parties affix their signatures below.

MONUMENT ACADEMY FOUNDATION

Name: MARK A. McWILLIAMS Date 20 May 2020
Title: MAF President
Signature: 

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY COLORADO

By: _____ Date _____
Mark Waller, Chair

Attest:

Chuck Broerman
County Clerk & Recorder

Approved as to form:

County Attorney's Office