

AGENDA ITEM EXECUTIVE SUMMARY

- I. Public Education Commission Meeting Date: April 13, 2018
- II. Item Title: Discussion and Possible Action on PEC Contract Template

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- Relevant Statutes.....p 20-27
- Current Contract Template.....p 28-88

Charter Contract Between
New Mexico Public Education Commission
And
Charter School

1. **Parties:** The New Mexico Public Education Commission is authorized, pursuant to New Mexico Statutes Annotated ("NMSA"), Chapter 22, Article 8B, to execute a Charter Contract ("Charter") for the purpose of authorizing the establishment of charter schools that will provide a learning environment to improve student achievement and to provide a parents and students with an educational alternative.
 - A. This Charter is entered into between Charter School ("Charter School") and the New Mexico Public Education Commission ("Commission") for the purpose of establishing a charter school to operate at the site(s) listed in Paragraph 3.H. of this Charter.
 - B. The person authorized to sign and act on behalf of the New Mexico Public Education Commission is the Chair of the New Mexico Public Education Commission.
 - C. The person(s) authorized to sign on behalf of the Charter School is/are XXXX ("Charter Representative(s)").
 - D. The Charter Representative(s) affirms as a condition of this Charter, that he/she is (one of) the above-described representative(s) of the Charter School and has authority to enter into this Charter on behalf of the Charter School.
 1. The Charter School must maintain one or more Charter Representative(s), including one Charter Representative who is a licensed school administrator ("Head Administrator"), and provide contact information to the New Mexico Public Education Commission within 10 days of the change of a Charter Representative(s).
 2. The New Mexico Public Education Commission shall direct all communication with regard to this Charter to the Charter Representative(s).
 3. The Charter Representative(s) shall respond to written communication from the New Mexico Public Education Commission within the timeframe specified in the communication.
 - E. Neither party to this Charter is the employee or agent of the other party.
 - F. The Charter School is a public body/agency of the State of New Mexico, subject to all laws and regulations applicable to public bodies/agencies.
2. **Purpose:** The Charter School shall operate a public school consistent with the terms of the Charter and all applicable laws; shall achieve student outcomes according to the educational standards established by law and this Charter; and shall be governed and managed in a financially prudent manner.
3. **Material Terms:**
 - A. **Mission:** The Charter School shall implement the mission identified below and shall report on the implementation of that mission in the manner described below.
 1. XXXX

2. The Charter School shall report on the implementation of its mission in the following manner:
 - a. Annually during the performance review visit required by NMSA 1978 § 22-8B-12(E), as evaluated through the site visit team's observations and the school's response to any such observations;
 - b. Annually through any mission specific goals identified in the Charter School's Performance Framework, **Attachment A**, incorporated herein by reference; and
 - c. At renewal through a narrative in the renewal application.
- B. **Overall Instructional Hours:** The Charter School shall annually provide the required number of instructional hours, which is mandatory instructional time in which students must be engaged in a school directed program and for which the Charter School enforces the Compulsory School Attendance Law. The Charter School shall provide instruction for no less than the overall instructional required by statute, based on the grade levels served.
- C. **Enrollment Cap and Authorized Grade Levels:** The Charter School is authorized to serve no more than **XXXX** students in grades **XXXX**.
 - a. The Charter School may make modifications as to the number of students in any particular grade, and number of students within a class to accommodate staffing decisions that are consistent with the Charter School's programmatic needs. This does not, however, give the school the authorize to combine students from different grade levels into the same classroom unless the school's educational program explicitly provides for mixed grade/age education.
 - b. The Charter School must annually, prior to beginning the annual enrollment process, establish the number of vacancies by grade level available for student enrollment in that year. That number will govern the enrollment throughout the school year.
 - c. The Charter School may not exceed the building capacity of their identified facility (facilities).
- D. **Partner Organization or Management Company (REMOVE IF NOT APPLICABLE):**
 1. The Charter School has a legal relationship with **XXXX**. **Attachment B**, incorporated herein by reference and as amended according to Paragraph 9 of this agreement, is the legal agreement governing the relationship between the Charter School and **XXXX**.
 2. The New Mexico Public Education Commission, through its designees and/or the Public Education Department, has reviewed the legal agreement in **Attachment B** to determine whether the contract complies with all provisions of New Mexico law and to determine that the Charter School is financially independent from **XXXX**. The New Mexico Public Education Commission, through its designees and/or the Public Education Department, will review any requested changes to that agreement to determine whether the proposed changes comply with all provisions of New Mexico law and to determine that the Charter School is financially independent from **XXXX**.
 3. On an annual basis, during the performance review visit required by NMSA 1978 § 22-8B-12(E), the New Mexico Public Education Commission, through its designees and/or the Public Education Department, reserve the right to review the legal

agreement and review school documents and records to determine whether the contract complies with all provisions of New Mexico law and to determine that the Charter School is financially independent from **XXXX**.

E. **Educational Program of the School:** The Charter School's educational program shall be as described below:

1. **XXXX**
2. **XXXX**
3. **XXXX**
4. **XXXX**
-

F. **Governance:**

1. The Charter School shall be governed by a governing body in the manner set forth in the governing body's bylaws, **Attachment B**, incorporated herein by reference and as amended according to Paragraph 9 of this agreement.
2. The Charter School's governing body shall have at least five members at all times.
 - a. The Charter School shall notify the Public Education Commission of all changes in membership within 15 days of the change in accordance with the Public Education Commission's policy regarding notifications of governance changes.
 - b. The Charter School shall replace any member who is removed or who resigns within 45 days in accordance with the Public Education Commission's policy regarding governance changes.
3. No member of the Charter School's governing body shall serve on the governing body of another charter school, unless the Charter School has been granted a discretionary waiver from the Secretary of Education.
4. Prior to voting on any school business, each member of the Charter School's governing body shall complete a seven hour Introductory Training provided by the Public Education Department or receive a waiver and complete a two hour online training, in accordance with Section 6.80.5 NMAC.
5. The Charter School shall notify the Public Education Commission within 15 days of the allegations of, or convictions for, inappropriate contact with a student or other minor by a governing board member, and shall notify the Public Education Commission within 15 days of allegations of, or convictions for, any crime related to the misappropriation of school funds or theft of school property by and governing board member.
6. The Charter School governing body members have a duty of care for complying with the provisions of this Charter, all applicable laws, regulations, and reporting requirements. All governing body members shall comply with training requirements established in Section 6.80.5 NMAC.
7. The Charter School's governing body is responsible for the policy decisions of the Charter School; is responsible for hiring, overseeing, and terminating the Head

Administrator of the Charter School; and is entrusted with oversight of expenditure of public funds in accordance with all applicable laws, regulations and rules, including but without limitation any laws or rules pertaining to conflicts of interest, public school finance, and procurement.

8. The Charter School shall, at all times, be qualified to act as a qualified board of finance.
 - a. In order to initially become qualified as a board of finance, the school shall provide:
 - i. The names, home addresses, personal email addresses, and personal phone numbers of each member of the board;
 - ii. A statement signed by every member of the governing body that the governing body agrees to consult with the department on any matter not covered by the manual of accounting and budgeting before taking any action relating to funds held as a board of finance;
 - iii. A signed affidavit from each governing body member declaring that the member is not a governing body member of any other charter school, or has been granted a waiver by the Secretary of Education, and that the member was not a governing body member of another charter school that was suspended or failed to receive or maintain their board of finance designation; and
 - iv. An affidavit or affidavits, signed by the school's licensed business official who will be given the responsibility of keeping the financial records of the charter school, describing the training completed, professional licensure held and degrees earned by them;
 - v. A copy of a certificate of insurance that indicates that the person who will be entrusted with handling the funds of the charter school is adequately bonded.
 - b. Within 15 days of the change to any member of the governing body or the school's licensed business official who will be given the responsibility of keeping the financial records of the charter school, the school shall resubmit all information required in subsection 3.F.7.a(i)-(v) above, revised to reflect the changes in staffing or board membership.
 - c. If at any time, the school's qualification as a board of finance is revoked by the Public Education Department pursuant to Section 22-8-39, the New Mexico Public Education Commission will, at its next regularly scheduled meeting, consider whether to commence revocation proceedings. If the New Mexico Public Education Commission decides not to revoke the charter, the school shall be required to develop and successfully implement a Corrective Action Plan to address the conditions and causes of the revocation of the school's qualification as a board of finance.

G. Operation:

1. The Charter School shall be nonsectarian in its charter school programs, admission policies and employment practices and all other operations.

Attachment C, incorporated herein by reference and as amended according to Paragraph 9 of this agreement, is the Charter School's admission policies and procedures.

2. The Charter School shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as a school district.
3. The Charter School shall comply with applicable federal, state and local rules, regulations and statutes relating to health, safety, civil rights and insurance.
4. The Charter School shall, in accordance with the Compulsory School Attendance Act, maintain records to document daily student attendance and shall make such records available for inspection upon request of the New Mexico Public Education Commission and the New Mexico Public Education Department.
5. The Charter School shall maintain student records in accordance with New Mexico public records retention requirements.
6. The Charter School shall allow representatives from the New Mexico Public Education Commission, New Mexico Public Education Department, and/or the New Mexico State Auditor to visit each school site at any reasonable time.
7. The Charter School shall allow the representatives to conduct financial, program or compliance audits and shall hold open for inspection all records, documents and files relating to any activity or program provided by the Charter School relating to the charter school or by the charter school. All books, accounts, reports, files and other records relating to this Charter shall be subject, at all reasonable times, to inspection and audit by the State for five years after termination of the Charter.
8. The Charter School shall notify the Public Education Commission within 15 days of the allegations of, or convictions for, inappropriate contact with a student or other minor by any staff member, and shall notify the Public Education Commission within 15 days of allegations of, or convictions for, any crime related to the misappropriation of school funds or theft of school property by any staff member.
9. If the Charter School receives federal grant funds, the Charter School shall timely submit financial and other reports required by the New Mexico Public Education Department for the Charter School's receipt of such funds.
10. The Charter School shall comply with applicable federal, state and local rules, regulations and statutes relating to public education unless the Charter School is specifically exempted from the provision of law.
 - a. **Attachment D**, incorporated herein by reference, identifies the non-discretionary waivers the Charter School is utilizing and the discretionary waivers the Charter School has requested from the Secretary of Education.
 - i. If the school requests and is granted a discretionary waiver at any point during the charter term, the school shall file a notification within 30 days of approval from the Secretary with the PEC to amend the contract and make the waiver a part of the contract.
 - ii. If the school begins making use of any additional non-discretionary waivers at any point during the charter term, the school shall file a notification within 30 days of beginning use of

the waiver with the PEC to amend the contract and make the waiver a part of the contract.

- b. **Attachment E**, incorporated herein by reference and as amended according to Paragraph 9 of this agreement, is signed assurances from the Charter School's governing body members regarding compliance with all federal and state laws governing organization, programmatic, and financial requirements applicable to charter schools.

- i. Within 30 days of any change to the membership of the Charter School's governing body, the school shall provide a signed assurance from all new members which will be incorporated into **Attachment E** of the contract.

11. **Use of Volunteers:** The School acknowledges that all volunteers must comply with state regulations regarding the use of volunteers as found in Section 6.50.18 NMAC.

12. **Background Checks:** The Charter School shall comply with the requirements of Section 22-10A-5 NMAC 1978.

- a. The Charter School shall develop and implement policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at the public school. The charter school shall comply with the Criminal Offender Employment Act.
- b. The charter school administrator shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.
- c. The charter school administrator or their respective designees shall investigate all allegations of ethical misconduct about any licensed school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of wrongdoing, the charter school administrator shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment. No agreement between a departing licensed school employee and the charter school shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void.

H. **Sites:** The Charter School shall provide educational services, including the delivery of instruction, at the following location(s):

School Name (Grades)
School Address
City, State Zip

School Name (Grades)
School Address
City, State Zip

The Charter School shall ensure the facilities meet the charter school facilities standards in NMSA 1978 § 22-8B-4.2, Subsections A, C, and D, and shall ensure that the facilities comply with all applicable federal, state and local health and safety standards and other applicable laws, regulations and rules.

- I. **Term of Charter:** This Charter is effective upon the signing of both parties for a term of six (6) years commencing on July 1, XXXX and ending on June 30, XXXX, except as otherwise provided in this Charter and by law. The Charter may be renewed for successive periods of up to five (5) years. The first year of the charter shall be used exclusively for planning.

Comment [KP1]: Only for new schools. For renewals this may range from three (3) to five (5) years.

The Charter School shall begin providing a comprehensive educational program no later than XXXX, unless the Charter School requests or is required to complete a second implementation year.

1. Prior to commencing operations, the school shall demonstrate that it:
 - a. Has satisfied all conditions imposed by the commission at initial approval;
 - b. Has completed all requirements in the Commission's Implementation Year Checklist; and
 - c. Is qualified to act as a board of finance.
2. If the Charter School requests or is required to complete a second planning year, the Charter School will be granted a one year suspension of the charter.
 - a. A suspension will be lifted prior to the end of the year upon a showing that the Charter School is prepared to commence operations, based on the Public Education Commission's implementation year checklist policy.
 - b. If the suspension is lifted, the term of the charter will be amended to reflect the one year term of the suspension and retain the five year performance term.
 - c. If the suspension is not lifted and the Charter School is unable to demonstrate that it is prepared to commence operations; the suspension will be treated as a revocation of the charter.

Comment [KP2]: Remove for renewal schools.

- J. **Performance Framework: Attachment F,** incorporated herein by reference, includes the Accountability Plan, Academic Performance Framework, Organizational Performance Framework, and Financial Performance Framework adopted by the New Mexico Public Education Commission. These documents together clearly set forth the academic and operational performance indicators and performance targets that will guide the chartering authority's evaluation of the charter school and the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school.

1. **Academic Performance Indicators and Evaluation:** The Charter School shall:
 - a. Provide a comprehensive educational program that aligns with the state academic standards prescribed by the New Mexico Public Education Department for the grades approved to operate.
 - b. Participate in the State required assessments as designated by the New Mexico Public Education Department or the Federal Department of Education.
 - c. Timely report student level data for State required assessments to the New Mexico Public Education Department and report student level data from school administered assessments, as requested by the Public Education

Commission or on a bi-annual basis if that data is incorporated into the Academic Performance Framework adopted by the Public Education Commission.

- d. Meet or make substantial progress toward achievement of the New Mexico Public Education Department's standards of excellence (C or better in the A-F Grading).
 - e. Meet or make substantial progress toward achievement of the performance standards identified in the Academic Performance Framework as adopted and modified periodically by the New Mexico Public Education Commission.
 - i. The Academic Performance Framework adopted by the New Mexico Public Education Commission allows for the inclusion of additional rigorous, valid and reliable mission specific indicators proposed by a charter school to augment external evaluations of its performance, provided that the New Mexico Public Education Commission approves of the quality and rigor of such proposed indicators and the indicators are consistent with the purposes of the Charter Schools Act. Any such indicators will be incorporated into **Attachment F**.
 - ii. If the school fails to meet its academic performance indicators in any year it must develop, submit, and begin implementing a school improvement plan within 60 days of the release of the academic performance information. The improvement plan will be submitted to the New Mexico Public Education Commission, but the Commission will not evaluate the quality or approve the plan. The Commission, through its authorized representatives, may evaluate implementation of the plan through its annual site visits and provide feedback to the school regarding fidelity of implementation and/or effectiveness of the plan in improving school performance.
 - iii. If the school does not meet the performance standards in the Performance Framework, it shall "make substantial progress" toward achievement of those standards as it is defined in the New Mexico Public Education Commission's Accountability Plan included in **Attachment F**.
 - iv. Failure to meet or make substantial progress toward meeting the performance standards shall be sufficient justification to revoke or non-renew the school's charter.
2. **Organizational Performance Indicators and Evaluation:** The Charter School shall:
- a. Comply with applicable federal, state and local rules, regulations and statutes relating to public education unless the Charter School is specifically exempted from the provision of law.
 - b. Timely submit all documentation, financial and other reports required by the New Mexico Public Education Department or the Commission in order to evaluate the school's compliance with applicable federal, state and local rules, regulations and statutes relating to public education.
 - c. Provide a written copy to the Commission, within 15 days of receiving a written notice of complaint filed against the Charter School alleging violations of state, federal or local law, regulation or rule, or a final determination from another state government division or agency or state or federal court

regarding any such complaint the Charter School.

- d. Cooperate with the Commission's authorized representatives to enable them to conduct annual site visits and all other auditing visits requested or required by the Commission's authorized representatives or the Public Education Department.
- e. Meet the organizational performance standards identified in the Organizational Performance Framework as adopted and modified periodically by the New Mexico Public Education Commission.
 - i. If the school fails to meet its organizational performance indicators the school will be provided notice through the procedures in the New Mexico Public Education Commission's Accountability Plan included in **Attachment F**.
 - ii. The school may be required to develop, submit and implement a corrective action plan. All corrective action plans must be submitted to the New Mexico Public Education Commission; the Commission may or may not evaluate the quality or approve the plan. The Commission, through its authorized representatives, may evaluate implementation of the plan through its site visits and provide feedback to the school regarding fidelity of implementation and/or effectiveness of the plan in improving school performance.
 - v. Failure to meet the organizational performance standards shall be sufficient justification to revoke or non-renew the school's charter.

3. Financial Performance Indicators and Evaluation: The Charter School shall:

- a. Meet generally accepted standards of fiscal management which shall include complying with all applicable provisions of the Public School Finance Code, the Procurement Code, and the Audit Act; paying debts as they fall due or in the usual course of business; complying with all federal requirements related to federally funded programs and awards; refraining from gross incompetence or systematic and egregious mismanagement of the school's finances or financial record;s and preparing and fairly presenting its financial statements in accordance with accounting principles generally accepted in the United State of America, which include the design, implementation, and maintenance of internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- b. Timely submit all documentation, financial and other reports required by the New Mexico Public Education Department or the Commission in order to evaluate the school's compliance with section 3.J.3.a. of the Charter. Timely submit any corrective action plans or additional financial reporting or documentation that may be required by the New Mexico Public Education Department or the Commission.
- c. Cooperate with the Commission's authorized representatives to enable them to conduct all auditing visits requested or required by the Commission's authorized representatives or the Public Education Department.
- d. Meet the financial performance standards identified in the Financial Performance

Framework as adopted and modified periodically by the New Mexico Public Education Commission, or provide an adequate response to explain why the school does not meet the performance standards and demonstrate the school is a financially viable and stable organization.

- e. Failure to meet generally accepted standards of fiscal management shall be sufficient justification to revoke or non-renew the school's charter.

4. Chartering Authority's Duties and Liabilities: The New Mexico Public Education Commission, shall:

- A. Evaluate all applications submitted by this charter school, including amendment requests, and approve those applications that meet the requirements of the Charter Schools Act and decline to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;
- B. Through its authorized representatives, monitor the performance and legal compliance of this charter schools, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract;
 - 1. This shall include monitoring the fiscal, overall governance and student performance and legal compliance of the charter school, and reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract;
 - 2. This shall include visiting the school at least once annually to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract
 - 3. This may include conducting appropriate inquiries and investigations as necessary;
 - 4. All evaluations and monitoring will be carried out using the processes and criteria established in the Accountability Plan in **Attachment F** and incorporated herein;
- C. Review all relevant information to determine whether this charter school merits suspension, revocation or nonrenewal;
- D. Conduct all its activities in accordance with its chartering policies and practices, which shall be modified from time to time to be consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing; and
- E. Promptly notify the governing body of the charter school of unsatisfactory fiscal, overall governance or student performance or legal compliance and provide reasonable opportunity for the governing body to remedy the problem;
 - 1. However, the New Mexico Public Education Commission is not required to allow the school the opportunity to remedy the problem if the unsatisfactory review warrants revocation; and
 - 2. Any such notice shall be provided in accordance with the Accountability Plan approved by the Public Education Commission and incorporated herein as **Attachment F**.

5. Withheld Two-Percent of Program Cost: Pursuant to Section 22-8B-13 NMSA 1978 the Charter

Schools Division of the New Mexico Public Education Department may withhold and use two percent of the school-generated program cost for its administrative support of a charter school. These funds are to be utilized in the following manner:

- A. **New Mexico Public Education Department:** The New Mexico Public Education Department shall utilize the funds for the following purposes:
1. Funding the work (salaries and benefits, contracts, travel, supplies) of the Charter Schools Division, which shall include:
 - a. Authorizing practices work such as conducting annual site visits and annual evaluations under the performance frameworks; receiving, processing, evaluating and making recommendations on new applications, amendment requests, and renewal applications; receiving, processing, and evaluating complaints; making recommendations to revoke charters, as necessary; making recommendations regarding improvement and corrective action plans, as necessary; overseeing the closure of charter schools; and making recommendations regarding the development and implementation of authorizing policies and practices to ensure they are consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing; and
 - b. Technical Assistance and Support work such as providing training for new governing board members; receiving, processing, evaluating and approving or denying applications for approval provide governing body training; maintaining communication with the charter school field to keep them apprised of best practices, opportunities for support from the New Mexico Public Education Department, policy changes from the Public Education Commission; hosting other training and professional development opportunities; and developing FAQs and other support materials and opportunities.
 2. Funding the work (salaries and benefits, contract, travel, supplies) of a proportional share, as determined by the Public Education Department, of New Mexico Public Education Department staff necessary to support the administrative workload related to state-authorized charter schools such as the oversight and approval of budget matters, capital outlay, transportation, special education, federal programs, school evaluation and accountability, annual financial audits, and T&E audits.
 3. Funding any other staff work necessary to provide staff support to the commission.
- B. **New Mexico Public Education Commission:** The New Mexico Public Education Commission shall utilize the funds for the following purposes:
1. Funding the travel and per diem expenses of Commissioners when conducting the business of the Public Education Commission.
 2. Funding the expenses of conducting the business of the Public Education Commission such as legal transcription.
- C. In addition to the above listed items, the New Mexico Public Education Department and the New Mexico Public Education Commission shall have authority to utilize the funds for similar or related costs for administrative support of charter schools and charter school programs.

6. **Applicable Law:** The material and services provided by this Charter School under this Charter shall comply with all applicable federal, state, and local laws and shall conform, in all respects, to the educational standards contained in its application and Charter. This Charter shall be governed and interpreted in accordance with the laws of the State of New Mexico.

- A. In the event of any conflict among the documents and practices defining this relationship, it is agreed that:
 - 1. The Contract shall take precedence over policies of either Party and the Charter; and
 - 2. If a provision in the Performance Framework conflicts with a provision in the Contract, the Contract shall take precedence over the Performance Framework.
- B. This Contract shall not take precedence over any applicable provisions of law, rule or regulation.
- C. **Changes in Law, Rules, Procedures or Forms:** In the event of a change in law, regulation, rule, procedure or form affecting the Charter School during the term of this Contract, the Parties shall comply with the change in law, rule, regulation or procedure or utilize the new form, provided.
 - 1. However, no such change all impair the existing Contract and the Parties' respective rights hereunder.
 - 2. If an amendment to this Contract is required to comply with a change in the law or rule, then the Parties shall execute such an amendment, to the extent that the change does not impair the Parties' respective rights hereunder.
 - 3. No such amendment is required to only amend or correct any references to statute, rule, regulation or document provision set forth in this Contract.

7. **Non-Availability of Funds:** Every payment obligation of the State of New Mexico under this Charter is conditioned upon the availability of funds continuing to be appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Charter, the New Mexico Public Education Commission may terminate this Charter at the end of the period for which funds are available. No liability shall accrue to the New Mexico Public Education Commission, nor the State of New Mexico, or any of its subdivisions, departments or divisions, in the event this provision is exercised, and neither the New Mexico Public Education Commission nor the State of New Mexico shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. **Charter Interpretation:**

- A. **Merger:** This Charter, including all of the attachments, constitutes the entire agreement of the Parties. New Mexico Statutes Annotated, New Mexico Public Education Commission policies, and New Mexico Public Education Department policies, and administrative rules and regulations which may be amended from time to time during the course of the Charter, are incorporated into this Charter, along with any amendments which may occur during the term of the Charter, by this reference.
- B. **Waiver:** Either party's failure to insist on strict performance of any term or condition of the Charter shall not constitute a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

- C. Severability: The provisions of this Charter are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Charter.
- D. Assignment: Neither party may assign or transfer any right or interest in this Charter unless authorized by law. No assignment, transfer or delegation of any duty of the Charter School shall be made without prior written permission of the New Mexico Public Education Commission.

9. Amendments to the Charter and Changes to the Charter School:

- A. This Charter may be amended or modified by mutual agreement, in writing, of the parties. Charter amendments and modifications requiring prior written approval by the New Mexico Public Education Commission shall be posted on its website as an Amendment or Notification Request. The Charter School shall not take action or implement the modification requested in the amendment or notification until approved by the New Mexico Public Education Commission.
 - 1. All amendment and notification requests shall be submitted pursuant to the procedures formulated by the New Mexico Public Education Commission.
 - 2. The New Mexico Public Education Commission shall consider and vote on all amendment requests within 90 days of receipt of the request.
 - 3. Charter modifications that are not posted on the website may be implemented without the approval of the New Mexico Public Education Commission.
- B. If the Parties cannot agree on a revision or amendment to the terms of the Charter, either party may appeal to the Secretary of Education pursuant to Section 22-8B-9(A) and (C) NMSA 1978.

10. Insurance:

- A. The Charter School shall obtain and maintain insurance in accordance with the laws of the State of New Mexico.
- B. The Charter School will participate in the Public School Insurance Authority.
- C. Waiver of Rights: The Charter School and its insurers providing the required coverage shall waive all rights of recovery against the State of New Mexico and the New Mexico Public Education Commission and the Department of Education, their agents, officials, assignees and employees.
- D. The Charter School shall maintain the following types and amounts of insurance liability coverage, as amended according to Paragraph 9 of this agreement:
 - 1. XXXX
 - 2. XXXX
 - 3. XXXX
 - 4. XXXX
 - ...

- 11. **Charter Revocation:** The Public Education Commission may at any time take action to revoke the contract of the Charter School, whether the school has been provided an opportunity to take corrective action or not.

- A. **Criteria:** Pursuant to Section 22-8B-12 NMSA 1978, the New Mexico Public Education Commission may revoke the Charter if the Commission determines that the school:
1. Committed a material violation of any of the conditions, standards or procedures set forth in the charter contract,
 2. Failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract,
 3. Failed to meet generally accepted standards of fiscal management, or
 4. Violated any provision of law from which the charter school was not specifically exempted.
- B. **Procedures and Timeline:** The Commission shall utilize the following revocation process:
1. Notify the school at least 7 days prior to a regularly scheduled meeting that it will be on the agenda for consideration of whether to issue a Notice of Intent to Revoke the Charter.
 2. Issue a written Notice of Intent to Revoke the Charter within 15 days of voting to issue such a notice. The Notice shall:
 - a. State the legal basis for the potential revocation, and reasonably identify the evidence that the Commission has to support the existence of the legal basis;
 - b. Identify the date, location, and time at which a Revocation hearing will be held;
 - c. Establish deadlines for the Charter School and the Commission to present written materials and all evidence that will be used during the hearing; and
 - d. Identify if the hearing will be conducted by the Commission or by an impartial hearing officer. If a hearing officer is to be used, the Notice shall establish the date on which the Commission will consider whether to accept, reject, or modify the hearing officer's findings of facts, conclusions of law, and recommendations.
 3. Upon making a final revocation decision, issue a written decision, through the Chair, within 15 days of voting to revoke the charter stating the findings of fact and conclusions of that support the revocation.
12. **Charter Renewal Processes:** On October 01, XXXX, the Charter School's governing body may submit a renewal application to the Commission using the Commission's renewal application as it may be amended from time to time, which will be posted to the Commission's website no later than June 1st annually. The application shall include all information required by law and necessary for the Commission to determine whether renewal, non-renewal, or a conditional or short-term renewal is most appropriate.
- A. **Criteria:** Pursuant to Section 22-8B-12 NMSA 1978, the New Mexico Public Education Commission may refuse to renew the Charter if the Commission determines that the school:

1. Committed a material violation of any of the conditions, standards or procedures set forth in the charter contract,
2. Failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract,
3. Failed to meet generally accepted standards of fiscal management, or
4. Violated any provision of law from which the charter school was not specifically exempted.

B. **Procedures and Timeline:** The Commission shall utilize the following renewal process:

1. At least one year prior to the date on which the school will apply for renewal, the Commission's authorized representatives will notify the school of its preliminary renewal profile, as established in the Commission's Accountability Plan which is incorporated herein as **Attachment F**.
2. At least 20 days prior to Commission's meeting at which it will consider the school's renewal application, the Commission's authorized representatives will provide the school with a preliminary application analysis and recommendation. The recommendation shall:
 - a. State the legal basis for potential non-renewal, and reasonably identify the evidence to support the existence of the legal basis; and
 - b. Establish deadlines for the Charter School to present a written materials and all evidence that will be used to respond to the recommendation, which shall not be less than 10 days from the date of the delivery of the recommendation.
3. No later than seven days prior to the Commission's meeting at which it will consider the school's renewal application, the Commission's authorized representatives will provide the school with a final application analysis and recommendation.
4. Upon making a final non-renewal decision, the Commission, through the Chair, shall issue a written decision within 15 days of voting to non-renew the charter stating the findings of fact and conclusions of that support the revocation.

13. **Indemnification and Acknowledgements:** The Charter School shall indemnify, defend, save and hold harmless the New Mexico Public Education Commission, the State of New Mexico, its departments, agencies, boards, commissions, universities and its officers, officials, agents and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) ("Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Charter School or any of its directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Charter School to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree that is applicable to the Charter School. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts

or omissions of the Indemnatee, be indemnified by the Charter School from and against any and all claims. It is agreed that the Charter School will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

14. **Employees and Contractors:** This Charter is not an employment contract. No officer, employee, agent, or subcontractor of the Charter School or the School is an officer, employee, or agent of the New Mexico Public Education Commission or the New Mexico Public Education Department.
15. **Non-Discrimination:** The Charter School shall comply with all applicable federal and state employment laws, rules and regulations, including the Americans with Disabilities Act. The Charter School shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.
16. **Notices:** Any notice required, or permitted, under the Charter shall be in writing and shall be effective immediately upon personal delivery, upon receipt of electronic mail, or three (3) days after mailing to the following:

Charter School:

<Insert Charter Representative Name>
Charter Representative
Charter Holder
Address
City, State Zip

New Mexico Public Education Commission:

<Insert Commission Chair's Name >
Chair
New Mexico Public Education Commission
300 Don Gaspar
Santa Fe, NM 87505

The New Mexico Public Education Commission may make changes in the address of its contact person by posting the change(s) on its website.

17. **Dispute Resolution:** Disputes arising out of the interpretation of this Contract shall be subject to the dispute resolution process set forth in this section. Disputes arising out of interpretations regarding state or federal statute, regulation, or policies of a federal entity or a different state entity Paragraph 11 shall not be subject to this dispute resolution process.
- A. **Notice of Dispute:** Either party shall notify the other party in writing that a dispute exists between them within 30 days from the date the dispute arises. The notice of dispute shall identify the Paragraph of this Contract in dispute, reasons alleged for the dispute and copies of any documentation that supports the complaining party's position. If the dispute is not timely presented to the other party, the party receiving late notice may elect not to enter into mediation.
- B. **Continuation of Contract Performance:** The Charter School and the Commission agree that the existence and details of a dispute notwithstanding, the Parties shall continue without delay their performance of this Contract, except for any performance that may be directly affected by such dispute.
- C. **Time limit for response to the notice and cure of the matter in dispute:** Upon receipt of a Notice of Dispute, the Chair of the Commission or the Charter Representative of the Charter School shall have 15 days to respond in writing.
1. The written response may:
 - a. Propose a course of action to cure the dispute;
 - b. Propose the parties enter into informal discussions to resolve the matter; or

- c. Require the parties select a neutral third party to assist in resolving the dispute.
- 2. If no response is received within 15 days, the Party sending the Notice may invoke the process for selecting a neutral third party to assist in resolving the dispute.
- 3. If the written response proposed a course action or negotiations to cure the dispute, the party sending the Notice shall respond within 15 days or receiving the response.
- 4. At any point in this informal process, either Party may, in writing, invoke the process for selecting a neutral third party to assist in resolving the dispute.

D. Selection of a neutral third party to assist in resolving the dispute:

- 1. If either Party invokes the process for selecting a neutral third party to assist in resolving the dispute, it shall include in the notice the name of a proposed mediator along with his/her qualifications.
- 2. If the other Party does not agree to the proposed mediator, then it shall identify an alternate mediator along with his/her qualifications within 5 business days.
- 3. If the other Party does not agree with the alternate designation, it shall give notice within 5 business days.
- 4. In the event that the Parties cannot agree on a mediator the Parties shall request that the Secretary of Education appoint a mediator. The appointed mediator shall mediate the dispute.

E. Apportionment of all costs related to the dispute resolution process: Each Party shall pay one-half of the reasonable fees and expenses of the mediator. All other fees and expenses of each party, including without limitation, the fees and expenses of its counsel, shall be paid by the Party incurring such costs.

F. Process for Final Resolution of Dispute: If settlement of the dispute is not reached through mediation or by agreement of the Parties, the Parties shall submit the matter to the Secretary of Education for resolution.

18. Release of Funding: A Charter School may not receive state equalization funding until a current NMCI determination, certificate of occupancy, and occupancy permit for educational use are provided for each site listed in Paragraph 3.H. (and each site subsequently approved by the New Mexico Public Education Commission). A Charter School may not receive state equalization funding until the New Mexico Public Education Commission has determined that the school has satisfied all conditions imposed by the Commission at initial approval and has demonstrated readiness to operate through completion of the Commission's Implementation Year Checklist.

Comment [KP3]: For renewal schools change to "at renewal" and remove all language after this.

CHARTER SCHOOL NAME

Executed this _____ day of _____ 20XX.

By _____
 XXXXX, Charter Representative for XXXXX

NEW MEXICO PUBLIC EDUCATION COMMISSION

Executed this _____ day of _____ 20XX.

By _____
XXXXX, Chair of the New Mexico Public Education Commission.

DRAFT

22-8B-9. Charter school contract; contents; rules.

Statute text

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

(1) all agreements regarding the release of the charter school from department and local school board rules and policies, including discretionary waivers provided for in Section [22-8B-5](#) NMSA 1978;

(2) any material term of the charter application as determined by the parties to the contract;

(3) the mission statement of the charter school and how the charter school will report on implementation of its mission;

(4) the chartering authority's duties to the charter school and liabilities of the chartering authority as provided in Section [22-8B-5.3](#) NMSA 1978;

(5) a statement of admission policies and procedures;

(6) signed assurances from the charter school's governing body members regarding compliance with all federal and state laws governing organizational, programmatic and financial requirements applicable to charter schools;

(7) the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school;

(8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section [22-8B-13](#) NMSA 1978;

(9) the types and amounts of insurance liability coverage to be obtained by the charter school;

(10) the term of the contract;

(11) the process and criteria that the chartering authority intends to use to annually monitor and evaluate the fiscal, overall governance and student performance of the charter school, including the method that the chartering authority intends to use to conduct the evaluation as required by Section [22-8B-12](#) NMSA 1978;

(12) the dispute resolution processes agreed upon by the chartering authority and the charter school, provided that the processes shall, at a minimum, include:

(a) written notice of the intent to invoke the dispute resolution process, which notice shall include a description of the matter in dispute;

(b) a time limit for response to the notice and cure of the matter in dispute;

(c) a procedure for selection of a neutral third party to assist in resolving the dispute;

(d) a process for apportionment of all costs related to the dispute resolution process;

and

(e) a process for final resolution of the issue reviewed under the dispute resolution process;

(13) the criteria, procedures and time lines, agreed upon by the charter school and the chartering authority, addressing charter revocation and deficiencies found in the annual status report pursuant to the provisions of Section [22-8B-12](#) NMSA 1978;

(14) if the charter school contracts with a third-party provider, the criteria and procedures for the chartering authority to review the provider's contract and the charter school's financial independence from the provider;

(15) all requests for release of the charter school from department rules or the Public School Code. Within ten days after the contract is approved by the local school board, any request for release from department rules or the Public School Code shall be delivered by the local school board to the department. If the department grants the request, it shall notify the local school board and the charter school of its decision. If the department denies the request, it shall notify the local school board and the charter school that the request is denied and specify the reasons for denial;

(16) an agreement that the charter school will participate in the public school insurance authority;

(17) if the charter school is a state-chartered charter school, a process for qualification of and review of the school as a qualified board of finance and provisions for assurance that the school has satisfied any conditions imposed by the commission;

(18) a listing of the charter school's nondiscretionary waivers; and

(19) any other information reasonably required by either party to the contract.

C. The process for revision or amendment to the terms of the charter contract shall be made only with the approval of the chartering authority and the governing body of the charter school. If they cannot agree, either party may appeal to the secretary as provided in Subsection A of this section.

History

History: Laws 1999, ch. [281](#), § [9](#); 2006, ch. [94](#), § [36](#); 2011, ch. [14](#), § [3](#); 2015, ch. [108](#), § [10](#).

Annotations

Cross references. — For transfer of powers and duties of former state board of education, see [9-24-15](#) NMSA 1978.

The 2015 amendment, effective July 1, 2015, required that each charter school contract contain a listing of the charter school's nondiscretionary waivers; in Paragraph (1) of Subsection B, after "discretionary waivers", deleted "and waivers"; in Paragraph (4) of Subsection B, after "Section", deleted "8 of this 2011 act" and added "22-8B-5.3 NMSA 1978"; and added new Paragraph (18) of Subsection B and redesignated the succeeding subsection accordingly.

The 2011 amendment, effective July 1, 2012, required that a chartering authority and a charter school enter into a contract as a condition to chartering the school; provided a procedure for finalizing a contract if the parties fail to timely enter into a contract and for amending a contract if the parties cannot agree upon amendments; and specified the minimum required contents of a contract.

The 2006 amendment, effective July 1, 2007, changed "local school board" to "chartering authority" in Subsection A; in Subsection B, deleted the reference to a contract between the charter school and the local school board and changed "school district" to "department", in Subsection C; added the qualification for locally chartered charter schools at the beginning of the first sentence and changed "state board" to "department"; deleted former Subsection D, which provided for waiver of certain Public School Code requirements for charter schools; in Subsection E (formerly Subsection F), changed "local school board" to "chartering authority"; and in Subsection F (formerly Subsection G), added the qualification for locally chartered charter schools at the beginning of the first sentence.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

22-8B-9.1. Performance framework.

Statute text

A. The performance provisions in the charter contract shall be based on a framework that clearly sets forth the academic and operations performance indicators and performance targets that will guide the chartering authority's evaluation of each charter school. The performance framework shall be a material term of the charter school contract and shall include performance indicators and performance targets for, at a minimum:

- (1) student academic performance;
- (2) student academic growth;
- (3) achievement gaps in both proficiency and growth between student subgroups;
- (4) attendance;
- (5) recurrent enrollment from year to year;
- (6) if the charter school is a high school, post-secondary readiness;
- (7) if the charter school is a high school, graduation rate;
- (8) financial performance and sustainability; and
- (9) governing body performance, including compliance with all applicable laws, rules and terms of the charter contract.

B. Annual performance targets shall be set by each chartering authority in consultation with its charter schools and shall be designed to help each charter school meet applicable federal, state and chartering authority expectations as set forth in the charter contracts to which the authority is a party.

C. The performance framework shall allow for the inclusion of additional rigorous, valid and reliable indicators proposed by a charter school to augment external evaluations of its performance, provided that the chartering authority shall approve the quality and rigor of such proposed indicators and the indicators are consistent with the purposes of the Charter Schools Act.

D. The performance framework shall require the disaggregation of all student performance data collected in compliance with this section by student subgroup, including gender, race, poverty status, special education or gifted status and English language learner.

E. The chartering authority shall collect, analyze and report all data from state assessment tests in accordance with the performance framework set forth in the charter contract for each charter school overseen by that chartering authority.

History

History: Laws 2011, ch. [14](#), § [4](#); 2015, ch. [108](#), § [11](#).

Annotations

The 2015 amendment, effective July 1, 2015, amended the performance framework that must be included in each charter school contract; in the introductory paragraph of Subsection A, after "performance indicators", deleted "measures", after the second occurrence of "and", deleted "metrics" and added "performance targets", after "performance framework shall", added "be a material term of the charter school contract and shall", after "include", added "performance", after "indicators", deleted "measures", and after the fourth occurrence of "and", deleted "metrics" and added "performance targets".

22-8B-12. Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.Statute text

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used exclusively for planning and not for completing the application. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the chartering authority.

B. During the planning year, the charter school shall file a minimum of three status reports with the chartering authority and the department for the purpose of demonstrating that the charter school's implementation progress is consistent with the conditions, standards and procedures of its approved charter. The report content, format and schedule for submission shall be agreed to by the chartering authority and the charter school and become part of the charter contract.

C. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section [22-8B-4.2](#) NMSA 1978.

D. A chartering authority shall monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, including conducting appropriate inquiries and investigations; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

E. As part of its performance review of a charter school, a chartering authority shall visit a charter school under its authority at least once annually to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.

F. If, based on the performance review conducted by the chartering authority pursuant to Subsection D of this section, a charter school's fiscal, overall governance or student performance or legal compliance appears unsatisfactory, the chartering authority shall promptly notify the governing body of the charter school of the unsatisfactory review and provide reasonable opportunity for the governing body to remedy the problem; provided that if the unsatisfactory review warrants revocation, the revocation procedures set forth in this section shall apply. A chartering authority may take appropriate corrective actions or exercise sanctions, as long as such sanctions do not constitute revocation, in response to the unsatisfactory review. Such actions or sanctions by the chartering authority may include requiring a governing body to develop and execute a corrective action plan with the chartering authority that sets forth time frames for compliance.

G. Every chartering authority shall submit an annual report to the division, including a performance report for each charter school that it oversees, in accordance with the performance framework set forth in the charter contract.

H. The department shall review the annual report received from the chartering authority to determine if the department or local school board rules and policies from which the charter school was released pursuant to the provisions of Section [22-8B-5](#) NMSA 1978 assisted or impeded the charter school in meeting its stated goals and objectives. The department shall use the annual reports received from the chartering authorities as part of its report to the governor, the legislative finance committee and the legislative education study committee as required by the Charter Schools Act.

I. No later than two hundred seventy days prior to the date in which the charter expires, the governing body may submit a renewal application to the chartering authority. A charter school may apply to a different chartering authority for renewal. The chartering authority shall rule in a public hearing on the renewal application no later than one hundred eighty days prior to the expiration of the charter.

J. A charter school renewal application submitted to the chartering authority shall contain:

(1) a report on the progress of meeting the academic performance, financial compliance and governance responsibilities of the charter school, including achieving the goals, objectives, student performance outcomes, state standards of excellence and other terms of the charter contract, including the accountability requirements set forth in the Assessment and Accountability Act [Chapter [22](#), Article [2C](#) NMSA 1978];

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) a copy of the charter contract executed in compliance with the provisions of Section [22-8B-9](#) NMSA 1978;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school; and

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section [22-8B-4.2](#) NMSA 1978.

K. A charter may be suspended, revoked or not renewed by the chartering authority if the chartering authority determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;

(2) failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract;

(3) failed to meet generally accepted standards of fiscal management; or

(4) violated any provision of law from which the charter school was not specifically exempted.

L. The chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that:

(1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action;

(2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and

(3) require the final determination made by the chartering authority to be submitted to the department.

M. If a chartering authority suspends, revokes or does not renew a charter, the chartering authority shall state in writing its reasons for the suspension, revocation or nonrenewal.

N. A decision to suspend, revoke or not to renew a charter may be appealed by the governing body pursuant to Section [22-8B-7](#) NMSA 1978.

History

History: Laws 1999, ch. [281](#), § [12](#); 2005, ch. [221](#), § [6](#); 2006, ch. [94](#), § [39](#); 2010, ch. [48](#), § [1](#); 2011, ch. [14](#), § [5](#); 2015, ch. [108](#), § [12](#).

Annotations

Cross references. — For transfer of powers and duties of former state board of education, see [9-24-15 NMSA 1978](#).

The 2015 amendment, effective July 1, 2015, amended the required contents of a charter school renewal application; in Paragraph (1) of Subsection J, after "state", deleted "minimum educational", after "standards", added of "excellence"; and in Paragraph (2) of Subsection K, after "department's", deleted "minimum educational", and after "standards", added "of excellence".

The 2011 amendment, effective July 1, 2012, required a chartering authority to monitor the performance of the charter schools it oversees, including visits to the school; permitted a chartering authority to take corrective actions and impose sanctions if a school's performance is unsatisfactory; required chartering authorities to submit an annual report to the charter school division that includes a performance report; required the department to review the annual report to determine how waivers of requirements affected the school's performance; and required chartering authorities to develop processes for suspension, revocation or nonrenewal of charters.

The 2010 amendment, effective May 19, 2010, added Subsection B and relettered succeeding subsections accordingly.

The 2006 amendment, effective July 1, 2007, in Subsection A, provided that the first year shall be used exclusively for planning and not for completing the application and changed "local school board" to "chartering authority"; added a new Subsection C to require demonstration of qualification as a board of finance and satisfaction of conditions imposed by the commission and to provide for the issuance of an authorization to commence operations; in Subsection D (formerly Subsection C), changed "January 1 of the year prior to the year the charter expires" to "two hundred seventy days prior to the date the charter expires"; changed "local school board" to "chartering authority", added the provision that a charter school may apply to a different chartering authority for renewal, and changed the date for ruling on a renewal application from March 1 of the fiscal year in which the charter expires to one hundred eighty days prior to the expiration of the charter; in Subsection E (formerly Subsection D), changed "local school board" to "chartering authority"; in Paragraph (5) of Subsection E (formerly Subsection D), changed "majority" to "at least seventy-five percent"; in Subsection F (formerly Subsection E), provided that a charter may be suspended and changes "local school board" to "chartering authority"; in Paragraph (2) of Subsection F (formerly Subsection E), changed "state board" to "department"; in Subsection G (formerly Subsection F), changed "local school board" to "chartering authority" and required written reasons for suspension of a charter; and in Subsection H (formerly Subsection G), provided for the appeal of the suspension of a charter.

The 2005 amendment, effective July 1, 2005, changed the initial term from five to six years and provided that the first year shall be used for planning; added Subsection B to provide that prior to the end of the planning year, the charter school shall demonstrate that its facilities meet statutory standards; provided in Subsection D(1) that an application for renewal shall contain a report on the progress in meeting the accountability requirements of the Assessment and Accountability Act; and added Subsection D(6) to provide that an application for renewal shall contain a description of the charter school facilities and assurances that the facilities comply with statutory standards.

22-8B-5.3. Chartering authority; powers; duties; liability.Statute text

A chartering authority shall:

- A. evaluate charter applications;
- B. actively pursue the utilization of charter schools to satisfy identified education needs and promote a diversity of educational choices;
- C. approve charter applications that meet the requirements of the Charter Schools Act;
- D. decline to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;
- E. negotiate and execute, in good faith, charter contracts that meet the requirements of the Charter Schools Act with each approved charter school;
- F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;
- G. determine whether a charter school merits suspension, revocation or nonrenewal; and
- H. develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:
 - (1) organizational capacity and infrastructure;
 - (2) evaluating charter applications;
 - (3) performance contracting;
 - (4) charter school oversight and evaluation; and
 - (5) charter school suspension, revocation and renewal processes.

History

History: Laws 2011, ch. [14](#), § [8](#).

Annotations

Effective dates. — Laws 2011, ch. [14](#), § [10](#) made Laws 2011, ch. [14](#), § [8](#) effective July 1, 2012.



The State of New Mexico

Charter School Contract

Between The
New Mexico Public Education
Commission

And

[Name Of Charter School]

July 1, _____

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This charter contract (“Contract”), effective the 1st day of July, 20____ is made and entered into between the New Mexico Public Education Commission (“Commission” or “Authorizer”) and [*name of charter school*], a public charter school (“School”).

Collectively, these entities are referred to as the “Parties.”

The Secretary of the New Mexico Public Education Department is authorized to hear appeals regarding this Contract from the Parties (“Secretary”)ⁱ.

Article I. Recitals.

Section 1.01 Purpose.

The Charter Schools Actⁱⁱ enables a charter school

- to structure its educational program and curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices, or have been replicated successfully in schools with diverse characteristics;
- to develop different and innovative ways of measuring student learning and achievement which addresses the needs of all students, including those determined to be at risk;
- to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- to improve student achievement;

- to provide parents and students with an educational alternative by creating new, innovative and more flexible ways of educating children within the public school system;
- to encourage parental and community involvement in the public school system; and
- to develop and use site-based budgeting that meets state fiscal requirements.

Section 1.02 Description of the Roles of the Parties.

In order to meet the purposes of the Act, the School will determine the process it uses to achieve successful outcomes for the students it serves. The Authorizer's roleⁱⁱⁱ will be to evaluate the School's outcomes rather than to establish the process by which the School achieves the outcomes sought.

Section 1.03 Description of Protocol for Oversight.

At the request of the Authorizer or its designee(s), in order to implement a protocol of continuous improvement or to address issues that are of concern, the School may present the Authorizer with improvement plans from time to time to address identified issues. The Parties may also implement a corrective action plan. The Authorizer may implement suspension or revocation procedures under the Charter School Act and associated regulations^{iv}.

Section 1.04 History.

[Enter history information here]

See, Exhibit 1, Documentation of renewal approval or permission to commence operation by the Authorizer.

The Parties, therefore, hereby agree to establish a New Mexico public charter school according to the following terms and conditions of this Contract.

Article II. Parties, Notice and Intent.

Section 2.01 Parties.

The Commission is created pursuant to the Article XII, Section 6 of the New Mexico Constitution and has powers as accorded to it by law. The Commission is authorized to receive applications for initial and renewal charter applications that request to be authorized by the state^v.

The Charter Schools Division (CSD) of the New Mexico Public Education Department (NMPED) shall provide staff support to the Commission as it performs its functions; provide staff support to the Secretary; provide technical support to the School and make recommendations regarding approval, denial, suspension or revocation of the School^{vi}. (The Commission or any person designated by the Commission to address an issue or shall be referred to generally as “Authorizer” from this point forward.)

The School is a charter school approved by the Authorizer. (The School Governing Body, its Head Administrator as staff or any person designated by the Governing Body or its Head Administrator to address an issue shall be referred to generally as “School” from this point forward.)

Section 2.02 Notice.

Any notice required, or permitted, under this Contract shall be in writing and shall be effective upon personal delivery (subject to verification of service or acknowledgement of receipt) or three days after mailing when sent by certified mail, to the Head Administrator for notice to the School, or to the designated Authorizer representative for notice to the Authorizer at the addresses set forth below. Either Party may change the address for notice by giving written notice to the other Party. At the commencement of any action which requires notice, the parties may agree to use electronic notice and filing.

<p>New Mexico Public Education Commission C/O Director, Options For Parents New Mexico Public Education Department 300 Don Gaspar, Room 301 Santa Fe, New Mexico 87505</p> <p>AND</p> <p>Abby Lewis Attorney for the PEC New Mexico Attorney General's Office 408 Galisteo Santa Fe, NM 87501</p>
<p>Charter Schools Division C/O Director, Options For Parents New Mexico Public Education Department 300 Don Gaspar, Room 301 Santa Fe, New Mexico 87505</p> <p>And a separate notice to</p> <p>Assistant General Counsel Charter Schools Division C/O Director, Options For Parents New Mexico Public Education Department 300 Don Gaspar, Room 301 Santa Fe, New Mexico 87505</p>

[Name Of School] Governing Body Contact [Mailing Address]
Head Administrator [Mailing Address]
Attorney

Section 2.03 Creation of Essential Documents.

Essential Documents. This Contract, the Performance Frameworks (as discussed in further detail in Articles V through VIII below) including the annual performance indicators set under the Performance Frameworks together form the essential documents governing the Parties (“Essential Documents”). Goals set forth in the initial application or the renewal application shall be reviewed by the Parties as part of the basis for the negotiations of the Performance Frameworks as further described in Section VI below. Where appropriate, the conditions placed by the Authorizer on the School in the application of renewal process may become Performance Indicators in the annual Performance Frameworks in order to monitor the School’s compliance with the conditions.

Material Elements of Charter and Renewal Applications Incorporated. The material provisions of the Charter **and renewal application (add if applicable)** have been incorporated as part of the Contract and are listed in Article VIII below.

Article III. General Governing Principles

Section 3.01 Public Charter School.

The School is authorized by the Authorizer to operate as a public school, but is a separate legal entity from the Authorizer^{vii}. Notwithstanding its existence as a separate legal entity, the School is subject to all applicable state and federal laws, regulations, rules, and policies unless waived by the Secretary or by law^{viii}.

Section 3.02 Term of the Charter.

This Contract and the Performance Frameworks are effective as of July 1, 20____. The Term of this Contract shall run until June 30, 20____.

Section 3.03 Availability of Funds.

Although this Contract is for the operation of the School for the Term of the Contract, any financial commitment on the part of the NMPED or Authorizer, if applicable, contained in this Contract is subject to the annual appropriations of the New Mexico Legislature.

Section 3.04 Board of Finance.

The governing body of the School is qualified as a Board of Finance.

Article IV. Oversight to Allow Autonomy

Section 4.01 Oversight allowing autonomy.

The Authorizer shall comply with the provisions of the Act and the terms of the Contract in a manner that does not unduly inhibit the autonomy granted to the School. In order to meet the purposes of the Act, the School will determine the process it uses to achieve the successful outcomes for its students. The Authorizer's role will be to evaluate the

School's outcomes according to this Contract and the Performance Frameworks, rather than to establish the process by which the School achieves the outcomes sought.

Section 4.02 Charter School Rights and Obligations

(a) Curriculum, Instructional Program, Student Performance Standards.

The School shall have the authority and responsibility for designing and implementing the educational plan described as material terms of the Charter in Section 8 below.

(b) Site Based Management.

The School is responsible for its own operation, including preparation of a budget; is subject to audits^{ix}; may contract for services; and shall address personnel matters in accordance with the School Personnel Act^x and all other applicable laws.

(c) Right to Sue.

The School's Governing Body may contract, sue and be sued.

(d) Limitation on Liability.

The Authorizer shall not be liable for any acts or omissions of the School^{xi}.

(e) Employees.

All employees hired by the School shall be employees of the School for which the Authorizer has no employment responsibility.

(f) Waivers.

(i) Automatic Waivers.

The Charter School Act allows for waivers for the School from the requirements of the Public School Code pertaining to individual class load, length of the school day, staffing patterns, subject areas, purchase of instructional materials, evaluation

standards for school personnel, school principal duties and driver education^{xii}.

Waivers listed pursuant to this paragraph shall be effective for the term of the Contract^{xiii}. The list of waivers is attached as **Exhibit 2**.

(ii) Discretionary Waivers.

The School has listed Discretionary Waivers that either it has obtained or will seek from the Secretary, as set forth in **Exhibit 2**, which must be approved by the Secretary as set forth in (iii) below.

(iii) Waiver Approval.

The School shall, within 30 days from the execution of this Contract, deliver to the NMPED any Discretionary Waiver requests submitted for the Secretary's approval. The NMPED shall notify the School of the Secretary's decision on the Discretionary Waiver(s). The School shall ensure that **Exhibit 2** correctly identifies the waiver(s) approved by the Secretary.

(iv) Subsequent Waivers.

The School may request additional Discretionary Waivers from the Secretary after the initial request. Any new waiver requests shall be processed according to NMPED waiver request procedures, and, if approved, shall be added to this Contract by the School submitting a revised list of approved waivers (**Exhibit 2** to this Contract) to the Authorizer.

(g) Policies.

The School agrees to adopt policies and/or procedures, if and as needed, to deliver the School's program. The School shall be exempt from local district policies and

shall, instead, develop policies and procedures to the extent required by applicable law and regulation.

(h) Acquisition of Property and Gifts.

The School, within constitutional and statutory limits, may acquire and dispose of property, provided that, upon termination of the Charter, the following will occur:

All assets of School shall revert to the state, except that, if all or any portion of a School facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.^{xiv}

The School's Governing Council may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the Material Terms of this Contract as set forth in Article VIII below. The particular gift, grant, devise or bequest shall be considered an asset of the School.

Section 4.03 Authorizer Rights, Obligations, and Processes for Oversight.

(a) Authorizer Criteria, Processes and Procedures

The Act requires that the Authorizer develop and maintain the criteria, processes and procedures^{xv} that the Authorizer and its designees will use for ongoing oversight of organizational, financial and academic performance of the School. Accordingly, these criteria, processes and procedures are set forth in this Article IV and in Articles V through VIII below.

In areas where the School needs improvement (as identified by results of the assessment of the School under the Performance Framework or any performance review), and as requested by the Authorizer, the School shall present an improvement plan(s) to the Authorizer for approval. The School will report to the Authorizer on the progress of the improvement plans from time to time, as established in the improvement plans. The Authorizer may require and the School shall implement a corrective action plan. If warranted the Authorizer may implement revocation, suspension or other procedures pursuant to the process in Article XI.

(b) Authorizer Development of Policies and Protocols.

The Authorizer shall develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing as set forth by the Act, including policies regarding charter school oversight and evaluation; organizational capacity and infrastructure; evaluation of charter applications; performance contracting; and charter school corrective action plans; suspension, revocation, renewal, and closure processes. This contract and the Performance Framework demonstrate, in part, implementation of its chartering policies and practices.

(c) Authorizer Development of Processes for Suspension, Revocation and Nonrenewal.

The Authorizer shall develop processes for suspension, revocation or nonrenewal of a school^{xvi}. In the event that the Authorizer ever determines that suspension, revocation or nonrenewal of the School is appropriate, the Authorizer shall

- i. provide the School with timely notification of the prospect of suspension, revocation or nonrenewal of the Charter and the reasons for such action;
- ii. allow the School a reasonable amount of time to prepare and submit a response to the Authorizer's action no less than 30 days, absent exigent circumstances; and
- iii. submit the final determination made by the Authorizer to the NMPED.

In addition, Article XI below also sets forth terms relating to suspension, revocation and non-renewal.

(d) Authorizer Development of a Performance Framework.

Throughout the term of this Contract, the Authorizer shall establish annual Performance Framework templates that set forth clear academic and operations performance indicators, measures and metrics that includes the following:

- a. Student academic performance;
- b. Student academic growth;
- c. Achievement gaps in both proficiency and growth between student subgroups;
- d. Attendance;
- e. Recurrent enrollment from year to year;
- f. Post-secondary readiness and graduation rate (if the charter school is a high school);
- g. Financial performance and sustainability; and

- h. Governing body performance, including compliance with all applicable laws, rules, and terms of the Contract.

For purposes of this Contract, the Authorizer shall implement the performance indicators, metrics and measures through the Performance Frameworks. Any additional indicators shall be negotiated in good faith between the Parties and included in the annual School Specific Indicators as discussed in Article V below.

(e) Authorizer Development of a Closure Protocol.

The Authorizer shall establish a closure protocol in the event the School closes. The Authorizer shall oversee and work with the closing School to ensure a smooth and orderly closure and transition for students and parents according to the closure protocol and to ensure that assets are appropriately accounted for and protected^{xvii}. In addition, Article XII below also sets forth terms relating to closure.

(f) Authorizer Obligations Relating to the Contract and Monitoring

(i) Negotiate the Contract in Good Faith.

The Authorizer shall negotiate and execute this Contract, in good faith, so long as it meets the requirements of the Act^{xviii}.

(ii) Collect, Analyze and Report Data.

The Authorizer shall collect, analyze and report all data from state assessment tests in accordance with the Performance Frameworks.

1) Access to Data and State Assessment.

The School shall obtain information where possible directly from NMPED, including, but not limited to, test scores, Elementary and Secondary Education Act school

improvement status, A-F school grading designation, Common Core alignment information, special education notices, and funding information. The Authorizer or its designee at the request of the School shall provide the School with substantive information pertaining to the School to which the Authorizer has access in a timely way that is otherwise not provided directly to the School by the NMPED.

2) Data Available through student information systems.

To the extent possible, the Authorizer shall not request reports from the School that are otherwise available to the Authorizer through student information systems or other data sources available to the Authorizer, including but not limited to those data sources created and kept by the NMPED.

In the event that information requested on the reports is available to the Authorizer's designee from the student information systems or other data sources reasonably available to the Authorizer's designee, the Authorizer's designee shall pre-populate required reports and provide this pre-populated report to the School.

(iii) Conduct Oversight.

The Authorizer shall conduct and/or require oversight activities according to its policies and procedures to allow the Authorizer to fulfill its responsibilities under the Act, including conducting appropriate inquiries and investigations, when warranted.

(iv) Monitor School's Progress (Site Visits).

The Authorizer shall continuously monitor and conduct at least one annual visit to the School to provide technical assistance to determine the overall organizational,

academic and financial performance of the School as described in the Performance Frameworks.

1) Site Visit

The Authorizer designee(s) shall make at least one annual visit to the School^{xix} (“Annual Site Visit”). The Authorizer its designee(s) or legal counsel, however, may conduct such monitoring activities in its performance review as it deems appropriate to ensure that the School is complying with applicable law, the terms of this Contract and Essential Documents. Except in extraordinary circumstances, Authorizer visits should be pre-arranged and with reasonable notice to avoid needless disruption of the educational process. The Authorizer, or its designee(s) reserves the right to make unannounced visits to open meetings, or to the School.

2) Annual Site Visit/ Site Visit Report.

The protocol for the Annual Site Visit and Annual Site Visit Report shall be conducted and prepared according to the Authorizer protocol and forms provided relating to the Performance Frameworks (as discussed in Articles V - VIII below) and any plan created pursuant to this Contract (i.e. improvement plan or corrective action plan). The protocol and forms shall be provided at least 30 days in advance to the School. The Annual Site Visit shall contain a review, at a minimum, of the School’s evidence of progress towards the indicators identified in the Performance Frameworks and progress towards any plan created pursuant to this Contract, as applicable.

Following the site visit, the Authorizer or its designee(s) shall complete a draft of the Annual Site Visit Report and present it to the School within 45 days after completion of the site visit. The School shall have 30 days to provide input and comment.

(v) Review Data.

The Authorizer shall review the data provided by the School to support ongoing evaluation according to the terms of the Contract.

(vi) Notify School of Unsatisfactory Performance.

The Authorizer shall notify the School in a timely manner of unsatisfactory performance on the organizational, academic or financial frameworks, or any other factor that may result in an improvement plan, corrective action, nonrenewal or revocation as determined during the annual site visit or at any other time.

If, based on a performance review conducted by the Authorizer, the Authorizer finds that the School is not making satisfactory progress towards organizational, academic or financial performance or the Authorizer believes there to be a breach of this Contract, the Authorizer may take any steps allowed by law including but not limited to establishment of an Improvement Plan or a Corrective Action Plan as set forth in Article XI^{xx}. The Authorizer may suspend or revoke the School's Charter if warranted^{xxi} and according to the process established by the Authorizer.

(vii) Suspend, Revoke or Not Renew the Contract, if necessary.

The Authorizer may suspend, revoke or not renew this Contract and the Charter^{xxii} if the Authorizer determines that the School did any of the following:

- a. Committed a material violation of any of the conditions, standards or procedures set forth in this Contract;
- b. Failed to meet or make substantial progress toward achievement of the department's minimum educational standards or the student performance standards identified in the Contract;
- c. Failed to meet generally accepted standards of fiscal management; or
- d. Violated any provision of law from which the School was not specifically exempted.

(viii) Identify Reasons for Suspension, Revocation or Nonrenewal.

The Authorizer shall state in writing and at a public meeting its reasons for the suspension, revocation or nonrenewal, including the factual bases therefor, if the Authorizer revokes or does not renew a charter^{xxiii}.

Section 4.04 Funding.

(a) Authorizer Budget for Two Percent Administrative Fee.

The amount of funding allocated to the School shall not be less than ninety-eight percent of the school-generated program costs^{xxiv}. The Authorizer may withhold and use the remaining two percent of the school-generated program cost for its administrative support of the School. The Authorizer shall use the two percent amount withheld for the following purposes:

1. A portion of the expenditures supports the charter school division staff salaries and benefits.

2. A second portion of the expenditures supports the Public Education Commission's work. This includes their travel, and expenses such as meals, hotels, and per diem.
3. A third portion of the expenditures provides the resources needed to accomplish the oversight necessary such as supplies, hardware, software and other resources needed to support the work of the CSD.
4. A fourth portion of the expenditures provides the resources needed from all other bureaus in the NMPED that spend time working on issues related to charter schools, including but not limited to, Special Education, Information Technology, Title I, School & Family Support Bureau, Student Nutrition, and School Budget.

(b) Federal Program Funding for Charters.

The School is authorized by law to apply for federal funding for which it may be eligible^{xxv}.

(c) Annual Audits.

The School agrees to pay its proportionate share of the NMPED's annual audit expense and to budget an appropriate amount annually for purposes of conducting the School's annual audit.

Select one:

The School has an associated not-for-profit foundation named _____, and the foundation is designated as a component unit of the School. The foundation shall pay a reasonable, additional amount to include the not-for-profit foundation in the School's audit.

OR

The School does not have an associated not-for-profit foundation that is designated as a component unit of the School.

School Delay in Audit. If the School's annual audit is delayed and that delay results in the School and/or the NMPED receiving a "late audit report" finding, the NMPED shall notify the Authorizer and the School with that information once the audit is released publically. The Authorizer may determine that the "late audit report" finding constitutes a violation of this Contract or the Performance Framework indicators and shall provide the School a reasonable opportunity to submit an explanation for the audit finding in addition to its "management response" for the Authorizer's review. The PEC may make an independent determination of whether it considers the School's "late audit finding" a material violation of this Contract based on the School's response to the audit finding and take appropriate action including imposition of the sanctions as set forth in NMSA 1978, 22-8-12.1 or as otherwise provided by law.

(d) Third Party Contracts.

The School may contract^{xxvi} with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the School is required to perform in order to carry out the educational program described in the Material Terms of the Contract as set forth in Article VIII below.

The School shall not contract with a for-profit entity for the management of the School.

Contract for goods or services. If the School proposes to contract with a third party provider for goods or services over \$60,000, the School shall provide notice that demonstrates that the contract complies with the Procurement Code and other applicable laws that relate to the use of public funds and provide a written assurance that the proposed contract preserves the School's financial independence from the provider ("Financial Compliance Documentation").^{xxvii}

Contract relating to Real Property. For any contract over \$60,000 involving real property, the School shall provide notice by submitting a written assurance that the proposed contract preserves the School's financial independence from the provider ("Real Property Compliance Documentation"). The written assurance may be satisfied by providing a copy of the written assurance provided pursuant to the Public School Finance Act.

1. The terms of this section do not apply to personnel contracts. The School is not required to seek a review of any personnel contracts.
2. After receipt of the required Financial Compliance Documentation or Real Property Compliance Documentation request from School on forms provided by the Authorizer, the Authorizer, its designee(s) or legal counsel, or staff's legal counsel designated to review the documentation shall respond in writing within 10 working days with objection(s) to the Financial Compliance Documentation or Real Property Compliance Documentation and the basis for such objection(s). If there

is no response, the Authorizer shall be deemed to have consented to the proposed contract with the selected vendor.

3. If the Authorizer, its designee(s) or legal counsel designated to review the documentation raises an objection(s) regarding the Financial Compliance Documentation or Real Property Compliance Documentation request, the School may submit a response within 10 working days.

4. The Authorizer, its designee(s) or legal counsel must then object or consent to the Financial Compliance Documentation or Real Property Compliance Documentation request in writing within 10 working days.

5. If the Authorizer, through its designee(s) or legal counsel, raises objection(s) that are unable to be resolved by the response from the school, either party may choose to commence alternative dispute resolution procedures outlined in Article IX of this contract. The parties are encouraged to continue informal discussions in an effort to resolve the objections.

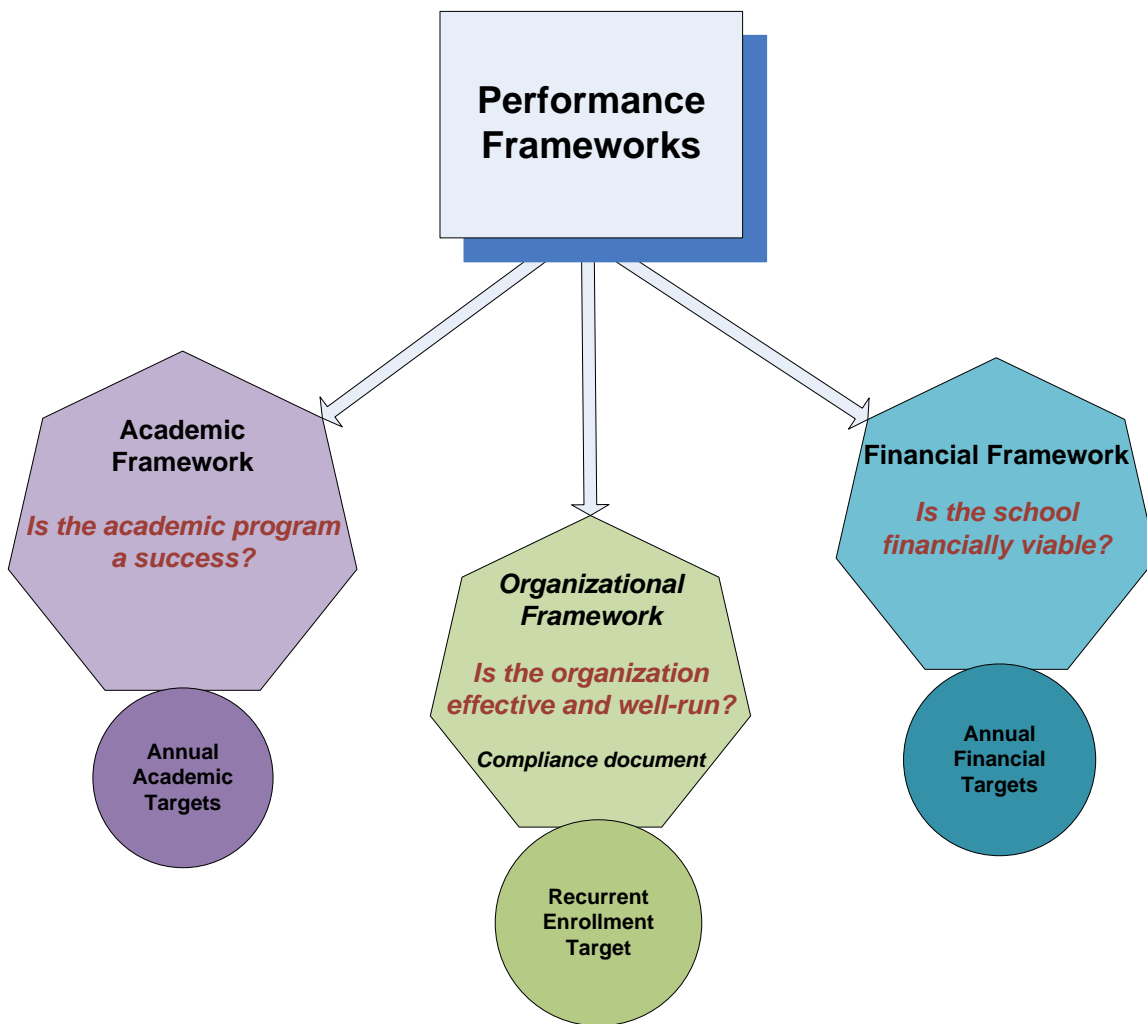
(e) Master Plan.

The School shall prepare its own facility master plan in compliance with the rules of the Public School Capital Outlay Council and the Public Schools Capital Outlay Act^{xxviii}.

Article V. Performance Frameworks.

Section 5.01 Performance Framework Overview.

The School's performance shall be based on three Performance Frameworks: an Academic, an Organizational and Financial Framework, which are discussed in further detail in Articles VI, VII and VIII below. Each Framework will include indicators^{xxix}, measures and metrics. As referenced above, these Performance Frameworks and the annual performance indicators are part of the Essential Documents governing the Parties.



(a) Optional Supplemental Indicators.

The School may identify optional supplemental indicator(s) that are specific, rigorous, valid, measureable and reliable. If such indicator(s) are identified, the School shall

report each year on supplemental indicator(s) as set forth in the Performance Framework. Progress towards achieving the supplemental indicator(s) shall be described annually.

These annual Performance Frameworks will be used by the Authorizer to monitor and assess the performance of the School. The Performance Frameworks are the basis of the annual school review process, and the data and evidence resulting from the annual review ultimately will inform the Authorizer's renewal decision.

Section 5.02 Annual Performance Indicators.

Each Performance Framework is set up to establish annual performance indicators and targets. For the annual performance indicators and targets, the Authorizer first shall approve a Performance Framework template to be used for the upcoming school year, after consultation with its schools. The Parties shall then complete the template with school-specific indicators for each year this Contract is in effect ("negotiated Performance Framework"). The annual negotiated Performance Framework and scorecards are compiled in [Exhibit 3](#). The annual negotiated Performance Framework negotiated by the parties may include additional specific, rigorous, valid and reliable indicators to augment other evaluations of the School's performance. The annual negotiated Performance Framework established for each year of this Contract and scorecards resulting from a review of these annual School Specific Indicators shall be included in the Essential Documents as [Exhibits 3.1, 3.2, 3.3, 3.4 and 3.5](#), as each document is created for each year of the Contract.

Section 5.03 Progress on Performance Framework Indicators and Annual Performance indicators.

The School shall make satisfactory progress towards the negotiated Performance Framework which includes Academic, Financial and Organizational Frameworks by meeting or exceeding the standard as set forth in the negotiated Performance Framework. If the Authorizer finds that the School is not making satisfactory progress toward any part or all of the annual negotiated Performance Framework or fiscal, overall governance and student performance and legal compliance^{xxx}, the Authorizer may take such action as allowed by this Contract or by law, rule or regulation, including implementing an Improvement Plan, a Corrective Action Plan or charter revocation as set forth in this Contract or by law, rule or regulation.

The renewal of the School's charter shall be based substantially on the data collected regarding how the School is progressing towards the annual School Specific Indicators in the negotiated Performance Frameworks and compliance with the terms of this Contract. The Parties will negotiate how the School will show compliance with its annual Academic Indicators. The information from the annual Financial Framework will come from the annual School audit or any other applicable sources. Each annual Organizational Indicator outlines the evidence that the School may show the Authorizer to show compliance with that Indicator.

During the Annual Site Visit, the Authorizer designee(s) and School shall review annual School Specific Indicators established the previous school year. Subsequently, the Parties shall identify the annual School Specific Indicators for the next year considering

and incorporating the general annual performance indicators set by the Authorizer for that year. The Parties may meet to negotiate changes if necessary.

Section 5.04 Terms Requiring Amendment.

Any modification of the Performance Frameworks requires an amendment that must be agreed to and executed by both Parties. Each Party must vote on this amendment in an open public meeting prior to execution of the amendment. The School will submit the requested amendment to all entitled to notice in Section 2.02 and request that the Authorizer place the amendment on the agenda of the Authorizer for approval.

Article VI. Academic Performance Framework

Is the Academic program a success?

Section 6.01 Academic Annual Performance indicators.

The annual negotiated Performance Framework includes three parts. One part is an Academic Framework. The Academic Framework looks at student performance.

Failure to meet the standard(s) set forth in an Academic Performance Indicator is not a “material violation” as defined in NMSA 1978, §22-8B-12(K)(1). Rather it may be deemed a failure “to meet or make substantial progress toward achievement of the department’s minimum educational standards or student performance standards” (NMSA 1978, §22-8B-12(K)(2)) and may be assessed accordingly for purposes of nonrenewal or revocation.

Section 6.02 Disaggregation of Data.

The Parties shall look at disaggregated data by student subgroup, including gender, race, poverty status, special education or gifted status, and English language learner status, in determining student performance. The Parties may obtain such information through reports prepared by the NMPED. To the extent that an annual performance indicator already reports disaggregated data by student subgroup, such as the A-F grading system, the Parties may use this report in their review rather than creating additional reports.

Article VII. Financial Performance Framework.

Is the School financially viable?

The annual negotiated Performance Framework includes three parts. One part is a Financial Framework. The Financial Framework looks at the financial viability of the School.

Article VIII. Organizational Framework.

Is the organization effective and well run?

The annual negotiated Performance Framework includes three parts. One part is an Organizational Framework. The Organizational Framework is a compliance checklist that ensures that the School is responsive to the needs of its students, employees and School community, and also looks at recurrent enrollment. This framework looks at organizational, overarching processes established by the School to ensure efficient operations by the School and compliance with applicable laws.

The following is a general description of the Organizational Framework areas of focus.

Section 8.01 Organizational Framework, Education Program 1.a. *Is the school implementing the Material Terms of the Charter as defined in this section?*

Organizational Framework Question 1.a. Description. The School shall demonstrate evidence of achieving the Material Terms of the Charter in all respects.

(a) Material Terms of the Charter.

The Parties agree that the following are the “Material Terms” of the approved Charter:

(i) Operational Structure

Length of school day	
Length of school year	
Enrollment cap	
Authorized school grades	
Partner	
Management company	

(ii) School Mission

The School’s mission statement is as follows:

[Insert school mission statement.]

The School shall report each year on implementation of its mission as set forth in the mission specific indicator(s) as set forth in the Performance Framework, Academic Framework. Progress toward achieving the School’s Mission shall be described annually.

(iii) Educational Program of the School

[Insert the key provisions. e.g. Curriculum and pedagogical approach]

(iv) Student – Focused Term(s).

[Insert the key provisions.]

(v) Teacher – Focused Term(s).

[Insert the key provisions.]

(vi) Parent – Focused Term(s).

[Insert the key provisions.]

(vii) Governance Structure.

The Parties agree that the following are key provisions regarding the School's governance structure.

[Insert the key governance structure provisions.]

(viii) Total Student Enrollment.

As set forth above, the School is authorized to enroll the following:

[Insert student enrollment numbers here.]

The School shall provide instruction to students in such grades and subject to approved caps in each year of operation^{xxxii}. The School may make modifications as to the number of students in any particular grade, and number of students within a class to accommodate staffing decisions that are consistent with the School's programmatic needs, and attrition patterns. However, the School shall not increase the number of grades or the total number of students proposed to be served in each grade without an amendment to this contract or waiver of grade cap provision^{xxxii}.

If the School seeks to amend enrollment or grades served, the School must, among other things, demonstrate that such changes in enrollment/grades served do not adversely compromise the fiscal and educational program of the School.

(ix) Intent to Provide Educational Services.

The School represents to the Authorizer that based upon its mission and school goals, it intends to provide educational services including delivery of instruction in the following described general geographic area:

County(ies):	
City(ies):	

(x) Facility.

For Schools with a Set Location. The Charter School's primary location is:

--

Physical Address). The facility meets all applicable facility requirements of State and Federal law.

For School Anticipating Changing Locations. The School is in the process of identifying a new location at

--

The School acknowledges that the new facility must meet all applicable health and safety requirements prior to the School relocating to the new location. The Authorizer

approves this location contingent upon the School providing the Authorizer with evidence of compliance with applicable law, including NMSA 22-8B-4.2(C).

(xi) Facilities Occupancy Requirement.

The School acknowledges that its facility must meet all educational occupancy standards required by applicable New Mexico Construction Codes^{xxxiii}. The School's facilities shall be certified for occupancy as a public school prior to commencing operations in the new building, including the approval of the director or designee of the New Mexico Public Schools Facilities Authority ("PSFA")^{xxxiv}. The School further acknowledges that if it is renewed on or after July 1, 2015, that its facilities must meet the requirements as set forth in Subsection D of Section 22-8B-4.2 NMSA 1978 (2011).

The School shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

(xii) New Mexico Condition Index.

The School acknowledges that it may not open or relocate to a facility after opening unless:

- A. the facility receives a condition rating equal to or better than the average condition for all New Mexico public schools as determined by the Public Schools Facility Authority (PSFA) for that year, or

B. the School demonstrates within 18 (eighteen) months of occupancy or relocation of the School, the way in which the facility will achieve a rating equal to or better than the average New Mexico condition index^{xxxv}.

(xiii) Facilities Funding.

The School is eligible for state capital outlay dollars to the extent provided for in the Public School Capital Outlay Act^{xxxvi}; the Public School Capital Improvements Act^{xxxvii}; the Public School Buildings Act^{xxxviii}; and any other applicable law.

(xiv) Lease Purchase Agreement.

The School acknowledges that it may not enter into a Public School Lease Purchase Agreement^{xxxix} without prior approval of the NMPED.

(xv) Multiple Facilities.

With the approval of the Authorizer, the School may maintain separate facilities at two or more locations. The School acknowledges that the separate facilities shall be treated together as only one school for purposes of calculating program units pursuant to the Public School Finance Act.

(xvi) Food Service.

According to the Charter, the School

will provide the following food services: food services shall be provided in a manner that is in compliance with applicable federal and state laws regarding public school food programs.

OR

will not provide food services.

OR

will provide free and reduced breakfast under the Free School Breakfast Program. Food services shall be provided in a manner that is in compliance with applicable laws regarding public school food programs.

AND/OR

will provide free and reduced lunch. Food services shall be provided in a manner that is in compliance with applicable laws regarding public school food programs.

(xvii) Transportation.

The School has agreed to provide student to-and-from transportation^{xl}.

OR

The School, in accordance with the Act, shall not provide student to-and-from transportation. The School may contract with qualified transportation providers for special events. The School will ensure that students with disabilities shall comply with their qualified IEP or Section 504 plan related to transportation.

Section 8.02 Organizational Framework, Education Program 1.b. Is the school complying with applicable educational requirements?

Organizational Framework Question 1.b. Description. Unless waived, the School shall demonstrate compliance with applicable laws, rules, and regulations relating to education requirements such as instructional days, graduation and promotion requirements; content standards, state assessments and implementing mandated programming associated with state or federal funding.

Section 8.03 Operational Framework, Students and Employees, 1.c. *Is the School protecting the rights of all students?*

Organizational Framework Question 1.c. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to the rights of students, including policies related to admissions, lottery, recruitment and enrollment; adherence to due process protections; and development and adherence to student discipline policies.

The School shall also comply with the following additional terms and conditions:

(a) Non-discrimination.

The School is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services. The School shall be a nonsectarian, nonreligious and non-home-based public school^{xli}.

Student recruitment and enrollment decisions shall be made in a nondiscriminatory manner and without regard to race, color, creed, national origin, sex, marital status, religion, ancestry, disability, or need for special education services^{xlii}.

(b) Enrollment and admission processes and procedure.

The School must establish and post enrollment and admissions process and procedures which comply with applicable law. The School may not charge tuition or have other admissions requirements, except as otherwise provided in the Public School Code^{xliii}.

(c) Lottery.

Unless otherwise exempted in the Public School Code, if more students apply than can be admitted based on the School's enrollment cap, admission decisions will be made by a lottery process^{xliv}. The School shall adopt in advance the enrollment procedure for vacancies that occur during the school year that complies with applicable law.

(d) Continuing Enrollment.

Students who enroll in the School shall remain enrolled in the School through the highest grade served by the School, unless there is a voluntary withdrawal, mandatory withdrawal pursuant to the New Mexico Public School Finance Act, expulsion, graduation, court-ordered placement, IEP team placement, or other applicable laws.

(e) Suspension or Expulsion.

A student who is long-term suspended or expelled from the School shall be deemed to be suspended or expelled from the school district in which the student resides^{xlv}. A student who is suspended from a school district may also be considered suspended or expelled from the School located within the geographic boundary of that district. The School shall develop its own enrollment policies for enrolling students who have been suspended or expelled from another charter school or a school district.

Section 8.04 Organizational Framework, Education Program 1.d. *Is the School protecting the rights of students with special needs?*

Organizational Framework Question 1.d. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations, including the Individuals with

Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and laws relevant to gifted children, relating to identification and referral of those suspected of having a disability or intellectual ability and providing services for students with identified needs.

The School shall also comply with the following additional terms and conditions:

(a) Special Populations.

The School is responsible for identifying, evaluating, and offering a free appropriate public education to all eligible children who are accepted for enrollment in the School.

(b) Enrollment of Students with Disabilities.

To ensure that the needs of students with a disability are met, the following procedures must be followed:

(i) Documents.

Following the application deadline and upon completing the lottery if required, the School shall request from relevant school district and/or the student a copy of the most recent Individualized Education Program (IEP) or Section 504 Accommodations Plan, if any.

(ii) Implementing the IEP.

Admission of applicants with an IEP or Section 504 Accommodations Plan must be in compliance with state and federal requirements and procedures concerning the education of students with disabilities or intellectual ability. Every student who is admitted to the School with an IEP or Section 504 Accommodations Plan from

his/her previous school must receive services as reflected in the IEP or 504 plan unless modified.

(c) Response to Intervention.

The School must fully implement the State’s Response to Intervention (Rtl) Framework known as the *Three-Tier Model of Student Intervention*^{xlvi}. This framework serves as the overarching structure for how K–12 public schools in New Mexico organize instruction to all students, and provides procedures for early assistance and intervention to students who are experiencing academic and/or behavioral challenges, or who need opportunities for advanced learning. The Rtl Framework includes the Student Assistance Team process which supplements regular education functions, conducts evaluations and develops accommodation plans under Section 504, develops individual student academic improvement plans^{xlvii}, and receives and analyzes evaluation requests for special education and gifted education services.

Section 8.05 Organizational Framework, Education Program 1.e. *Is the School protecting the rights of English Language Learner (ELL) students?*

Organizational Framework Question 1.e. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations, including Title III of the Elementary and Secondary Education Act, relating to English Language Learner requirements.

Section 8.06 Organizational Framework, Education Program 1.f. *Is the School complying with compulsory attendance laws?*

Organizational Framework Question 1.f. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to compulsory school attendance.

Section 8.07 Organizational Framework, Education Program 1.g. *Is the School complying with the annual recurrent enrollment target?*

The School shall comply with the annual recurrent enrollment target set by the Authorizer.

Section 8.08 Organizational Framework, Financial Management and Oversight 2.a. *Is the School meeting financial reporting and compliance requirements?*

Organizational Framework Question 2.a. Description. The School shall demonstrate complete and timely compliance with applicable laws, rules, and regulations relating to sound financial principles^{xlvi} and financial reporting requirements, including compliance with the New Mexico Procurement Code.

The School shall also comply with the following additional terms and conditions:

(a) Authorizer Notification.

The School shall notify the authorizer or its designee(s) and appropriate authorities in the following situations:

- A. All complaints filed against the School by governmental entities alleging violations of state, federal or local violations of law, regulation or rule, (e.g. building-code violations, environmental or health code violations, state-level IDEA special education complaints or due process hearings, Section 504 grievances, Title I of the Elementary and Secondary Education Act complaints);

- B. The conviction of any members of the School’s governing body or staff for a crime punishable as a felony, or misdemeanor involving moral turpitude, or determination of inappropriate contact^{xlix} related to that person’s responsibilities to the School; or for any crime related to the misappropriation of school funds or theft of school property; or
- C. A finding by an internal or independent auditor or investigator of misappropriation of the School’s public funds by any member of the School’s governing body, employee, volunteer, contractor, or other individuals.

Notice shall be provided within a reasonable period of time under the circumstances.

The Parties may then take such steps as reasonably necessary, and as consistent with their adopted policies, to address these issues.

(b) Operational Reporting.

The School shall provide the following reports to the Authorizer:

Documentation to support the Site Visit report

The Authorizer may require additional reporting as a part of an Improvement Plan or Corrective Action Plan.

Section 8.09 Operational Framework, Financial Management and Oversight 2.b. *Is the School following Generally Accepted Accounting Principles?*

Organizational Framework Question 2.b. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations, relating to financial management and oversight expectations, that shows that the School is following generally accepted accounting principles.

Section 8.10 Organizational Framework, Governance and Reporting

3.a. *Is the School complying with governance requirements?*

Organizational Framework Question 3.a. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to charter school governance through the adoption of and adherence to school policies; the Open Meetings Act; the Inspection of Public Records Act; a conflict of interest policy; an anti-nepotism policy and sound Governing Body operations.

The School shall also comply with the following additional terms and conditions:

(a) Governing Structure.

The School's governing body shall have at least 5 (five) membersⁱ. No member shall serve on the School's governing body if he or she was a member of another charter school's governing body that was suspended or failed to receive or maintain their board of finance designation.ⁱⁱ

(b) Change in Governance Membership.

The School will notify the Authorizer within 30 (thirty) days of a member's resignation or designation of a new member and shall sign the appropriate forms to ensure that the governing body continues to qualify as a board of financeⁱⁱⁱ. The School shall fill any vacancy on its governing body no later than 45 days from the vacancy or shall seek an extension for such appointment from the Authorizer in writing. The new member must execute the required statements for Board of Finance designationⁱⁱⁱⁱ to the NMPED.

Section 8.11 Operational Framework, Governance and Reporting

3.b. *Is the School holding management accountable?*

Organizational Framework Question 3.b. Description. The School shall demonstrate timely compliance with applicable laws, rules, and regulations relating to oversight of school management through evaluation of the head of school and the relationship with a partner organization, if any.

The School shall also comply with the following additional terms and conditions:

(a) School Complaint Process.

The School must establish a process for resolving community, parental, and other public complaints. The process shall afford the opportunity for the complainants to be heard by the head administrator and/or the School's governing body. The governing body shall be the final determiner of the complaint unless the complainant has additional legal remedies or requirements provided by law.

(b) Authorizer Notification Regarding Complaints.

The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. The School shall respond to the complaint according to its prescribed complaint procedures and shall notify the Authorizer through its legal counsel of the School's response to the complaint within the timeframe prescribed in the notice of the complaint.

Section 8.12 Organizational Framework, Students and Employees, 4.a. *Is the School meeting teacher and other staff credentialing requirements?*

Organizational Framework Question 4.a. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to state certification requirements and Title II of the ESEA for Highly Qualified Teachers and Paraprofessionals.

Section 8.13 Organizational Framework, Students and Employees, 4.b. *Is the School respecting employee rights?*

Organizational Framework Question 4.b. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to employment requirements; and develop and adhere to sound policies for employees.

The School shall also comply with the following additional terms and conditions:

(a) Volunteer Requirements.

The School acknowledges that all volunteers must comply with state regulations^{liv}.

Section 8.14 Organizational Framework, Students and Employees, 4.c. *Is the School completing required background checks?*

Organizational Framework Question 4.c. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to background checks of all individuals at the School having unsupervised access to children, including staff and members of the community, where required.

Section 8.15 Organizational Framework, School Environment, 5.a. *Is the School complying with facilities and transportation requirements?*

Organizational Framework Question 5.a. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to the School's facilities and transportation.

The School shall also comply with the following additional terms and conditions:

(a) Insurance Provider.

The School shall procure insurance^{lv} through the New Mexico Public Insurance Authority (NMPSIA). Upon request by the Authorizer, a copy of the certificate of insurance shall be provided.

(b) Insurance Coverage.

The School shall purchase insurance protecting the School and its governing body, employees, and volunteers, and the Authorizer, consisting of comprehensive general liability insurance, errors and omissions liability insurance, and auto liability insurance. The School shall also purchase statutory workers' compensation insurance coverage.

(c) Change of Coverage.

All of the School's insurance policies purchased by the School shall state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, except after 45 days prior written notice by certified mail, return receipt requested, has been given to the Authorizer. The School shall notify the Authorizer within 10 days if for any reason there is a lapse in insurance coverage. The School shall be solely responsible for any deductibles payable under the policies purchased by the School.

Section 8.16 Operational Framework, School Environment, 5.b. *Is the School complying with health and safety requirements?*

Organizational Framework Question 5.b. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to safety and the provision of health related services, if such services are provided by the School.

Section 8.17 Organizational Framework, School Environment 5.c. *Is the School handling information appropriately?*

Organizational Framework Question 5.c. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to security of and appropriate access to personally identifiable student information; student records and testing materials.

All records required to be kept pursuant to state and/or federal laws, regulations, or policies or as otherwise established shall be open to inspection and review and made available in a timely manner to the PEC, CSD, NMPED, or other officials who shall be deemed to have legitimate educational interests in such records within the meaning of the federal Family Educational Rights and Privacy Act (FERPA). The School is encouraged to adopt a policy for student directory information in compliance with FERPA.

Article IX. Resolution of Dispute Relating to the Contract.

Section 9.01 Dispute Resolution.

Disputes arising out of the implementation of this Contract shall be subject to the dispute resolution process set forth in this section. However disputes coming under

Article XI of this Contract shall not be subject to the dispute resolution process unless agreed to by the Parties.

Section 9.02 Continuation of Contract Performance.

The School and the Authorizer agree that the existence and details of a dispute notwithstanding, the Parties shall continue without delay their performance of this Contract, except for any performance that may be directly affected by such dispute.

Section 9.03 Notice of Dispute.

Either party shall notify the other party in writing that a dispute exists between them within 15 working days from the date the dispute arises. The notice of dispute shall identify the article and section of this Contract in dispute, reasons alleged for the dispute and copies of any documentation that supports the complaining party's position. If the dispute is not timely presented to the other party, the party receiving late notice may elect not to enter into mediation.

Section 9.04 Initial Administrative Resolution.

The matter shall be submitted to the head administrator of the School and the Authorizer's designee(s). The head administrator and the Authorizer's designee(s) shall keep the School Governing Body and the Authorizer informed during any attempt at administrative resolution. Either Party may identify an authorized representative to join the School staff or the Authorizer's designee(s) in identifying possible solutions. The process shall be completed within 15 working days of the receipt of the Notice of Dispute or the Parties shall agree in writing to an alternative date certain for the termination of this process. If the matter is not resolved within the time frame

established, either Party may consider the Initial Administrative Resolution alternative terminated and give the other party notice of the termination. (“Termination of Initial Administrative Resolution”).

If the matter is able to be resolved through an Initial Administrative Resolution, the School staff and Authorizer’s designee(s) shall jointly draft a document identifying the agreed upon resolution and notify the respective Parties of the Initial Administrative Resolution. If the Initial Administrative Resolution requires an action of the School and the Authorizer, such Initial Administrative Resolution shall be presented after due notice at the next respective Governing Body meetings of the Parties. If necessary, the Parties shall call a special or emergency meeting to approve any Initial Administrative Resolution. In the case that Party approval is needed under this paragraph, the Initial Administrative Resolution shall take effect only if approval is given by both Parties and shall have no effect otherwise.

Section 9.05 Mediation at the Administrative Level.

If there is a Termination of the Initial Administrative Resolution process, then either Party may demand formal mediation by mailing or delivering notice in writing to the other Party within 10 working days after the Termination of Initial Administration Resolution.

Mediation conducted by the Parties is subject to the Mediation Procedures Act^{lvi}. If either Party submits a Notice of Demand to Mediate, it shall include in the notice the name of a mediator along with his/her qualifications. If the other Party does not agree to

the proposed mediator, then it shall identify an alternate mediator along with his/her qualifications within 5 business days. If the other Party does not agree with the alternate designation, it shall give notice within 5 business days. In the event that the Parties cannot agree on a mediator the two proposed mediators shall meet within 5 business days to appoint a third person to act as mediator. The appointed mediator shall mediate the dispute.

Each Party shall pay one-half of the reasonable fees and expenses of the mediator. All other fees and expenses of each party, including without limitation, the fees and expenses of its counsel, shall be paid by the Party incurring such costs.

Mediation shall be completed within 40 working days unless another date certain is set by the Parties and mediator.

If the matter is able to be resolved through Mediation at the Administrative Level, the School through its staff and Authorizer through its designee shall jointly draft a document identifying the Mediation Resolution and notify the Parties of the Mediation Resolution. If the Mediation Resolution requires an action of the School and the Authorizer, such Mediation Resolution shall be presented at the next respective Governing Body meeting of the Parties. If necessary, the Parties shall call a special or emergency meeting to approve any Mediation Resolution. In the case that Party approval is needed under this paragraph, the Mediation Resolution shall take effect only if approval is given by both Parties and shall have no effect otherwise.

If no resolution is reached by the Parties, then the mediator shall render a written proposal with a proposed resolution of the mediator concerning the matters in controversy, together with his/her findings in the event that the Parties do not come to any agreement. The Proposed Resolution of the Mediator shall be presented to each Party. The mediator shall note any provision in the proposed resolution that would require a vote of the respective Parties.

Section 9.06 Governing Body Consideration.

If a Mediation Resolution has not been reached within 40 business days of the appointment of the mediator, both representatives shall submit the matter to the respective Parties for consideration along with the Proposed Resolution of the Mediator.

The matter shall be placed on the next regular meeting of each Party, unless a special or emergency meeting is warranted. Prior to the board meeting, the Parties may designate a subcommittee to meet with the subcommittee of the other Party for informal discussions. The subcommittee shall be less than the quorum needed for a meeting of the Governing Body. The subcommittees shall meet jointly to consider the proposals of each Party and the Proposed Resolution of the Mediator. If the subcommittees of the Governing Bodies can identify a Joint Proposal that may resolve the dispute, the Joint Proposal of the subcommittees shall be presented at the next meeting of each Party. The Joint Proposal shall be discussed in the public meeting and public comment shall be heard on the Joint Proposal. The Joint Proposal shall then be voted on by the Parties. A special or emergency session may be called of each Party, if needed.

If both Parties adopt the Joint Proposal, the issue shall be deemed resolved according to the terms of the Joint Proposal. If one or both Parties reject(s) the Joint Proposal, then the dispute resolution process shall be deemed to have failed and to have ended.

Section 9.07 Process for Final Resolution of Dispute.

If settlement of the dispute is not reached through mediation or by agreement of the Parties, either Party may pursue any right or remedy to which it may be entitled by law.

Article X. Renewal.

Section 10.01 Renewal Timeline and Process.

The School shall submit its renewal application to the Authorizer on or before October 1 of 20___. The Parties may mutually agree to an extension of the submittal of the renewal application; such extension shall be memorialized in writing. The Authorizer shall vote on the renewal application in a public hearing no later than January 1, of the year in which the Contract expires; i.e. January 1, 20___ unless extended by agreement.

Section 10.02 Required Information.

The renewal application shall contain the information required by law^{lvii}.

Section 10.03 Authorizer Review and Analysis of Renewal Contract.

The Authorizer review shall be conducted according to law, regulation and rule.

Article XI. Suspension, Nonrenewal and Revocation.

Section 11.01 Suspension, Nonrenewal and Revocation.

The charter may be suspended, revoked, or not renewed by the Authorizer as set forth in law, regulation, rule or policy that complies with law and as set forth in this Contract. The Authorizer is not required to allow corrective action as set forth below if the unsatisfactory review warrants revocation.^{lviii} Until such time as the NMPED promulgates regulations setting forth procedures for revocation, the Parties shall follow the processes set forth in the Uniform Licensing Act^{lix} and such other Rules of Civil Procedure as agreed to by the Parties in conjunction with the revocation proceedings under the Charter School Act, but only to the extent such processes are consistent with the provisions of the Charter Schools Act.

Section 11.02 Corrective Action Required by Authorizer for Actions Not Warranting Immediate Revocation.

If, based on a performance review conducted by the Authorizer, the School's organization, academic or financial performance appears unsatisfactory or the Authorizer believes there to be a breach of this Contract not warranting immediate revocation, the Authorizer may initiate the process to implement a corrective action plan. The Authorizer shall notify the School of the unsatisfactory review and provide a reasonable opportunity for the School to remedy the Authorizer's concerns.

(a) Notice of Unsatisfactory Performance (NUP) for actions not warranting immediate revocation.

The Authorizer shall provide written notice to the School no more than 10 business days after determining that there is unsatisfactory performance related to the School's organization, the School's academic or financial performance appears unsatisfactory, or the Authorizer believes there to be a breach of this Contract not warranting immediate revocation.

(b) Response for actions not warranting immediate revocation.

The School shall respond to the NUP within 10 business days, unless an extension is agreed to by the Authorizer. The response shall be in writing and shall include all documents that support the response.

(c) Corrective Action Plan (CAP) for actions not warranting immediate revocation.

After receiving the School's response to the NUP, the Authorizer may require the School to present a Corrective Action Plan that addresses the identified deficiencies; provided that if the unsatisfactory review and School's response to the NUP warrants revocation, the Authorizer may begin revocation procedures. The Authorizer shall provide clear timelines for complying with the Authorizer's demand for corrective action.

(d) CAP Development for actions not warranting immediate revocation.

If a CAP is required by the Authorizer, the School shall develop the CAP along with a proposed timeline for correcting the alleged deficiencies and submit the CAP to the authorizer for review, comment, and approval. The Authorizer may require the school to review and revise the plan if it is not effective in remedying the deficiency.

(e) Effect of Successful CAP Response for actions not warranting immediate revocation.

Successful completion of the CAP shall be acknowledged by the Authorizer in writing and the corrected infractions addressed by the CAP shall not be a basis for future for nonrenewal or revocation actions. However, if the School does not successfully correct the Authorizer's concerns, the Authorizer may take additional steps to insure

compliance, which include, but are not limited to seeking assistance from the CSD or another technical assistance provider to implement a plan for correcting the Authorizer's concerns. Failure to comply with the requirements of the CAP may also be considered by the Authorizer when making decisions about renewal, suspension or revocation.

Article XII. School Closure.

Any permanent School closure shall be conducted according to applicable law, regulation rule or policy that complies with law.

Article XIII. General Provisions.

Section 13.01 Order of Precedence.

In the event of any conflict among the documents and practices defining this relationship, it is agreed that

- a) the Contract shall take precedence over policies of either Party and the Charter; and
- b) a provision in the annual Performance Frameworks that conflicts with a provision in the Contract shall take precedence over that provision in the Contract.

This Contract shall not take precedence over any applicable provisions of law, rule or regulation.

Section 13.02 Amendments.

(a) Terms Requiring Amendment.

Any modification of the contract requires an amendment that must be agreed to and executed by both parties. The Authorizer is required by law to vote on this amendment in an open public meeting. The party requesting the amendment will submit the requested amendment to all entitled to notice in section 2.02.

(b) Authority to Amend.

No amendment to the Contract shall be valid unless ratified in writing by the Authorizer and the School and executed by its authorized representatives.

(c) Process.

The School must first vote in a public meeting to approve any proposed amendment to the Contract or Essential Documents. The School must then submit the requested amendment to the Authorizer's legal counsel. The Authorizer shall vote on the proposed amendment within 60 days of the request. If the Authorizer denies the amendment, the School may appeal the decision to the Secretary of the NMPED. Until the time that NMPED promulgates appropriate regulations; the procedure for this appeal will be the same as provided in NMSA 22-8B-9(C).

Section 13.03 Merger.

The Contract and Essential Documents to this Contract contain all terms, conditions, and understandings of the Parties relating to its subject matter. All prior verbal representations, understandings, and discussions are superseded by this Contract.

Section 13.04 Non-Assignment.

Neither Party shall assign or attempt to assign any rights, benefits, or obligations accruing to the Party under this Contract unless the other Party agrees in writing to any such assignment.

Section 13.05 Governing Law and Enforceability.

This Contract shall be governed and construed according to the Constitution and laws of the State of New Mexico. If any provision of this Contract or any application of this Contract to the School is found to be contrary to law, such provision or application shall have effect only to the extent permitted by law.

Section 13.06 Severability.

If any provision of this Contract is determined to be unenforceable or invalid for any reason, the remainder of the Contract shall remain in full force and effect, unless otherwise terminated by one or both of the Parties in accordance with the terms contained herein. Either Party may revoke this Contract if a material provision is declared unlawful or unenforceable by any court of competent jurisdiction and the Parties do not successfully negotiate a replacement provision.

Section 13.07 Changes in Law, Rules, Procedures or Forms.

In the event of a change in law, regulation, rule, procedure or form affecting the School during the term of this Contract, the Parties shall comply with the change in law, rule, regulation or procedure or utilize the new form, provided, however, that the change does not impair the existing Contract and the Parties' respective rights hereunder. If an amendment to this Contract is required to comply with a change in the law or rule, then the Parties shall execute such an amendment, to the extent that the change does not

impair the Parties' respective rights hereunder. No such amendment is required to only amend or correct any references to statute, rule, regulation or document provision set forth in this Contract.

Section 13.08 No Third Party Beneficiary.

The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Authorizer and the School. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only.

Section 13.09 No Waiver.

The Parties agree that no assent, express or implied, to any breach by either of them of any one or more of the provisions of this Contract shall constitute a waiver of any other breach.

Section 13.10 Authorized Signatories.

The Parties hereby declare that their president/chair or their authorized designee shall be or has been duly authorized to sign this Contract.

Approved:

**New Mexico Public Education
Commission**

By: Carolyn Shearman

Title: Chair

Approved:

Insert name of Charter School

By:

Title: Chair

Signature:

Signature:

Date:

Date:

-
- ⁱ Section 22-8B-9(A) NMSA 1978.
- ⁱⁱ Section 22-8B-3 NMSA 1978.
- ⁱⁱⁱ Section 22-8B-5.3 NMSA 1978 and all other duties assigned to the Commission relating to charter schools.
- ^{iv} e.g. Section 22-8B-12 NMSA 1978
- ^v Section 22-8B-16 NMSA 1978.
- ^{vi} Section 22-8B-17 NMSA 1978.
- ^{vii} Sections 22-8B-2(A) and 22 -8B-4(C),(J), (N), (P), and (R) (2011) NMSA 1978.
- ^{viii} Section 22-8B-5 NMSA 1978.
- ^{ix} Pursuant to the Audit Act at Section 12-6-1 NMSA 1978, *et seq.*
- ^x Section 22-10A-1 NMSA 1978, *et seq.*
- ^{xi} Section 22-8B-4(P) NMSA 1978 (2011).
- ^{xii} Section 22-8B-5(C) NMSA 1978 (2006).
- ^{xiii} Section 22-8B-5(C) NMSA 1978 (2006).
- ^{xiv} Section 22-8B-4 (N) NMSA, 1978
- ^{xv} Section 22-8B-5.3(H) NMSA 1978.
- ^{xvi} Section 22-8B-12(L) NMSA 1978 (2011).
- ^{xvii} Section 22-8B-12.1(A) NMSA 1978 (2011).
- ^{xviii} Section 22-8B-9 NMSA 1978 (2011).
- ^{xix} Section 22-8B-12(E) NMSA 1978 (2011).
- ^{xx} Section 22-8B-12(F) NMSA 1978.
- ^{xxi} Section 22-8B-12(K) NMSA 1978 (2012).
- ^{xxii} Section 22-8B-12(K) NMSA 1978 (2012).
- ^{xxiii} Section 22-8B-12(M) NMSA 1978 (2011).
- ^{xxiv} As defined by the Public School Finance Act, Section 22-8-1 NMSA 1978, *et seq.* Also see Section 22-8B-13 NMSA 1978 (2006).
- ^{xxv} Section 22-8B-13(C) and (D) NMSA 1978.
- ^{xxvi} Section 22-8B-4 (R) NMSA 1978.
- ^{xxvii} Section 22-8B-9(B)(14) NMSA 1978 (2011).
- ^{xxviii} Section 22-24-4 NMSA 1978 (2010).
- ^{xxix} Performance indicators in this Contract are the same as the performance targets referenced in Section 22-8B-9.1(B) NMSA 1978 (2011)
- ^{xxx} Section 22-8B-12 (D) 1978
- ^{xxxi} Section 22-8B-6 NMSA 1978 (2011).
- ^{xxxii} Section 22-8B-6(D) NMSA 1978 (2011).
- ^{xxxiii} Section 22-8B-4.2(A) NMSA 1978 (2011).
- ^{xxxiv} Section 22-8B-4.2 NMSA 1978 (2011).
- ^{xxxv} Section 22-8B-4.2(C) NMSA 1978 (2009).
- ^{xxxvi} Section 22-24-1 NMSA 1978, *et seq.*
- ^{xxxvii} Section 22-25-1 NMSA 1978, *et seq.*
- ^{xxxviii} Section 22-25-1 NMSA 1978, *et seq.*
- ^{xxxix} Section 22-26A-1 NMSA 1978, *et seq.* of the Public School Lease Purchase Act
- ^{xl} Section 22-8B-26 NMSA 1978.
- ^{xli} Section 22-8B-4(K) NMSA 1978.

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- xlii Section 22-8B-4(J) NMSA 1978.
 - xliii Section 22-8B-4 (K) NMSA 1978.
 - xliv Section 22-8B-4.1 NMSA 1978.
 - xlv Section 22-8B-5(G) NMSA 1978 (2006).
 - xlvi 6.29.1.9(D) NMAC, including the guidance manual cited in that rule
 - xlvii Section 22-2C-6 NMSA 1978.
 - xlviii e.g. Public School Finance Act at Section 22-8-1 NMSA 1978, *et seq.*, and 6.20.2.1 NMAC [2006].
 - xliv 6.60.9 NMAC
 - ¹ Section 22-8B-4(B) NMSA 1978 (2011).
 - li Section 22-8-38(B)(4) NMSA 1978 (2011).
 - lii Section 22-8-38 NMSA 1978 (2011).
 - liii 6.80.4.16 NMAC [6/30/2008].
 - liv 6.50.18 NMAC [2010] (“Use of Volunteers in Schools and School Districts).
 - lv Section 22-8B-9(B)(16) NMSA 1978.
 - lvi Section 44-7B-1 NMSA 1978, *et seq.*
 - lvii Section 22-8B-12(J) NMSA 1978.
 - lviii Section 22-8B-12(F) NMSA 1978
 - lix Section 61-1-1 et. seq. NMSA 1978 and associated rules and regulations