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Content

114 Replacements

28 Insertions

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0 Styling

0 Annotations

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Charter Contract
Between the
New Mexico Public Education Commission
And
[NAME OF CHARTER SCHOOL]

This Charter Contract ("Contract"), is hereby entered into by and between the New Mexico Public Education Commission ("COMMISSION"), and [NAME OF CHARTER SCHOOL] ("School"), a New Mexico Charter School, by and through the School's GOVERNING BODY, effective this ___ day of _____ 20__.

WHEREAS, the COMMISSION is created pursuant to Article 12, Section 6 of the New Mexico Constitution, with such powers and duties as are provided by law; and,

WHEREAS, the COMMISSION is authorized pursuant to the Charter Schools Act ("Act"), Section 22-8B-1, *et seq.*, NMSA 1978, to approve charter school applications and to negotiate and execute, in good faith, charter contracts that meet the requirements of the Act with the governing body of an authorized State charter school; and,

WHEREAS, the COMMISSION is further authorized pursuant to the Act, to monitor charter schools' compliance with the requirements of the Act, and with the requirements of the contract for each authorized State charter school; and,

WHEREAS, the COMMISSION is further authorized pursuant to the Act to determine whether an authorized State charter school merits suspension, revocation, or nonrenewal; and,

WHEREAS, the COMMISSION approved the charter application for the School on [DATE OF CHARTER APPLICATION APPROVAL], and now grants the State Charter for the School, the conditions of which are expressed through the terms of this Charter Contract; and,

WHEREAS, pursuant to the Act, the COMMISSION and the GOVERNING BODY wish to enter into this Contract, in compliance with the Act, in order to define each Party's responsibilities, and provide the financial, academic, and operational performance expectations that will guide the monitoring, oversight and evaluation of the School by the Parties.

NOW, THEREFORE, in consideration of the representations and mutual promises herein contained, the COMMISSION and the GOVERNING BODY agree:

SECTION 1: DEFINITIONS

Terms shall have the meaning as specified in this section wherever used in this Contract, including the foregoing recitals, unless the context clearly requires otherwise.

"Audit Act" means Sections 12-6-1 through 12-6-14, NMSA 1978.

"Chair" means the chairperson of the COMMISSION, as elected by the members of the COMMISSION, pursuant to the Act.

"Charter Representative(s)" means the President and any other person(s), authorized by the GOVERNING BODY to sign the Contract, and other documents, and to legally bind the School to the Contract and other documents as required under the Act.

"Attendance for Success Act" means Sections 22-12A-1 through 22-12A-14, NMSA 1978.

“Corrective Action Plan” or “CAP” means a plan developed by the School and submitted to the COMMISSION to remedy Operational or Financial violations or problems.

“Criminal Offender Employment Act” means Section 28-2-1, *et seq.*, NMSA 1978.

“Days” means calendar days.

“Department” means the Public Education Department of the State of New Mexico.

“Division” means the Charter School Division of the Department.

“Facility” or “Facilities” means the facilities, including without limitation, all buildings classrooms, and other spaces owned or leased by the School, and used by the School, its staff, teachers, and students, for educational and recreational purposes, and other purposes connected with the School.

“Governing Body” means the governing body of the School, as authorized under the Act and this Contract.

“Head Administrator” means the State licensed school administrator hired by the GOVERNING BODY to manage the day-to-day operations of the School.

“Instructional Hours” means the mandatory instructional time during which students are engaged in a School-directed program, and for which the Attendance for Success Act is enforced.

“Mission” means the educational and pedagogical mission of the School, as provided herein.

“NMAC” means the New Mexico Administrative Code, which contains the State regulations.

“NMSA” means the New Mexico Statutes Annotated, which contain the State laws.

“President” means, for purposes of this Contract, the member selected and authorized by the GOVERNING BODY to legally bind the GOVERNING BODY to this Contract, even if this member operates under a different working title (e.g. Executive Director, Director or Chair).

“Procurement Code” means Section 13-1-101, *et seq.*, NMSA 1978.

“Public School Finance Code” means Section 22-8-1, *et seq.*, NMSA 1978.

“School Improvement Plan” means a plan developed by the School and submitted to the COMMISSION to remedy academic performance.

“Secretary” means the Secretary of the Department.

“State” means the State of New Mexico.

SECTION 2: TERM

This Contract shall be in full force and effect from its effective date until June 30, _____, unless the Charter is revoked or suspended by the COMMISSION pursuant to the Act. The Contract will not automatically be renewed or extended; the Contract may be renewed by the COMMISSION upon timely application by the School pursuant to the Act, and upon such terms and conditions as the COMMISSION deems appropriate under the Act.

SECTION 3: ROLE AND RESPONSIBILITIES OF THE COMMISSION

The COMMISSION, as the Chartering Authority of all State Chartered Schools, shall:

3.1 Comply With Legal Obligations.

Conduct its activities and provide appropriate notices in accordance with its policies and practices, the Act and this Contract;

3.2 Timely Respond to Submissions.

Evaluate all submissions by the GOVERNING BODY or School, including amendment requests, and act timely on any such submissions or requests.

3.3 Provide School Evaluation and Oversight.

Evaluate and monitor the performance and legal compliance of the School.

3.4 Provide Performance Frameworks.

Adopt and provide Academic, Organizational and Financial Performance Frameworks, Attachment A, to set forth the standards and metrics that will guide the oversight and evaluation of the School.

3.5 Review and Determine School Charter Status.

Review all relevant information to determine whether the School merits a suspension, revocation, renewal or nonrenewal.

3.5.1 Revocation: The COMMISSION may at any time take action to revoke the Charter of the School.

3.5.1.1 Criteria: Pursuant to the Act, the COMMISSION may revoke the Charter if the COMMISSION determines that the School:

- A. Committed a material violation of any of the conditions, standards or procedures set forth in the Contract,
- B. Failed to meet or make substantial progress toward academic achievement of the Department's standards or student performance standards identified in the Contract,
- C. Failed to meet generally accepted standards of fiscal management, or
- D. Violated any provision of law from which the School was not specifically exempted.

3.5.1.2 Procedures and Timeline: The COMMISSION shall utilize the following revocation process:

- A. Notify the GOVERNING BOARD and the School at least 72 hours prior to a regularly scheduled or special meeting, or at least 24 hours before an emergency meeting, that consideration of whether to issue a Notice of Intent to Revoke the Charter is on the meeting's agenda.
- B. Timely Issue a written Notice of Intent to Revoke the Charter. The Notice shall:
 - 1. State the legal basis for the potential revocation, and reasonably identify the evidence that the COMMISSION has to support the existence of the legal basis;

2. Identify the date, location, and time at which a revocation hearing will be held;
 3. Establish deadlines for the GOVERNING BODY and the School to present written materials and all evidence that will be used during the hearing; and
 4. Identify if the hearing will be conducted by the COMMISSION or by a third party hearing officer. If a hearing officer is to be used, the Notice shall establish the date on which the COMMISSION will consider whether to accept, reject, or modify the hearing officer's findings of facts, conclusions of law, and recommendations.
- C. After a hearing, upon making a final revocation decision, the COMMISSION shall issue a written decision to revoke the Charter.
- 3.5.2 **Renewal:** Within the time period established by the Act, the GOVERNING BODY may submit a renewal application to the COMMISSION using the COMMISSION's renewal application form. The application shall include all information required by law and necessary for the COMMISSION to determine whether to renew the Charter, non-renew, or renew with conditions, including a contract term of less than 5 years.
- 3.5.2.1 **Criteria:** Pursuant to the Act, the COMMISSION may refuse to renew the Charter if the COMMISSION determines that the School:
- A. Committed a material violation of any of the conditions, standards or procedures set forth in the Contract,
 - B. Failed to meet or make substantial progress toward achievement of the Department's standards of excellence or student performance standards identified in the Contract,
 - C. Failed to meet generally accepted standards of fiscal management, or
 - D. Violated any provision of law from which the School was not specifically exempted.
- 3.5.2.2 **Procedures and Timeline:** The COMMISSION shall utilize the following renewal process:
- A. At least one year prior to the Charter renewal application due date, the COMMISSION's authorized representatives will notify the School of its preliminary renewal profile, as established in the COMMISSION's Performance Frameworks, Attachment A.
 - B. At least 20 days prior to COMMISSION's meeting at which it will consider the renewal application, the COMMISSION's authorized representatives will provide the School with a preliminary application analysis and recommendation. The recommendation shall:
 1. State the legal basis for potential non-renewal, or renewal with conditions and reasonably identify the evidence to support the recommendation; and

2. Establish deadlines for the GOVERNING BODY to present its written materials and all evidence that will be used to respond to the recommendation, which shall be not less than 10 days from the date of the delivery of the recommendation.
 3. No later than seven (7) days prior to the COMMISSION's meeting at which it will consider the renewal application, the COMMISSION's authorized representatives will provide the School with a final application analysis and recommendation.
- C. Upon making a final non-renewal decision, or renewal with conditions the COMMISSION shall issue a written decision within 30 days of voting to non-renew Charter, or renew the Charter with conditions.


3.6 Not Be Responsible for Department Withholding and Expenditures.

The Department may withhold and use two percent (2%) of the school-generated program cost for the administrative support of the School as provided in Section 22-8B-13 NMSA 1978. The Department does not directly provide these funds, or any accounting of these withheld funds, to the COMMISSION. Accordingly, the COMMISSION is unable to provide a detailed description of how the withheld funds, which are not under the COMMISSION's control, will be utilized.

SECTION 4: ROLE AND RESPONSIBILITIES OF THE GOVERNING BODY

The GOVERNING BODY is responsible for the policy decisions of the School; is responsible for hiring, evaluating, and terminating the Head Administrator of the School; and is entrusted with oversight of expenditure of public funds in accordance with all applicable laws, regulations, including those pertaining to conflicts of interest, public school finance, and procurement. The GOVERNING BODY is ultimately responsible to the COMMISSION and the State for the academic, operational and financial performance and legal compliance of the School.

4.1 Governance of the Body. The GOVERNING BODY shall:

 **4.1.1 Establish Bylaws.** Govern the School in the manner set forth in the GOVERNING BODY's bylaws, Attachment D.

4.1.2 Ensure Members Meet Requirements.

4.1.2.1 Minimum Number.

- A. Have at least five (5) members at all times; the number of Governing Body Members shall be specified in the bylaws.
- B. Either replace any member who is removed or who resigns, or close the position in conformity with its bylaws, within 45 days of removal, resignation or closure.

4.1.2.2 Training. All members shall comply with training requirements of Section 22-8B-5.1, NMSA 1978, and any related regulations.

4.1.2.3 Waiver Required. No member shall serve on the governing body of another charter school, unless granted a discretionary waiver from the Secretary.

4.1.2.4 **Certify Legal Obligations and Commitments.** Each member of the GOVERNING BODY shall sign a certificate, Attachment G, certifying the legal obligations undertaken and offering assurance of each member's commitment to comply with all federal and state laws governing the organizational, programmatic, and financial requirements applicable to charter schools.

4.1.2.5 **Notification.** Within 30 days, notify the COMMISSION of all changes in the GOVERNING BODY's membership, and provide a signed certification in the form of Attachment G from any new members.

4.1.3 **Member Responsibility.** Members each have a duty to uphold the provisions of this Contract, all applicable laws, including, without limitation, the Act, all regulations, and reporting requirements.

4.1.4 **Member Misconduct, Allegations and Violations.** The GOVERNING BODY shall ensure that the School notify the COMMISSION within 15 days of any and all written complaints of inappropriate contact as defined in its policies with a student or other minor by a GOVERNING BODY member, and shall notify the COMMISSION within 15 days of allegations of, or convictions for, any crime related to the misappropriation or theft of School funds or property by a GOVERNING BODY member.

4.2 **Board of Finance Designation.**

4.2.1 **Required Information.** The GOVERNING BODY shall, at all times, be qualified and designated to act as a board of finance for public school funds, as demonstrated in Attachment E, which contains:

4.2.1.1 The names, home addresses, personal email addresses, and personal phone numbers of each member;

4.2.1.2 A statement signed by every member stating that the GOVERNING BODY agrees to consult with the Division on any matter not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

4.2.1.3 A signed affidavit from each member declaring that the member is not a member of the governing body of any other charter school (unless granted a waiver by the Secretary for that purpose), and that the member was not a governing body member of another charter school that was suspended and was not reinstated, or failed to receive or maintain its board of finance designation;

4.2.1.4 Affidavit(s) signed by the School's licensed business official who will be given the responsibility of keeping the financial records of the School, describing their training, professional licensure and degree(s); and

4.2.1.5 A copy of a certificate of insurance that indicates that the person(s) who will be entrusted with handling the funds of the School are adequately bonded.

4.2.2 **Designated Licensed Business Official and CPO.** Have a designated licensed business official and State Certified Procurement Officer ("CPO") and provide their CPO certification [Attachment I]. The COMMISSION shall be notified of all changes to the designated licensed business official or CPO within 30 days.

4.2.3 **Updated and Current Information.** The GOVERNING BODY shall ensure that the Commission is provided with updated and current information within 30 days of the change to any member of the GOVERNING BODY or the School's licensed business official who will be given the responsibility of keeping the financial records. The GOVERNING BODY shall resubmit all information required above, revised to reflect the changes in staffing or membership.

4.2.4 **Board of Finance Revocation.** If at any time, the GOVERNING BODY's qualification as a board of finance is revoked by the COMMISSION, the COMMISSION shall consider whether to commence revocation proceedings to revoke the charter. If the COMMISSION decides not to revoke the charter, the GOVERNING BODY shall be required to develop and successfully implement a Corrective Action Plan to address the conditions and causes that raised for consideration the revocation of the board of finance designation.

4.3 **Release of Public School Funds.**

The GOVERNING BODY acknowledges that the School may not receive State Equalization Guarantee ("SEG") funding until:

4.3.1 A current NMCI determination, certificate of occupancy and the occupancy permit for educational use are provided for each authorized site listed herein (and each site subsequently approved by the COMMISSION).

4.3.2 The COMMISSION has determined that the GOVERNING BODY has satisfied all conditions imposed by the COMMISSION at initial approval and has demonstrated readiness to operate through the completion of the COMMISSION's Implementation Year Checklist.

4.3.3 Upon a request for renewal, the COMMISSION has determined that the GOVERNING BODY has satisfied all conditions imposed by the COMMISSION.

4.4 **Federal Grant Fund Accountability.** If the School receives federal grant funds that flow through the Department, the GOVERNING BODY shall ensure that the School timely submits financial and other reports required by the Department for the receipt of such funds.

4.5 **Third Party Contracts and Relationships**

4.5.1 **Benefit of Students.** The School must be operated for the benefit of the students, and not for the benefit of a third party.

4.5.2 **Public Trust and Accountability.** The GOVERNING BODY is publicly entrusted and charged with the obligation to account for and oversee public school funds and to deliver specific educational results, and be accountable to the COMMISSION and the State for the School's funds and performance. Accordingly, the GOVERNING BODY must ensure that any third party contract for the expenditure of public funds includes clear provisions of accountability and reporting, such that the GOVERNING BODY's fiduciary and other responsibilities are not abdicated.

4.5.3 **Term Limits and Renewals.** The contract term may not exceed the Term of this Contract, but may provide for term renewals. Similarly, the contract terms must allow a reasonable ability to terminate the agreement.

4.5.4 **Reasonable and Commensurate Fees.** Any fees provided under third party contracts must be reasonable and commensurate with the services provided, and

not exceed the local market rates for services.

4.5.5 **Public Funds Limitation.** State and federal funds, including but not limited to student funding shall not be used to pay, compensate or reimburse contract management organization or education management organization, regardless of their organizational or tax-exempt status.

4.5.6 **Non-Profit Foundation Declaration.**

The School has a relationship with _____, a non-profit foundation the primary purpose of which is to provide financial support to the School. The agreement governing the relationship between the School and the foundation is Attachment B. The members of the foundation's Board of Directors and its Executive Director are provided, along with a signed conflict of interest disclosure from each member, as Attachment C.

4.5.7 **Other Third Party Relationship Declaration.**

4.5.7.1 **Legal Agreement Provided.** The GOVERNING BODY or School has a legal relationship with _____ that is distinct from a relationship with a non-profit foundation described above. The legal agreement governing the relationship between the School and _____ is included as Attachment B.

4.5.7.2 **Prior Approval Required.** Changes to the document set out as Attachment B, or to its legal relationship and agreements with _____ requires the prior approval of the COMMISSION, which approval shall not be unreasonably withheld.

4.5.7.3 **Compliance.** The legal agreement in Attachment B complies with all provisions of this Contract and State law, and the School is not governed by, and is financially independent from, _____.

4.5.7.4 **Compliance Review.** The COMMISSION shall be permitted to review the legal agreement and other relevant documents and records to determine whether the legal relationship between the School and _____ complies with all provisions of this Contract and State law, and to determine that the School is not governed by, and is financially independent from _____.

SECTION 5: GOVERNANCE OF THE SCHOOL AND REPRESENTATIONS

The GOVERNING BOARD represents and promises that it will ensure that the School operates as a public school and adheres to the following provisions:

5.1 **Educational Program:** The School's educational program shall be as described below

5.1.1 _____

5.1.2 _____

5.1.3 _____

5.1.4 _____

add more as necessary

- 5.2 **Mission and Report.** Implements the mission identified below and report on the implementation of that mission in the manner described below.
- 5.2.1 _____
- 5.2.2 **Reporting.** The implementation of the School's mission shall be reported to the COMMISSION:
- 5.2.2.1 Annually during the performance review site visit required by the Act, as evaluated through the site visit team's observations and the School's response to any such observations;
- 5.2.2.2 Annually through any mission specific goals identified in the Performance Framework, Attachment A; and
- 5.2.2.3 Upon any application for Charter renewal, through a narrative in the renewal application.
- 5.3 **Notification of Waivers.** Notice must be provided to the COMMISSION regarding any waivers the School is utilizing or has requested from the Secretary. All waivers are identified in Attachment H.
- 5.3.1 **Discretionary.** If a discretionary waiver is granted by the Secretary at any point during the Term, written notification must be provided to the COMMISSION within 30 days of approval from the Secretary, and the Contract may be amended to reflect such waiver.
- 5.3.2 **Non-discretionary.** If the School begins utilizing any additional non-discretionary waivers at any point during the Term, a written notification must be provided to the COMMISSION within 30 days of first use of the waiver, and the Contract may be amended to reflect the use of such non-discretionary waiver.
- 5.4 **Enrollment Cap and Authorized Grade Levels.**
The School shall serve no more than _____ students in grades _____.
- 5.4.1 **Allowable Modifications.** The School may make modifications as to the number of students in any particular grade, and number of students within a class to accommodate staffing decisions that are consistent with the School's programmatic needs; except that, nothing in this Contract shall give the GOVERNING BODY the authority to allow the School to combine students from different grade levels into the same classroom unless the School's educational program explicitly provides for mixed grade or age education.
- 5.4.2 **Establish Vacancies by Grade.** The School must annually, prior to beginning the annual enrollment process, establish the number of vacancies by grade level available for student enrollment in that year. That number will govern the enrollment throughout the school year.
- 5.4.3 **Facility Capacity.** The School may not exceed the building capacity of the Facility, which is _____.
- 5.5 **Authorized Facilities.**
The School shall provide educational services, including the delivery of instruction, only at the following authorized location(s):

School Name (Grades) _____

Street Address
City, State Zip

- 5.5.1 **Meet Legal Standards.** The GOVERNING BODY shall ensure that the Facilities meet the standards in Section 22-8B-4.2 (A, C, D) NMSA 1978, and shall ensure that the facilities comply with all applicable federal, State and local health and safety standards and other applicable laws, regulations and rules.
- 5.5.2 **Lease Agreements Provided.** The Lease(s) or Lease Purchase Agreement(s) with amendments for all School facilities shall be provided as Attachment J.
- 5.5.3 **Access Required.** Allow the COMMISSION and its authorized representatives to visit each facility at any reasonable time.
- 5.6 **Insurance Required.** Obtain and maintain appropriate insurance in accordance with applicable federal, State and local rules, regulations and statutes, and provide the types, limits and deductibles in Attachment K.
 - 5.6.1 **Required Participation in NMPSIA.** Participate in the New Mexico Public School Insurance Authority ("NMPSIA").
 - 5.6.2 **Waivers Required.** The School and its insurers providing the required coverage shall waive all rights of recovery against the State and the COMMISSION, their agents, officials, assignees and employees.
- 5.7 **Inspection of Records, Retention and Audit.**
 - 5.7.1 **Student Records.** Maintain student records in accordance with all federal and State laws, including those regarding privacy, and comply with State public records retention requirements.
 - 5.7.2 **Audits.** Allow the COMMISSION and its authorized representatives to conduct financial, program or compliance audits and shall hold open for inspection all records, documents and files relating to any activity or program provided by the School.
 - 5.7.3 **Retention.** All books, accounts, reports, files and other records relating to this Contract shall be subject, during normal business hours, to inspection and audit by the State for five (5) years after termination of this Contract.
- 5.8 **Student Attendance and Instructional Hours.**

In accordance with the Attendance for Success Act, maintain records to document daily student attendance and shall make such records available for inspection upon request of the COMMISSION. The School shall comply with the number of overall instructional hours required by State law, based on the grade levels served, which may be verified through budget reporting.
- 5.9 **School Personnel and Agents.**
 - 5.9.1 **Volunteers.** Comply with State requirements regarding the use of school volunteers (Section 6.50.18 NMAC).
 - 5.9.2 **Background Checks.** Comply with the requirements of Section 22-10A-5 NMSA 1978, relating to background checks for all staff, instructors, and volunteers, in whatever capacity, working with its students or at the Facilities.

5.9.2.1 Policies and Procedures. The School shall develop and implement policies and procedures to require background checks on an applicant who has been offered employment, and for all volunteers, contractors and contractor's employees with unsupervised access to students.

5.9.2.2 Criminal Offender Employment Act. The School shall comply with the Criminal Offender Employment Act.

5.9.2.3 Report Conviction of Licensed or Certified Employee. The Head Administrator shall report to the Department and the COMMISSION any known conviction of a felony or misdemeanor involving moral turpitude of a licensed or certified employee.

5.9.3 Notification of Allegations, Misconduct and Convictions. Notify the COMMISSION within 15 days of any and all written complaints of inappropriate contact as defined in the School's policies, or convictions for inappropriate contact with a student or other minor by any staff member, employee, volunteer, agent or contractor and shall notify the COMMISSION within 15 days of allegations of, or convictions for, any crime related to the misappropriation or theft of School funds or property by any staff member, employee, volunteer, agent or contractor.

5.9.4 Investigate Allegations. The Head Administrator or an authorized representative shall investigate all allegations of ethical misconduct about any licensed or certified employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made, or incident occurs.

5.9.4.1 Substantiated Findings. If the investigation results in a finding of wrongdoing, the Head Administrator shall report the identity of the licensed or certified employee and attendant circumstances of the ethical misconduct on a standardized form to the Department and the licensed or certified employee within 30 days following the separation from employment.

5.9.4.2 Agreements Restricted. No agreement between a departing licensed or certified employee and the School shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such provision or agreement to the contrary is void and unenforceable.

5.10 Comply With Public Education Laws. Operate as a public school and comply with all applicable federal, state and local rules, regulations and statutes relating to public education, including those listed below, unless the School is specifically exempted from the particular provision of law.

5.10.1 Nonsectarian Policies and Practices. Be nonsectarian in its programs, enrollment policies and employment practices and all other operations. Attachment F is the School's enrollment policies and procedures.

5.10.2 Children with Disabilities Law. Comply with all federal and state laws relating to the education of children with disabilities.

5.10.3 Health, Safety, and Civil Rights Law. Comply with applicable federal, State and local rules, regulations and statutes relating to health, safety and civil rights.

SECTION 6: STANDARD TERMS

- 6.1 **Applicable Law:** This Contract shall be governed and interpreted in accordance with State and federal laws. In the event of a change in law, regulation, rule, procedure or form affecting the School during the term of this Contract, the Parties shall comply with the change in law, rule, regulation or procedure or utilize the new form, as provided.
- 6.2 **Entire Agreement.** This Contract, including all of its Attachments, constitutes the entire agreement of the Parties.
- 6.3 **Amendments.** This Contract shall not be altered, changed or amended except as executed in writing by the Parties hereto. The COMMISSION shall consider and vote on all amendment requests within 60 days of receipt of a complete submission. If an amendment to this Contract is required to reflect a change in the law or rule, then the Parties shall execute such an amendment. If the Parties cannot agree on an amendment to the terms of the contract, either party may appeal to the Secretary pursuant to Section 22-8B-9(A and C) NMSA 1978.
- 6.4 **Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not constitute a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.
- 6.5 **Invalid Term or Condition is Severable.** The provisions of this Contract are severable. If any term or condition is held to be invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.
- 6.6 **Assignment.** Neither party may assign or transfer any right or interest in this Contract unless authorized by law. No assignment, transfer or delegation of any duty shall be made without prior written permission of the COMMISSION.
- 6.7 **Financial Records and Financial Audit.** The GOVERNING BODY shall ensure that detailed expenditure records are maintained that indicate the date, time, nature and cost of services rendered and paid from public funds during the Contract's term and retained for a period of five (5) years from final date of payment. The records shall be subject to inspection by the State. Payments rendered pursuant to this Contract shall not foreclose the right of the State to recover excessive or illegal payments
- 6.8 **Indemnification.** To the extent permitted by law, the GOVERNING BODY shall indemnify, defend, save and hold harmless the COMMISSION, the State, its departments, agencies, officials, agents and employees ("Indemnitees") from and against any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation). "Claims" includes demands for relief from bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the GOVERNING BODY or any of its members, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of the GOVERNING BODY to conform to any applicable federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the GOVERNING BODY from and against any and all claims. It is agreed that the GOVERNING BODY will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

- 6.9 **Not an Employment Contract.** This is not an employment contract. No officer, employee, agent, or subcontractor of the GOVERNING BODY is an officer, employee or agent of the COMMISSION or the State as a result of this Contract.
- 6.10 **Non-Discrimination.** The GOVERNING BODY shall ensure that the School complies with all applicable federal and state employment laws, rules and regulations, including the Americans with Disabilities Act. The GOVERNING BODY shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, sexual orientation, gender identity, spousal affiliation, national origin or disability.
- 6.11 **Notices.** Any notice required, or permitted, under the Contract shall be in writing and shall be effective immediately upon personal delivery, upon receipt of electronic mail, or three (3) days after mailing to the following:

GOVERNING BODY:

NM Public Education COMMISSION:

Patricia E. Gipson, PEC Chair
300 Don Gaspar Santa Fe, NM 87505
575-405-9135
PEC.DistrictSeven@state.nm.us

and

Ami Jaeger, PEC Counsel
BioLaw Group
7 Avenida Vista Grande, 205
Santa Fe, NM 87508
asj@bio-law.com

School:

NM Public Education Department:

NAME, Head Administrator

Ryan Stewart, PED Secretary

and

Lisa Chai, PED General Counsel

- 6.11.1 **Notification of Change.** The GOVERNING BODY must provide contact information to the COMMISSION within 30 days of the change of the President or other Charter Representative, and the Head Administrator.
- 6.11.2 **Timely Response.** The Charter Representative(s) shall respond to written communication from the COMMISSION within the timeframe specified in the communication, which shall be no less than five (5) days absent exigent circumstance.
- 6.12 **Dispute Resolution:** Disputes between the School and the COMMISSION shall be subject to the dispute resolution process set forth in this section.

- 6.12.1 **Scope.** Disputes arising out of interpretations of state or federal statute, regulation, or policies of a federal entity or a different state entity, Charter revocation, suspension or renewal shall not be subject to this dispute resolution process.
- 6.12.2 **Notice of Dispute:** Notice must be provided in writing that a dispute exists within 30 days from the date the dispute arises. The notice of dispute shall identify a description of the matter in dispute, and copies of any documentation that supports the position.
- 6.12.3 **Continuation of Contract Performance:** The GOVERNING BODY and the COMMISSION agree that the existence and details of a dispute notwithstanding, the Parties shall continue without delay their performance of this Contract, except for any performance that may be directly affected by such dispute.
- 6.12.4 **Response to Notice and cure of the matter in dispute:** Upon receipt of a Notice of Dispute, the COMMISSION or the Head Administrator shall have 15 days to respond in writing. The written response may:
- 6.12.4.1 Propose a course of action to cure the dispute;
 - 6.12.4.2 Propose informal discussions to resolve the matter; or
 - 6.12.4.3 Require the parties select a neutral third party to assist in resolving the dispute.
 - 6.12.4.4 If no response is received within 15 days, the aggrieved party sending the Notice of Dispute may invoke the process for selecting a neutral third party to assist in resolving the dispute.
 - 6.12.4.5 At any point in this informal process, either party may, in writing, invoke the process for selecting a neutral third party to assist in resolving the dispute.
- 6.12.5 **Selection of a neutral third party to assist in resolving the dispute:**
- 6.12.5.1 If either party invokes the process for selecting a neutral third party to assist in resolving the dispute, it shall include in the notice the name of a proposed neutral third party along with his/her qualifications.
 - 6.12.5.2 If the other party does not agree to the proposed neutral third party, it shall identify an alternate neutral third party along with his/her qualifications within seven (7) days.
 - 6.12.5.3 If the other party does not agree with the alternate designation, it shall give notice within seven (7) days.
 - 6.12.5.4 In the event that the Parties cannot agree on a mediator the Parties shall request the assignment of a mediator from the Office of Dispute Prevention and Resolution, of the General Services Department's Risk Management Division. The assigned mediator shall mediate the dispute.
- 6.12.6 **Apportionment of all costs related to the dispute resolution process:** Each party shall pay one-half of the reasonable fees and expenses of the neutral third

party. All other fees and expenses of each party, including without limitation, the fees and expenses of its counsel, shall be paid by the party incurring such costs.

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

GOVERNING BODY of CHARTER SCHOOL NAME

Executed this _____ day of _____ 20____.

By Charter Representative(s):

[NAME], President.

[NAME, Title.]

NEW MEXICO PUBLIC EDUCATION COMMISSION

Executed this _____ day of _____ 20____.

By _____
[NAME], Chair

Charter Contract

ATTACHMENTS

Attachment A	Performance Frameworks
	A.1 Academic
	A.2 Operational
	A.3 Financial
Attachment B	Agreement(s) with Non-Profit Foundation Agreement(s) with Other Third Parties
Attachment C	Non-Profit Foundation's Members, Director and Each Member's Signed Conflict of Interest Disclosure
Attachment D	Governing Body's Bylaws
Attachment E	Supporting Documents for Board of Finance Designation
Attachment F	School's Enrollment Policies and Procedures
Attachment G	Governing Body Certifications of Legal Obligations and Commitments
Attachment H	Waivers
Attachment I	State Certification for Designated Procurement Officer
Attachment J	Lease(s) or Lease Purchase Agreement(s), With Amendments For All School Facilities
Attachment K	School Insurance Requirements - Types, Limits and Deductibles

ATTACHMENT A
PERFORMANCE FRAMEWORKS

A.1 ACADEMIC FRAMEWORK

The GOVERNING BODY shall ensure that the School meets or makes substantial progress towards the achievement of the following Academic Framework standards:

- a. **Department Standards.** Provides a comprehensive educational program that meets or makes substantial progress toward achievement of the academic standards prescribed by the Department for the grades approved to operate.
- b. **Mission Specific Standards.** The following additional rigorous, valid and reliable mission specific indicators proposed by the GOVERNING BODY or School, and approved by the COMMISSION as consistent with the purposes of the Act, are provided to augment external evaluations of the School's performance.
- c. **Participation in Assessments.** Participates in assessments as designated by the Department or the U.S. Department of Education.
- d. **Student Data Reporting.** Timely reports timely student level data for State-required assessments to the Department and report student level data from School-administered assessments, as requested by the COMMISSION or on a twice annually basis if that data is incorporated into the Academic Performance Framework adopted by the COMMISSION.
- e. **School Improvement Plan.** If the School fails to meet its academic performance indicators in any year it must develop, submit, and begin implementing a School Improvement Plan within 60 days of the release of the academic performance information. The COMMISSION will not evaluate the quality of, or approve, the Plan. The COMMISSION may evaluate at implementation of the Plan at any time, including through its annual site visits, and provide feedback to the School regarding fidelity of implementation and effectiveness of the Plan in improving the School's performance.

Unsatisfactory Review. The COMMISSION is not required to allow an opportunity to remedy the problem if an unsatisfactory review warrants revocation. Failure to meet or make substantial progress toward meeting the performance standards shall be sufficient justification to revoke or non-renew the Charter.

A.2 ORGANIZATIONAL FRAMEWORK

The GOVERNING BODY shall ensure that the following Organizational Framework standards are met:

- a. **Comply with Public Education Requirements.** Comply with applicable federal, state and local rules, regulations and statutes relating to public education.
- b. **Timely Submit Documentation.** Timely submits all documentation, financial and other reports required by or the COMMISSION or its authorized representative(s) in order to evaluate the School's compliance with applicable federal, state and local rules, regulations and statutes relating to public education.
- c. **Complaints Against the School.** Provide a written copy to the COMMISSION, within 15 days of receiving a notice of complaint filed against the School alleging violations of federal, state, or local law, regulation or rule, or a final determination from another State division or agency, or State or federal court regarding any such complaint against the School.
- d. **Cooperate to Allow Audits.** Cooperates with the COMMISSION or authorized representative(s) to enable the conduct of annual site visits and all other auditing visits requested or required by the COMMISSION.
- e. **Corrective Action Plan.** The School may be required to develop, submit and implement a Corrective Action Plan ("CAP") to address deficiencies in its organizational performance. All CAPs must be submitted to the COMMISSION, but the COMMISSION will not evaluate the quality of, or approve, the CAP. The COMMISSION may evaluate implementation of the CAP at any time, including through its site visits, and provide feedback to the School regarding fidelity of implementation and effectiveness of the plan in improving the School's performance.

Unsatisfactory Review. The COMMISSION is not required to allow an opportunity to remedy the problem if an unsatisfactory review warrants revocation. Failure to meet or make substantial progress toward meeting the performance standards shall be sufficient justification to revoke or non-renew the Charter.

A.3 FINANCIAL FRAMEWORK

The GOVERNING BODY shall ensure that the following Financial Framework standards are met:

- a. **Compliance with Generally Accepted Professional and Legal Standards.** Meet generally accepted standards of fiscal management which shall include complying with all applicable provisions of the Public School Finance Code, the Procurement Code, and the Audit Act; pay debts as they fall due or in the usual course of business; comply with all federal requirements related to federally funded programs and awards; refrain from gross incompetence or systematic and egregious mismanagement of School finances or financial records; and, prepare and fairly present financial statements in accordance with accounting principles generally accepted in the United States of America, which include the design, implementation, and maintenance of internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- b. **Timely Submit Documents.** Timely submit all documentation, financial and other reports including any Corrective Action Plans that may be requested or required by the COMMISSION to demonstrate that the School is financially viable and stable.
- c. **Cooperate to Allow Audits.** Cooperate with the COMMISSION, or its authorized representative(s), to allow for all auditing visits requested or required by the COMMISSION.
- d. **Corrective Action Plan.** The School may be required to develop, submit and implement a Corrective Action Plan ("CAP") to address deficiencies in its financial performance. All CAPs must be submitted to the COMMISSION, but the COMMISSION will not evaluate the quality of, or approve, the CAP. The COMMISSION may evaluate implementation of the CAP at any time, including through its site visits, and provide feedback to the School regarding fidelity of implementation and effectiveness of the plan in improving the School's performance.

Unsatisfactory Review. The COMMISSION is not required to allow an opportunity to remedy the problem if an unsatisfactory review warrants revocation. Failure to meet or make substantial progress toward meeting the performance standards shall be sufficient justification to revoke or non-renew the Charter.