



**The State of New Mexico**

**New Mexico  
Public Education Commission**

**DRAFT**  
**Charter School Performance  
Contract**  
**2012**

Between The  
New Mexico Public Education  
Commission or  
[Name of Local Authorizer]

And

[Name Of Charter School]

[Date]

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This charter contract (“Contract”), effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ is made and entered into between (*select one of the following authorizers who is entering into this Contract*)

the New Mexico Public Education Commission (“Commission” or “Authorizer” if a state chartered school is authorized)

OR

[*Name of Local Authorizer*] (“Local Authorizer” or “Authorizer” if a locally chartered school is authorized)

and [*name of charter school*], a public charter school (“School”). Collectively, these entities are referred to as the “Parties.”

The Secretary of the New Mexico Public Education Department is authorized to hear appeals from the Parties (“Secretary”).

## **Article I. Recitals.**

### **Section 1.01 Purpose.**

The Charter Schools Act<sup>1</sup> (“Act”) enables a charter school

- to structure its educational program and curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices, or have been replicated successfully in schools with diverse characteristics;
- to develop different and innovative ways of measuring student learning and achievement which addresses the needs of all students, including those determined to be at risk;

- to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- to improve student achievement;
- to provide parents and students with an educational alternative by creating new, innovative and more flexible ways of educating children within the public school system;
- to encourage parental and community involvement in the public school system; and
- to develop and use site-based budgeting that meets state fiscal requirements.

### **Section 1.02 Description of the Roles of the Parties**

In order to meet the purposes of the Act, the School will determine the process it uses to achieve successful outcomes for the students it serves. The Authorizer's role will be to evaluate the School's outcomes rather than establish the process by which the School achieves the outcomes sought.

### **Section 1.03 Description of Protocol for Oversight**

In order to improve overall performance, the Parties will use a graduated system of oversight and intervention to maintain the balance between School autonomy and appropriate Authorizer oversight. In order to implement a protocol of continuous improvement or to address issues that are not of serious concern, the School may present the Authorizer with improvement plans from time to time to address identified issues. For issues that warrant more formal intervention, the Parties may implement a corrective action plan. If warranted for statutorily denoted acts arising out of the



operations of the School, the Authorizer may implement suspension or revocation procedures.

#### **Section 1.04 History**

On \_\_\_/\_\_\_/20\_\_\_, an application for a new charter school was submitted by eligible applicant(s) and approved according to the Act to establish the School. **[Add if applicable: The school has been renewed \_\_\_\_\_ times in \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ and amendments have been made to the original charter application during the renewal process]** On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, pursuant to the criteria set forth in the Act, the Authorizer passed a resolution approving the School. See, Exhibit 1, Resolution of the Authorizer.

### **Article II. Parties, Notice and Intent.**

#### **Section 2.01 Parties**

**[ ] For State Charters.** The Commission is created pursuant to the Article XII, Section 6 of the New Mexico Constitution and has powers as accorded to it by law. The Commission is authorized to receive applications for initial charter applications that request to be authorized by the state<sup>ii</sup>. (The Commission shall be referred to as “Authorizer” from this point forward.)

The Charter Schools Division (CSD) of the New Mexico Public Education Department (NMPED) shall provide staff support to the Commission to perform its oversight functions; provide technical support to the School and make recommendations

regarding denial, suspension or revocation of the School<sup>iii</sup>. The CSD shall be responsible for overseeing the implementation of this Contract.

**[ ]** *For Local Charters.* The local school board (“Local Authorizer”) has the authority to approve the establishment of a charter school within its district boundaries<sup>iv</sup>.

The Superintendent and other administrative employees of a local school board may provide staff support to the Local Authorizer to perform its oversight functions, provide technical support to the School and make recommendations regarding denial, revocation or suspension of the School. The Superintendent may be asked by the Local Authorizer to oversee the implementation of this Contract on behalf of the Local Authorizer. (The Commission or Local Authorizer shall be referred to as “Authorizer” from this point forward.)

The School Governing Board may ask its Head Administrator to oversee the implementation of this Contract on behalf of the School.

## **Section 2.02      Notice.**

Any notice required, or permitted, under this Contract shall be in writing and shall be effective upon personal delivery (subject to verification of service or acknowledgement of receipt) or three days after mailing when sent by certified mail, postage prepaid to the head administrator for notice to the School, or to the designated Authorizer representative for notice to the Authorizer at the addresses set forth below. Either Party may change the address for notice by giving written notice to the other Party.

<input type="checkbox"/> For State Charters <b>New Mexico Public Education Commission</b> C/O Director, Options For Parents New Mexico Public Education Department 300 Don Gaspar, Room 301 Santa Fe, New Mexico 87505	<input type="checkbox"/> For Local Charters [Name of Local Authorizer] [Mailing Address]
<b>Charter Schools Division</b> C/O Director, Options For Parents New Mexico Public Education Department 300 Don Gaspar, Room 301 Santa Fe, New Mexico 87505	
[Name Of School] <b>School Board Contact</b> [Mailing Address]	
<b>Head Administrator</b> [Mailing Address]	

### Section 2.03 Creation of Essential Documents

Essential Documents. This Contract, the Performance Frameworks and annual target goals set under the Performance Frameworks together form the essential documents governing the Parties (“Essential Documents”). The decision to renew the charter at the end of the term shall be based on these documents and the School’s performance on the Performance Frameworks.

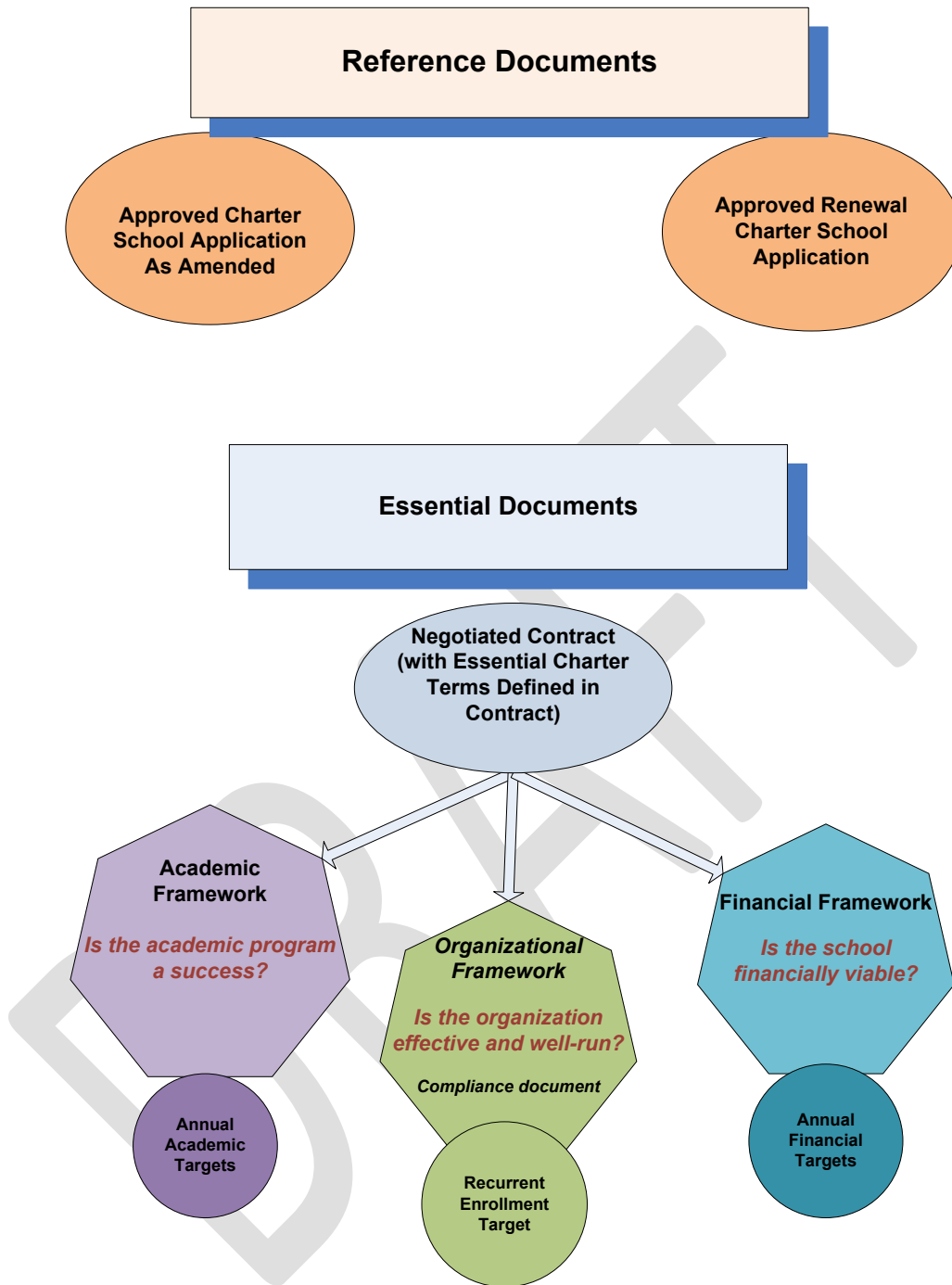
Key Elements of Charter and Renewal Applications Incorporated. The most recent and current approved charter document (“Charter”)<sup>v</sup> is attached as Exhibit 2. The Charter is attached a reference document, but is *not* one of the essential documents governing the

Parties. The key provisions of the Charter are incorporated as part of the Contract and are listed in Article 6 below.

[*Add if applicable* The key provisions of the renewal application have resulted in negotiated terms that are incorporated into this Contract. The charter renewal application itself is *not* one of the essential documents defined below.]

#### **Section 2.04 Amendment to the Contract Is Construed as an Amendment to the Charter.**

The Parties agree that the only provisions of the Charter required to be amended (if the School seeks to change any of those provisions) are those listed as material terms in Article 6 below. The Parties agree that an amendment to Article 6 of this Contract will also be construed to be an amendment to the Charter without further action by either Party.



The Parties, therefore, agree to establish a New Mexico public charter school according to the following terms and conditions of this Contract and the other Essential Documents.

## Article III. General Governing Principals

### Section 3.01 Public Charter School

A charter school is authorized by the Authorizer to operate as a public school, but is a separate legal entity from the Authorizer<sup>vi</sup>. Notwithstanding its existence as a separate legal entity, the School is subject to all applicable state and federal laws, regulations, rules, and policies unless waived<sup>vii</sup>. As a governmental entity within the meaning of the Tort Claims Act<sup>viii</sup>, the Charter School is entitled to consideration as a political subdivision of the state including certain protections regarding immunity.

### Section 3.02 Term of the Charter.

The term of this Contract shall be for an initial term of five years, beginning July 1, 20\_\_ through June 30, 20\_\_.

### Section 3.03 Availability of Funds.

Although this Contract is for operation of the School for the term of the Contract, any financial commitment on the part of the NMPED and the Authorizer contained in this Contract is subject to the annual appropriations of the New Mexico Legislature.

### Section 3.04 Board of Finance.

*For State Charters.* The governing body of the School is qualified as a Board of Finance.

*For Local Charters.* The governing body of the School is not required to be designated as a Board of Finance.

## **Article IV. Oversight to Allow Autonomy**

### **Section 4.01 Oversight allowing autonomy.**

The Authorizer shall comply with the provisions of the Act and the terms of the Contract in a manner that does not unduly inhibit the autonomy granted to the School. In order to meet the purposes of the Act, the School will determine the process it uses to achieve the successful outcomes for its students. The Authorizer's role will be to evaluate the School's outcomes according to this Contract and the Performance Frameworks rather than establish the process by which the School achieves the outcomes sought.

#### **(a) Curriculum, Instructional Program, Student Performance Standards.**

The School shall have the authority and responsibility for designing and implementing its educational plan.

#### **(b) Site Based Management.**

The School is responsible for its own operation, including preparation of a budget; is subject to audits<sup>ix</sup>; and may contract for services and address personnel matters in accordance with the School Personnel Act<sup>x</sup>.

#### **(c) Right to Sue.**

The School's governing body may contract; sue and be sued.

#### **(d) Limitation on Liability.**

The Authorizer shall not be liable for any acts or omissions of the School<sup>xi</sup>.

#### **(e) Employees.**

All employees hired by the School shall be employees of the School for which the Authorizer has no employment responsibility. The Authorizer shall have no obligation to employ a School employee whose employment has been severed whether voluntarily or involuntarily.

**(f) Waivers.**

***(i) Automatic Waivers***

The School shall be waived from the requirements of the Public School Code pertaining to individual class load, length of the school day, staffing patterns, subject areas, purchase of instructional materials, evaluation standards for school personnel, school principal duties and driver education<sup>xii</sup>. Waivers granted pursuant to this paragraph shall be effective for the term of the Contract<sup>xiii</sup>.

***(ii) Discretionary Waivers.***

The School requests the following waivers for the following reasons

Waiver	Rationale for Request

The Authorizer shall, within 30 days from the execution of this agreement, deliver any request by the School to be waived from NMPED rule or the Public School Code, to



the NMPED. If the request is denied, the NMPED shall notify the Authorizer and the School in writing of the denial and reasons. If denied, the School shall, within 30 days of the NMPED's notice of denial, submit a proposed amendment to the Authorizer addressing the denied waiver, if necessary.

***(iii) Subsequent Waivers.***

The School may request additional waivers after the initial request. Any new waiver requests shall be processed according to NMPED waiver request procedures, and, if approved, added to this Contract by creating an amended list of approved waivers.

***(iv) Approved Waivers.***

The Parties shall attach a complete list of approved waiver as Exhibit 3 to this Contract. If new waivers are submitted and approved, the list of approved waivers shall be updated. The list of waivers attached to this Contract shall be deemed an amendment of the Charter as well without further action by either of the Parties.

***(g) Policies***

The School agrees to provide acceptable replacement policies for the automatic waivers, as needed.

*For State Charters.* The School shall be exempt from local district policies and shall, instead, develop policies and procedures to the extent required by applicable law and regulation.

*For Local Charters.* The School shall

*(select one)*

adopt the Authorizer's policies or

[ ] be waived from the Authorizer’s policies and shall, instead, develop policies and procedures to the extent required by applicable law and regulation.

#### **(h) Acquisition of Property and Gifts**

The School, within constitutional and statutory limits, may acquire and dispose of property; provided that, upon termination of the Charter, the following will occur.

[ ] *For State Charters.* All assets of School shall revert to the state, except that, if all or any portion of a School facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board;

OR

[ ] *For Local Charters.* All assets of the School shall revert to the Authorizer<sup>xiv</sup>.

The School’s governing body may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the material terms of this contract as set forth in Article 6 below. The particular gift, grant, devise or bequest shall be considered an asset of the School.

### **Section 4.02 Funding and Services for Pay**

#### **(a) Authorizer Budget for Two Percent Administrative Fee.**

The amount of funding allocated to the School shall be not less than ninety-eight percent of the school-generated program costs<sup>xv</sup>. The Authorizer may withhold and use the two percent of the school-generated program cost for its administrative

support of the School. The Authorizer shall use the two percent fee for the following purposes:

**[insert the intended use of the 2%]**

**(b) Federal Program Funding for Charters.**

*For State Charters.* The School is authorized by law to apply for federal funding for which it may be eligible<sup>xvi</sup>.

*For Local Charters.* When the School is serving students eligible for funding, the portion of money from state or federal programs generated by students enrolled in the School shall be allocated to the School. The School is not entitled to receive funding for programs it does not offer<sup>xvii</sup>.

The School shall receive the following Title II of the Elementary or Secondary Education Act (“Title II”)<sup>xviii</sup> or other staff training funds or the benefits from the Authorizer’s Title II or other staff training funding as follows:

**[Identify the Teacher Training resources here, including Special Education training.]**

**(c) Annual Audits.**

The School agrees to pay its proportionate share of the Authorizer’s audit expense and to budget an appropriate amount annually to pay that amount for purposes of conducting the annual audit.

*Select one:*

The School has an associated not-for-profit foundation named \_\_\_\_\_, and the foundation is designated as a component

unit of the School. The School shall pay a reasonable, additional amount to include the not-for-profit foundation in the School's audit.

OR

The School does not have an associated not-for-profit foundation that is designated as a component unit of the School.

***(i) School Delay in Audit.***

If, for causes within the School's control, and after the Authorizer provides the School with written notice of potential default and an opportunity to timely provide the requested information, the School audit is not completed on or before  each year, it shall be considered a material breach of this Contract. The Authorizer shall provide written verification to the auditor and the School that the School caused the late audit and that the delay was within the School's control.

**(d) Contract with for Services between the Authorizer and the School – Local Charters**

The Authorizer agrees to provide the services described in Exhibit 4 to the School according to the fee schedule described therein. The fees charged by the Authorizer are for a reasonable cost and shall not be increased during the term of this contract unless agreed to by the School in writing. Either Party may terminate the services described in Exhibit 4 with no less than 30 days written notice to the other.

OR

The School has independently contracted with other providers for services needed.

#### **(e) Food Service**

According to the Charter, the School

will provide for food services. Food services shall be provided in a manner that is in compliance with applicable federal and state laws regarding public school food programs.

OR

will not provide food services

will only provide free breakfast under the Free School Breakfast Program. Food services shall be provided in a manner that is in compliance with applicable laws regarding public school food programs.

#### **(f) Third Party Contracts**

The School may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the School is required to perform in order to carry out the educational program described in the material terms of the Contract as set forth in Article 6 below.

The School shall not contract with a for-profit entity for the management of the School.

If the School contracts with a third-party provider for goods and services in excess of \$25,000.00, the Parties shall use the following criteria and procedures for the

Authorizer to review the provider's contract which preserves the School's financial independence from the provider<sup>xix</sup>.

**[ ]** *For State Charters or Local Charters electing to adopt this Provision*

1. The terms of this section do not apply to personnel contracts. The School is not required to seek the Authorizer's approval of any personnel contracts.
2. For all single purchases of goods or non-employee services in excess of \$25,000.00, the School shall submit to the Authorizer or its staff, the proposed agreement and a statement including the name and contact information of the service provider, a signed statement by the provider disclosing any affiliation to the School or any of its employees or governing body members, which shall also be signed by the head administrator.
3. The Authorizer shall respond in writing within 10 working days as to whether there is any cause to believe that the statement is not satisfactory or whether there are concerns of impropriety by the School or vendor and the basis for such determination. If there is no response, the Authorizer shall be deemed to have consented to the contract, its terms, and the selected vendor.
4. If the Authorizer raises any concern regarding the Contract, the School may submit a response within 10 working days.
5. The Authorizer must then agree to allow the contract or deny the request in writing within 10 days.
6. If the Parties cannot agree on whether or not the contract is proper, either Party may request that the Secretary make a final decision regarding the contract. The Parties agree to be bound by the Secretary's decision.

7. Once this process is complete and has resulted in the School entering into the Contract, the School is not required to submit subsequent contracts with the same provider to the Authorizer.

OR

*For Local Charters*

*Identify review process to be used here*

**(g) Master Plan.**

*For State Charters.* The School shall prepare its own facility master plan in compliance with the rules of the Public School Capital Outlay Council and the Public Schools Capital Outlay Act<sup>xx</sup>.

OR

*For Local Charters.* The School shall be included in the district's facility master plan.

**(h) Transportation.**

*For State Charters.* The School has agreed to provide student to-and-from transportation<sup>xxi</sup>. The School agrees to provide said transportation in the manner described in Exhibit 5.

OR

*For Local Charters.* The Authorizer agrees to provide to-and-from transportation to all eligible students of the School.

OR

The School, in accordance with the Act, shall not provide student to-and-from transportation. The School may contract with qualified transportation providers for

special events. The School will ensure that students with disabilities shall comply with their qualified IEP or Section 504 plan related to transportation.

**(i) Extracurricular Activities.**

**[ ]** *For Local Authorizers.* The Authorizer shall allow the School's students in grades 7 through 12 to participate in school district extracurricular activities sanctioned by the New Mexico Activities Association if they meet eligibility requirements. If a student from the School participates in the local district's athletic programs pursuant to this provision, the Authorizer shall include that student in the district's annual report on its athletics program<sup>xxii</sup>.

**Section 4.03 Access to Data and State Assessment.**

The Authorizer or its designee shall provide the School with substantive information pertaining to the School in a timely way that is otherwise not provided directly to the School by the NMPED, including, but not limited to, test scores, Elementary and Secondary Education Act school improvement status, A-F school grading designation, Common Core alignment information, special education notices, and funding information.

**Section 4.04 Data Available through student information systems.**

To the extent possible the Authorizer shall not request reports from the School that are otherwise available through student information systems or other data sources reasonably available to the Authorizer; including but not limited to those data sources created and kept by the NMPED.



In the event that information requested on the reports is available to the Authorizer from the student information systems or other data sources reasonably available to the Authorizer, the Authorizer shall pre-populate required reports and provide this pre-populated report to the School.

#### **Section 4.05      Process for Oversight.**

The Authorizer will develop and publish the criteria, processes and procedures that the Authorizer will use for ongoing oversight of organizational, financial and academic performance of the School; including the method that the Authorizer intends to use to conduct annual site visit and the evaluation<sup>xxiii</sup>. The process developed will utilize national best practices for Authorizer oversight.

In order to improve overall performance, the Parties will use a graduated system of oversight and intervention. In areas where the School needs improvement as identified by results of the assessment of the School under the Performance Framework or otherwise identified by the Parties, the School may present improvement plans to the Authorizer for approval which are intended to improve school performance and outcomes. The School will report to the Authorizer on the progress of the improvement plans from time to time. For issues that warrant more formal intervention, the Parties may implement a corrective action plan. If warranted due to statutorily denoted acts arising out of operation of the School, the Authorizer may implement revocation or other procedures.

#### **Section 4.06      Authorizer Monitoring.**

The Authorizer or the Authorizer’s staff shall make at least one visit annually to the School<sup>xxiv</sup> (“annual site visit”). The Authorizer or the Authorizer’s staff, however, shall conduct such monitoring activities as it deems appropriate to ensure that the School is complying with the terms of this Contract and Essential Documents. Except in extraordinary circumstances, Authorizer visits should be pre-arranged and with reasonable notice to avoid needless disruption of the educational process. The Authorizer reserves the right for it, its staff, or authorized representatives to make unannounced visits to open meetings or the School under circumstances that constitute extraordinary circumstances.

#### **Section 4.07 Annual Site Visit/ Site Visit Report.**

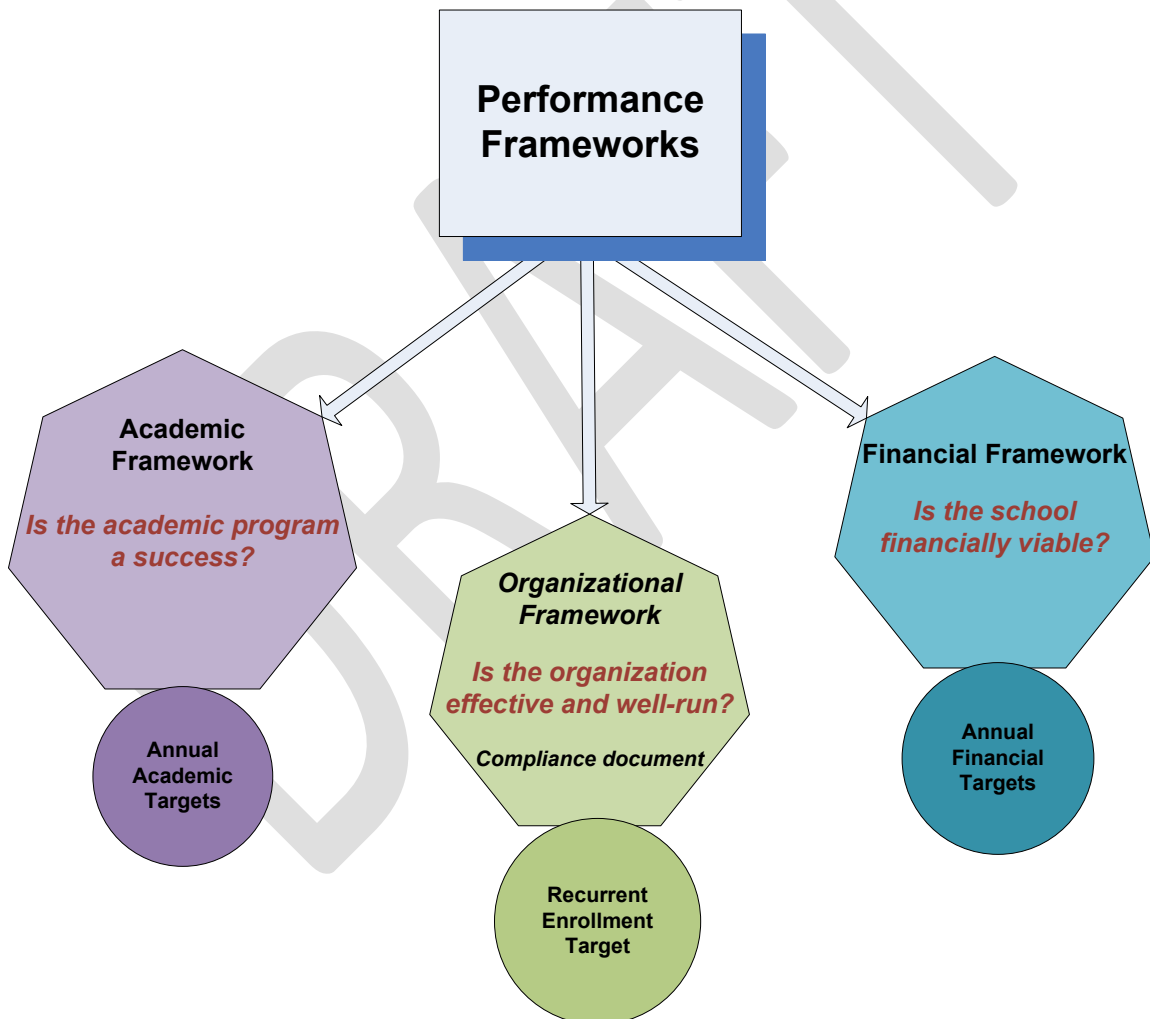
The protocol for the annual site visit and Annual Site Visit Report shall be conducted and prepared according to the protocol and forms provided in advance to the School. The annual site visit shall contain a review, at a minimum, of the School’s evidence of progress towards the outcomes identified in the Performance Framework as discussed below.

Following the site visit, the Authorizer or the Authorizer’s staff shall complete a draft of the Annual Site Visit Report and present it to the School within 60 days after the site visit. The School shall have 30 days to provide input and comment before the Authorizer finalizes its assessment of the School’s progress.

## Article V. Performance Frameworks.

### Section 5.01 Performance Framework Overview.

The School's performance shall be based on three Performance Frameworks, an Academic, an Organizational and Financial Framework, which are discussed further below. Each Framework will include indicators, measures and metrics. As referenced above, these Performance Frameworks and the annual performance targets are part of the Essential Documents governing the Parties.



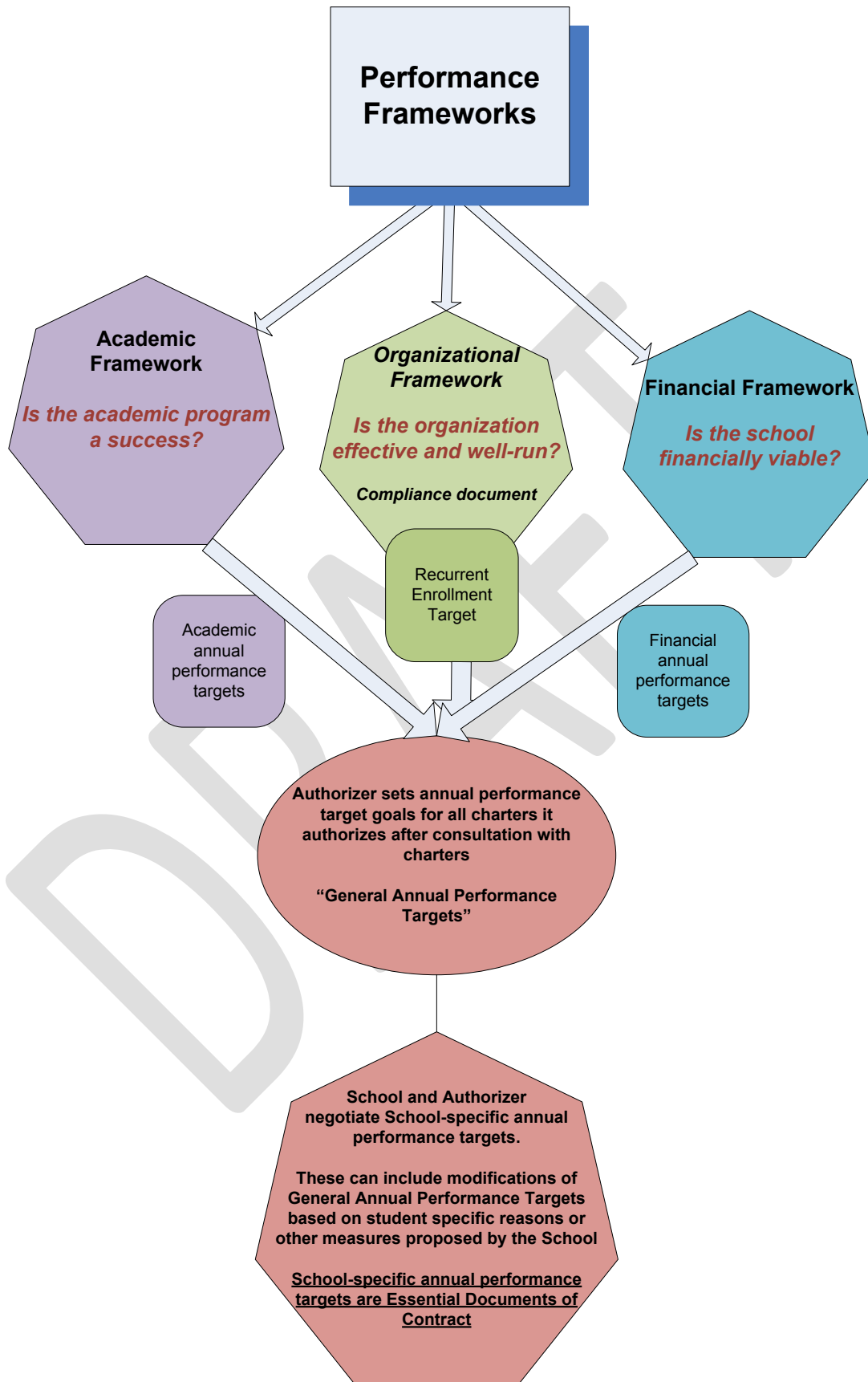
These Performance Frameworks will be used to monitor and assess the performance at the School. Information resulting from the Frameworks shall be used to guide technical

assistance and to assist the School in improving overall performance during the term of this Contract.

## **Section 5.02 Annual Performance Targets.**

Each Performance Framework is set up to establish annual performance targets. To set the annual performance targets, the Authorizer shall set general annual performance targets for its authorized schools after consultation with those schools. The Parties shall then negotiate school-specific annual performance targets for each year this Contract is in effect. These annual performance targets may include additional rigorous, valid and reliable indicators to augment external evaluations of the School's performance.

The Performance Framework indicators and annual performance targets established for each year of the Charter term shall be included in the Essential Documents as Exhibit 6.1, 6.2, 6.3, 6.4 and 6.5 as each document is created for each year of the Contract.



### **Section 5.03 Progress on Performance Framework Indicators and Annual Performance Targets.**

The School shall make satisfactory progress towards the indicators and annual performance target in the Organizational Performance Framework and towards the annual performance targets established in the Academic and Financial Frameworks. If the Authorizer finds that the School is not making satisfactory progress towards any or all of the Performance Framework indicators and the annual performance targets, the Authorizer may take such action as allowed by this Contract, including implementing the corrective action processes as set forth in Article 12.

The renewal of the School's charter shall be based substantially on how the School is progressing on the Performance Framework indicators and annual targets.

During the Annual Site Visit, the Authorizer or Authorizer's staff and School shall review the Performance Frameworks and school-specific annual performance targets established the previous school year. Next, the Parties shall negotiate school-specific annual performance targets for the next year considering and incorporating, where appropriate, the general annual performance targets set by the Authorizer.

## **Article VI. Organizational Framework.**

*Is the organization effective and well run?*

The Organizational Framework is a compliance checklist that ensures that the School is responsive to the needs of its students, employees and School community. This framework looks at organizational, overarching processes established to ensure

efficient operations by the School by looking at compliance with laws. One annual target, that related to recurrent enrollment, is included in this framework.

The indicators and annual target of the Organizational Framework are set each year and attached in Exhibit 6. To the extent that a conflict between the descriptions of the Organizational Framework components set forth in this Section and the annual indicators of the Organizational Framework, the annual indicators will control. This Contract sets out each Organizational Framework indicators generally in order to present a complete understanding of the obligations of the Parties.

The following is a general description of the Organizational Framework areas of focus.

**Section 6.01 Organizational Framework, Education Program 1.a. *Is the school implementing the material terms of the Charter as defined in this section?***

Organizational Framework Question 1.a. Description. The School shall demonstrate evidence of achieving the material terms of the Charter in all respects.

**(a) School Mission.**

The School's mission statement is as follows:

***[Insert school mission statement.]***

The School shall report each year on implementation of its mission using the following evidence:

***[Identify evidence of achieving school mission here]***

***[ ] For State Charters or Authorizers electing to use this reporting system.*** Progress towards achieving the School's Mission shall be described annually.

[ ] *For Local Charters*

*Describe process here for reporting.*

**(b) Material Terms of the Charter.**

The Parties agree that the following are the “material terms” of the approved Charter:

**[Insert the terms of the approved Charter which the Parties determine to be material.]**

**(c) Governance Structure.**

The Parties agree that the following are key provisions regarding the School’s governance structure.

**[Insert the key governance structure provisions.]**

**(d) Total Student Enrollment.**

The School is authorized to enroll the following:

**[Insert student enrollment numbers here.]**

The School shall provide instruction to students in such grades and subject to approved caps in each year of operation<sup>xxv</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, attrition patterns. However, the School shall not increase the number of grades or the total number of students proposed to be served in each grade<sup>xxvi</sup>.

If the School seeks to amend enrollment or grades served, the School must, among other things, demonstrate that such changes in enrollment/grades served do not compromise the fiscal and educational program of the School.



**(e) Intended School Location.**

The School represents to the Authorizer that based upon its mission and school goals, it intends to provide educational services including delivery of instruction in the following described general geographic area

County(ies): \_\_\_\_\_

City(ies): \_\_\_\_\_

**(f) Facility.**

*For Schools with a Set Location.* The Charter School's primary location is:

\_\_\_\_\_  
\_\_\_\_\_(Physical Address). The facility meets all applicable facility requirements of the State.

*For School Anticipating Changing Locations.* The School is in the process of identifying a new location at \_\_\_\_\_.

The School acknowledges that it the new facility must meet all applicable health and safety requirements prior to the School relocating to the new location.

**(i) Facilities Occupancy Requirement.**

The School acknowledges that its facility must meet all educational occupancy standards required by applicable New Mexico Construction Codes<sup>xxvii</sup>. The School's facilities shall be certified for occupancy as a public school prior to commencing operations in the new building including the approval of the director or designee of the PSFA<sup>xxviii</sup>. The School further acknowledges that if it is renewed on or after July 1, 2015, that its facilities must meet the requirements as set forth in Subsection D of Section 22-8B-4.2 NMSA 1978 (2011).

The School shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

***(ii) New Mexico Condition Index.***

The School acknowledges that it may not open or relocate to a facility after opening unless

- A. the facility receives a condition rating equal to or better than the average condition for all New Mexico public schools as determined by the Public Schools Facility Authority (PSFA) for that year, or
- B. the School demonstrates within 18 (eighteen) months of occupancy or relocation of the School, the facility will achieve a rating of equal to or better than the average New Mexico condition index<sup>xxxix</sup>.

***(iii) Facilities Funding.***

The School is eligible for state capital outlay dollars to the extent provided for in the Public School Capital Outlay Act<sup>xxx</sup>; the Public School Capital Improvements Act<sup>xxxi</sup>; the Public School Buildings Act<sup>xxxii</sup>; and any other applicable law.

The School is encouraged to apply for all available capital outlay funding for which it is eligible, including lease reimbursement grants through the Public School Capital Outlay Council.

***(iv) Lease Purchase Agreement.***

The School acknowledges that it may not enter into a Public School Lease Purchase Agreement<sup>xxxiii</sup> without prior approval of the NMPED.

***(v) Multiple Facilities.***

With the approval of the Authorizer, the School may maintain separate facilities at two or more locations. The School acknowledges that the separate facilities shall be treated together as only one school for purposes of calculating program units pursuant to the Public School Finance Act.

***(g) Terms Requiring Amendment.***

Any provisions set forth in this Article 6 may only be changed by agreement of the Parties. No other provision of the Charter requires an amendment executed by the Parties. Provisions not listed in this Article 6 may be changed by the School without approval of the Authorizer.

A modification or amendment of this Article 6 of the Contract shall be considered to be an amendment of the Charter without further action by the Parties.

***Section 6.02 Organizational Framework, Education Program 1.b. Is the school complying with applicable educational requirements?***

Organizational Framework Question 1.b. Description. Unless waived, the School shall demonstrate compliance with applicable laws, rules, and regulations relating to education requirements such as instructional days, graduation and promotion requirements; content standards, state assessments and implementing mandated programming associated with state or federal funding.

### **Section 6.03 Operational Framework, Students and Employees, 1.c. *Is the School protecting the rights of all students?***

Organizational Framework Question 1.c. Description. Unless waived, the School shall demonstrate compliance with applicable laws, rules, and regulations relating to the rights of students including policies related to admissions, lottery, recruitment and enrollment; adherence to due process protections; and development and adherence to student discipline policies.

The School shall also comply with the following additional terms and conditions:

#### **(a) Non-discrimination.**

The School is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services. The School shall be a nonsectarian, nonreligious and non-home-based public school<sup>xxxiv</sup>.

Student recruitment and enrollment decisions shall be made in a nondiscriminatory manner and without regard to race, color, creed, national origin, sex, marital status, religion, ancestry, disability, or need for special education services<sup>xxxv</sup>.

#### **(b) Enrollment and admission processes and procedure.**

The School must establish and post enrollment and admissions process and procedures which comply with the law. The School may not charge tuition nor have other admissions requirements, except as otherwise provided in the Public School Code<sup>xxxvi</sup>.

**(c) Lottery.**

Unless otherwise exempted in the Public School Code, if more students apply than can be admitted based on the School's enrollment cap, admission decisions will be made by a lottery process<sup>xxxvii</sup>. The School shall adopt in advance of a new school year the enrollment procedure for vacancies that occur during the school year that complies with law.

**(d) Continuing Enrollment.**

Students who enroll in the School shall remain enrolled in the School through the highest grade served by the School, unless there is a voluntary withdrawal, expulsion, graduation, court-ordered placement, or IEP team placement.

**(e) Suspension or Expulsion.**

A student who is suspended or expelled from the School shall be deemed to be suspended or expelled from the school district in which the student resides<sup>xxxviii</sup>. A student who is suspended from a school district may also be considered suspended or expelled from the School located within the geographic boundary of that district. The School shall develop its own enrollment policies for enrolling students who have been suspended or expelled from another charter school or a school district.

**Section 6.04 Organizational Framework, Education Program 1.d. *Is the School protecting the rights of students with disabilities?***

Organizational Framework Question 1.d. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations, including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the

Americans with Disabilities Act, relating to identification and referral of those having a disability.

The School shall also comply with the following additional terms and conditions:

**(a) Special Populations.**

The School is responsible for identifying, evaluating, and offering a free appropriate public education to all eligible children who are accepted for enrollment in the School.

**(b) Enrollment of Students with Disabilities.**

To ensure that the needs of students with a disability are met, the following procedures must be followed:

**(i) Documents.**

Following the application deadline and upon completing the lottery if required, the School shall request from relevant school district and/or the student a copy of the most recent Individualized Education Program (IEP) or Section 504 Accommodations Plan, if any.

**(ii) Implementing the IEP.**

Admission of applicants with an IEP or Section 504 Accommodations Plan must be in compliance with state and federal requirements and procedures concerning the education of students with disabilities. Every student who is admitted with an IEP or Section 504 Accommodations Plan from his/her previous school must receive services as reflected in the IEP unless modified.

**(c) Response to Intervention.**

The School must fully implement the State’s Response to Intervention (RtI) Framework known as the *Three-Tier Model of Student Intervention*<sup>xxxix</sup>. This framework serves as the overarching structure for how K–12 public schools in New Mexico organize instruction to all students, and provides procedures for early assistance and intervention to students who are experiencing academic and/or behavioral challenges, or need opportunities for advanced learning. The RtI Framework includes the Student Assistance Team process which supplements regular education functions, conducts evaluations and develops accommodations plans under Section 504, develops individual student academic improvement plans<sup>xl</sup>, and receives and analyzes evaluation requests for special education and gifted education services.

**Section 6.05 Organizational Framework, Education Program 1.e. *Is the School protecting the rights of English Language Learner (ELL) students?***

Organizational Framework Question 1.e. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations, including Title III of the Elementary and Secondary Education Act, relating to English Language Learner requirements.

**Section 6.06 Organizational Framework, Education Program 1.f. *Is the School complying with compulsory attendance laws?***

Organizational Framework Question 1.f. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to compulsory school attendance.

**Section 6.07 Organizational Framework, Education Program 1.g. *Is the School complying with the annual recurrent enrollment target?***

The School shall comply with the annual recurrent enrollment target set by the Authorizer.

**Section 6.08 Organizational Framework, Financial Management and Oversight 2.a. *Is the School meeting financial reporting and compliance requirements?***

Organizational Framework Question 2.a. Description. The School shall demonstrate complete and timely compliance with applicable laws, rules, and regulations relating to sound financial principles<sup>xii</sup> and financial reporting requirements, including compliance with the New Mexico Procurement Code.

The School shall also comply with the following additional terms and conditions:

**(a) Authorizer Notification.**

The School shall notify the authorizer or its designee and appropriate authorities in the following situations:

- A. The discipline of employees at the School arising from misconduct or behavior that resulted in any harm to a student or others, or that constituted serious violations of law;
- B. All complaints filed against the School by governmental entities alleging violations of state, federal or local violations of law, regulation or rule, (e.g. building-code violations, environmental or health code violations, state-level IDEA special education complaints or due process hearings, Section 504 grievances, Title I of the Elementary and Secondary Education Act complaints);



- C. Any circumstance requiring the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, flood or other weather-related event, other extraordinary emergency, or destruction of or damage to the School facility;
- D. The conviction of any members of the School's governing body or staff for a crime punishable as a felony or misdemeanor involving moral turpitude related to that person's responsibilities to the School; or for any crime related to the misappropriation of school funds or theft of school property; or
- E. A finding by an internal or independent auditor or investigator of misappropriation of the School's public funds by any member of the School's governing body, employee, volunteer, contractor, or other individuals.

Notice shall be provided within a reasonable period of time under the circumstances.

The Parties may then take such steps as reasonably necessary, and as consistent with their adopted policies, to address these issues.

#### **(b) Operational Reporting.**

The School shall provide the following reports to the Authorizer:

*[List other reports required as negotiated between the Parties]*

### **Section 6.09 Operational Framework, Financial Management and Oversight 2.b. *Is the School following Generally Accepted Accounting Principles?***

Organizational Framework Question 2.b. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations, relating to financial management and oversight expectations, showing the School is following generally accepted accounting principles.

## Section 6.10 Organizational Framework, Governance and Reporting

### 3.a. *Is the School complying with governance requirements?*

Organizational Framework Question 3.a. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to charter school governance through the adoption of and adherence to school policies; the Open Meetings Act; the Inspection of Public Records Act; a conflict of interest policy; an anti-nepotism policy and sound governing board operations.

The School shall also comply with the following additional terms and conditions:

#### **(a) Governing Structure.**

The School's governing body shall have at least 5 (five) members<sup>xii</sup>.

*For State Charters.* No member shall serve on the School's governing body if he or she was a member of another charter school's governing body that was suspended or failed to receive or maintain their board of finance designation.

*For Local Charters.* No member of the School's governing body may be a member of the Authorizer's elected school board<sup>xiii</sup>.

#### **(b) Change in Governance Membership.**

The School will notify the Authorizer within 30 (thirty) days of a member's resignation or designation of a new member. The School shall fill any vacancy on its governing body no later than 90 days from the vacancy or seek an extension for such appointment from the Authorizer's staff in writing. Upon selection of a new member, the School shall submit to the Authorizer the name, contact information, and term of the new member.

**[ ]** *For State Charters* The new member must execute the required statements for Board of Finance designation<sup>xliv</sup>.

### **Section 6.11 Operational Framework, Governance and Reporting 3.b. *Is the School holding management accountable?***

Organizational Framework Question 3.b. Description. The School shall demonstrate timely compliance with applicable laws, rules, and regulations relating to oversight of school management through evaluation of the head of school and the relationship with a partner organization, if any.

The School shall also comply with the following additional terms and conditions:

#### **(a) School Complaint Process.**

The School must establish a process for resolving community, parental, and other public complaints. The process shall afford the opportunity for the complainants to be heard by the head administrator and/or the School's governing body. The governing body shall be the final determiner of the complaint unless the complainant has other legal remedies provided by law.

#### **(b) Authorizer Notification Regarding Complaints.**

The Authorizer agrees to notify the School of all written complaints about the School that the Authorizer receives. The notification shall be made immediately or as soon as is practicable under the circumstances, but not later than 10 business days after its receipt by the Authorizer. The notice shall include the substance of the complaint, taking into consideration any complainant's request for anonymity. The School shall respond to the complaint according to its prescribed complaint procedures and notify

the Authorizer's staff of the School's response to the complaint within the timeframe prescribed in the notice of the complaint.

**(c) Mediation of School Complaints.**

The School is encouraged to use mediation to resolve complaints submitted to the School.

**Section 6.12 Organizational Framework, Students and Employees, 4.a. *Is the School meeting teacher and other staff credentialing requirements?***

Organizational Framework Question 4.a. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to state certification requirements and Title II of the ESEA for Highly Qualified Teachers and Paraprofessionals.

**Section 6.13 Organizational Framework, Students and Employees, 4.b. *Is the School respecting employee rights?***

Organizational Framework Question 4.b. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to employment requirements; and develop and adhere to sound policies for employees.

The School shall also comply with the following additional terms and conditions:

**(a) Volunteer Requirements.**

Any requirement that parents/guardians commit to a number of volunteer hours shall be subject to a waiver process that considers individual family circumstances. The School acknowledges that all volunteers must comply with state regulations<sup>xiv</sup>.

**Section 6.14 Organizational Framework, Students and Employees, 4.c. *Is the School completing required background checks?***

Organizational Framework Question 4.c. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to background checks of all individuals at the School having unsupervised access to children, including staff and members of the community, where required.

**Section 6.15 Organizational Framework, School Environment, 5.a. *Is the School complying with facilities and transportation requirements?***

Organizational Framework Question 5.a. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to the School's physical plant and transportation.

The School shall also comply with the following additional terms and conditions:

**(a) Insurance Provider.**

The School shall procure insurance<sup>xlvi</sup> through the New Mexico Public Insurance Authority (NMPSIA). Upon request by the Authorizer, a copy of the certificate of insurance shall be provided.

**(b) Insurance Coverage.**

The School shall purchase insurance protecting the School and its governing body, employees, and volunteers, and the Authorizer, consisting of comprehensive general liability insurance, errors and omissions liability insurance, and auto liability insurance. The School shall also purchase statutory workers' compensation insurance coverage.

**(c) Change of Coverage.**

All of the School's insurance policies purchased by the School shall state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, except after 45 days prior written notice by certified mail, return receipt requested, has been given to the Authorizer. The School shall notify the Authorizer within 10 days if for any reason there is a lapse in insurance coverage. The School shall be solely responsible for any deductibles payable under the policies purchased by the School.

**Section 6.16 Operational Framework, School Environment, 5.b. *Is the School complying with health and safety requirements?***

Organizational Framework Question 5.b. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to safety and the provisions of providing health related services.

**Section 6.17 Organizational Framework, School Environment 5.c. *Is the School handling information appropriately?***

Organizational Framework Question 5.c. Description. The School shall demonstrate compliance with applicable laws, rules, and regulations relating to security of and appropriate access to personally identifiable student information; student records and testing materials.

All records required to be kept pursuant to state and/or federal laws, regulations, or policies or as otherwise established shall be open to inspection and review and made available in a timely manner to the CSD, NMPED, or other officials who shall be deemed to have legitimate educational interests in such records within the meaning of

the federal Family Educational Rights and Privacy Act (FERPA). The School is encouraged to adopt a policy for student directory information in compliance with FERPA.

## **Article VII. Academic Performance Framework**

*Is the Academic program a success?*

### **Section 7.01 Academic Annual Performance Targets.**

The Authorizer shall establish annual academic performance targets for the school(s) that it authorizes, in consultation with its charter school(s)<sup>xlvii</sup>. The Parties shall then negotiate school-specific annual performance targets for the Academic Framework for each year in which this Contract is in effect.

### **Section 7.02 Additional Academic Performance Indicators.**

The School may present additional school-specific rigorous, valid and reliable indicators to augment evaluations of its performance and outcomes. The Authorizer agrees to consider these additional rigorous, valid, and reliable indicators of the School's performance. These negotiated indicators will be included in the school-specific annual performance targets.

Negotiated modifications of the general annual performance targets. The additional indicators may include mission or school-specific annual performance targets that modify the general annual performance targets set by the Authorizers. These indicators shall be determined by agreement of the Parties for good cause shown. In particular if the School is targeting an alternative student population, a school-specific annual

performance target that takes into consideration working with that population may justify modifying the general annual performance target.

Additional other indicators. The School may present additional indicators not related to the general annual performance targets to augment the external evaluations of its performance.

The Performance Framework indicators and annual performance targets established for each year of the Charter term shall be added to, and included in, the Essential Documents.

### **Section 7.03      Disaggregation of Data.**

The Parties shall look at disaggregated data by student subgroup, including gender, race, poverty status, special education or gifted status, and English language learner status. The Parties may obtain such information through reports prepared by the NMPED. To the extent that an annual performance target already reports disaggregated data by student subgroup, such as the A-F grading system, the Parties may use this report in their review and not create additional reports.

## **Article VIII.      Financial Performance Framework.**

*Is the School financially viable?*

The Authorizer shall establish general financial annual performance targets for its authorized schools in consultation with its charter school(s).



The Parties shall then negotiate school-specific annual performance targets for the Financial Framework for each year this Contract is in effect.

During the Annual Site Visit, in addition to reviewing the annual financial targets for the previous year, the Parties shall negotiate school-specific annual financial targets for the next year.

### **Section 8.01 Additional Financial Performance Indicators.**

The School may present additional rigorous, valid and reliable indicators to augment external evaluations of its financial performance. The Authorizer agrees to consider the additional rigorous, valid, and reliable indicators of the School's performance. These indicators will be considered part of the Authorizer's assessment of the School's demonstrated success in meeting the performance indicators as described in the Performance Framework.

Negotiated modifications of the general annual performance targets. The additional indicators may include school-specific annual performance targets that modify the general annual performance targets set by the Authorizers. These indicators shall be determined by agreement of the Parties for good cause shown.

Additional other indicators. In addition, the School may present indicators not related to the general annual performance targets to augment the external evaluations of its performance.

The Performance Framework indicators and annual performance targets established for each year of the Charter term shall be added to, and included in, the Essential Documents.

## **Article IX. Authorizer Powers and Responsibilities.**

The Authorizer has the following powers and authority<sup>xlviii</sup>:

### **Section 9.01 Develop policies**

Develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing as set forth by the Act, including policies regarding charter school oversight and evaluation; organizational capacity and infrastructure; evaluation of charter applications; performance contracting; and charter school corrective action plans; suspension, revocation, renewal, and closure processes.

### **Section 9.02 Establish a performance framework.**

Establish a performance framework that sets forth clear academic and operations performance indicators, measures and metrics that includes the following:

- a. Student academic performance;
- b. Student academic growth;
- c. Achievement gaps in both proficiency and growth between student subgroups;
- d. Attendance;
- e. Recurrent enrollment from year to year;

- f. Post-secondary readiness and graduation rate (if the charter school is a high school);
- g. Financial performance and sustainability; and
- h. Governing body performance, including compliance with all applicable laws, rules, and terms of the Contract.

For purposes of this Contract, the Authorizer shall implement the performance indicators, metrics and measures through the Performance Frameworks. Any additional indicators shall be negotiated in good faith between the Parties.

### **Section 9.03      Collect, analyze and report data**

Collect, analyze and report all data from state assessment tests in accordance with the Performance Frameworks.

### **Section 9.04      Conduct oversight**

Conduct and/or require oversight activities according to its policies and procedures to allow the Authorizer to fulfill its responsibilities under the Act, including conducting appropriate inquiries and investigations, when warranted.

### **Section 9.05      Develop processes for revocation and nonrenewal**

Develop processes for suspension, revocation or nonrenewal of a school<sup>xlix</sup>. In the event that the Authorizer ever determines that suspension, revocation or nonrenewal of the School is appropriate, the Authorizer shall

- i. provide the School with timely notification of the prospect of suspension, revocation or nonrenewal of the Charter and the reasons for such action;

- ii. allow the School a reasonable amount of time to prepare and submit a response to the Authorizer's action; and
- iii. submit the final determination made by the Authorizer to the NMPED.

#### **Section 9.06 Negotiate the Contract in good faith.**

Negotiate and execute this Contract, in good faith, so long as it meets the requirements of the Act<sup>i</sup>.

#### **Section 9.07 Monitor performance.**

Annually monitor the performance and legal compliance of the School in accordance with the requirements of the Act, and the terms of this Contract.

#### **Section 9.08 Impose sanctions if necessary.**

If, based on the annual performance review conducted by the Authorizer, the Authorizer finds that the School is not making satisfactory progress towards organizational, academic or financial performance or the Authorizer believes there to be a breach of this Contract, the Authorizer may establish a Corrective Action Plan as set forth in Article 12<sup>ii</sup>. The Authorizer may suspend or revoke the School's Charter if warranted<sup>iii</sup> and according to the process established by the Authorizer.

#### **Section 9.09 Suspend, revoke or not renew the Contract if necessary.**

Suspend, revoke or not renew this Contract and the Charter<sup>iiii</sup> if the Authorizer determines that the School did any of the following:

- a. Committed a material violation of any of the conditions, standards or procedures set forth in this Contract;

- b. Failed to meet or make substantial progress toward achievement of NMPED's minimum educational 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.

### **Section 9.10 Consider amendments.**

Consider requests for amendments to the Contract in a timely manner. Only those Charter provisions listed in Article 6 above shall require an amendment by the Authorizer if a change is sought. No other terms of the Charter shall require an Amendment agreed to by the Authorizer. An amendment to Article 6 above shall also constitute an amendment to the Charter without further action by the Parties.

### **Section 9.11 Set annual performance targets.**

Set annual performance targets for the Frameworks after consultation with its authorized schools which shall be designed to help the schools meet applicable federal, state and Authorizer expectations. The Authorizer shall then negotiate school-specific annual target goals with the School for each school year of the Charter. The annual performance targets for the School are discussed in Articles 6, 7, and 8 above.

### **Section 9.12 Consider alternative performance frameworks**

Consider the alternative performance framework described by the School which allows for the inclusion of additional rigorous, valid and reliable indicators proposed by the School, if any, to augment evaluation of its performance. The Authorizer shall may

reject such framework if the indicators fail to provide the quality and rigor as contemplated by the Act.

### **Section 9.13 Monitor School's progress.**

Continuously monitor and conduct at least one annual visit to the School to provide technical assistance to determine the overall organizational, academic and financial performance of the School as described in the Performance Frameworks.

### **Section 9.14 Review data.**

Review the data provided by the School to support ongoing evaluation according to the terms of the Contract.

### **Section 9.15 Notify School of unsatisfactory performance.**

Notify the School in a timely manner of unsatisfactory performance on the organizational, academic or financial frameworks, or any other factor that may result in corrective action, nonrenewal or revocation as determined during the annual site visit.

### **Section 9.16 Identify reasons for suspension, revocation or nonrenewal.**

State in writing and at a public meeting its reasons for the suspension, revocation or nonrenewal if the Authorizer revokes or does not renew a charter<sup>liv</sup>.

### **Section 9.17 Establish closure protocol.**

Establish a closure protocol in the event the School closes. The Authorizer shall oversee and work with the closing School to ensure a smooth and orderly closure and transition for students and parents according to the closure protocol and to ensure that assets are appropriately accounted for and protected<sup>lv</sup>.

## **Article X. Resolution of Dispute Relating to the Contract.**

**[ ]** *For State Charters and Local Charters Electing to Adopt this Provision.*

### **Section 10.01 Dispute Resolution.**

All disputes arising out of the implementation of this Contract shall be subject to the dispute resolution process set forth in this section, unless specifically provided otherwise.

### **Section 10.02 Continuation of Contract Performance.**

The School and the Authorizer 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.

### **Section 10.03 Notice of Dispute.**

Either party shall notify the other party in writing that a dispute exists between them within 15 working days from the date the dispute arises. The notice of dispute shall identify the article and section of this Contract in dispute, reasons alleged for the dispute and copies of any documentation that supports the complaining party's position. If the dispute is not timely presented to the other party, the party receiving late notice may elect not to enter into mediation.

### **Section 10.04 Initial Administrative Resolution.**

The matter shall be submitted to the head administrator of the School and the head of the Authorizer's staff or their designee. The head administrator and the Authorizer's staff shall keep the School governing board and the Authorizer informed during any attempt at administrative resolution. Either Party may identify an authorized

representative to join the School staff or the Authorizer’s staff in identifying possible solutions. The process shall be completed within 15 working days of the receipt of the Notice of Dispute or the Parties shall agree in writing to an alternative date certain for the termination of this process. If the matter is not resolved within the time frame established, either Party may consider the Initial Administrative Resolution terminated and give the other party notice of the termination. (“Termination of Initial Administrative Resolution”).

If the matter is able to be resolved through an Initial Administrative Resolution, the School staff and Authorizer staff shall jointly draft a document identifying the agreed upon resolution and notify the respective Parties of the Initial Administrative Resolution. If the Initial Administrative Resolution requires an action of the School and the Authorizer, such Initial Administrative Resolution shall be presented after due notice at the next respective governing board meetings of the Parties. If necessary, the Parties shall call a special or emergency meeting to approve any Initial Administrative Resolution. In the case that Party approval is needed under this paragraph, the Initial Administrative Resolution shall take effect only if approval is given by both Parties and shall have no effect otherwise.

#### **Section 10.05      Mediation at the Administrative Level.**

If there is a Termination of the Initial Administrative Resolution process, then either Party may demand formal mediation by mailing or delivering notice in writing to the other Party within 10 working days after the Termination of Initial Administration Resolution.



Mediation conducted by the Parties is subject to the Mediation Procedures Act<sup>vi</sup>. If either Party submits a Notice of Demand to Mediate, it shall include in the notice the name of a mediator along with his/her qualifications. If the other Party does not agree to the proposed mediator, then it shall identify an alternate mediator along with his/her qualifications within 5 business days. If the other Party does not agree with the alternate designation, it shall give notice within 5 business days. In the event that the Parties cannot agree on a mediator the two proposed mediators shall meet within 5 business days to appoint a third person to act as mediator. The appointed mediator shall mediate the dispute.

Each Party shall pay one-half of the reasonable fees and expenses of the mediator. 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.

Mediation shall be completed within 40 working days unless another date certain is set by the Parties and mediator.

If the matter is able to be resolved through Mediation at the Administrative Level, the School through its staff and Authorizer through its staff shall jointly draft a document identifying the Mediation Resolution and notify the Parties of the Mediation Resolution. If the Mediation Resolution requires an action of the School and the Authorizer, such Mediation Resolution shall be presented at the next respective governing board meeting

of the Parties. If necessary, the Parties shall call a special or emergency meeting to approve any Mediation Resolution. In the case that Party approval is needed under this paragraph, the Mediation Resolution shall take effect only if approval is given by both Parties and shall have no effect otherwise.

If no resolution is reached by the Parties, then the mediator shall render a written proposal with a proposed resolution of the mediator concerning the matters in controversy, together with his/her findings in the event that the Parties do not come to any agreement. The Proposed Resolution of the Mediator shall be presented to each Party. The mediator shall note any provision in the proposed resolution that would require a vote of the respective Parties.

#### **Section 10.06 Governing Body Consideration.**

If a Mediation Resolution has not been reached within 40 business days of the appointment of the mediator, both representatives shall submit the matter to the respective Parties for consideration along with the Proposed Resolution of the Mediator.

The matter shall be placed on the next regular meeting of each Party, unless a special or emergency meeting is warranted. Prior to the board meeting, the Parties may designate a subcommittee to meet with the subcommittee of the other Party for informal discussions. The subcommittee shall be less than the quorum needed for a meeting of the Governing Board. The subcommittees shall meet jointly to consider the proposals of each Party and the Proposed Resolution of the Mediator. If the subcommittees of the Governing Boards can identify a Joint Proposal that may resolve the dispute, the Joint

Proposal of the subcommittees shall be presented at the next meeting of each Party. The Joint Proposal shall be discussed in the public meeting and public comment shall be heard on the Joint Proposal. The Joint Proposal shall then be voted on by the Parties. A special or emergency session may be called of each Party, if needed.

If both Parties adopt the Joint Proposal, the issue shall be deemed resolved according to the terms of the Joint Proposal. If one or both Parties reject(s) the Joint Proposal, then the dispute resolution process shall be deemed to have failed and to have ended.

#### **Section 10.07 Process for Final Resolution of Dispute.**

If settlement of the dispute is not reached through mediation or by agreement of the Parties, either Party may pursue any right or remedy to which it may be entitled by law.

**[ ]** *For Local Charters adopting their own dispute resolution process.*

*Insert dispute resolution process here.*

### **Article XI. Renewal.**

#### **Section 11.01 Renewal Timeline and Process**

The School shall submit its renewal application to the Authorizer on or before October 1 of 20\_\_\_. The Parties may mutually agree to an extension of the submittal of the renewal application; such extension shall be memorialized in writing. The Authorizer shall vote on the renewal application in a public hearing no later than January 1, of the year in which the Contract expires; i.e. January 1, 20\_\_\_ unless extended by agreement.

#### **Section 11.02 Required Information.**

The renewal application shall contain the information required by law<sup>lvii</sup>.

### **Section 11.03 Authorizer Review and Analysis of Renewal Contract.**

The Authorizer review shall be conducted according to law, regulation and rule. The renewal of the School's charter shall be based substantially on a review as to whether the School is progressing on the Performance Framework indicators.

## **Article XII. Suspension, Nonrenewal and Revocation**

### **Section 12.01 Suspension, Nonrenewal and Revocation**

The charter may be suspended, revoked, or not renewed by the Authorizer as set forth in law, regulation or rule.

### **Section 12.02 Corrective Action Required by Authorizer.**

If, based on the performance review conducted by the Authorizer, the School's organization, academic or financial performance appears unsatisfactory or the Authorizer believes there to be a breach of this Contract, the Authorizer may initiate the process to implement a corrective action plan. The Authorizer shall notify the School of the unsatisfactory review and provide a reasonable opportunity for the School to remedy the Authorizer's concerns.

#### **(a) Notice of Unsatisfactory Performance (NUP).**

The Authorizer shall provide written notice to the School by no less than 10 business days after determining that there is unsatisfactory performance related to the School's organization, academic or financial performance appears unsatisfactory or the Authorizer believes there to be a breach of this Contract.

**(b) Response.**

The School shall respond to the NUP within 10 business days, unless an extension is agreed to by the Authorizer. The response shall be in writing and include all documents that support the response.

**(c) Corrective Action Plan (CAP).**

If after receiving the School's response to the NUP, the Authorizer may nevertheless require the School to present a Corrective Action Plan that addresses the identified deficiencies; provided that if the unsatisfactory review and response to the NUP warrants revocation, the revocation procedures set forth in this Article 12 shall apply. The Authorizer shall provide clear timelines for complying with the Authorizer's demand for corrective action.

**(d) CAP Development.**

If a CAP is required by the Authorizer, the School shall develop the CAP along with a proposed timeline for correcting the alleged deficiencies and submit the CAP to the authorizer for review, comment, and approval. The Authorizer may require the school to review and revise the plan if it is not effective in remedying the deficiency.

**(e) Effect of Successful CAP Response.**

Successful completion of the CAP shall be acknowledged by the Authorizer in writing and the corrected infractions addressed by the CAP shall not be a basis for future for nonrenewal or revocation actions. However, if the School does not successfully correct the Authorizer's concerns, the Authorizer may take additional steps to insure compliance, which include, but are not limited to seeking assistance from the CSD or

another technical assistance provider to implement a plan for correcting the Authorizer's concerns. Failure to comply with the requirements of the CAP may also be considered by the Authorizer when making decisions about renewal, suspension or revocation.

### **Article XIII. School Closure**

Any permanent School closure shall be conducted according to applicable law, regulation and rule.

### **Article XIV. General Provisions.**

#### **Section 14.01 Order of Precedence.**

In the event of any conflict among the documents and practices defining this relationship, it is agreed that

- a) the Contract shall take precedence over policies of either Party and the Charter; and
- b) the annual Performance Frameworks shall take precedence over a term of the Contract that appears to conflict with the annual Performance Frameworks.

This Contract shall not take precedence over any provisions of law, rule or regulation.

#### **Section 14.02 Amendments.**

##### **(a) Authority to Amend.**

No amendment to the Contract shall be valid unless ratified in writing by the Authorizer and the School and executed by its authorized representatives.

**(b) Process.**

The School must first vote in a public meeting to approve any amendment to the Contract or Essential Documents. The School must then submit the requested amendment to the Authorizer's designee. The Authorizer shall vote on the proposed amendment within 60 days of the request. If the Authorizer takes no action within 60 days, the Amendment is deemed approved. If the Authorizer denies the amendment, the School may appeal the decision to the Secretary of the NMPED. A written appeal must be filed by no later than 30 days from the date the Authorizer voted to deny the amendment.

**Section 14.03 Merger.**

The Contract and Essential Documents to this Contract contain all terms, conditions, and understandings of the Parties relating to its subject matter. All prior verbal representations, understandings, and discussions are merged herein and superseded by this Contract.

**Section 14.04 Non-Assignment.**

Neither Party shall assign or attempt to assign any rights, benefits, or obligations accruing to the Party under this contract unless the other Party agrees in writing to any such assignment.

**Section 14.05 Governing Law and Enforceability.**

This Contract shall be governed and construed according to the Constitution and laws of the State of New Mexico. If any provision of this contract or any application of this Contract to the School is found contrary to law, such provision or application shall have effect only to the extent permitted by law.

#### **Section 14.06 Severability.**

If any provision of this Contract is determined to be unenforceable or invalid for any reason, the remainder of the Contract shall remain in full force and effect, unless otherwise terminated by one or both of the Parties in accordance with the terms contained herein. Either Party may revoke this Contract if a material provision is declared unlawful or unenforceable by any court of competent jurisdiction or the Parties do not successfully negotiate a replacement provision.

#### **Section 14.07 Changes in Law, Rules, Procedures or Forms.**

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. The Contract shall be deemed to conform to the new law, rule or procedure. If an amendment to this Contract is required to comply with a change in the law or rule, then the Parties shall execute such as amendment. However, no such amendment is required to only to amend or correct any references to statute, rule, regulation or document provision set forth in this Contract.

#### **Section 14.08 No Third Party Beneficiary.**

The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Authorizer and the School.



Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only.

**Section 14.09 No Waiver.**

The Parties agree that no assent, express or implied, to any breach by either of them of any one or more of the provisions of this Contract shall constitute a waiver of any other breach.

**Section 14.10 Authorized Signatories.**

The Parties hereby declare that their president/chair or their authorized designee is authorized to sign this Contract.

**Approved:**

**New Mexico Public Education  
Commission**

**OR**

***Insert name of Authorizer***

By:

Title:

Signature:

Date:

**Approved:**

***Insert name of Charter School***

By:

Title:

Signature:

Date:

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- <sup>i</sup> Section 22-8B-3 NMSA 1978.
- <sup>ii</sup> Section 22-8B-16 NMSA 1978.
- <sup>iii</sup> Section 22-8B-17 NMSA 1978.
- <sup>iv</sup> Section 22-8B-6(A) NMSA 1978.
- <sup>v</sup> Section 22-8B-9 NMSA 1978 (2011).
- <sup>vi</sup> Sections 22-8B-2(A) and 22 -8B-4(C),(J), (N), (P), and (R) (2011) NMSA 1978.
- <sup>vii</sup> Section 22-8B-5 NMSA 1978.
- <sup>viii</sup> Section 41-4-1 through 41-4-27 NMSA 1978.
- <sup>ix</sup> Pursuant to the Audit Act at Section 12-6-1 NMSA 1978, *et seq.*
- <sup>x</sup> Section 22-10A-1 NMSA 1978, *et seq.*
- <sup>xi</sup> Section 22-8B-4(P) NMSA 1978 (2011).
- <sup>xii</sup> Section 22-8B-5(C) NMSA 1978 (2006).
- <sup>xiii</sup> Section 22-8B-5(C) NMSA 1978 (2006).
- <sup>xiv</sup> Section 22-8B-4(N) NMSA 1978 (2011)
- <sup>xv</sup> As defined by the Public School Finance Act, Section 22-8-1 NMSA 1978, *et seq.* Also see Section 22-8B-13 NMSA 1978 (2006).
- <sup>xvi</sup> Section 22-8B-13(C) and (D) NMSA 1978.
- <sup>xvii</sup> Section 22-8B-13(B) NMSA 1978.
- <sup>xviii</sup> <http://www2.ed.gov/policy/elsec/leg/esea02/index.html>
- <sup>xix</sup> Section 22-8B-9(B)(14) NMSA 1978 (2011).
- <sup>xx</sup> Section 22-24-4 NMSA 1978 (2010).
- <sup>xxi</sup> Section 22-8B-26 NMSA 1978.
- <sup>xxii</sup> School Athletics Equity Act, Section 22-31-1 NMSA 1978, *et seq.* (2011).
- <sup>xxiii</sup> Section 22-8B-12 NMSA 1978.
- <sup>xxiv</sup> Section 22-8B-12(E) NMSA 1978 (2011).
- <sup>xxv</sup> Section 22-8B-6 NMSA 1978 (2011).
- <sup>xxvi</sup> Section 22-8B-6(D) NMSA 1978 (2011).
- <sup>xxvii</sup> Section 22-8B-4.2(A) NMSA 1978 (2011).
- <sup>xxviii</sup> Section 22-8B-4.2 NMSA 1978 (2011).
- <sup>xxix</sup> Section 22-8B-4.2(C) NMSA 1978 (2009).
- <sup>xxx</sup> Section 22-24-1 NMSA 1978, *et seq.*
- <sup>xxxi</sup> Section 22-25-1 NMSA 1978, *et seq.*
- <sup>xxxii</sup> Section 22-25-1 NMSA 1978, *et seq.*
- <sup>xxxiii</sup> Section 22-26A-1 NMSA 1978, *et seq.* of the Public School Lease Purchase Act
- <sup>xxxiv</sup> Section 22-8B-4(K) NMSA 1978.
- <sup>xxxv</sup> Section 22-8B-4(J) NMSA 1978.
- <sup>xxxvi</sup> Section 22-8B-4 (K) NMSA 1978.
- <sup>xxxvii</sup> Section 22-8B-4.1 NMSA 1978.
- <sup>xxxviii</sup> Section 22-8B-5(G) NMSA 1978 (2006).
- <sup>xxxix</sup> 6.29.1.9(D) NMAC, including the guidance manual cited in that rule
- <sup>xl</sup> Section 22-2C-6 NMSA 1978.
- <sup>xli</sup> E.g. Public School Finance Act at Section 22-8-1 NMSA 1978, *et seq.*, and 6.20.2.1 NMAC [2006].
- <sup>xlii</sup> Section 22-8B-4(B) NMSA 1978 (2011).
- <sup>xliii</sup> Section 22-8B-4(B) NMSA 1978 (2011).
- <sup>xliv</sup> 6.80.4.16 NMAC [6/30/2008].
- <sup>xlv</sup> 6.50.18 NMAC [2010] (“Use of Volunteers in Schools and School Districts).
- <sup>xlvi</sup> Section 22-8B-9(B)(16) NMSA 1978.
- <sup>xlvii</sup> Section 22-8B-9.1 NMSA 1978.
- <sup>xlviii</sup> Section 22-8B-5.3 NMSA 1978 (2011).
- <sup>xlix</sup> Section 22-8B-12(L) NMSA 1978 (2011).
- <sup>l</sup> Section 22-8B-9 NMSA 1978 (2011).

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- li Section 22-8B-12(F) NMSA 1978.
  - lii Section 22-8B-12(K) NMSA 1978 (2012).
  - liii Section 22-8B-12(K) NMSA 1978 (2012).
  - liv Section 22-8B-12(M) NMSA 1978 (2011).
  - lv Section 22-8B-12.1(A) NMSA 1978 (2011).
  - lvi Section 44-7B-1 NMSA 1978, *et seq.*
  - lvii Section 22-8B-12(J) NMSA 1978.

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