

# New Mexico Public Education Commission



## New Mexico Charter School Contract

### Performance Framework

### Mission Goal

### Condition Compliance Template

For *[insert school name]*

For the charter term: *[insert charter term]*

Public Education Commission  
300 Don Gaspar Ave.  
Santa Fe, NM 87501  
(505) 827-6909  
[charter.schools@ped.nm.gov](mailto:charter.schools@ped.nm.gov)

Charter Contract  
Between the New Mexico Public Education Commission  
and

[NAME OF CHARTER SCHOOL]

This Charter 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, known as the [name of governing body] (“Governing Body”) effective this \_\_\_ day of \_\_\_\_\_ 20\_\_\_. Hereafter, each party may be referred to as “Party” or both parties as “Parties.”

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 to approve new and renewing charter school applications and to negotiate in good faith and execute, charter contracts that meet the requirements of the Act with the governing body of an authorized state charter school;

WHEREAS, the Commission is further authorized pursuant to the Charter Schools Act, to monitor charter schools’ compliance with the requirements of the Act, applicable provisions of the New Mexico Administrative Code and the Charter Contract;

WHEREAS, the Commission is further authorized pursuant to the Charter Schools Act to determine whether to approve a new charter school application and whether an authorized State charter school merits revocation, nonrenewal, or renewal with conditions;

WHEREAS, the Commission approved the School’s [ new charter application/charter renewal application CHECK ONE] on [DATE OF CHARTER APPLICATION APPROVAL], and now enters this Charter Contract with the School’s Governing Body; and,

WHEREAS, pursuant to the Charter Schools Act, the Parties wish to enter into this Charter Contract, in order to define each Party’s responsibilities, and identify the financial, academic, and operational performance expectations that will guide the monitoring, oversight, and evaluation of the School by the Commission and the Charter Schools Division of the New Mexico Public Education Department.

**NOW, THEREFORE**, in consideration of the representations and mutual promises herein contained, the Parties agree as follows:

**SECTION 1: DEFINITIONS**

Terms shall have the meaning as specified in this section wherever used in this Charter Contract, including the foregoing recitals, unless the context clearly requires otherwise. Where applicable, terms defined in the Commission Rule shall use the definitions set forth there.

“Chair” means the chairperson of the Commission, as elected by the members of the Commission, pursuant to the Commission’s Rules of Procedure.

“Charter Representative(s)” means the chair, president, or other member of the Governing Body authorized by the Governing Body to legally bind the School to the Charter Contract and any other designated school official who will provide information to the Commission or CSD on behalf of the School as set forth in this Charter Contract or Commission Rule.

“Charter Schools Act” means §§ 22-8B-1, *et seq.* NMSA 1978 as may be amended.

“Commission” means the Public Education Commission.

“Commission Rule” means a regulation governing the Commission’s oversight responsibilities issued pursuant to the State Rules Act (§§14-4-1 to 11 NMSA 1978,) and codified as 6.2.9.1, *et seq.* NMAC as may be amended. If the Commission Rule as contemplated herein is not codified, the proposed Commission Rule, Exhibit D, shall govern the relevant provisions of this Charter Contract until such time as the Commission Rule is codified, and the Commission Rule shall then apply, and Exhibit D shall have no further effect.

“Commission Website” means the web page maintained by the Department on behalf of the Commission and the location where the Commission posts and maintains as current the PEC’s Procedures and its directives, instructions, templates and forms, and timelines adopted by it pursuant to Commission Rule (6.2.9.7 (Y.) NMAC).

“Corrective Action Plan” means a plan developed by the School and submitted to, and approved by, the Commission to remedy operational or financial violations or problems or to address academic performance issues under the Intervention Ladder pursuant to the Charter Schools Act and Commission Rule (6.2.9.13. NMAC).

“CSD” means the Charter Schools Division of the Department as established by the Charter Schools Act, §22-8B-17 NMSA 1978, to

- A. provide staff support to the commission;
- B. provide technical support to all charter schools;
- C. review and approve state-chartered charter school budget matters; and
- D. make recommendations to the commission regarding the approval, denial, suspension or revocation of the charter of a state-chartered charter school.

“Days” means unless otherwise specified in a provision in the Commission Rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the number of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the Department or Charter School is closed, the period continues to run until the end of the next business day that the Department or Charter School is not closed.

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

“Department Rule” means 6.80.4.1 *et seq.* NMAC as may be amended.

“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 related purposes.

“Governing Body” means the governing body of the School that shall operate as set forth in the Charter Contract, as required by law and consistent with its governing documents.

“Head Administrator” means the School’s administrator licensed by the Department and hired by the Governing Body to manage the day-to-day operations of the School with duties similar to that of a superintendent as set forth in §22-5-14 NMSA 1978.

“Instructional Hours” has the meaning as set forth in §22-2-8.1 NMSA 1978.

“Intervention Ladder” has the meaning as set forth in the Commission Rule (6.2.9.7.(Q.) NMAC) and are procedures adopted by the commission to impose interventions intended to address the School’s unsatisfactory performance or non-compliance with the contract.

“Mission” means the stated educational and pedagogical purpose of the School consistent with §22-8B-3 NMSA 1978 of the Charter Schools Act.

“NMAC” means the New Mexico Administrative Code.

“NMSA” means the New Mexico Statutes Annotated.

“PEC Procedures” has the meaning as set forth in the Commission Rule (6.2.9.7.(Y.) NMAC) and are the Commission’s adopted directives, instructions, templates and forms, and timelines in support of its authorizing practices adopted pursuant to the Commission Rule.

“Performance Framework” is a material term of this Charter Contract set forth in Exhibit A, negotiated pursuant to §22-8B-5.3(E) NMSA 1978 and which includes the requirements of §22-8B-9 and 22-8B-9.1 NMSA 1978.

“Procurement Code” means §§ 13-1-28 to 13-1-199 NMSA 1978.

“Public School Finance Act” means §§ 22-8-1 to 22-8-49 NMSA 1978.

“Secretary” means the cabinet secretary of the Department.

“State” means the State of New Mexico.

## **SECTION 2. EXHIBITS AND REQUIRED DOCUMENTS**

**2.1. Exhibits and Contract Monitoring Documents.** The following are exhibits to the Charter Contract and are incorporated by reference.

### **Exhibits incorporated into the Charter Contract**

Exhibit A	Performance Framework <sup>1</sup>
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<sup>1</sup> Amendments to the school specific goal may be proposed by providing a School Specific Goal Amendment Form to the Commission. (Document A5). The Performance Framework is scored according to business rules approved by the PEC and posted here: <https://webnew.ped.state.nm.us/bureaus/public-education-commission/policies-and-processes/performance-review-and-accountability-system-and-performance-frameworks/>

The following are contract monitoring documents to be used by the Parties that may be modified in writing by CSD and School as long as the changes are consistent with this Charter Contract. The Parties' signatures below indicate approval of the form of monitoring documents set forth in the chart below.

Monitoring Documents		
Monitoring Doc 1 (Performance Framework 2.A).	Mission specific indicator	Scoring sheet for PF 2.A. attached to Mission specific indicator, Performance Framework, page _____
Monitoring Doc 2 (Performance Framework 1.A.2/1.B.2 or 1.A.3/1.B.3)	School-specific assessment replacing a Department assessment. Scored using a Reporting Template for that assessment.	<input type="checkbox"/> N/A or <input checked="" type="checkbox"/> Provided on the PEC website related to the Performance Framework for the specific type of assessment tool to be used. Presently posted here: <a href="https://webnew.ped.state.nm.us/bureaus/public-education-commission/policies-and-processes/performance-review-and-accountability-system-and-performance-frameworks/">https://webnew.ped.state.nm.us/bureaus/public-education-commission/policies-and-processes/performance-review-and-accountability-system-and-performance-frameworks/</a>
Monitoring Doc 3 (See 3.2 below)	Condition compliance information	<input type="checkbox"/> N/A or <input type="checkbox"/> Attached to Performance Framework, page _____

**2.2. Charter School Required Elements and notification to CSD.** The School shall maintain the following described operational elements and provide and maintain current information with CSD about each element according to the PEC Procedures as posted on the Commission Website. The PEC Procedure documents referenced in this section may be amended by the Commission pursuant to the Commission Rule.

	Operational Elements	Current PEC Amendments and Notifications form: <a href="https://webnew.ped.state.nm.us/bureaus/public-education-commission/policies-and-processes/amendment-request/">https://webnew.ped.state.nm.us/bureaus/public-education-commission/policies-and-processes/amendment-request/</a>	
A.	Head Administrator	The Governing Body will employ a Head Administrator.	Document B.1.
Exhibit B. B.	Board of Finance Business Manager	authorization letter from the Commission The School will contract with, or employ, a	Document

		licensed school business official as the term is defined in 6.63.12. NMAC.	B.1
C.	Chief Procurement Officer	The School will have a chief procurement officer as the term is defined in §13-1-38.1 NMSA 1978.	Document B.1
D.	Member information	The Governing Body will maintain a list of its current members, a copy of each member's signed assurances as required by §22-8B-9(B)(6) NMSA 1978, and a signed Conflict of Interest Disclosure.	Document B.2, B2.a, B2.b, B2.c
E.	Admissions, Lottery, and Enrollment Policies and Procedures	The School will maintain admission, lottery and enrollment policies consistent with law.	Document B.3
F.	Governance Policies	The Governing Body of the School must be governed through policies adopted by the Governing Body which shall be designated as the Governing Body's bylaws.	Document B.4
G.	Pre-Kindergarten Program	The School will notify the Commission if it has been awarded a pre-kindergarten/pre-school program grant and is operating said program, or a tuition- based preschool program operated at the School. In this notification, the School must attest that the pre-K program is funded only by allowable sources of public funds so as not to violate N.M. Const. Art. IX, §14 and that any lottery preference complies with state and federal law.	Document B.5
H.	Lease/Lease Purchase Arrangement	The School will provide a copy of its current lease or lease purchase arrangement to CSD.	Document B.6
I.	Foundation Membership	The School will provide information on Foundation board members and employees.	Document B.7
J.	Assurance of No Conflict of Interest	The School will identify and provide an assurance that no conflict of interest exists due to a school staff person or board member at the School who also serves on the board of, receives a benefit from, is employed by or contracts with, the Foundation or a Third-Party Contractor.	Schools to provide their own form until a form is approved by the Commission
K.	Third-Party Contractor	If the School has identified a Third-Party Contractor in Section 3.8 below, the School will provide a copy of the contract or other legal agreement with the Third-Party Contractor.	Document A.6
L.	Foundation	If the School has identified a Foundation below, the School will provide a copy of the contract or a memorandum of understanding with the Foundation and the School that describes the	Document A.6

		parties' relationship.	
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**SECTION 3: SCHOOL SPECIFIC TERMS**

The Governing Body shall govern the School as required by this Charter Contract and in accordance with all laws, regulations and policies applicable to it.

**3.1 Public School.** The Governing Body shall ensure that:

A. the School is operated as a public school consistent with the terms of the Charter Contract including the Performance Framework<sup>2</sup> and all applicable laws, provides an educational program consistent with the requirements and purposes of the Charter Schools Act, and is governed and managed in a financially prudent manner according to accounting and auditing standards applicable to public entities in the State;

B. it employs a licensed Head Administrator who shall be held accountable by the Governing Body for staffing the School with qualified personnel, and who shall oversee the operations of the School;

C. the School is operated as a nonsectarian, nonreligious and non-home-based public school;

D. the School offers and provides a free public education to all school-age persons who are accepted for enrollment, through a lottery if there are more students seeking to enroll than seats available, and an enrollment process that complies with the Charter Schools Act and law;

E. the School complies with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy;

F. the School expends public funds in accordance with all state and federal laws and rules, including but not limited to the Procurement Code; and

G. the Governing Body operates according to its bylaws.

**3.2 Charter Contract Term, Condition of Approval and Monitoring Documents and Compliance Documents.** This School has been an authorized charter school since \_\_\_\_\_. This Charter Contract shall be in full force and effect from July 1, \_\_\_\_\_ until June 30, \_\_\_\_\_, unless it is revoked by the Commission pursuant to the Charter Schools Act, the Commission Rule, and provisions of this Charter Contract. The Charter Contract will not automatically be renewed or extended; the Charter Contract may be renewed by the Commission upon timely application, and upon such terms and conditions as set forth in this Charter Contract, and consistent with the Charter Schools Act and applicable regulations of the Department and Commission.

The School was

renewed without condition;

\_\_\_\_\_

<sup>2</sup> Exhibit A

renewed with the following condition:

\_\_\_\_\_.

The Governing Body and CSD have developed monitoring documents documenting how the School will gather and report data annually on school-specific indicators. The following monitoring tools will be used by the School to report its progress annually and are attached as monitoring tools as set forth in Section 2.1 above:

*[check all that apply]*

- scoring of school-specific indicators in the Performance Framework,
- scoring of alternative assessments administered by the School as part of Performance Framework, and
- compliance with the condition placed on the School as listed immediately above.

**3.3 Mission.**<sup>3</sup> The School's Mission is as stated below:

\_\_\_\_\_

**3.4 Educational Program:** The School's educational program shall be as described below and shall be monitored by CSD based on evidence provided below:

- A. \_\_\_\_\_, as evidenced by \_\_\_\_\_
- B. \_\_\_\_\_, as evidenced by \_\_\_\_\_
- C. \_\_\_\_\_, as evidenced by \_\_\_\_\_
- D. \_\_\_\_\_, as evidenced by \_\_\_\_\_ *[add more as necessary]*

E. The School

\_\_\_\_\_ *[Select one]*

- uses or
- does not use mixed grade or mixed age education as part of its model.

If the School does, please explain \_\_\_\_\_

**3.5 Manner of Instruction.**

Remote instruction may be employed by the School, if provided by statute, rule, policy or executive order subsequently issued by the Department, or as ordered by the New Mexico Department of Health or Executive Orders of the Governor of New Mexico, without amendment to the Charter Contract. Nothing in this section prohibits using remote instruction as an accommodation under a 504 Plan or to deliver special education or related services if to do so is consistent with the School's

\_\_\_\_\_

<sup>3</sup> The School may request that the Mission or educational program be amended by submitting an amendment form. (Current PEC Procedure Forms A.1 and A.2)



educational program delivered pursuant to this Charter Contract. It is understood that schools utilize computers, chrome books, smart boards and other electronic devices that are not considered “remote instruction.”

[Select one]

**A.1  No Remote Instruction.** The School’s educational program does not include a remote, hybrid or blended learning model, nor incorporate a remote component in its educational program.

**A.2  Some Remote Components.** The School uses remote instruction, or a hybrid or blended learning model as follows: [modify language, if needed]

- i. in-person on-site instruction for \_\_\_\_% of the Instructional Hours of the School;
- ii. remote instruction provided by school personnel for \_\_\_\_% of the Instructional Hours of the School;
- iii. remote instruction with non-school personnel through a remote school program as described here: \_\_\_\_\_; and
- iv. [provide additional information] \_\_\_\_\_ OR \_\_\_\_\_

**A.3  Fully Remote School.** The School will provide all instruction in a virtual setting.

### 3.6 Enrollment Cap and Authorized Grade Levels.

The School shall serve no more than \_\_\_\_\_ students in grades \_\_\_\_\_.<sup>4</sup>

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.

### 3.7 Authorized Facility and Facility Occupancy Capacity.<sup>5</sup>

[Check one]

The School will provide in-person instruction as described in 3.5 above at the Facility identified below:

School Name:

Street Address:

City, State, Zip:

<sup>4</sup> The School may request that the enrollment cap or grade levels be amended by submitting an amendment form. (Current PEC Procedure Form A.3 and A.4)

<sup>5</sup> The School may request that the location of the School be amended by submitting an amendment form. (Current PEC Procedure Form A.7 and 8.)

The School may not exceed the approved occupancy capacity of the Facility, which is \_\_\_\_\_. The School may move facilities by following the PEC procedure processes.

OR

Virtual Instruction only. The School is approved as a school that is authorized to provide all virtual instruction, and stores school records and identifies its principal place of business at the following location:

Street Address:

City, State Zip:

**3.8 Third Party Contracts and Relationships**

**3.8.1 Public Funds Limitation.** The Governing Body shall not contract with a for-profit entity for the management of the charter school.

**3.8.2 Essential Third Party Relationship Declaration.**<sup>6</sup>

[Check one]

Not Applicable.

The Governing Body or School has a contractual relationship with a third-party entity or individual that is a foundational element to the implementation of the School’s Mission or educational program. That third party is \_\_\_\_\_ and provides the following service to the School \_\_\_\_\_.

The School has provided the required documentation related to this relationship as set forth in the PEC Procedures (Document A.6).

**3.8.3 Foundation Declaration.**

[Check one]

Not Applicable.

The School has a relationship with \_\_\_\_\_, a non-profit foundation the primary purpose of which is \_\_\_\_\_.

[Check all that are applicable]

to provide financial support to the School through grants or other funds generated by the nonprofit.

to provide a Facility paid for by the School, which includes the following \_\_\_\_\_.

<sup>6</sup> The School may request that the contractual relationship information be amended by submitting an amendment form. (Current PEC Procedure Form A.6.)

- to utilize funds contributed by the School for the following additional purposes:

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The School has provided the required documentation related to this relationship as set forth in the PEC Procedures (Document A.6).

**3.9 Transportation & Food Services**

The School is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services.

*[Check one of each]*

The School:

- provides transportation; or
- does not provide transportation.

The School:

- provides food services to include:  breakfast  lunch  snacks; or
- does not provide food services presently, but intends to provide food services as follows:

follows:

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**3.10 Notification of Discretionary Waivers.** The following discretionary waivers have been approved by the Secretary. The School will update this list as needed<sup>7</sup>. The School shall be entitled to implement all mandatory waivers as contemplated pursuant to NMSA 1978, §22-8B-5(C) without notice to the Commission.

*[Check one.]*

- Not Applicable.
- Discretionary waivers approved by PED Secretary:

Waiver	Date Approved

**3.11 Tribal Consultation.**

The Public Education Department provides annual designation to schools on tribal consultation. A school designation and the requirements of the school may change from year to year.

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<sup>7</sup> Notification of additions to this list as approved by the Secretary shall be provided on a Notification form.

The information is posted at <https://webnew.ped.state.nm.us/bureaus/indian-education/tribal-consultation/>.

[check all that apply]

Not applicable at the present time. The School understands that it may be designated to provide tribal consultation during the term of the Charter and, if so designated, will comply with the requirement.

The School is located on tribal land of \_\_\_\_\_ and shall consult with the educational liaison identified at the Department for consultation as required by law and prior to any action that may result in the School's closure in accordance with the requirement of the Charter Schools Act.

The School is required to consult with \_\_\_\_\_ [insert tribal entity] pursuant to law because of the number of Native children enrolled at the School and shall consult with the educational liaison identified at the Department for consultation as required by law.

#### **SECTION 4. SCHOOL EVALUATION AND OVERSIGHT.**

Pursuant to, and consistent with, the Charter Schools Act and the Commission Rule and PEC Procedures, the School's performance assessment will be conducted as follows:

**4.1 Annual Review and Corrective Action regarding Unsatisfactory Performance.** The Commission shall conduct an evaluation of the School each year of this Charter Contract term according to the requirements of the Charter Schools Act, Commission Rule, PEC Procedures, and the evaluation criteria set forth in the Performance Framework. (§22-8B-12(E.) NMSA 1978, and 6.2.9.12 and 13 NMAC) and the provisions of this Charter Contract.

**4.1.1 Annual Site Visit.** The Commission will conduct an annual site visit required by the Charter Schools Act (§22-8B-12(E), NMSA 1978) using a Commission-approved annual site visit protocol that is adopted pursuant to PEC procedures and consistent with the Commission Rule. In conducting the annual site visit and development of the phase 1 annual report as defined in the Commission Rule, the CSD, as staff for the Commission, and the School will provide the required documentation, and adhere to the procedures, timelines and notice requirements set forth in the Commission Rule (6.2.9.7.(W.) and (Y.), 6.2.9.12.(A.), (B.) and (C.)(1) and (2) NMAC).

**4.1.2 Annual Assessment.** The annual assessment will be conducted pursuant to the Commission Rule (6.2.9.12.(C.)(3), (4), (D.) and (E.) NMAC) through the following:

A. An assessment of educational programming of the School set forth in Section 3 above and the performance indicators and performance targets negotiated between the Parties and set forth in the Performance Framework;

B. An evaluation conducted during the annual site visit, as evaluated through the CSD's review and the School's response to any such review or annual site visit;

C. Through the final annual report provided to, and accepted by, the Commission, including CSD's findings and recommendations related to an annual report notice and the School's response related to the annual report and recommendations; and

D. Through annual report notices provided by the Commission.

**4.1.3 Correction of Unsatisfactory Performance.** The School will correct unsatisfactory performance by taking such action as authorized by the Commission in the Commission Rule (6.2.9.13 NMAC) or otherwise established by the Commission in specific direction to the School.

**4.2. Performance Framework.** The Commission shall assess the School's academic, operational and financial performance based on performance indicators and performance targets set forth in the Performance Framework. The Performance Framework includes indicators and targets as required by law or as negotiated by the Parties. The evaluation of the School's performance based on the Performance Framework shall be conducted using the criteria set forth in the Performance Framework, which shall not be modified without an amendment to this Charter Contract.

**4.3 Evaluation of the Performance Framework and Conditions.** The School shall maintain records that evidence compliance with its obligations under the Charter Contract, including the Performance Framework and any conditions imposed. The data shall be reported on the monitoring documents referenced in Sections 2.1 and 3.2 above.

**4.4 Notification of Unsatisfactory Performance and Intervention Ladder.** The Commission shall address the School's unsatisfactory performance or other performance deficiencies meriting corrective action, up to and including those serious enough to lead to non-renewal, renewal with conditions, or revocation pursuant to the procedures, timelines and notice requirements set forth in the Commission Rule (6.2.9.12, 6.2.8.13, 6.2.8.15, and 6.2.8.16 NMAC).

**4.5 Renewal.** Within the time period established by the Charter Schools Act and pursuant to 6.2.9.15 NMAC, the Governing Body may submit a renewal application to the Commission on forms approved by the Commission pursuant to the Commission Rule. The application shall include all information required by law. Legal grounds for nonrenewal are articulated in §22-8B-12(K) NMSA 1978 of the Charter Schools Act. The Commission shall follow the procedures and requirements of the Commission Rule before voting to deny renewal or before imposing conditions on renewal of a Charter Contract.

**4.6 Revocation.** The Commission may take action to revoke the Charter Contract in accordance with procedures, timelines and notice requirements provided in the Charter Schools Act, the Commission Rule, and the Department Rule. The Commission must demonstrate that the School has violated any one of the reasons set forth in §22-8B-12(K) NMSA 1978 of the Charter Schools Act.

**4.7 Written Decision.** If the Commission revokes, does not renew or renews with conditions, it shall state in writing its reasons and legal grounds for its actions established at the hearing on the matter and comply with any requirements set forth in the Commission Rule and Department Rule.

**4.8 Appeal.** If the Commission suspends, revokes, does not renew or renews with conditions, the School may appeal the decision to the Secretary pursuant to the Charter Schools Act and the Department Rule (6.80.4.14 NMAC).

## **SECTION 5: ROLE AND RESPONSIBILITIES OF THE COMMISSION**

The Commission, as the Chartering Authority, shall take the following action.

**5.1 Comply with Legal Obligations.** The Commission shall conduct its oversight and monitoring of the School in accordance with all laws, regulations and policies applicable to it, including, but not limited to the Charter Schools Act, the Commission Rule, the Department Rule, PEC Procedures, the Open Meetings Act (§§10-15-1, *et seq.* NMSA 1978) and the Government Conduct Act (§§10-16-1, *et seq.* NMSA 1978).

**5.2 Timely Response to Submissions.** The Commission shall evaluate all submissions by the Governing Body or School, including amendment requests, and act in accordance with this Charter Contract, the Charter Schools Act, the Commission Rule, and the PEC Procedures on each submission or request.

**5.3 Commission Use of Withheld Funds.** Pursuant to § 22-8B-9 (B)(8) NMSA 1978, the Commission will use the withheld funds of the school-generated program cost and provide details of how the funds are used as follows:

By June 30 for each year of the term of this Charter Contract, the Commission shall direct the CSD to post to the Commission Website an oversight and expenditure budget estimate for the upcoming year using the monies withheld from the budgets of the charter schools authorized by the Commission.

Pursuant to § 22-8B-13 NMSA 1978, CSD may withhold and use up to two percent of the school-generated program cost for its administrative support of a charter school.

## **SECTION 6: ROLE AND RESPONSIBILITIES OF THE GOVERNING BODY**

**6.1 Comply with Legal Obligations.** The Governing Body shall conduct its oversight of the School in accordance with all laws, regulations and policies applicable to it, including, but not limited to the Charter Schools Act, the Commission Rule, the Department Rule, PEC Procedures, the Open Meetings Act (§§10-15-1, *et seq.* NMSA 1978) and the Government Conduct Act (§§10-16-1, *et seq.* NMSA 1978).

**6.2. Governing Body Membership requirements.** The Governing Body shall consist of no fewer than five members, and the Governing Body will require each member to comply with training requirements consistent with law.

### **6.3 Board of Finance Designation.**

**6.3.1 Required Information.** The Governing Body shall, at all times, be qualified and designated to act as a board of finance as contemplated by §22-8-38(B), NMSA 1978 and Department Rule, 60.8.4.16 NMAC and shall complete and keep current documents as required by PEC Procedures.<sup>8</sup>

**6.3.2 Board of Finance Suspension.** If at any time, the Governing Body's qualification as a Board of Finance is suspended by the Department pursuant to §22-8-39 NMSA 1978 or otherwise, the Commission shall consider whether to issue a notice of breach under the Intervention Ladder as defined by the Commission Rule or commence proceedings to revoke or non-renew the charter for failing to

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<sup>8</sup> See Section 2.2 above.

meet generally accepted standards of fiscal management as contemplated by §22-8B-12(K)(2) NMSA 1978. If the Commission decides not to revoke or does not deny a School's renewal because of the Department's suspension of the board of finance, the Governing Body shall be required to develop and successfully implement a Commission-approved Corrective Action Plan in consultation with the Department to address the reasons for the suspension of the board of finance designation to obtain this designation again within a reasonable time.

**6.4 Insurance Required.** The School shall obtain insurance coverage through, and in types and amounts required by, New Mexico Public School Insurance Authority unless an exception is provided as authorized by law.

## **SECTION 7: INTERACTIONS BETWEEN THE PARTIES.**

**7.1 Facility Access Required.** The School shall allow the Commission and the CSD to visit the Facility with reasonable notice to conduct the oversight and monitoring responsibilities as contemplated by and in the same manner as defined in §22-8B-12 NMSA 1978, Commission Rule and this Charter Contract.

### **7.2 Commission access to School records.**

**7.2.1 Information supporting the Contract and Performance Framework.** The School shall provide information required to assess compliance with this Contract, the Performance Framework, as needed for the annual report and as may be reasonably requested by the Commission upon reasonable notice, which shall be no sooner than 10 days unless exigent circumstances exist. The School shall provide such permission as is needed for the Commission and/or CSD to obtain data directly from a vendor used by the School to confirm data used in the Performance Framework.

**7.2.2 Method for Obtaining Information.** The Commission shall direct CSD to first attempt to obtain the information sought from the Department if the Department maintains the data through reporting platforms, including but not limited to, OBMS and STARS. The Commission will

- a. utilize classroom or school-level data when possible;
- b. will be provided with redacted student-level information if student-level data is reported; and
- c. will only be provided with students' personally identifiable information consistent with the requirements of the Family Education Rights and Privacy Act (20 U.S.C. §1232g; 34 CFR Part 99).

The Commission and CSD shall meet all requirements of 34 CFR Part 99.31 before and after accessing student personally identifiable information.

### **7.3 Records.**

**7.3.1 Student Records.** The School shall maintain student records in accordance with all federal and State laws, including those regarding privacy and State public records retention requirements.

**7.3.2 Student Attendance and Instructional Hours.** The School shall maintain daily attendance records and comply with the number of Instructional Hours required by State law, based on the grade levels served, which may be verified by the School’s calendar submitted to the Department during budget development and through the Department’s STARS platform.

**7.3.3 Notice of Violation of Law.** The School shall

A. provide a written copy to the Commission of a final determination from a state or federal court or administrative agency with jurisdiction over the subject matter of a violation of law by the School;

B. comply with §22-10A-5.1 NMSA 1978 regarding reporting of ethical misconduct and ensure compliance of the School staff with 6.60.9 NMAC related to the code of conduct for school employees;

C. notify the Commission within 15 days of being notified by a governmental entity with jurisdiction of a charge or a conviction(s) for any crime related to the misappropriation or theft of School funds or property by a member or School employee. All personal identifiers shall be redacted and not disclosed publicly by the CSD or the Commission unless compelled to do so, and

D. notify the Commission within 15 days if the School reports an issue to a governmental entity with jurisdiction to investigate any crime related to the misappropriation or theft of School funds or property by a member or School employee, or if the School is made aware of that the Department is taking action against the license of one of its employees for any reason, including failure to comply with 6.60.9 NMAC. All personal identifiers shall be redacted and not disclosed publicly by the CSD or the Commission unless compelled to do so.

**SECTION 8: STANDARD TERMS**

**8.1 Notice.** Any notice required, or permitted, under the Charter Contract shall be in writing and shall be effective immediately upon personal delivery, upon receipt of electronic mail, or 3 days after mailing to the following:

<b>School:</b>	<b>New Mexico Public Education Commission:</b>
<p>To: Head Administrator Governing Body Chair</p> <p>At the email addresses provided by the School to the CSD for the CSD-maintained school directory.</p> <p>Email is the primary notification.</p>	<p>To: Chair of the Public Education Commission New Mexico Public Education Commission</p> <p>300 Don Gaspar Santa Fe, NM 87505</p> <p>At the email address of the Chair of the Public Education Commission as listed on the Commission Website with a copy to: <a href="mailto:charter.schools@ped.nm.gov">charter.schools@ped.nm.gov</a></p> <p>Email is the primary notification.</p>



**8.2 Applicable Law.** This Charter Contract shall be governed and interpreted in accordance with applicable New Mexico and federal laws.

**8.3 Amendments.**

**8.3.1** Either party may amend this contract, and such request shall be considered in good faith by the other.

**8.3.2** In the event of a change in a statute passed by Congress or the New Mexico Legislature or a state or federal constitutional change that affects the rights or obligations of the Parties to this Charter Contract, this Charter Contract shall be deemed to be amended to conform to the new law unless to do so would cause an unconstitutional impairment of contract.

**8.3.3** If the Commission amends or modifies the Commission Rule during the term of this Charter Contract, and the School believes that the Commission Rule change impairs the School's rights, obligations or performance of this Charter Contract, the School shall notify the Commission within ninety days, and the parties shall negotiate an amendment to this Charter Contract in good faith, unless said Commission Rule amendment or modification is required by a change in state or federal law.

**8.3.4** In the event of a change in the law or the Commission Rule, either party may request that the Parties clarify this Charter Contract as it relates to the law change. If a Charter Contract amendment proposed by either Party cannot be agreed upon, either Party may appeal the impasse to the Secretary as provided in § 22-8B-9, NMSA 1978. The Charter Contract shall not be otherwise altered, changed or amended except as approved in writing by the Parties.

**8.4 Waiver.** Either Party's failure to insist on strict performance of any term or condition of the Charter Contract shall not constitute a waiver of that term or condition.

**8.5 Invalid Term or Condition is Severable.** The provisions of this Charter Contract are severable. If any term or condition is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Charter Contract shall not be affected, shall be valid and enforceable.

**8.6 Assignment.** Neither Party may assign its rights or interest in this Charter Contract unless authorized by law and agreed to by both Parties. The School may apply to a new authorizer at renewal of the charter contract.

**8.7 Dispute Resolution:** Disputes between the School and the Commission shall be subject to the dispute resolution process set forth in this section.

**8.7.1 Scope.** Except as otherwise provided herein, if either Party has a dispute regarding interpretation or implementation of a Charter Contract provision, that Party shall present the dispute to the other Party in writing. The following shall not be subject to this dispute resolution provision:

- A. interpretation of state or federal statute, regulation, or policies applicable to the Charter Contract, the School or Commission,
- B. a CSD recommendation(s), or

- C. a Commission’s authorizing decision(s) under the Charter Schools Act.

**8.7.2 Notice of Dispute:** Notice must be provided in writing that a dispute exists within 30 days from the date the dispute arises (“Notice of Dispute”). The Notice of the Dispute must describe the dispute and provide:

- A. the Charter Contract provision at issue,
- B. the specific reasons the Party contends the other Party’s implementation or interpretation of the Charter Contract provision is in error,
- C. a statement of the facts giving rise to the dispute,
- D. documents supporting that Party’s position
- E. a desired resolution including specific language to clarify the Charter Contract, and
- F. the names of proposed neutral mediators, along with a description of the qualification of the mediator and each person’s availability within a 30-day time period to hear the dispute. The mediator shall not be an employee of the Department.

**8.7.3 Continuation of Charter Contract Performance:** The Governing Body and the Commission agree that the existence and details of a dispute under this Section 8.7 shall not excuse performance by either Party during the pendency of the dispute, except for any performance that may be directly affected by such dispute.

**8.7.4 Response to Notice/Informal Process:** Upon receipt of a Notice of Dispute, the Commission or the Governing Body shall have 10 days to respond in writing. The written response may:

- A. Accept the proposal or propose an alternative solution to cure the dispute, including specific language to clarify the Charter Contract;
- B. Propose informal discussions to resolve the matter; and/or
- C. Accept or reject the proposed mediator. If the proposed mediator is not acceptable, an alternative name of a mediator, along with a description of the qualification of the mediator and that person’s availability within a 30-day time period to hear the dispute. The mediator shall not be an employee of the Department.

**8.7.5 Appointment of a Mediator and Mediation.**

- A. Within five days of the written response, the Parties shall select a mutually acceptable mediator.
- B. If no mutually acceptable mediator has been selected within five days, the Parties will jointly request that, within 15 days of the Parties’ request, the Secretary identify an available, qualified and willing mediator. The mediator shall not be an employee of the Department.
- C. The Parties shall jointly retain the mediator and agree on a mutually-agreed upon date and time for the mediation. The mediation shall be no later than 30 days from the date that

the mediator is selected unless extenuating circumstances exist. The Parties agree to mediate the dispute in good faith.

**8.7.6 Resolution and payment.**

A. Any proposed agreement reached in mediation must be memorialized in writing and presented to, and approved by, the Commission and the Governing Body during public meetings of those bodies prior to it being considered a binding agreement between the Parties. If either Party makes a change to the proposed agreement, the change must be approved by both entities.

B. If the written agreement includes a modification of the contract, the written agreement shall then constitute an amendment to the Charter Contract and shall be added to the Charter Contract documentation.

C. 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.

By the signature below, the person signing represents that he/she has authority to execute this Charter Contract on behalf of the School/Commission and that this Charter Contract was reviewed and approved by that entity in a public meeting.

Governing Body of \_\_\_\_\_

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By Charter Representative:

\_\_\_\_\_  
[NAME], \_\_\_\_\_ [Title]

New Mexico Public Education Commission

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[NAME], Chair.