

## LEASE PURCHASE ARRANGEMENT

**THIS LEASE PURCHASE ARRANGEMENT** ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2017, between the County of Socorro, New Mexico, a New Mexico County Government, organized and existing under and by virtue of the laws of the State of New Mexico, ("County") and the Cottonwood Valley Charter School, a public charter school organized and existing under and by virtue of the laws of the State of New Mexico ("CVCS" or "School").

### **I. RECITALS**

A. CVCS is a New Mexico charter school, chartered by the Socorro School District ("District"), and authorized to enter into "lease purchase arrangements" under the New Mexico Public School Lease Purchase Act, Chapter 22, Article 26A NMSA 1978 (the "Lease Purchase Act").

B. The County is a New Mexico County Government, organized and existing under and by virtue of the laws of the State of New Mexico. NMSA 1978, Section 4-38-13 (1953) provides that a Board of County Commissioners shall have power at any session to make such orders concerning County property as they may deem expedient.

C. The County has owns certain Real Property upon which it has constructed certain improvements ("Improvements"). The real property is described as follows, and depicted on Exhibit A hereto:

A tract of land situate in the NE ¼ of Section 21 of the Socorro Grant, City of Socorro, New Mexico, being the south and east portion of that certain tract of land deeded to Cottonwood Valley Charter School by the County of Socorro on February 22, 2005 (v. 511, p. 3806-3807), including Lots 1 and 2 of Western Hills-Unit 1, bounded on the north by land now or formerly standing in the name of Cottonwood Valley Charter School and the south line of Neel Avenue, bounded on the east by land now or formerly standing in the name of the City of Socorro, bounded partially on the south by land now or formerly standing in the name of the Fitch Estate, bounded on the west by the east line of Lot 3 of the Western Hills-Unit 1 and the east line of Western Ave. and more particularly described as follows, to-wit;

beginning at corner 1, a found "PK" nail in concrete on the south line of Western Ave., marking the NE corner of Lot 3 of Western Hills-Unit 1 (corner 4 of the aforementioned land deeded to Cottonwood Valley Charter School), whence the ¼ section corner common to Sections 16 and 21 of the Socorro Grant bears N 56°16' W, a distance of 479.0 feet;  
thence, S 75°30" E, a distance of 25.70 feet along the south line of Western Ave, to corner 2, a found ½ inch iron pipe (Jaramillo, 12797); thence, northeasterly, 105.03 feet along the arc of a curve to the left, having a central angle of 64°37'00", a radius of 93.13 feet and a chord which bears N 72°11'30" E, a distance of 99.55 feet,

along the south line of Western Ave. to corner 3, a found ½ inch iron pipe (Jaramillo, 12797);  
thence, N 39°53' E, a distance of 66.29 feet along the east line of Western Ave. to corner 4, the NW corner, a set ½ inch rebar;  
thence, S 50°39' E, a distance of 159.00 feet to corner 5, a set ½ inch rebar;  
thence, N 39°21'E, a distance of 152.55 feet to corner 6, a railroad spike set in the paving on the south line of Neel Ave.;  
thence, S 50°10' E, a distance of 249.71 feet along the south line of Neel Ave. to corner 7, the NE corner, a found iron pipe (Jaramillo, 12797) marking the NE corner of the aforementioned land of Cottonwood Valley Charter School; thence, S 49°37' W, a distance of 177.30 feet along the east boundary line of the CVCS property to corner 8 a found ½ inch iron pipe (Jaramillo, 12797);  
thence, S 40°00' W, a distance of 156.2 feet along the east boundary line of the CVCS property to corner 9, the SE corner;  
thence, N 50°00' W, a distance of 244.6 feet along the south boundary line of the CVCS property to corner 10, a found ½ inch iron pipe (Jaramillo, 12797);  
thence, N 0°00" E, a distance of 35.4 feet along the south boundary line of the CVCS property to corner 11 a found ½ inch iron pipe (Jaramillo, 12797);  
thence, N 90°00" W, a distance of 150.73 feet along the south boundary line of the CVCS property to corner 12, a found ½ inch iron pipe marking the SE corner of Lot 3 of Western Hills-Unit 1;  
thence, N 0°00" E, a distance of 109.81 feet along the west boundary line of the CVCS property to corner 1, the place of beginning.  
Containing 2.529 acres, more or less.

(together with Improvements, the "Subject Property").

D. The County and CVCS wish to enter into an agreement for lease-purchase by CVCS of the Subject Property, with CVCS having an option to purchase the Subject Property upon the terms and conditions set forth in this Lease Purchase Arrangement.

E. On June 8, 2016, at a regular meeting called for the purpose of considering the acquisition of the Subject Property through the lease purchase arrangement described in this Agreement, the CVCS Governing Council, the governing body of CVCS, determined pursuant to Section 22-26A-6(B) NMSA 1978 that a lease-purchase arrangement is necessary and in the best interest of CVCS.

F. As a condition precedent to this Agreement, the New Mexico State Board of Finance must approve the lease of the Subject Property to CVCS subject to this Agreement, on behalf of the County of Socorro, pursuant to NMSA 1978, Section 13-6-2.1. A copy of said approval shall be attached hereto as Exhibit B. The New Mexico Public School Facilities Authority's approval of the lease purchase arrangement is further attached as Exhibit B.

G. As a condition precedent to this Agreement, the Secretary of Public Education (“Secretary”) must approve this Agreement on behalf of CVCS pursuant to NMSA 1978, Section 22-26A-4(B) (2009). A copy of said approval shall be attached hereto as Exhibit B.

H. This Agreement represents a Lease Purchase arrangement or financing agreement, as these two terms are defined in the Lease Purchase Act, NMSA 1978 Section 22-26A-3(A)(2015), and is not a debt or indirect obligation whatsoever of the School or a mandatory charge or requirement against the School in any fiscal year (July 1 to June 30), beyond the fiscal year for which such payments have been appropriated. Pursuant to the Lease Purchase Act and this Agreement, there is and shall be no legal obligation for the School to continue the lease from year to year or to purchase the Subject Property, and this Agreement shall be terminated if sufficient money is not available to meet the current lease payments.

## **II. AGREEMENT**

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### **A. Covenants and Representations.**

1. **Covenants and Representations of School.** School represents and covenants as follows:

- a) School is a duly formed and validly existing public school, formed and existing under the Charter Schools Act.
- b) State law authorizes School to lease, operate, maintain and purchase the Subject Property, to enter into this Agreement and the transactions contemplated herein, and to carry out its obligations under this Agreement subject to the limitations and conditions stated and the availability of sufficient appropriations and revenues therefor.
- c) The representatives of School executing this Agreement have been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of School's governing body or by other appropriate official action.
- d) The School has complied with all open meeting laws applicable to actions of School with respect to this Agreement and acquisition of the Subject Property, and all other state and federal laws applicable to this Agreement.
- e) Except as otherwise provided under the terms of this Agreement, including but not limited to Section G.10 herein, School will not transfer, lease, assign, mortgage or encumber this Agreement or the Subject Property.
- f) School will use and occupy the Subject Property for the primary purpose of a public school and related activities thereto and for such other public purposes as may be lawfully authorized or permitted by the School.

g) School will conform and comply with all applicable municipal, state and federal ordinances, laws, rules and regulations in using the Subject Property and will not use or suffer to be used the Subject Property in any manner which contravenes any applicable municipal, state or federal ordinance, law, rule or regulation, or so as to create any nuisance.

h) This Agreement may have a final payment date not exceeding thirty (30) years after the date of execution. School will use its best efforts to acquire the Subject Property from County with funds obtained from grant assistance from the New Mexico Public Schools Capital Outlay Council or from other available revenue or funding sources at the earliest possible time, but in no event later than thirty (30) years from the date the Agreement is executed.

2. **Covenants and Representations of County.** County represents and covenants as follows:

a) County is duly organized and existing under the laws of the State of New Mexico and has full and complete power to enter into this Agreement and to enter into and carry out the transactions contemplated hereby, and to carry out its obligations under this Agreement; and is possessed of full power to own and hold real and personal property, and to lease the same and has duly authorized the execution and delivery of this Agreement.

b) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or will result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which County is now a party.

c) County owns or, as of the Commencement Date, shall own marketable title to the Subject Property, subject to reservations, restrictions, and easements of record.

d) At time of closing of School's purchase option hereunder, there shall be no unpaid bills or sums due laborers, contractors, materialmen, mechanics or others with respect to any improvements or repairs constructed or performed on the Property.

e) To the best of County's knowledge, County has not received any notice that the Subject Property and/or the present use and condition of the Subject Property violates any applicable deed restrictions or other covenants, restrictions or agreements, mortgages or conditions of title or ownership, site plan approval, zoning or subdivision regulations, urban development plans, the laws statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions or requirements of any authorities governing or regulating the use and operation, or otherwise applicable to the Subject Property.

f) At the time of closing on the exercise of School's purchase option, there shall be no agreements affecting the ownership, use or possession of the Subject Property other than those agreements which have been disclosed in writing to CVCS and accepted by CVCS in writing.

g) To the best of County's knowledge, there are no underground storage tanks at the Subject Property and, to the best of County's knowledge, County has not used the School Site to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource Conservation and Recovery Act (42 U.S.C.A. §§6901 et seq.) as amended, the comprehensive Environmental Response Compensation and Liability Act (42 U.S.C.A. §§9601 et seq.) as amended, or any other related legal requirement, and to the best of County's knowledge, County has not caused, and has no knowledge of, the leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any hazardous substances on or off the Subject Property on adjacent properties.

**B. Demise of the Subject Property.** Upon satisfaction of all contingencies described in this Agreement, County shall lease the Subject Property fixtures, equipment, and other personal property thereon to CVCS, and CVCS shall lease the Subject Property, Improvements, fixtures, equipment, and other personal property thereon from County, for the term and upon the terms and conditions set forth in this instrument:

1. The Subject Property; and
2. Improvements (as described on Exhibit C hereto).
3. County acknowledges that CVCS is a public school and that as

such it is required to locate in facilities that meet the Educational Occupancy standards of the applicable building codes, as well as applicable State Adequacy Standards as determined by the New Mexico Public School Facilities Authority ("PSFA"). Further, County acknowledges that CVCS' facilities must meet or exceed the weighted average condition index for public school established by the PSFA ("wNMCI"). County agrees that the Improvements provided by County meet or exceed E-Occupancy and applicable State Adequacy standards, and meet or exceed the PSFA's wNMCI, as of the Commencement Date. CVCS agrees to cooperate with County in obtaining variances that are appropriate under the circumstances. County agrees to obtain and assign to CVCS standard contractor/manufacturer warranties on the improvements/equipment/property constructed/placed on the Subject Property by the County and/or its contractors and subcontractors.

4. Equipment and other Personal Property: NONE.

5. Possession and Enjoyment. County hereby covenants with respect to the Subject Property, to provide CVCS during the Term herein with quiet use and enjoyment of the Property without suit, trouble or hindrance from County, except as expressly set forth in this Agreement.

**C. Term.** The Effective Date of this Agreement shall be the date that all required governmental approvals have been obtained from the NM State Board of Finance, the NMPED, and the PSFA, and the date the last party has executed this Agreement. The Term of this Lease Purchase Arrangement shall be **fifteen (15) years**, beginning on the Effective Date, or the date that the School is able to occupy and use the constructed Improvements, whichever is later ("Commencement Date").

**D. Agreement Payments.**

1. CVCS shall make periodic payments under this Agreement for the Subject Property consisting of principal and interest in the amounts set forth in Exhibit "D" attached hereto and incorporated by reference ("Agreement Payments"), payable monthly on the first day of the first month following the Commencement Date and each succeeding month throughout the Term. The interest rate charged shall not exceed the maximum allowed pursuant to the Public Securities Act, NMSA 1978, Section 6-14- through 6-14-3. Any revisions to Exhibit D are subject to approval by NMPED.

2. A portion of each of the Agreement Payments is paid as, and represents payment of, interest, as shown on Exhibit D hereto. Upon receipt by the County of each Agreement Payment, the County shall apply the amount of each Agreement Payment to principal and interest as shown on Exhibit D, thereby reducing the purchase price for each succeeding purchase option date (**Section II.G** hereunder).

3. County and CVCS agree that the Agreement Payments, as used in **Section II.G** hereof, do not include payments for repair, maintenance, operating expenses and the like which are otherwise obligations of CVCS as facility costs under the terms of **Sections II.H and II.I** of this Agreement.

4. The Agreement Payments and other obligations payable by the School under this Agreement shall constitute currently appropriated expenditures of the School and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the School or a mandatory charge or requirement against the School in any fiscal year (July 1 to June 30) beyond the fiscal year for which such payments have been approved.

**E. Termination.**

1. **Termination of Agreement.** The Agreement will terminate upon the occurrence of the first of the following events:

- a) The purchase of the Subject Property by CVCS pursuant to **Section II.G** of this Agreement;
- b) an uncured default by CVCS and County's election to terminate this Agreement pursuant to **Section II.Q**;
- c) an uncured default by County and CVCS's election to terminate this Agreement pursuant to **Section II.Q** below;
- d) if sufficient money is not available to meet any current lease payment;
- e) CVCS's charter is revoked by its authorizer and said revocation is not reversed on appeal prior to the effective date of the charter revocation.

The effective date of any termination pursuant to **Section II.E.1.e** supra, shall be the effective date of revocation specified by the charter authorizer. CVCS shall make reasonable effort to give the County at least six (6) months' notice of termination.

2. **Effect of Termination.** Upon termination of the Agreement:
  - a) All unaccrued obligations of the School hereunder shall terminate, but all obligations of the School that have accrued hereunder prior to such termination shall continue until they are discharged in full; and
  - b) If the termination occurs because of the occurrence of a non-appropriation or an Event of Default (**Section II.E.1.b-d**):
    - (1) the School's right to possession of the Subject Property hereunder shall terminate;
    - (2) the School shall, within 90 days, vacate the Subject Property; and
    - (3) if and to the extent the School has appropriated funds for payment of Agreement Payments payable during, or with respect to the School's use of the Subject Property during the period between termination of the Term and the date the Property is vacated, the School shall pay such Agreement Payments to the County. If termination occurs because of non-renewal or revocation of the School's charter, Agreement Payments shall be paid through the effective date of the revocation or, in the case of nonrenewal, the expiration of the then-current charter.
  - c) If the Agreement is terminated prior to the final payment and the release of the security interest or the transfer of title, the current value of all Improvements at the time of termination in excess of the outstanding principal due and attributable to capital improvements that were made by School during the term of the Agreement and that were not a term or condition of the Agreement shall be paid in accordance with Section 22-26A-1 et seq., as amended NMSA 1978, to School.
  - d) Lien on Improvements by School. If State or School's funds, above those required for lease payments, are used to construct or acquire improvements after the Commencement Date, the cost of such improvements shall constitute a lien on the Subject Property in favor of school and then, if this Agreement is terminated prior to the final payment and the release of the security interest or the transfer of title at the option of the school: (1) School may foreclose the lien on the Subject Property; or (2) the current market value of the Subject Property or other real property at the time of termination, as determined by an independent appraisal certified by the New Mexico Taxation and Revenue Department, in excess of the outstanding principal due under the Agreement, shall be paid to School. The priority of any such lien shall be determined according to New Mexico law. For purposes of this subsection, "improvements" shall be defined as buildings, capital improvements and other facilities placed on the

Subject Property after the Commencement Date, that were constructed or acquired using State or school funds above those required for lease payments.

**F. Continuation.** Pursuant to NMSA 1978 §22-26A-5(I), the parties agree that this Agreement represents a Lease Purchase arrangement or financing agreement, as these two terms are defined in the Lease Purchase Act, NMSA 1978 Section 22-26A-3(A)(2015), and is not a debt or indirect obligation whatsoever of the school or a mandatory charge or requirement against the school in any fiscal year (July 1 to June 30), beyond the fiscal year for which such payments have been appropriated. Pursuant to the Lease Purchase Act and this Agreement, there is and shall be no legal obligation for the School to continue the lease for year to year or to purchase the Subject Property, and this Agreement shall be terminated if sufficient money is not available to meet the current lease payments.

**G. Option to Purchase.**

1. **Grant of Option.** In consideration of the promises and covenants made in this Agreement, and other good and valuable consideration, county grants to School the option to purchase the Subject Property upon the terms and conditions set forth in this Agreement.

2. **Term of Option.** School may acquire the Subject Property only on an option date. The term "Option Date" shall be August 1 of each year of the Term after the Commencement Date and the corresponding date in each year thereafter. If the sale and transfer of the Subject Property is not completed on or prior to the expiration of the Term, this option shall expire and thereafter be of no further force or effect.

3. **Exercise of Option.** CVCS may elect to proceed to sale and transfer of the Subject Property by giving County written notice, prior to the expiration or termination of the Term, of CVCS' election to proceed to sale and transfer, via registered or certified mail addressed to County as provided in Notices, herein. Such written notice must be given not less than two (2) months before the Option Date on which the sale and transfer is to occur.

4. **Purchase Price on Exercise of Option.** The purchase price for the Subject Property shall be \$1,620,449.00 of principal upon which interest shall accrue at an annual rate of 1.56 percent (1.56%) per annum. Said interest rate does not exceed the maximum permitted by the Public Securities Act, Section 6-14-1 through 6-14-3 NMSA 1978. The price to be paid by School to County for the Subject Property on an Option Date ("Purchase Price on Exercise of Option") shall be the principal balance of the unpaid Purchase Price as of that Option date, as set forth in the schedule attached at Exhibit D, plus any accrued and unpaid interest plus expenses described in Section II.G.5 below.

5. **Expenses, mortgage.** The Purchase Price to be paid to County, as provided above, shall be a net amount to County, and all expenses in connection with the transfer of the Subject Property, including, but not limited to, title insurance, recording fees, documentary stamps, and all other closing costs, shall be paid by School. The Purchase Price shall be paid by School in cash to the County concurrently with the conveyance of the Subject Property by County to School.

6. **Transfer of title.** Except as provided below, at closing County shall convey the Subject Property to School free and clear of any mortgage, indenture or other encumbrance. Any such transfer shall be effected by a quitclaim deed by County. The closing of the sale of the Subject Property shall occur on or as soon as is reasonably possible



after an Option Date. The exact time and place of closing shall be determined by the mutual agreement of County and CVCS, but in no event will be prior to CVCS' acquisition of the funds required by closing.

7. **Performance of lease.** The right to exercise this option is conditioned upon the faithful performance by CVCS of all its covenants, conditions, and agreements under this Agreement, and the payment by CVCS of all payments as provided in this Agreement to the date of the completion of the purchase of the Subject Property by School. CVCS shall not be allowed to exercise the purchase option if a default by CVCS has occurred and has not been cured.

8. **Adjustments.** Adjustments and proration of taxes, water rents, insurance premiums, and similar items shall be made as of the date of the closing of title, in accordance with the practice approved by the parties.

9. **Priority.** This option shall be a covenant running with the Subject Property land described above, and no conveyance, transfer, easement, or encumbrance of such land shall defeat or adversely affect this option.

10. **Assignment of option, binding effect.** This Agreement is assignable only in accordance with the provisions of the Lease Purchase Act, Sections 22-26A-5(K) and -5.1, respectively. With the prior written consent of the County, but without cost to the School, School may assign this Agreement, with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to another charter school, school district, the state or one of its institutions, instrumentalities or other political subdivisions. County's consent to assignment shall not be unreasonably withheld.

11. **Prepayment.** The amounts due under this Agreement are subject to prepayment at the option of the School at such time or times and upon such terms and conditions, with or without the payment of premium or premiums, as determined by the School's Governing Council. Beginning with the first Option Date, the parties may proceed to closing on purchase at any time without assessment of costs, expenses or penalties except that School agrees to pay any prepayment amounts required by any loan secured by the Subject Property.

12. **"As - Is" Condition.** Upon the closing of the sale of the Subject Property from County to CVCS, County shall deliver possession of the Property to CVCS in an "as - is" condition without warranty as to condition, either express or implied, including warranty of habitability, merchantability, or fitness for a particular purpose. CVCS acknowledges and represents that CVCS is purchasing the Property solely upon CVCS' own inspection and examination of the Subject Property, and not upon any representations of County other than as set forth in this Agreement. County shall not be responsible for any latent defects, whether or not the defects could have been discovered by CVCS.

13. **Contractor Warranties.** Upon acceptance and purchase of the Subject Property by CVCS, County will assign to CVCS all of its interest, if any, in all warranties and guarantees or other contract architects, builders, contractors, subcontractors, suppliers, materialmen or manufacturers for the Subject Property, express or implied, issued on or applicable to the Subject Property, and County hereby authorizes CVCS to obtain the customary services furnished in connection with such warranties and guarantees at CVCS's expense. CVCS's sole remedy for the breach of such warranties and guarantees shall be against the provider of such work, service, equipment or materials made to or on the Subject Property and not against County, nor shall such matter have any effect whatsoever on the

rights of the County with respect to this Agreement, including the right to receive full and timely payments hereunder.

#### **H. Improvements by School.**

1. **Improvements to Property.** School may make capital improvements to the Subject Property at its own expense during the Term hereof, provided that such remodeling, modifications and additions

(a) shall not in any way damage the Subject Property as it existed prior thereto and

(b) shall become part of the Subject Property, subject to the provisions of **Section I.E.2.d**;

(1) the value of the Subject Property after such remodeling, modifications and additions shall be at least as great as the value of the Subject Property prior thereto; and

(2) the Subject Property, after such remodeling, modifications and additions, shall continue to be used as provided in and shall otherwise be subject to the terms of this Agreement. If the School makes capital improvements to the building or other real property, there shall be no change in the lease payments or final payment without a written amendment approved by the Public Education Department.

2. **Installation of School's Equipment.** School may at any time and from time to time in its sole discretion and at its own expense, install items of movable machinery, standard office partitions, railings, doors, gates, counters, cabinets, lighting fixtures, signs and such other furnishings and equipment as may in School's judgment be necessary for its purposes in or upon the Subject Property. All such items shall remain the sole property of School, in which County shall have no interest, and may be modified or removed by School at any time provided that School shall repair and restore any and all damage to the Subject Property resulting from the installation, modification or removal of any such items upon termination of this Agreement for any reason other than purchase of the Subject Property by the School. Nothing in this Agreement shall prevent School from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Subject Property.

**I. Utilities.** After the Commencement Date, CVCS shall pay all utility charges for the Property, including, but not limited to, electricity, telephone, natural gas or propane, garbage disposal and sewer charges.

**J. Repairs.** County agrees that, upon completion of the Improvements and certification of the Subject Property for School occupancy, the Subject Property shall be in good condition and repair and suitable for School's occupancy and use as a public charter school, pursuant to **Section II.B.3** above. Thereafter, CVCS shall, at CVCSs' sole cost and expense, keep the Subject Property in good condition and repair during the term of the Agreement.

Upon expiration or termination of this Agreement other than purchase by the School, CVCS shall surrender the Property to County broom-clean and in at least as good a condition as the Property was in at the beginning of this Agreement, ordinary wear and tear excepted.

**K. Assignment, Subletting.** CVCS shall not mortgage, pledge, hypothecate, or encumber this Agreement or any interest therein, and shall not sublet the Subject Property or any part thereof, without the prior written consent of County. The consent by County to a sublease on one occasion shall not be deemed to be consent to any subsequent sublease. Any sublease by CVCS without first obtaining County's written consent shall, at the option of County, constitute a default by CVCS according to the terms of this Agreement. Nothing in this Section shall be deemed to prohibit, limit or restrict the School's power to enter into joint powers agreements as provided in Sections 11-1-1 et seq. NMSA 1978, as amended for shared use of the Property. This Agreement is assignable only in accordance with the provisions of the Lease Purchase Act, Sections 22-26A-5(K) and -5.1, respectively. With the prior written consent of the County, but without cost to the School, School may assign this Agreement, with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to another charter school, school district, the state or one of its institutions, instrumentalities or other political subdivisions. County's consent to assignments shall not be unreasonably withheld.

#### **L. Insurance.**

1. **Liability Insurance.** Beginning upon the Commencement Date, CVCS shall procure and maintain or cause to be carried and maintained in full force and effect during the term of this Agreement and any extension thereof at CVCS's sole cost and expense, such public liability insurance covering bodily injury, disease, illness or death and property damage liability, as is available from and provided by the New Mexico Public Schools Insurance Authority ("NMPSIA") or its successor with limits of coverage not less than \$300,000 for each person for all past and future medical and medically-related expenses arising out of a single occurrence and \$400,000 in the aggregate for all claims other than medical or medically-related expenses arising out of a single occurrence, and \$100,000 for each accident for property damage liability for the benefit of both County and CVCS as protection against all liability claims arising from activities in or on the Property, causing County to be named as an additionally-named insured on such policy of insurance, and delivering a copy thereof to County upon the commencement of the term of this Agreement. CVCS shall adjust such minimum coverage limits annually or as necessary to conform to the minimum coverage limits required for local public bodies pursuant to Sections 41-4-19 and 41-4-20 NMSA 1978, and Sections 22-29-1 through 22-29-11 NMSA 1978, as amended.

2. **Property Insurance.** Subject to the availability of such coverage from NMPSIA, CVCS shall also carry and maintain or cause to be carried and maintained in full force and effect during the term of this Agreement and any renewal thereof, at CVCS's sole cost and expense, fire and extended coverage insurance upon the Property, in an amount equal to their replacement values. In the event that the Property should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, CVCS shall have the option to either continue this Agreement and use the proceeds to replace or repair the Property and on County's behalf, or terminate this Agreement and tender to the County all such insurance proceeds attributable to the loss or damage to the Property.

3. **Worker's Compensation Insurance.** As required by state law as of the Commencement Date, CVCS shall carry worker's compensation insurance covering all of their respective employees on, in, near or about the Property, and upon request, shall furnish certificates to the other party evidencing such coverage.

**M. Repair and Restoration of Damage.** If the Property is damaged or destroyed by fire or other hazard against which CVCS is required to carry insurance:

1. CVCS shall immediately notify County of that fact; and
2. CVCS shall promptly repair, replace, or rebuild the portion of the Property so damaged or destroyed, at least to the extent of its condition prior to the damage or destruction, using insurance proceeds. CVCS may, with County's prior consent, delay commencement of the work until the proceeds of insurance policies covering the casualty or hazard are made available to CVCS for such purpose. CVCS shall continue the commenced work with reasonable diligence until its completion. If the work is not commenced by CVCS and completed within a reasonable time, CVCS shall be in breach of this Agreement and this Agreement shall be subject to termination as provided below. In the event of termination of this Agreement by County, the insurance proceeds received or receivable shall belong to County without claim thereon by CVCS.

**N. Entry by County.** County shall have the right at all reasonable times to enter the Property for purposes of fulfilling any duties/obligations of County under this Agreement, upon compliance with any school visitor/security requirements imposed by CVCS, and upon reasonable notice.

**O. Liability.**

1. County agrees that CVCS shall not be liable for any injury, loss or damage to persons or property arising from any cause whatsoever, which occurs in any manner in or about the Lot Split Parcel during construction of the Improvements by the County. After the Commencement Date, CVCS agrees that the County shall not be liable for any loss or damage to persons or property arising from any cause whatsoever, which occurs in any manner in or about the Property, or in connection with CVCS's use of the Property, unless such loss or damage is due to the actions of the County, or any of its employees, agents or representatives.

2. By entering into this Agreement, each party agrees that it shall be responsible for liability arising from personal injury or damage to property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (NMSA 1978, Section 41-4-1, et seq.) and any amendments thereto. This section is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The parties and their "public employees," as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, and do not waive any defense or limitations of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

3. Neither party shall be liable for special or consequential damages arising from a breach of this Agreement.

**P. Default.**

1. The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement, with respect to the Subject Property, any one or more of the following events:

- a) Failure by County or CVCS to observe and perform any covenant, condition or agreement on its part to be observed or performed, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given by the non-defaulting party, unless the non-defaulting party shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the non defaulting party will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by eves within the applicable period and diligently pursued until the default is corrected.
- b) The final revocation of CVCS's charter to operate by CVCS's authorizer, or nonrenewal thereof, and exhaustion of any administrative appeal(s) to the Secretary of NMPED.
- c) The failure of CVCS to pay any amounts due under this Agreement within five (5) days of the date it is due, except where sufficient money is not available to make any current lease payment.
- d) Abandoning the Property or failure to utilize the Property as a public school for a period exceeding six (6) months.

**Q. Remedies on Default.** Whenever any event of default referred to in **Section II.P** hereof shall have occurred and be continuing, the non-defaulting party shall give the party in default written notice by hand delivery or by certified or registered mail specifying such event of default. Unless the event of default is remedied by defaulting party within thirty (30) days after its receipt of such notice, or unless within such thirty day period the party in default shall have commenced and shall continue to take action for the purpose of remedying or obviating such event or default other than failure to pay Agreement Payments, and shall thereafter in good faith prosecute such action to completion, the non-defaulting party may, without any further demand or notice, take one or any combination of the following remedial steps:

- 1. Terminate the Agreement and, if applicable, give notice to vacate the Subject Property within one hundred twenty (120) days from the date of such notice;
- 2. Lease all or any portion of the Subject Property;
- 3. Take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Subject Property under this Agreement.

**R. Force Majeure.** The provisions of **Section II.P** are subject to the following limitations: if by reason of force majeure County or CVCS is unable in whole or in part to carry out its obligations under this Agreement, County or CVCS shall not be deemed in default during the continuance of such inability or during any other delays which are a direct consequence

of the force majeure inability, and the time for cure shall be extended to cover such delays. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or any civil or military authority other than CVCS; insurrections; riots; earthquakes; fires; storms; drought; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of County and CVCS and not resulting from its negligence. County and CVCS agree, however, to remedy with all reasonable dispatch the cause or causes preventing them from carrying out their obligations under this Agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall not be required if in the judgment of the party raising the defense of force majeure, acceding to the demands of the person or persons creating the strike, lock out or industrial disturbance, would be injurious to such party.

**S. Remedies Cumulative.** The above-provided rights and remedies to which either party is entitled hereunder cumulative, and not exclusive, of all other rights and remedies to which a party may be entitled in the event of breach or threatened breach by a party in default of any of the terms, conditions and provisions contained herein.

**T. No Additional Waiver Implied by One Waiver.** The failure, neglect or omission of a non-defaulting party to terminate this Agreement for any breach or default shall not be deemed a consent by the non-defaulting party of such breach or default and shall not stop, bar or prevent the non-defaulting party from thereafter terminating this Agreement, either for such violation of for prior or subsequent violation of any covenant hereof. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**U. Dispute Resolution.** In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**V. No Attorney's Fees.** In the event this Agreement results in dispute, mediation, litigation, or settlement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**W. Surrender of Possession.** Subject to Section II.E.2.d and Section II.H, upon the expiration of the term of this Agreement, termination of the Agreement or upon a termination of this Agreement based upon the default of CVCS, CVCS shall immediately restore possession of the Property to the County, in as good a condition as the Property was in at the inception of this lease, ordinary wear and tear excepted.

**X. Holding Over.** If CVCS remains in possession of the Property after the expiration of this Agreement, without the express written consent of County, such occupancy shall be a tenancy from month-to-month at twice the monthly rental which was payable during the month immediately prior to the expiration, and such tenancy shall be subject to all of the terms, conditions, and covenants of this Agreement.

**Y. Nature and Survival of Warranties and Representations.** All statements contained in this agreement and in any document delivered by or on behalf of County to CVCS's in connection with this Agreement shall be deemed representations and warranties by County to CVCS. All such representations and warranties shall survive closing and the conveyance of title.

**Z. Entire Agreement.** This instrument constitutes the entire agreement between County and CVCS and there are no agreements, understandings, warranties or representations between County and CVCS except as set forth or provided for in this instrument. All prior agreements, understandings and writings related to the Subject Property are merged into this Agreement. This Agreement may not be amended except by a written instrument signed by the party to be charged or bound by the amendment, and approved by the NMPED.

**AA. Time is of the Essence.** Time is of the essence hereof.

**BB. Further Assurances and Corrective Instruments.** County and CVCS agree that they will, if necessary, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**CC. Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**DD. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

**EE. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

**FF. Business Days.** If the day upon which any action required by the Agreement shall fall on a Saturday, Sunday or banking holiday, then such actions shall be deemed timely if made or taken on the next succeeding business day.

**GG. Non-Waiver.** Forbearance of enforcement of any of a party's rights or remedies under this instrument shall not constitute a waiver or release of any such rights or remedies. A waiver of a right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

**HH. Binding Effect.** Upon the execution of this Agreement, it shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

**JJ. Severability.** Each provision, sentence, or portion of this Agreement shall be separate and distinct from any other provision, sentence, or portion of this instrument. In the event of the invalidity of any portion of this instrument, the provisions of this instrument set forth herein shall be deemed independent and divisible and shall remain in full force and effect.

**KK. Conditions Precedent.** Implementation of this Agreement is conditioned and contingent upon:

1. Final approval hereof by the Secretary or authorized NMPED representative.
2. Approval of the Socorro Consolidated School District.
3. Approval of the New Mexico State Board of Finance.
4. Approval of the New Mexico Public School Facilities Authority.

**LL. Public Property.** Pursuant to NMSA 1978 Section 22-26A-5.1, the Subject Property subject to this Agreement shall be considered to be public property.

**MM. Hazardous Materials.**

1. **Compliance with all Hazardous Materials Laws.** Prior to the Commencement Date, County, and as of the Commencement Date, CVCS, shall at all times keep and maintain the Property in compliance with and shall not cause or permit the Property or any activities conducted therein to be in violation of any federal, state or local law, ordinance or regulation relating to commercial or industrial hygiene, environmental safety or the environmental conditions on, under or about the Property, including, but not limited to, air, soil, subsurface and ground water conditions. Neither party shall permit any subtenant or other occupant of the Property, except in accordance with applicable Hazardous Materials laws as hereinafter defined, to use, generate, manufacture, store, produce, release, discharge, dispose of or otherwise permit the presence of, on, under or about the premises or transport to or from the Property any explosives (flammable or otherwise), radioactive materials, pollutants, contaminants, hazardous wastes, hazardous air pollutants, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous pollutants" or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials"). Hazardous materials shall include petroleum products. Upon request of either party, the other party will prepare and provide such reasonable reports as will evidence compliance by the party with Hazardous Materials laws, and which will evidence that the School Site and the uses thereon are in compliance with Hazardous Materials Laws. Either party shall immediately advise the other party in writing of its discovery of or receipt of notice of:

- a) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state or local laws, ordinances,



regulations, orders or publications relating to any Hazardous Materials affecting the School Site ("Hazardous Materials Laws");

b) any use, generation, manufacture, production, release, discharge, storage or disposal of Hazardous Materials, or substantial threat of any of the foregoing, on, under or about the Property;

c) all claims made or threatened by any third party against a party or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in **Section II.MM.1** herein are referred to as "Hazardous Materials Claims"); and

d) any occurrence or condition on any property adjoining or in the vicinity of the Property that could cause the Property to be subject to any restrictions on the ownership, Completion, transferability or use of the premises under any Hazardous Materials Law.

2. **CVCS's Responsibility.** Upon and after issuance of the Certificate of Occupancy and acceptance of the Subject Property by CVCS, CVCS shall be solely responsible to pay or otherwise satisfy any claim, written notice or demand, penalty, fine, settlement, loss, damage, cost, expense or liability made against County or CVCS directly or indirectly arising out of or attributable to the violation by CVCS of any Hazardous Materials Law, orders, written notice or demand of governmental authorities, or the use, generation, manufacture, storage, release, threatened release, discharge, disposal, production, abatement or presence of Hazardous Materials on, under or about the premises including, without limitation: the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property, and the preparation and implementation of any closure, abatement, containment, remedial or other required plan and shall to the extent allowable by law applicable to public schools, indemnify County and hold County harmless from any such claim, demand, penalty, fine, settlement, loss, damage, cost, expense or liability subject to the limitations and waivers contained in the New Mexico Tort Claims Act and any insurance coverage issued pursuant thereto.

3. **Remedial Action Required.** Without the other party's prior written consent, which shall not be unreasonably withheld, a party shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in response to any Hazardous Materials claim, which remedial action, settlement, consent or compromise might, in the other party's reasonable judgment, impair the value of party's fee interest in the Property; provided, however, that prior consent shall not be necessary in the event that:

a) the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat or is of such a nature that an immediate remedial response is necessary; or

b) any delay in taking such remedial action would result in the imposition of periodic or daily fines; and

c) such action is required by government order; and

d) it is not possible to obtain the other party's consent before taking such action; provided that in such event notice shall be given as soon as practicable of any action so taken.

e) Each party agrees not to withhold its consent, where such consent is required hereunder, if either

- (1) a particular remedial action is ordered by a court of competent jurisdiction, or
- (2) the party establishes to the reasonable satisfaction of the other party that there is no reasonable alternative to such remedial action that would result in less impairment to the value of the party's interest in the Property.

4. **Survival of CVCS's Obligations and Liabilities.** CVCS's obligations and liabilities hereunder with respect to Hazardous Materials Claims arising from CVCS's actions shall survive the expiration or other termination of this Agreement.

**NN. Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered or mailed to County or CVCS, as the case may be, postage pre-paid and by certified mail, return receipt requested, at their respective addresses shown below (or at such other address as County or CVCS may specify to the other party in writing from time to time), and such notices shall be effective on the date of receipt thereof:

CVCS:	Head Administrator Cottonwood Valley Charter School P.O. Box 1829 Socorro, NM 87801
COUNTY:	The County of Socorro P.O. Box I Socorro, NM 87801

**OO. School and County Representatives.** Whenever under the provisions of this Agreement the approval of School or County is required, or School or County is required to take some action at the request of the other, such approval of such request may be given for School by a School Representative and for County by a County Representative, and any party hereto shall be authorized to rely upon any such approval or request.

**PP. Liens.** Except as otherwise provided in this Agreement, neither County nor School shall directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Subject Property, other than the respective rights of School and County as herein provided. Except as otherwise expressly provided in this Agreement, County and School shall promptly, at its own expense, take such action as may be necessary to discharge or remove any such mortgage, other than existing mortgages or subsequent mortgages as agreed to by the parties in writing, pledge, lien, charge, encumbrance or claim if the same shall arise at any time during the respective party's control of the Subject Property and each party shall reimburse the other for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim which arose during the control of the Subject Property. Nothing herein shall limit the County's right to refinance or restructure debt against the Subject Property; however, no refinance or restructure shall impair School's rights under the terms of this Agreement. County shall, within 30 days of refinancing or restructuring provide notification to School with certification from the lender or financial institution that this Agreement does not violate any term or condition of the restructured or refinanced obligation, with County paying for any of Lessee's costs associated with said refinancing.

**QQ. Integration.** This Agreement contains all of the agreements of School and County respecting the subject matters hereof, and all prior negotiations are merged herein.

**RR. Exhibits.** The following Exhibits are attached to and by reference made a part of this Agreement:

1. Exhibit A: Legal Description of Subject Property
2. Exhibit B: Copy of NMPED, PSFA and State Board of Finance approvals
3. Exhibit C: Construction/Site/Floor plans for Improvements
4. Exhibit D: Base Rent payment schedule
5. Exhibit E: Planned funding sources and Budget to make Base Rent

**SS. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the County and CVCS and their respective administrators, successors and assigns.

**TT. Amendments, Changes and Modifications.** This Agreement may be amended or any of its terms modified only by a written amendment authorized and executed by both County and CVCS. Amendments to this Agreement, except amendments that would improve the Subject Property without additional financial obligations to the School, shall be approved by the NMPED pursuant to 22-26A-5(L) NMSA 1978.

**THIS Agreement is effective** upon the approval and execution of both parties, following the approval of the NMPED, the New Mexico State Board of Finance, and the PSFA.

IN WITNESS WHEREOF, County has caused this Agreement to be executed in its name by its duly authorized officers; and School has caused this Agreement to be executed in its name by its duly authorized officers.

[Signatures on following pages]

**APPROVED, ADOPTED, AND PASSED** on this day of \_\_\_\_\_, 2017.

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Pauline Jaramillo, Chair  
District I

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Manuel Anaya, Commissioner  
District III

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Martha Salas, Vice-Chair  
District II

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Daniel P. Monette, Commissioner  
District IV

---

Juan Jose Gutierrez, Commissioner  
District V

Attest:

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Rebecca Vega, Clerk

COTTONWOOD VALLEY CHARTER SCHOOL

\_\_\_\_\_  
GOVERNING COUNCIL PRESIDENT  
DATE:

Attest:

\_\_\_\_\_  
GOVERNING COUNCIL SECRETARY  
DATE:

ACKNOWLEDGMENT FOR NATURAL  
PERSON STATE OF NEW MEXICO )  
   )ss.  
COUNTY OF SOCORRO   )

THE FOREGOING INSTRUMENT was acknowledged before me  
on \_\_\_\_\_, 2017 by \_\_\_\_\_, Governing Council President  
for the  
Cottonwood Valley Charter School.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:  
\_\_\_\_\_