

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into on OCT. 1, 2018, by and between the Board of Education of the Santa Fe Public Schools ("SFPS" or "District"), located at 610 Alta Vista, Santa Fe, New Mexico 87505, and the Governing Council of the Turquoise Trail Charter School, ("TTCS" or "School"), located at 13A San Marcos Loop, Santa Fe, New Mexico 87508 ("School Site"). SFPS and TTCS may be referred to herein together as the "parties," and individually as a "party".

WHEREAS, the Board of Education of the Santa Fe Public Schools is the statutorily-created governing body of the Santa Fe Public School District, a local political subdivision of the State of New Mexico;

WHEREAS, Turquoise Trail Charter School is a New Mexico public charter school, organized and operating pursuant to the Charter Schools Act, NMSA 1978, §22-8B-1 et seq. ("Act") as authorized by the New Mexico Public Education Commission;

WHEREAS, TTCS and SFPS entered that certain Turquoise Trail Charter School Lease for the School Site on June 19, 2009, which was subsequently amended by the First Amendment to Turquoise Trail Charter School Lease (collectively, the "Lease") and which Lease currently expires as of June 30, 2021;

WHEREAS, due to population growth in the Southwest area of the District as determined by SFPS, SFPS concluded that it requires additional classroom space and facilities for educational programs, and had identified the School Site as a possible location for such programs and facilities to address that need;

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WHEREAS, a dispute has arisen between SFPS and TTCS as to the intent of the Agreement and SFPS's proposal not to renew the Agreement at its expiration in 2021 ("the dispute"); and

WHEREAS, the parties have participated in mediation in an effort to resolve the dispute, and have reached the agreements in this MOU to avoid further controversy, and potential litigation between the parties, as to the issues presented by the dispute.

NOW THEREFORE, IT IS HEREBY covenanted and agreed to between the parties:

I. COVENANTS AND CONDITIONS.

A. TTCS agrees that upon approval of this MOU by the respective governing bodies of the parties, that it will revise, adopt and implement its lottery admissions policy to grant enrollment preferences as follows:

1. First level preference, as required by the Act, is given to those students who have been admitted to the School for the current school year and who apply to and remain in attendance through subsequent grades;
2. Second level preference, as required by the Act, is given to the siblings of those students described in subparagraph IA(1) above and who apply to TTCS; and
3. Third level preference, to students who apply to TTCS and reside in the pre-1994 SFPS Turquoise Trail Elementary Attendance Area boundaries ("SFPS TTE Boundary"), in accordance with the attendance area map used by Architectural Research Consultants, Incorporated ("ARC"), attached hereto as Exhibit 1.

B. TTCS agrees to adopt the enrollment preferences stated in subparagraph I(A), above, and to commence accepting students for enrollment according to this lottery process, in order to achieve full implementation of such policy by the start of the 2019-2020 school year. TTCS

will continue to enroll students on a first-come, first-served basis, when seats are available as required by the Act.

C. If determined necessary to accommodate SFPS TTE Boundary students who begin attending TTCS in 2019-2020, TTCS will offer to SFPS TTE Boundary sixth-grade students an alternative to attending the TTCS Middle School, which is not located on the School Site. The alternative for the SFPS TTE Boundary sixth-grade students may be accomplished by a combined fifth and sixth grade class or some other proposed solution, which the District Superintendent and TTCS Head-Administrator shall jointly approve by February 1, 2019. TTCS shall not be required to offer the alternative program as finally agreed to by the Superintendent and Head Administrator for any student who is not a SFPS TTE Boundary student.

D. SFPS agrees that TTCS may expand its facilities at the School Site, in order to accommodate anticipated growth in enrollment and expansion of its programs, which may include locating portable classroom buildings at the School Site, at TTCS expense, as permitted by law.

At present, Turquoise Trail tentatively plans growth in enrollment, and expansion of programs, in the following areas and within the following anticipated timeframes:

TTCS anticipates opening 100 new Kindergarten through fifth-grade seats at the School Site to accommodate student growth, whether as a consequence of new SFPS TTE Boundary students or other students wishing to enroll in TTCS for the 2019-2020 school year. Thereafter, TTCS tentatively plans to expand by 250 additional seats to accommodate student growth at the School Site, whether as a consequence of new SFPS TTE Boundary students, or other students wishing to enroll in TTCS.

E. Notwithstanding any provisions to the contrary in the Lease, any amendment to the Lease, a new lease for the School Site or the failure of the parties to agree upon the terms of a new lease for the School Site, SFPS agrees that TTCS may continue in possession of the School Site for as long as it exists as a legally-authorized public charter school, unless a default is declared by SFPS, and TTCS does not cure such default in order to comply with the terms of any existing or amended lease, provided, however, TTCS shall not be in default under the Lease for the School Site for continuing in possession beyond June 30, 2021.

F. The parties agree that the mediation held on August 6, 2018 between the parties, the matters discussed at such mediation, and the negotiations of this MOU shall remain confidential, and will not be disclosed beyond the participants in the mediation, their counsel and governing bodies, nor will they be discussed publicly.

G. Upon final approval and execution of this MOU by SFPS and TTCS, the parties will release a joint statement to their respective school communities, and to the public, which describes the elements of this agreement. A copy of that joint statement is appended to this MOU as Exhibit 2.

H. The parties agree that a legislative amendment is not required in order to implement the provisions in this MOU, and that the parties will not seek a legislative change to address it. However, the parties will confer in good faith to review the possibility of seeking judicial approval of this MOU to ratify its terms, if the enrollment preferences specified in subparagraph I(A) above, or other elements of this MOU, are challenged by parties other than SFPS and TTCS.

II. TERM. This MOU shall become effective upon the signatures of the authorized representatives of the parties. This MOU will remain in effect, and shall operate cooperatively

and in conjunction with the Lease, or any amendment or extension thereof entered into by the parties.

III. FUNDING. All students enrolled in TTCS programs from within the SFPS TTE Boundary or otherwise, shall be counted by TTCS for all funding purposes, in accordance with the Public School Finance Act, NMSA 1978, §22-8-1 et seq., or such other provisions of law related to public school funding as may be available.

IV. MOU IMPLEMENTATION REVIEW. The parties or their authorized representatives agree to meet as necessary, but no less than once per academic semester for the school years 2018-2019 and 2019-2020, to review the progress toward implementation of this MOU and the effectiveness of TTCS policies established accordingly. The parties agree to cooperate with such review, and to utilize the dispute resolution procedure specified below to address concerns or areas of disagreement. Failure of the parties' representatives to meet due to inconvenience or scheduling priorities shall not constitute a violation of this MOU.

V. NONDISCRIMINATION. Neither party will discriminate against program participants and employees of the other party on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

VI. APPROPRIATIONS. The terms of this MOU are contingent on sufficient appropriations and authorizations being made by the Legislature of New Mexico, the New Mexico Public Education Department and the Federal Government for the performance of this Agreement. If, for any reason, sufficient appropriations and authorizations are not made, the MOU shall terminate upon written notice being given by the affected party. Such termination

shall not result in any claim for damages by another party. The decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final. Termination of the MOU shall not effectuate a termination of the Lease or amendments thereto, the termination which shall be governed solely by its terms and not this MOU.

VII. BINDING EFFECT. This Agreement is binding upon, and inures to the benefit of, the parties to this MOU and their respective successors and assigns.

VIII. NOTICES. Any notice required to be given pursuant to the terms and provisions of this MOU will be in writing and will be sent by certified mail, return receipt requested, postage prepaid, with a courtesy copy by facsimile or email, as follows:

**TO: SANTA FE PUBLIC SCHOOLS**

**Attention: Dr. Veronica Garcia, Superintendent of Schools**  
610 Alta Vista  
Santa Fe, New Mexico 87505  
(505) 467-2000  
[vcgarcia@sfps.k12.nm.us](mailto:vcgarcia@sfps.k12.nm.us)

**TO: TURQUOISE TRAIL CHARTER SCHOOL**

**Attention: Dr. Ray Griffin, Head Administrator**  
13A San Marcos Loop  
Santa Fe, New Mexico 87508  
(505-986-4000)  
[Rgriffin@ttschool.org](mailto:Rgriffin@ttschool.org)

IX. ENTIRE AGREEMENT. This MOU and Exhibits hereto represent the entire understanding between the parties and supersedes any prior agreements or understandings with respect to the subject matter of this MOU.

X. RECORDS AND AUDIT. The parties will maintain records of expenditures incurred in furtherance of this MOU for at least three years from the end of the fiscal year in which the

expenditure was made. The records shall indicate the date and nature of services rendered or the expenditure made. These records shall be subject to inspection and audit by the Superintendent of the District, the Public Education Department, the Department of Finance and Administration, and the State Auditor.

XI. **LIABILITY.** Each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents. The liability of SFPS and TTCS shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq., NMSA 1978, as amended. Each party shall maintain its insurance coverage with the New Mexico Public Schools Insurance Authority during the term of this MOU, and shall provide proof of insurance to the other party upon request.

XII. **MODIFICATIONS.** No changes, amendments or alterations to this MOU will be effective, unless in writing and signed by all parties, or their authorized representatives.

XIII. **NON-ASSIGNABILITY.** This MOU will not be assigned by a party, nor will the duties imposed upon a party by this MOU be delegated, subcontracted, or transferred by a party, in whole or in part, without the prior written consent of the other party.

XIV. **GOVERNING LAW.** This MOU will be construed, interpreted, governed, and endorsed in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.

XV. **SEVERABILITY.** The invalidity or unenforceability of any term or provision of this MOU will in no way affect the validity or enforceability of any other term or provision, to the extent permitted by law.

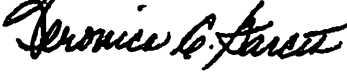
**XVI. COOPERATION AND DISPUTE RESOLUTION.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this MOU, the parties agree to the following dispute resolution process, prior to initiating litigation:

A. First, the authorized representatives of each party who have the authority to bind the party they represent will meet in good faith to resolve the dispute.

B. If the authorized representatives cannot resolve the dispute, the parties shall choose a mutually agreed upon mediator with the cost of mediation to be shared equally by the parties. If the parties cannot agree on a mediator, or if the mediation session cannot be held within 60 days after the request, unless the parties consent to a longer period, the parties may proceed to enforce this MOU, pursuant to any right or remedy to which it may be entitled by law.

**XIII. AUTHORIZED REPRESENTATIVES.** The Superintendent of Santa Fe Public Schools and the Head Administrator of Turquoise Trail Charter School, or such other designee appointed by the respective governing bodies of SFPS or TTCS, shall act as the authorized representatives of the parties to this MOU for purposes of implementing the terms and conditions of this MOU, including execution of all documents related hereto.

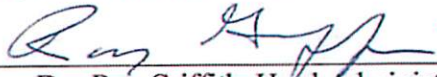
BOARD OF EDUCATION OF THE SANTA FE PUBLIC SCHOOLS

By: 

Dr. Veronica C. Garcia  
Superintendent of Schools and authorized representative  
610 Alta Vista  
Santa Fe, New Mexico 87505  
(505) 467-2000  
[vegarcia@sfps.k12.nm.us](mailto:vegarcia@sfps.k12.nm.us)



TURQUOISE TRAIL CHARTER SCHOOL

By: 

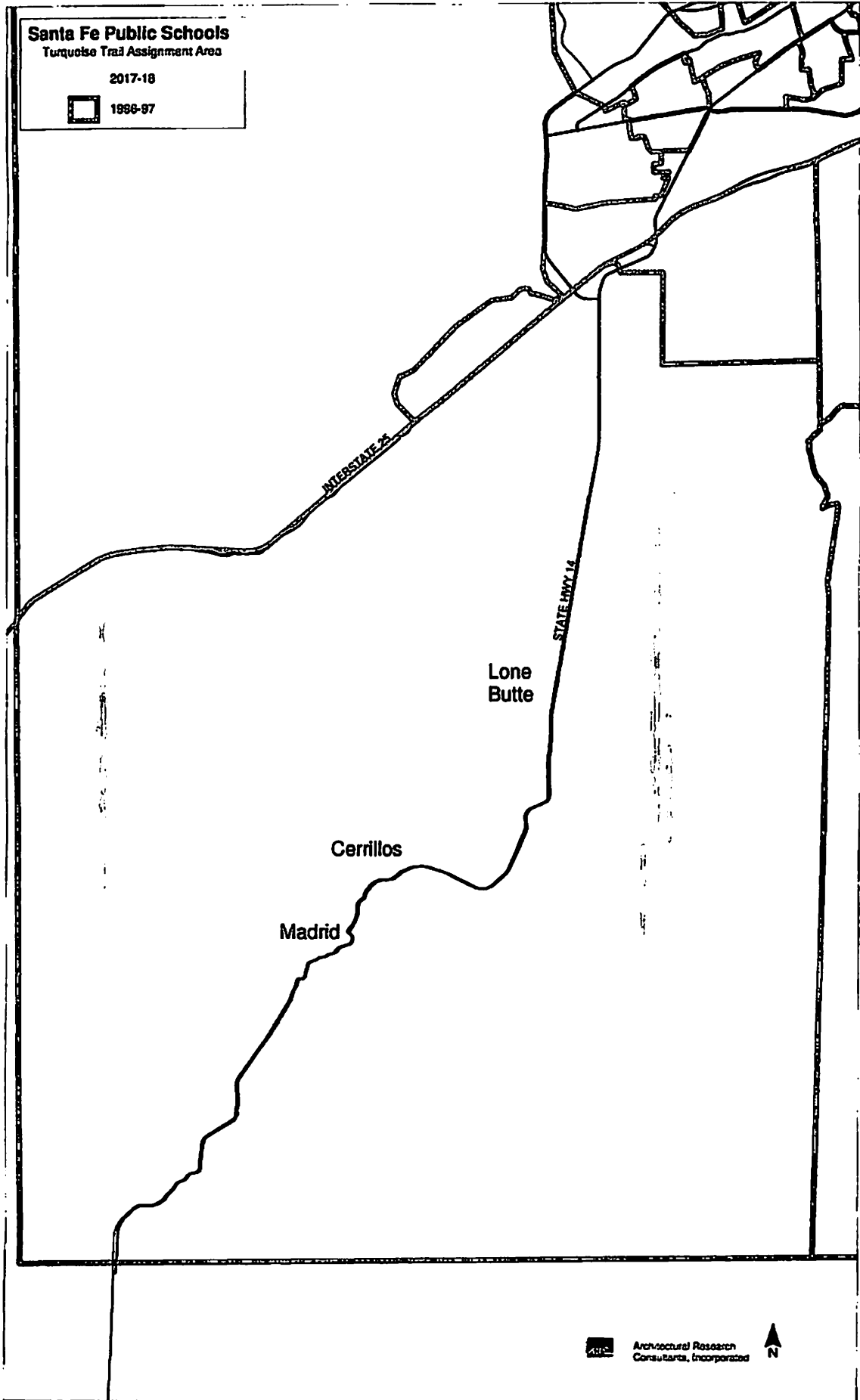
Dr. Ray Griffith, Head Administrator  
and authorized representative of the TTCS Governing Council  
13A San Marcos Loop  
Santa Fe, New Mexico 87508  
(505-986-4000)  
[Rgriffin@ttschool.org](mailto:Rgriffin@ttschool.org)

APPROVED BY:

SANTA FE PUBLIC SCHOOLS BOARD OF EDUCATION on \_\_\_\_\_, 2018.

TURQUOISE TRAIL CHARTER SCHOOL GOVERNING COUNCIL on \_\_\_\_\_, 2018

EXHIBIT 1



**EXHIBIT 2**

**Santa Fe Public Schools and Turquoise Trail Charter School agree on MOU for school site.**

Today representatives from Santa Fe Public Schools and Turquoise Trail Charter School signed a Memorandum of Understanding wherein the District agrees that Turquoise Trail Charter School may remain in the current facility where it has been located since its inception as a conversion from a local elementary school. Turquoise Trail and Santa Fe Public Schools also agreed to cooperate to ensure that elementary-aged students living in the original Turquoise Trail Elementary School attendance boundary zone have preference to attend the Charter School as their local elementary school, which will help alleviate some of the District's overcrowding issues on the Southside of Santa Fe.

The School Board and the Charter School appreciate the sincere efforts which resulted in a solution that is truly in the best interest of all of Santa Fe's students.