

## **Part E: Description of Charter School Facilities and Assurances**

This section will be completed by school and submitted as part of the renewal application and is an opportunity to provide a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of NMSA 1978 § 22-8B-4.2. The school must provide supporting documentation to demonstrate the assurances are correct in an appendix. The required documentation includes the E-Occupancy Certificate, a letter regarding the New Mexico Condition Index (NMCI) from Public School Facilities Authority (PSFA), and a copy of any lease documents. All schools must provide a response for this section of the application.

## F. Facility

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.

The school must provide a narrative description of its facilities. The school should attach any facility plans or the school's Facility Master Plan in **Appendix D**.

In addition, attach a copy of the building E Occupancy certificate and a letter from the PSFA with the facility NMCI Score as **Appendix D**, indicating that the school facility meets the requirements at Subsection C of 22-8B-4.2 NMSA 1978. (If the charter school is relocating or expanding to accommodate more students.)

The school must also provide assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978, including subsections A, C, and D. A template is available from the PEC's website.

### *School response:*

Middle College High School (MCHS) is located on the UNM-Gallup campus. The Charter School is made up of two portable buildings and leased spaces within Gurley Hall of UNM-Gallup. In 2009, MCHS purchased the two portable buildings, so the buildings are owned by the Charter School. Our two portable buildings are located on approximately two (2) acres of leased land on the northeast portion of the campus, just north of the gymnasium. MCHS leases this land from UNM-Gallup. Each unit has two classroom areas. One area is utilized as the administrative office, and the other three areas are utilized as classrooms. The spaces leased within Gurley Hall consist of four (4) classrooms and one office. The office space is utilized to store textbook inventory. The leased space is owned by UNM-Gallup. Refer to Section e of the Appendix for supporting documentation.

STATE OF NEW MEXICO  
REGULATION AND LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES DIVISION  
GENERAL CONSTRUCTION BUREAU

23446

☒ THIS BUILDING HAS BEEN OCCUPIED BEFORE A FINAL INSPECTION HAS BEEN CONDUCTED.  
PERMANENT \_\_\_\_\_ TEMPORARY, \_\_\_\_\_ EXPIRATION DATE \_\_\_\_\_

~ CERTIFICATE OF OCCUPANCY ~

THE FOLLOWING BUILDING OR PORTION THEREOF HAS BEEN INSPECTED FOR COMPLIANCE WITH THE REQUIREMENTS OF  
OCCUPANCY GROUP "E" \_\_\_\_\_ AS SPECIFIED BY THE NEW MEXICO BUILDING CODE.

705 GURLEY AVE. GALLUP, NM 87301

BUILDING ADDRESS

GALLUP MIDDLE COLLEGE HS 705 GURLEY AVE GALLUP, NM 87301

NAME AND ADDRESS OF OWNER

MURPHY BUILDERS, INC

NAME(S) OF LICENSED NEW MEXICO CONTRACTOR(S)

GENC-2018039061

BUILDING PERMIT NUMBER

ERNEST JOHNSON

INSPECTOR'S NAME

IF NO LICENSED CONTRACTOR, NAME(S) OF OWNER-BUILDER(S)

BUILDING "1" AND BUILDING "2"

PORTION OF BUILDING

12-06-2018

DATE

CHANGE IN OCC FROM OCCUPANCY B TO OCCUPANCY E

COMMENTS

**LICENSE AGREEMENT  
BETWEEN  
REGENTS OF THE UNIVERSITY OF NEW MEXICO  
AND  
MIDDLE COLLEGE HIGH SCHOOL**

This License Agreement ("License") is effective as of July 1, 2012, by the Regents of the University of New Mexico, a body corporate of the State of New Mexico, on behalf of the University of New Mexico – Gallup Branch Campus ("UNM") and the Middle College High School, a private charter school ("MCHS").

**I. RECITALS**

A. UNM is the owner of real property and improvements thereon located at 200 College Road, Gallup, NM 87301 and commonly referenced as the University of New Mexico – Gallup Branch Campus (the "Premises").

B. MCHS desires to utilize certain space within the Premises identified in this License for the purposes of operating a charter school serving at-risk and previously home schooled students at the sophomore, junior and senior grades.

C. UNM desires to permit MCHS to use the space identified in this License for the purposes stated above, subject to the terms and conditions of this License

**II. ASSIGNMENT OF SPACE**

A. MCHS will use and occupy approximately two (2) acres of land for the temporary location of portable buildings and 334 square feet of administrative space located in the gym (collectively, the "Space"), as further described on the attached "Exhibit A".

**III. RESPONSIBILITIES OF MCHS**

A. In consideration for use of the Space, as described above, MCHS will pay rent in the amount of Seventeen Thousand Two Hundred Dollars and 00/100 (\$17,200.00) annually payable in quarterly installments of Four Thousand Three Hundred Dollars and 00/100 (\$4,300.00).

B. At its sole cost, MCHS will provide two (2) portable buildings. The location of the portables on the Space shall be approved in advance by UNM.

C. MCHS will use the Space for the purpose of operating a charter school.



D. MCHS will be responsible for its direct or proportionate share of electricity and natural gas for the Space. MCHS shall be solely responsible for all maintenance costs related to the portable buildings.

F. MCHS will abide by all reasonable rules regarding use of the Space which are promulgated by UNM, including, but not limited to, building entry, areas of access, employee identification and security.

G. MCHS will not assign or transfer any interest in this License or sublet the Space.

#### IV. RESPONSIBILITIES OF UNM

A. UNM will provide internet service, water, sewer, refuse disposal, landscaping and grounds maintenance, and structural maintenance for the 334 square feet of space located within the gymnasium.

#### V. TERM AND TERMINATION

A. This License will be in effect from July 1, 2012 through June 30, 2013, and may thereafter be renewed on an annual basis by written agreement of the parties.

B. Either party may terminate this License at any time upon thirty (30) days advance written notice.

#### VI. DUTY TO INSURE

##### MCHS'S INSURANCE

A. Liability Insurance. MCHS shall obtain and keep in force a Commercial General Liability policy of insurance protecting MCHS and UNM as an additional insured against claims for bodily injury, personal injury, and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Space and all areas appurtenant thereto including the Common Areas. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this License as an "insured Contract" for the performance of MCHS's indemnity obligations under this License.

B. Property Damage. MCHS shall obtain and maintain insurance coverage on all of MCHS's personal property, trade fixtures, and MCHS owned alterations and utility installation. Such insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000.00 per occurrence.

C. **MCHS's Insurance Policies.** Insurance required herein by MCHS shall be by companies duly licensed or admitted to transact business in the state where the Space is located and maintaining during the policy term a "General Policyholders Rating" of at least a B+, V, as set forth in the most current issues of "Best's Insurance Guide". MCHS shall not do or permit to be done anything which invalidates the required insurance policies. MCHS shall, upon execution of this License, deliver to UNM certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to UNM. MCHS shall, at least 30 days prior to the expiration of such policies, furnish UNM with evidence of renewals or "insurance binders" evidencing renewal thereof, or UNM may order such insurance and charge the cost thereof to MCHS, which amount shall be payable by MCHS to UNM upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this License, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

#### **UNM's INSURANCE**

A. MCHS acknowledges that UNM is insured through the State of New Mexico Risk Management Division, with limits on liability as established by the New Mexico Tort Claims Act. UNM shall not carry insurance covering MCHS's property or improvements.

B. During the term of this License and any extension thereof, UNM shall provide coverage for liability of UNM and its "public employees," as defined in the New Mexico Tort Claims Act.

#### **GENERAL**

A. **Waiver of Subrogation.** Without affecting any other rights or remedies, MCHS and UNM each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against UNM or MCHS, as the case may be, so long as the insurance is not invalidated thereby.

B. **MCHS's Indemnity.** Except for UNM's gross negligence or willful misconduct, MCHS shall indemnify, protect defend and hold harmless the Premises, the Space, UNM and its Regents, agents, students and employees from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises and the Space by MCHS, its agents, employees and students. If any action or proceeding is brought against UNM by reason of any of the foregoing matters, MCHS shall upon notice defend the same at MCHS's expense by counsel reasonably satisfactory to UNM and UNM shall cooperate

with MCHS in such defense. UNM need not have first paid any such claim in order to be defended or indemnified.

C. **Exemption of UNM from Liability.** UNM shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of MCHS, MCHS's employees, contractors, invitees, students, customers, or any other person in or about the Premises or the Space whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or the Space or upon other portions of the Premises, or from other sources or places. UNM shall not be liable for any damages arising from any act or neglect of any other tenant of UNM nor from the failure of UNM to enforce the provisions of any other lease in the Premises. Notwithstanding UNM's negligence or breach of this License, UNM shall under no circumstances be liable for injury to MCHS's business or for any loss of income or profit therefrom.

**VII. CONDITION OF PREMISES UPON SURRENDER.** At the termination of this License, MCHS shall surrender the Space in the condition in which they were on the effective date of this License, excepting:

- (a) Deterioration caused through reasonable use and ordinary wear and tear;
- (b) Alterations, improvements or additions made with UNM's express approval;
- (c) Any change, damage or destruction not resulting from MCHS's negligent or willful act; and,
- (d) Conditions required to be repaired by UNM

**VIII. LIABILITY.** As between the parties, 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 that party's employees. The liability of UNM will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978, as amended.

**IX. LATE CHARGES.** MCHS hereby acknowledges that late payment by MCHS of Rent will cause UNM to incur costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon UNM by any Lender. Accordingly, if any Rent shall not be received by UNM within five (5) days after such amount shall be due, then, without any requirement for notice to MCHS, MCHS shall pay to UNM a one-time late charge equal to ten percent (10%) of each such overdue amount. The parties hereby agree that such late charges represents a fair and reasonable estimate of the costs UNM will incur by reason of such late payment. Acceptance of such late charge by UNM shall in no event constitute a waiver of MCHS's default or breach with respect to such overdue. Amount, nor



prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of base rent, then notwithstanding any provision of this License to the contrary, base rent shall, at UNM's option, become due and payable quarterly in advance.

**X. INTEREST.** Any monetary payment due UNM hereunder, other than late charges, not received by UNM, when due as to scheduled payments or within thirty (30) days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the thirty-first (31<sup>st</sup>) day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus four percent (4%), but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in paragraph IX.

**XI. ENTIRE AGREEMENT/MODIFICATIONS.** This License represents the entire understanding between the parties and supersedes any prior agreements or understandings with respect to the subject matter of this License. This License may be amended upon written consent of the parties. Each party will consider in good faith modifications presented for consideration by the other party.

**XII. 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 License, representatives of the parties will meet in good faith to resolve the dispute.

**XIII. THIRD PARTIES.** Nothing in this License, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this License

**XIV. ADDRESS FOR NOTICES, PAYMENT OF RENT, ETC.** Notices required under this License and rental payments shall be made at the following address, except as changed by written notice to the other party.

(a) UNM:                   The University of New Mexico  
Real Estate Department  
MSC06 3595  
1 University of New Mexico  
Albuquerque, NM 87131

(b) MCHS:                   Middle College High School  
Attn: Walter Feldman  
200 College Road  
Gallup, NM 87301



THE REGENTS OF THE UNIVERSITY OF NEW MEXICO

By:

David W. Harris  
David W. Harris  
EVP for Administration, COO & CFO

Date

5/25/12

By:

Bruce Cherrin  
Bruce Cherrin  
Chief Procurement Officer

Date

5-24-12

Reviewed and Approved by:

Kim D. Murphy  
Kim D. Murphy  
Director of Real Estate

MIDDLE COLLEGE HIGH SCHOOL

By:

Walter Feldman  
Walter Feldman  
Principal

Date

7/13/12

**SEVENTH AMENDMENT TO  
LICENSE AGREEMENT**

**THIS SEVENTH AMENDMENT TO LICENSE AGREEMENT** ("Seventh Amendment") is made and entered into this 31<sup>st</sup> day of May, 2018 by and between the Regents of the University of New Mexico, a body corporate of the State of New Mexico, on behalf of the University of New Mexico-Gallup Branch Campus, ("UNM"), and the Middle College High School, a public charter school, ("MCHS").

**RECITALS**

**WHEREAS**, UNM and MCHS (the "Parties") entered into that certain License Agreement effective July 1, 2012 ("the License"), pertaining to that certain premises commonly known as 705 Gurley Avenue (formerly known as 200 College Road), Gallup, NM 87301 consisting of approximately two (2) acres of land for the temporary location of portable buildings and 334 square feet of administrative space located in the gym (collectively, the "Space") and more particularly described in said License; and,

**WHEREAS**, the Parties entered into that certain First Amendment dated August 30, 2012, regarding MCHS's utility obligation (the "First Amendment"); and,

**WHEREAS**, the Parties entered into that certain Second Amendment dated June 24, 2013, regarding MCHS's square footage of the Space (the "Second Amendment"); and,

**WHEREAS**, the Parties entered into that certain Third Amendment dated June 30, 2014, regarding assignment of space and an extension of the term; and,

**WHEREAS**, the Parties entered into that certain Fourth Amendment dated May 29, 2015, extending the term; and

**WHEREAS**, the Parties entered into that certain Fifth Amendment dated June 22, 2016, extending the term, expanding the space and modifying the rent; and

**WHEREAS**, the Parties entered into that certain Sixth Amendment dated May 8, 2017, extending the term, expanding the space and modifying the rent; and

**WHEREAS**, MCHS desires to extend the term and the Parties agree to amend the License to reflect the same;

**AGREEMENT**

**NOW THEREFORE**, in consideration of the promises and covenants contained herein, UNM and MCHS agree that said License for 705 Gurley Avenue, Gallup NM 87301 is hereby modified and amended as follows:

1. **TERM:** The License is hereby extended for an additional four (4) years commencing July 1, 2018 and ending June 30, 2022, and may be thereafter renewed every four years by written agreement of the parties.

2. **BROKERAGE FEES:** The Parties respectively represent to the other that no brokers were retained, used or referred to with respect to this Seventh Amendment to License and/or leasing.

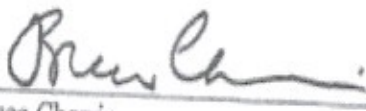
Except as modified herein, all other terms of the License, as amended, shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Seventh Amendment as of the date first above written.

**THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**

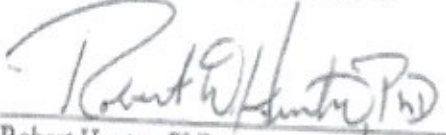
By:   
David W. Harris  
EVP for Administration, COO & CFO

Date: 5/10/18

By:   
Bruce Cherrin  
Chief Procurement Officer

Date: 5/3/18

**MIDDLE COLLEGE HIGH SCHOOL**

By:   
Robert Hunter, PhD  
CEO

Date: 5/24/18



EXHIBIT A

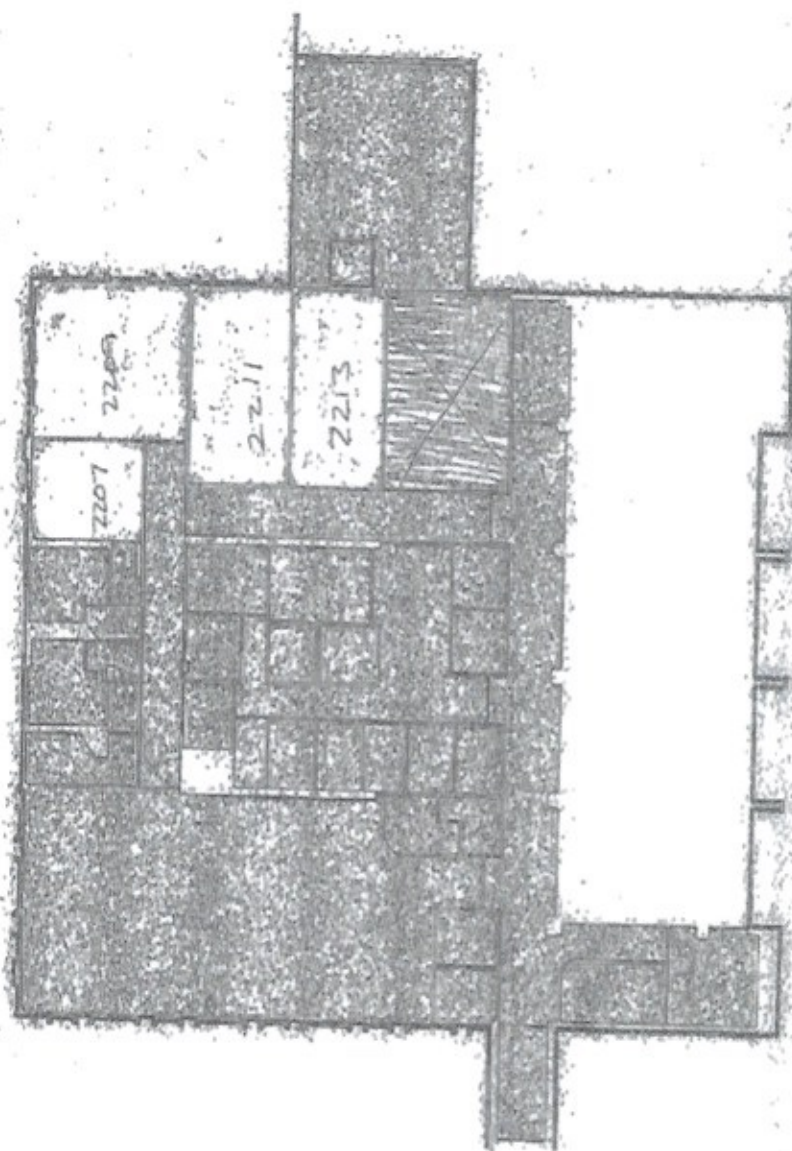


EXHIBIT A



CERTIFICATION A

Public Facility

The undersigned hereby certify under penalty of perjury that the owner of the facility in which Middle College High School is a public facility owned by The University of New Mexico, Real Estate Department and providing the facility for Middle College High School.

**Charter School Governing Board**

By: Dale Buser  
Print Name: Dale Buser  
Print Title: Governing Council President  
Date: \_\_\_\_\_

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF MCKINLEY )

On this 16<sup>th</sup> day of May, 2017, before me, the undersigned officer, personally appeared 705 Gurley Ave. Gallup, N.M. 87301 known to me to be the person whose name is subscribed to the within instrument, and acknowledged executing the same for the purpose therein contained.

Nellie Mendoza  
Notary Public

My Commission Expires:  
08-30-2017

**Charter School Principal / Administrator**

By: Robert D. Hunter, PhD  
Print Name: Robert Hunter, PhD  
Print Title: Chief Executive Officer  
Date: \_\_\_\_\_

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF MCKINLEY )

On this 16<sup>th</sup> day of May, 2017, before me, the undersigned officer, personally appeared 705 Gurley Ave Gallup, N.M. 87301 known to me to be the person whose name is subscribed to the within instrument, and acknowledged executing the same for the purpose therein contained.

Nellie Mendoza  
Notary Public

My Commission Expires:  
08-30-2017

Use note:

For use by charter schools that are housed in a facility that is owned by the charter school, the school, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government.



**State of New Mexico  
Public School Facilities Authority**



Vacant, Director

Rocky Kearney, Deputy Director

1312 Basehart Road, SE, Suite 200  
Albuquerque, NM 87106  
(505) 843-6272 (Phone); (505) 843-9681 (Fax)  
Website: [www.nmpsfa.org](http://www.nmpsfa.org)

August 31, 2017

Kim Brown, Business Manager  
Middle College High School  
UNM Gallup 705 Gurley Avenue  
Gallup, NM 87301

**Re: wNMCI of current existing facility per 2017-2018 Final wNMCI Ranking**

**VIA E-MAIL**

Mrs. Brown,

Public School Facilities Authority (PSFA) had assessed the current facilities for the Middle College High School. This assessment was conducted pursuant to 22-8B-4.2 NMSA 1978 and 22-20-1(A) (2)NMSA 1978.

PSFA is pleased to advise you that per 2017-2018 Final wNMCI Ranking the current existing facilities had resulted in a weighted New Mexico Condition Index (wNMCI) score of 14.20% which is better (lower is better) than the current wNMCI statewide average of 15.27% as required by this statute.

The prior assessment meet the requirements of 22-8B-4.2 NMSA 1978 and 22-20-1(A)(2)NMSA1978.

Please feel free to contact me if you have any questions or concerns regarding this correspondence. I can be reached at (505) 468-0295.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Tj" followed by a stylized flourish.

Timothy Rybarczyk, Facilities Specialist  
Public School Facilities Authority

Cc: Martica Casias, Planning & Design Manager