

Charter Contract Between the  
New Mexico Public Education Commission  
And  
**NEW MEXICO SCHOOL FOR THE ARTS**

This Charter Contract, (the "Contract"), is hereby entered into by and between the New Mexico Public Education Commission, (the "Commission"), and New Mexico School for the Arts ("NMSA") (the "School", and, together with the Commission, the "Parties"), a New Mexico Charter School, effective this 1st day of July, 2019.

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, § 22-8B-1, *et seq.*, New Mexico Statutes Annotated, 1978, as amended and supplemented, (the "Act"), to, *inter alia*, authorize charter applications that meet the requirements of the Act, and to negotiate and execute, in good faith, charter contracts that meet the requirements of the Act with approved charter schools; and,

WHEREAS, the Commission is further authorized pursuant to the Act, to monitor charter schools' compliance with the requirements of the Act, and with the requirements of the charter and Contract for each approved charter school; and,

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

WHEREAS, the Commission approved the charter renewal application for the School on December 12, 2018, (the "Charter"); and,

WHEREAS, pursuant to the Act and the Charter, the Commission and the School wish to enter into this Contract in compliance with the Act, and in order to set out the performance frameworks, as that term is defined in the Act, that define the financial, academic, and operations performance indicators, measures and metrics that will guide the evaluation of the School.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the Commission and the School agree:

SECTION 1: DEFINITIONS

Capitalized terms defined in this Section 1 shall have the meaning specified in this Section 1 wherever used in this Contract, including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms defined in the foregoing recitals, if not defined in this Section 1, shall have the same meaning as stated when used in this Contract, unless the context clearly requires otherwise.

"Audit Act" means § 12-6-1 through 12-6-14, NMSA 1978, as amended and supplemented.

"Chair" means the chairperson of the Commission, as elected by the members of the Commission, pursuant to the Act, from time to time.

"Charter Representative(s)" means Bill Beacham and Eric Crites as the person(s) authorized to sign the Contract, and other documents, on behalf of the School, and to legally bind the School to the Contract and other documents as required under the Act.

"Comprehensive Educational Program" means an educational program that meets Department academic standards as identified in this contract.

“Compulsory School Attendance Law” means the compulsory school attendance law set out at § 22-12-1 through 22-12-9, NMSA 1978, as amended and supplemented.

“Corrective Action Plan” means a plan developed by the School and submitted to the Commission to remedy operational, or financial violations or problems.

“Criminal Offender Employment Act” means the criminal offender employment act set out at § 28-2-1, *et seq.*, NMSA 1978, as amended and supplemented.

“Days” means calendar days.

“Department” means the Public Education Department of the State of New Mexico, and its successors.

“Division” means the Charter School Division of the Department, and its successors.

“Effective Date” means the effective date of this Contract, which is July 1, 2019, found on the first page of this Contract.

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

“Governing Body” means the governing body of the School, and any successor thereto.

“Head Administrator” means a Charter Representative, as defined herein, who is also a licensed school administrator.

“Instructional Hours” means mandatory instructional time during which students are engaged in a School-directed program, and for which the School enforces the Compulsory School Attendance Law.

“Mission” means the educational and pedagogical mission of the School, as set out in Section 4.1 herein.

“NMAC” means the New Mexico Administrative Code, as amended and supplemented from time to time.

“NMSA, 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented from time to time.

“Procurement Code” means §13-1-101, *et seq.*, NMSA 1978, as amended and supplemented from time to time.

“Public School Finance Code” means § 22-8-1, *et seq.*, NMSA 1978, as amended and supplemented from time to time.

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

“Secretary” means the Secretary of the Department, and his or her duly appointed successors.

“State” means the State of New Mexico.

“Term” means the term of this Contract, as set forth in Section 3, herein.

SECTION 2: SCOPE

1. This Charter Contract is entered into between the School and the Commission for the purpose of establishing a charter school to operate at the site(s) listed in Section 4.10. of this Contract.
2. The person authorized to sign and act on behalf of the Commission is the Chair, or such person as the Chair may lawfully designate from time to time.

The person(s) authorized to sign on behalf of the Charter School is/are the Charter Representative(s). The Charter Representative(s) affirm(s) as a condition of this Charter, that he/she is (one of) the above-described representative(s) of the Charter School and has the authority to enter into this Charter on behalf of the Charter School.

- i. The Charter School must maintain one or more Charter Representative(s), including one Charter Representative who is a Head Administrator, and provide contact information to the Commission within 30 days of the change of a Charter Representative(s).
  - ii. The Commission shall direct all communication with regard to the Charter and the Contract to the Charter Representative(s).
  - iii. The Charter Representative(s) shall respond to written communication from the Commission within the timeframe specified in the communication, which shall be no less than three business days absent exigent circumstance.
3. The Charter School is a public entity of the State of New Mexico, subject to all laws and regulations applicable to public entities.

SECTION 3: TERM

1. The term of this Contract shall be in full force and effect until June 30, [REDACTED]. The Contract will not automatically be renewed or extended; the Contract may be renewed by the Commission upon timely application by the School pursuant to the Act, and upon such terms and conditions as the Commission deems appropriate under the Act.

SECTION 4: REPRESENTATIONS, COVENANTS, AND WARRANTIES

1. **Purpose:** The School shall operate a public school consistent with the terms of the Charter and the Contract, and all applicable laws; shall achieve student outcomes according to the educational standards established by law, this Charter and Contract; and shall be governed and managed in a financially prudent manner.
2. **Mission:** The Charter School shall implement the mission identified below and shall report on the implementation of that mission in the manner described below.
  - i. NMSA provides access to a rigorous mastery arts and academic high school education for youth with passion and aptitude in the arts, leading to post-secondary learning, careers in the arts, and lives that contribute to society.
  - ii. The Charter School shall report on the implementation of its mission in the following manner:
    - a. Annually during the performance review visit required by the Act, as evaluated through the site visit team's observations and the school's response to any such observations;

- b. Annually through any mission specific goals identified in the School's Performance Framework, Attachment A, incorporated herein by reference; and
    - c. At renewal, in the event that the School applies to the Commission for renewal, through a narrative in the renewal application.
3. **Enrollment Cap and Authorized Grade Levels:** The School is authorized to serve no more than 300 students in grades 9-12.
- i. The School may make modifications as to the number of students in any particular grade, and number of students within a class to accommodate staffing decisions that are consistent with the School's programmatic needs; except that, nothing in this Contract shall give the School the authority to combine students from different grade levels into the same classroom unless the school's educational program explicitly provides for mixed grade or age education.
  - ii. The School must annually, prior to beginning the annual enrollment process, establish the number of vacancies by grade level available for student enrollment in that year. That number will govern the enrollment throughout the school year.
  - iii. The School may not exceed the building capacity of the Facility.
    - a. The building capacity of 275 E. Alameda is 1,130.
    - b. The building capacity of 500 Montezuma is 2,118.
4. **Partner Organization or Management Company (Intentionally omitted):**
- i. ~~The School has a legal relationship with \_\_\_\_\_ that is distinct from a relationship with a non-profit foundation described in 4.5 of this contract. The legal agreement governing the relationship between the School and \_\_\_\_\_ is included as Attachment B, incorporated herein by reference.~~
  - ii. ~~The legal agreement in Attachment B complies with all provisions of New Mexico law and the School is financially independent from \_\_\_\_\_. The School shall not make any changes to the document set out as Attachment B, or to its legal relationship and agreements with \_\_\_\_\_ without the approval of the Commission and the Department, which approval shall not be unreasonably withheld.~~
  - iii. ~~The Commission, through its designees and the Department, shall be permitted to review the legal agreement and other relevant school documents and records to determine whether the legal relationship between the School and \_\_\_\_\_ complies with all provisions of New Mexico law, and to determine that the School is financially independent from \_\_\_\_\_.~~
5. **Relationship with a Non-Profit Foundation**
- i. The school has a relationship with New Mexico School for the Arts – Art Institute, a non-profit foundation the primary purpose of which is to provide financial support to the school or leases the facility for the charter school
  - ii. The legal agreement or Memorandum of Understanding governing the relationship between the School and the foundation is Attachment C, incorporated herein by reference.
  - iii. The identity of the Board of Directors and Executive Director of foundation with a conflict of interest disclosure from each are provided in Attachment C.

6. **Comprehensive Educational Program of the School:** The School's educational program shall be as described below:

- i. The school will maintain admissions criteria designed to admit students who show exceptional promise or aptitude in the arts and a strong desire to pursue a career in the arts. (NMSA admits students based on passion, promise, and aptitude for the arts.) The admissions process will be conducted in a way that provides equal opportunity for admission to each prospective student regardless of that student's exposure to previous artistic training and without regard to the student's ability to pay residential costs. The board shall ensure, to the greatest extent possible and without jeopardizing admissions standards, that an equal number of students is admitted to the school from each of the state's congressional districts.
- ii. The school shall conduct outreach activities throughout the state to acquaint potential students with the programs offered by the school. The outreach activities shall include programs for middle school students and workshops for teachers. There shall be no admissions criteria established for participation in outreach activities.
- iii. The school, either through a foundation or other private or public funding sources, shall obtain funding to ensure that the school has adequate revenue to pay for all expenses associated with outreach activities provided for in Section 22 - 15F - 6 NMSA 1978 and for room and board costs for those students who are not able to pay the full cost of room and board as provided in Section 22 -15F - 7 NMSA 1978.
- iv. The school shall provide an annual report to the PEC in June as required by 22 - 15F 6. C. that includes:
  - a. non - personally identifiable demographic information about both applicants (to the extent available) and students admitted to the school delineated by counties, congressional districts, socioeconomic status, gender and ethnicity; and
  - b. the number of students who requested financial assistance for room and board, the total amount of financial assistance provided, and the amounts distributed delineated by the source of gifts, grants and donations received by the school.
- v. The school will offer intensive pre - professional instruction in the performing, creative writing, and visual arts combined with a strong academic program that leads to high school diploma.
- vi. Art disciplines of Creative Writing & Literature, Dance, Music, Theater and Visual Arts will be offered.
- vii. The school will offer a Guest Artist Program that augments students' technical skills, provides mentors and real - life examples of what can be achieved, expands imaginations as to what can be dreamt, and supports and inspires the regular teaching staff.

7. **Governance:**

- i. The School shall be governed by a governing body in the manner set forth in the governing body's bylaws, Attachment D, incorporated herein by reference.

- ii. The School's Governing Body shall have at least five members at all times; the number of Governing Body Members shall be specified in the bylaws.
- iii. The School shall notify the Commission of all changes in membership within 30 days of the change.
- iv. The Charter School shall either replace any member who is removed or who resigns, or close the position in conformity with its bylaws, within 45 days of removal, resignation or closure.
- v. No member of the Governing Body shall serve on the governing body of another charter school, unless the School has been granted a discretionary waiver from the Secretary.
- vi. All governing body members shall comply with training requirements established in Section 6.80.5 NMAC, as amended.
- vii. The School shall notify the Chair of the Commission within 15 days of any and all written complaints of inappropriate contact as defined in its school policies with a student or other minor by a member of the Governing Body, and shall notify the Chair of the Commission within 15 days of allegations of, or convictions for, any crime related to the misappropriation of school funds or theft of school property by a member of the Governing Body.
- viii. The members of the Governing Body have a duty to comply with the provisions of this Contract, all applicable laws, including, without limitation, the Act, all regulations, and reporting requirements.
- ix. The Governing Body is responsible for the policy decisions of the School; is responsible for hiring, overseeing, and terminating the Head Administrator of the School; and is entrusted with oversight of expenditure of public funds in accordance with all applicable laws, regulations and rules, including but without limitation any laws or rules pertaining to conflicts of interest, public school finance, and procurement.
- x. The Governing Body shall, at all times, be qualified to act as a qualified board of finance as demonstrated in Attachment E, which is incorporated by reference.
- xi. In order to initially become qualified as a board of finance, the school shall provide:
  - a. The names, home addresses, personal email addresses, and personal phone numbers of each member of the board;
  - b. A statement signed by every member of the Governing Body stating that the Governing Body agrees to consult with the Department on any matter not covered by the manual of accounting and budgeting before taking any action relating to funds held as a board of finance;
  - c. A signed affidavit from each member of the Governing Body member declaring that the member is not a member of the governing body of any other charter school, unless it has been granted a waiver by the Secretary for that purpose, and that the member was not a governing body member of another charter school that was suspended and was not reinstated, or failed to receive or maintain its board of finance designation; and
  - d. An affidavit or affidavits, signed by the School's licensed business official who will be given the responsibility of keeping the financial records of the School,

describing the training completed, professional licensure held and degrees earned by him or her;

- e. A copy of a certificate of insurance that indicates that the person who will be entrusted with handling the funds of the School is adequately bonded.
- xi. Within 30 days of the change to any member of the Governing Body or the School's licensed business official who will be given the responsibility of keeping the financial records of the charter school, the school shall resubmit all information required in Section 4. Subsection 7.xi (a)-(e) above, revised to reflect the changes in staffing or board membership.
- xii. If at any time, the School's qualification as a board of finance is revoked by the Department, the Commission shall, at its next regularly scheduled meeting, consider whether to commence revocation proceedings to revoke the School's Charter. If the Commission decides not to revoke the charter, the School shall be required to develop and successfully implement a Corrective Action Plan to address the conditions and causes of the revocation of the School's qualification as a board of finance.

**8. Operation:**

- i. The School shall be nonsectarian in its charter school programs, enrollment policies and employment practices and all other operations. Attachment F, incorporated herein by reference, states the School's enrollment policies and procedures.
- ii. The School shall comply with all federal and state laws relating to the education of children with disabilities.
- iii. The School shall comply with applicable federal, state and local rules, regulations and statutes relating to health, safety, civil rights and insurance.
- iv. The School shall, in accordance with the Compulsory School Attendance Act, maintain records to document daily student attendance and shall make such records available for inspection upon request of the Commission and the Department. The School shall comply with the number of overall instructional hours required by statute, based on the grade levels served, which may be verified through budget reporting.
- v. The School shall maintain student records in accordance with all other New Mexico public records retention requirements.
- vi. The School shall allow the Commission and the Department to visit each school site at any reasonable time.
- vii. The School shall allow the Commission and the Department to conduct financial, program or compliance audits and shall hold open for inspection all records, documents and files relating to any activity or program provided by the School relating to the School. All books, accounts, reports, files and other records relating to this Charter and Contract shall be subject, during normal business hours, to inspection and audit by the State for five years after termination of the Charter and the Contract.
- viii. The School shall notify the Chair of the Commission and the Department within 15 days of any and all written complaints of inappropriate contact as defined in the school's policies, or convictions for inappropriate contact with a student or other minor by any staff member, employee, or contractor and shall notify the Chair of the Commission within 15 days of allegations of, or convictions for, any crime related to the misappropriation of school funds or theft of school property by any staff member,

employee or contractor.

- ix. If the School receives federal grant funds that flow through the Department, the School shall timely submit financial and other reports required by the Department for the School's receipt of such funds.
  - x. The School shall comply with applicable federal, state and local rules, regulations and statutes relating to public education unless the School is specifically exempted from the provision of law. All members of the Governing Body shall sign a certificate, in the form attached hereto as Attachment G, certifying their compliance with all federal and state laws governing the organizational, programmatic, and financial requirements applicable to charter schools. Within 30 days of any change to the membership of the Governing Body, the School shall provide a signed certification from any new members in the form of Attachment G, which will be incorporated into this Contract.
  - xi. The School shall identify the non-discretionary waivers the School is utilizing and the discretionary waivers the School has requested from the Secretary in Attachment H, incorporated herein by reference.
    - a. If the school requests from, and is granted a discretionary waiver by the Secretary at any point during the Term, the School shall file a notification within 30 days of approval from the Secretary with the Commission to amend the Contract to reflect such waiver.
    - b. If the School begins making use of any additional non-discretionary waivers at any point during the charter term, the School shall file a notification within 30 days of first use of the waiver with the Commission to amend the contract to reflect the use of such non-discretionary waiver.
9. **Use of Volunteers:** The School covenants and represents that all volunteers it allows access to its students or the Facility will comply with state regulations regarding the use of volunteers set out in Section 6.50.18 NMAC.
10. **Background Checks:** The School shall comply with the requirements of Section 22-10A-5 NMAC 1978, relating to background checks for all staff, instructors, and volunteers, in whatever capacity, working with its students or at the Facility.
- i. The School shall develop and implement policies and procedures to require background checks on an applicant who has been offered employment, and for all volunteers, contractors and contractor's employees with unsupervised access to students at the public school. The School shall comply with the Criminal Offender Employment Act.
  - ii. The Head Administrator of the School shall report to the Department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed or certified school employee.
  - iii. The Head Administrator of the School or their respective designees shall investigate all allegations of ethical misconduct about any licensed or certified school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made, or incident occurs. If the investigation results in a finding of wrongdoing, the Head Administrator of the School shall report the identity of the licensed or certified school employee and attendant circumstances of the ethical misconduct on a standardized form to the Department and the licensed or certified school employee within thirty days following the separation from employment. No agreement between a departing licensed or certified school employee and the School shall diminish or eliminate the responsibility of investigating and reporting the alleged



ethical misconduct, and any such provision or agreement to the contrary is void and unenforceable

11. **Sites:** The School shall provide educational services, including the delivery of instruction, at the following location(s):

New Mexico School for the Arts  
500 Montezuma Avenue  
Santa Fe, NM 87501

The School shall ensure the Facilities meet the charter school facilities standards in Section 22-8B-4.2(A, C, D) NMSA 1978, and shall ensure that the facilities comply with all applicable federal, state and local health and safety standards and other applicable laws, regulations and rules. The School shall provide the Lease(s) or Lease Purchase Agreement(s) for all facilities, which is attached to this contract as Attachment J incorporated herein by reference,

## SECTION 5: PERFORMANCE FRAMEWORKS

1. **Performance Framework: Attachment A**, incorporated herein by reference, includes the Charter Performance Review and Accountability System (“Accountability Plan”), which includes Academic Performance Framework, Organizational Performance Framework, and Financial Performance Framework adopted by the Commission. These documents together set forth the academic and operational performance indicators and performance targets that will guide the Commission’s evaluation of the School and the criteria, processes and procedures that the Commission will use for ongoing oversight of operational, financial and academic performance of the School.
2. **Academic Performance Indicators and Evaluation:** The School shall:
  - i. Provide a comprehensive educational program that aligns with the state academic standards prescribed by the Department for the grades approved to operate.
  - ii. Participate in the State-required assessments as designated by the Department or the U.S. Department of Education.
  - iii. Timely report student level data for State-required assessments to the Department and report student level data from school administered assessments, as requested by the Commission or on a bi-annual basis if that data is incorporated into the Academic Performance Framework adopted by the Commission.
  - iv. Meet or make substantial progress toward achievement of the Department's standards of excellence.
  - v. Meet or make substantial progress toward achievement of the Department's standards of excellence or the performance standards identified in the Academic Performance Framework as adopted and modified periodically by the Commission.
    - i. The Academic Performance Framework adopted by the Commission allows for the inclusion of additional rigorous, valid and reliable mission specific indicators proposed by a charter school to augment external evaluations of its performance, provided that the Commission approves of the quality and rigor of such proposed indicators and the indicators are consistent with the purposes of the Act. Any such indicators will be incorporated into Attachment A.
    - ii. If the School fails to meet its academic performance indicators in any year it must develop, submit, and begin implementing a School Improvement Plan within 60 days of

the release of the academic performance information. The School Improvement Plan will be submitted to the Commission, but the Commission will not evaluate the quality of, or approve, the plan. The Commission may evaluate implementation of the plan through its annual site visits and provide feedback to the School regarding fidelity of implementation and effectiveness of the plan in improving School performance.

- iii. If the School does not meet the performance standards in the Performance Framework, it shall “make substantial progress” toward achievement of those standards as it is defined in the Commission’s Accountability Plan included in Attachment A.
- iv. Failure to meet or make substantial progress toward meeting the performance standards shall be sufficient justification to revoke or non-renew the School’s Charter.
- vi. The Commission is not required to allow the school the opportunity to remedy the problem if unsatisfactory review warrants revocation.

**3. Organizational Performance Indicators and Evaluation:** The School shall:

- i. Comply with applicable federal, state and local rules, regulations and statutes relating to public education unless the School is specifically exempted from the provision of law.
- ii. Timely submit all documentation, financial and other reports required by the Department or the Commission in order to evaluate the School’s compliance with applicable federal, state and local rules, regulations and statutes relating to public education.
- iii. Provide a written copy to the Commission, within 15 days of receiving a written notice of complaint filed against the School alleging violations of federal, state, or local law, regulation or rule, or a final determination from another state government division or agency, or state or federal court regarding any such complaint against the School.
- iv. Cooperate with the Commission or authorized representative to enable them to conduct annual site visits and all other auditing visits requested or required by the Commission or the Department.
- v. Meet the organizational performance standards identified in the Organizational Performance Framework as adopted and modified periodically by the Commission.
  - a. If the school fails to meet its organizational performance indicators, the School will be provided notice through the procedures in the Commission’s Accountability Plan included in Attachment A.
  - b. The school may be required to develop, submit and implement a Corrective Action Plan to address deficiencies in its organizational performance. All Corrective Action Plans must be submitted to the Commission, but the Commission will not evaluate the quality of, or approve, the plan. The Commission may evaluate implementation of the plan through its site visits and provide feedback to the School regarding fidelity of implementation and effectiveness of the plan in improving school performance.
  - c. Failure to meet the organizational performance standards shall be sufficient justification to revoke or non-renew the School’s Charter.
- vi. The Commission is not required to allow the school the opportunity to remedy the problem if unsatisfactory review warrants revocation.

**4. Financial Performance Indicators and Evaluation:** The School shall:

- i. Meet generally accepted standards of fiscal management which shall include complying with all applicable provisions of the Public School Finance Code, the Procurement Code, and the Audit Act; paying debts as they fall due or in the usual course of business; complying with all federal requirements related to federally funded programs and awards; refraining from gross incompetence or systematic and egregious mismanagement of the School's finances or financial records; and preparing and fairly presenting its financial statements in accordance with accounting principles generally accepted in the United States of America, which include the design, implementation, and maintenance of internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- ii. Timely submit all documentation, financial and other reports required by the Department or the Commission. The School shall further timely submit any Corrective Action Plans or additional financial reporting or documentation that may be required by the Department or the Commission.
- iii. Cooperate with the Commission to enable them, or its authorized representative to conduct all auditing visits requested or required by the Commission or the Department.
- iv. Meet the financial performance standards identified in the Financial Performance Framework as adopted and modified periodically by the Commission, or provide an adequate response to explain why the School does not meet the performance standards and demonstrate the school is a financially viable and stable organization.
- v. Failure to meet generally accepted standards of fiscal management shall be sufficient justification to revoke or non-renew the School's Charter.
- vi. The School shall have a designated licensed business official and certified procurement officer. The School shall identify the current individual designated as the certified procurement officer and contains their CPO certification in Attachment I incorporated herein by reference. The school shall notify the Commission of all changes to the designated licensed business official or certified procurement officer within 30 days.
- vii. The Commission is not required to allow the school the opportunity to remedy the problem if unsatisfactory review warrants revocation.

**5. Chartering Authority's Duties and Liabilities:** The Commission, shall:

- i. Evaluate all applications submitted by this charter school, including properly submitted amendment requests, and act timely on any such applications or requests;
- ii. Monitor the performance and legal compliance of the School, in accordance with the requirements of the Act and the terms of the Charter and Contract;
- iii. Review all relevant information to determine whether the School merits suspension, revocation or nonrenewal. All evaluation and monitoring will be carried out using the processes and criteria established in the Accountability Plan in Attachment A;
- iv. Conduct all its activities in accordance with its chartering policies and practices, which shall be modified from time to time to be consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing; and
- v. Promptly notify the Governing Body of the School of unsatisfactory fiscal, overall

governance or student performance or legal compliance and provide reasonable opportunity for the governing body to remedy the problem; Any such notice shall be provided in accordance with the Accountability Plan as provided in Attachment A.

- vi. The Commission is not required to allow the school the opportunity to remedy the problem if the unsatisfactory review warrants revocation.

SECTION 6: ADDITIONAL TERMS

**1. Withheld Two-Percent of Program Cost:** The Charter Schools Division of the Department may withhold and use two percent (2%) of the school-generated program cost for administrative support of the School as provided in Section 22-8B-13 NMSA 1978. These funds are to be utilized in the following manner:

- i. New Mexico Public Education Department: The Department shall utilize the funds for the following purposes:
  - a. Funding the staff to conduct work for the Division, which shall include:
    - 1. Conducting annual site visits and annual evaluations under the Performance Frameworks; receiving, processing, evaluating and making recommendations on new applications, amendment requests, and renewal applications; receiving, processing, and evaluating complaints; making recommendations to revoke charters, as necessary; making recommendations regarding School Improvement and Corrective Action Plans, as necessary; overseeing the closure of charter schools; and making recommendations regarding the development and implementation of authorizing policies and practices to ensure they are consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing; and
    - 2. Technical assistance and support work such as providing training for new Governing Board members; providing Governing Body training; maintaining communication with the charter school field to keep them apprised of best practices, opportunities for support from Department, policy changes from the Commission; hosting other training and professional development; and developing other support materials.
  - b. Funding a proportional share of the Department staff to conduct work, as determined by the Department, necessary to support the administrative oversight, approval of budget matters, capital outlay, transportation, special education, federal programs, school evaluation and accountability, annual financial audits, and T&E audits.
  - c. Funding any other staff work necessary to provide professional support or data analysis to the Commission.
  - d. The Commission's reasonable request for funding of any project or service to support the work of the Commission shall not be denied by the Department. The Commission's request for funding of project or service shall take budget priority over the Department's budget priorities or allocations.
  - e. The Commission shall request an annual accounting from the Department on

how the two percent (2%) was utilized and shall provide the information received to the school.

- ii. New Mexico Public Education Commission: The New Mexico Public Education Commission shall utilize the funds for the following purposes:
  - a. Funding the travel and per diem expenses of Commissioners when conducting the business of the Commission.
  - b. Funding the administrative expenses of the business of the Commission
- iii. In addition to the above listed items, the Department and the Commission shall have authority to utilize the funds for similar or related costs for administrative support of charter schools and charter school programs.

**2. Amendments to the Charter and Changes to the School:**

- i. This Contract may be amended by mutual agreement, in writing, of the parties. Processes for submitting requests to amend, or notifications of amendments, as amended from time to time, shall be posted on the Commission's website as an Amendment Request or Notification. The School shall not take action or implement the amendment until approved by the Commission unless the Commission's processes indicate otherwise.
  - a. All amendment requests and notifications shall be submitted pursuant to the procedures developed by the Commission.
  - b. The Commission shall consider and vote on all properly submitted amendment requests and notifications within 60 days of receipt of a complete submission.
- ii. If the Parties cannot agree on an amendment to the terms of the contract, either party may appeal to the Department Secretary pursuant to Section 22-8B-9(A) and (C) NMSA 1978.

**3. Insurance:**

- i. The School shall obtain and maintain insurance in accordance with the laws of the State.
- ii. The School will participate in the Public School Insurance Authority.
- iii. Waiver of Rights: The School and its insurers providing the required coverage shall waive all rights of recovery against the State and the Commission, or the Department, their agents, officials, assignees and employees.
- iv. The School shall maintain insurance coverage as required by law and provide the types, limits, and deductibles in Attachment K.

**4. Charter Revocation:** The Commission may at any time take action to revoke the Charter and Contract of the School.

- i. **Criteria:** Pursuant to the Act, the Commission may revoke the Charter if the Commission determines that the School:

- a. Committed a material violation of any of the conditions, standards or procedures set forth in the Contract,
  - b. Failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the Contract,
  - c. Failed to meet generally accepted standards of fiscal management, or
  - d. Violated any provision of law from which the School was not specifically exempted.
- ii. **Procedures and Timeline:** The Commission shall utilize the following revocation process:
- a. Notify the school at least 7 days prior to a regularly scheduled meeting that it will be on the agenda for consideration of whether to issue a Notice of Intent to Revoke the Charter.
  - b. Issue a written Notice of Intent to Revoke the Charter within 15 days of voting to issue such a notice. The Notice shall:
    - 1. State the legal basis for the potential revocation, and reasonably identify the evidence that the Commission has to support the existence of the legal basis;
    - 2. Identify the date, location, and time at which a revocation hearing will be held;
    - 3. Establish deadlines for the School and the Commission to present written materials and all evidence that will be used during the hearing; and
    - 4. Identify if the hearing will be conducted by the Commission or by an impartial hearing officer. If a hearing officer is to be used, the Notice shall establish the date on which the Commission will consider whether to accept, reject, or modify the hearing officer's findings of facts, conclusions of law, and recommendations.
  - c. After a hearing, upon making a final revocation decision, the Commission shall issue a written decision, through the Chair, within 15 days of voting to revoke the charter stating the findings of fact and conclusions of law that support the revocation.

**5. Charter Renewal Processes:** Within the time period established by the Act, the School's Governing Body may submit a renewal application to the Commission using the Commission's renewal application form as it may be amended from time to time. The application shall include all information required by law and necessary for the Commission to determine whether renewal, non-renewal, or a conditional or short-term renewal is most appropriate.

- i. **Criteria:** Pursuant to the Act, the Commission may refuse to renew the Charter if the Commission determines that the school:
  - a. Committed a material violation of any of the conditions, standards or procedures set forth in the Contract,

- b. Failed to meet or make substantial progress toward achievement of the Department's standards of excellence or student performance standards identified in the Contract,
  - c. Failed to meet generally accepted standards of fiscal management, or
  - d. Violated any provision of law from which the School was not specifically exempted.
- ii. Procedures and Timeline: The Commission shall utilize the following renewal process:
- a. At least one year prior to the date on which the school will apply for renewal, the Commission's authorized representatives will notify the school of its preliminary renewal profile, as established in the Commission's Accountability Plan which is incorporated herein as Attachment A.
  - b. At least 20 days prior to Commission's meeting at which it will consider the school's renewal application, the Commission's authorized representatives will provide the School with a preliminary application analysis and recommendation. The recommendation shall:
    - 1. State the legal basis for potential non-renewal, and reasonably identify the evidence to support the existence of the legal basis; and
    - 2. Establish deadlines for the School to present its written materials and all evidence that will be used to respond to the recommendation, which shall be not less than 10 days from the date of the delivery of the recommendation.
  - c. No later than seven (7) days prior to the Commission's meeting at which it will consider the school's renewal application, the Commission's authorized representatives will provide the school with a final application analysis and recommendation.
  - d. Upon making a final non-renewal decision, the Commission, through the Chair, shall issue a written decision within 30 days of voting to non-renew the charter stating the findings of fact and conclusions of that support the revocation.

**6. Applicable Law:** The material and services provided by this School under this Charter shall comply with all applicable federal, state, and local laws and shall conform, in all respects, to the educational standards contained in its application and Charter. This Charter shall be governed and interpreted in accordance with the laws of the State.

- i. 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. If a provision in the Performance Framework conflicts with a provision in the Contract, the Contract shall take precedence over the Performance Framework.
- ii. This Contract shall not take precedence over any applicable provisions of law, rule or regulation.

- iii. 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, provided.
  - a. If an amendment to this Contract is required to comply with a change in the law or rule, then the Parties shall execute such an amendment.

**7. Charter Interpretation:**

- i. Merger: This Charter and Contract, including all of the attachments, constitute the entire agreement of the Parties. NMSA, Commission policies, and Department policies, and administrative rules and regulations which may be amended from time to time during the course of the Charter, are incorporated into this Charter, along with any amendments which may occur during the term of the Charter, by this reference.
- ii. Waiver: Either party's failure to insist on strict performance of any term or condition of the Charter shall not constitute a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- iii. Severability: The provisions of this Charter are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Charter or Contract.
- iv. Assignment: Neither party may assign or transfer any right or interest in this Charter and Contract unless authorized by law. No assignment, transfer or delegation of any duty of the School shall be made without prior written permission of the Commission.

**8. Indemnification and Acknowledgements:** To the extent permitted by law, the Charter School shall indemnify, defend, save and hold harmless the Commission, the State, its departments, agencies, boards, commissions, universities and its officers, officials, agents and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) ("Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the School or any of its directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such School to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree that is applicable to the School. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the School from and against any and all claims. It is agreed that the School will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This provision shall be subject to annual budget and appropriation by the New Mexico Legislature.

**9. Employees and Contractors:** This Charter is not an employment contract. No officer, employee, agent, or subcontractor of the School is an officer, employee, or agent of the Commission or the Department.

**10. Non-Discrimination:** The School shall comply with all applicable federal and state employment laws, rules and regulations, including the Americans with Disabilities Act. The School shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, sexual orientation,



gender identity, spousal affiliation, national origin or disability.

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

**Charter School:**

Bill Beacham  
500 Montezuma Avenue  
Santa Fe, NM 87501  
505-310-4194  
bbeacham@nmschoolforthearts.org

Eric Crites  
500 Montezuma Avenue  
Santa Fe, NM 87501  
505-310-4194 (office)  
505-670-0062 (cell)  
ecrites@nmschoolforthearts.org

Patricia Matthews  
Matthews Fox, PC  
1925 Aspen Drive Suite 301A  
Santa Fe, NM 87505  
505-473-3020  
pmatthews@matthewsfox.com

**NM Public Education Commission:**

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

The Parties may make changes in the address of its contact person by posting the change(s) on its website.

12. **Dispute Resolution:** Disputes arising out of the interpretation of this Contract shall be subject to the dispute resolution process set forth in this section. Disputes arising out of interpretations of state or federal statute, regulation, or policies of a federal entity or a different state entity, Charter revocation, or Charter renewal shall not be subject to this dispute resolution process.
- i. **Notice of Dispute:** Either party shall notify the other party in writing that a dispute exists between them within 30 days from the date the dispute arises. The notice of dispute shall identify the Paragraph 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.
  - ii. **Continuation of Contract Performance:** The School and the Commission agree that the existence and details of a dispute notwithstanding, the Parties shall continue without delay their performance of this Contract, except for any performance that may be directly affected by such dispute.
  - iii. **Time limit for response to the notice and cure of the matter in dispute:** Upon receipt of a Notice of Dispute, the Chair of the Commission or the Charter Representative of the Charter School shall have 15 days to respond in writing.
    - a. The written response may:
      - 1. Propose a course of action to cure the dispute;

- 2. Propose the parties enter into informal discussions to resolve the matter; or
  - 3. Require the parties select a neutral third party to assist in resolving the dispute.
- b. If no response is received within 15 days, the Party sending the Notice may invoke the process for selecting a neutral third party to assist in resolving the dispute.
  - c. If the written response proposed a course action or negotiations to resolve the dispute, the party sending the Notice shall respond within 15 days or receiving the response.
  - d. At any point in this informal process, either Party may, in writing, invoke the process for selecting a neutral third party to assist in resolving the dispute.
- iv. **Selection of a neutral third party to assist in resolving the dispute:**
- a. If either Party invokes the process for selecting a neutral third party to assist in resolving the dispute, it shall include in the notice the name of a proposed mediator along with his/her qualifications.
  - b. If the other Party does not agree to the proposed mediator, it shall identify an alternate mediator along with his/her qualifications within 5 business days.
  - c. If the other Party does not agree with the alternate designation, it shall give notice within 5 business days.
  - d. In the event that the Parties cannot agree on a mediator the Parties shall request that the Secretary appoint a mediator. The appointed mediator shall mediate the dispute.
- v. **Apportionment of all costs related to the dispute resolution process:** 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.
- vi. **Process for Final Resolution of Dispute:** If settlement of the dispute is not reached through mediation or by agreement of the Parties, the Parties shall submit the matter to the Secretary for resolution.

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

**14. Release of Funding:** A School may not receive state equalization funding until a current NMCI determination, certificate of occupancy, and occupancy permit for educational use are provided for each site listed in Section 4.10 (and each site subsequently approved by the New Mexico Public Education Commission). A School may not receive state equalization funding until the

Commission has determined that the school has satisfied all conditions imposed by the Commission at initial approval and has demonstrated readiness to operate through completion of the Commission's Implementation Year Checklist. Upon request for renewal, the School may not receive state equalization funding until the Commission has determined that the school has satisfied all conditions imposed by the Commission.

**NEW MEXICO SCHOOL FOR THE ARTS**

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

By \_\_\_\_\_

\_\_\_\_\_, Charter Representative for  
New Mexico School for the Arts

**NEW MEXICO PUBLIC EDUCATION COMMISSION**

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

By \_\_\_\_\_

Patricia E. Gipson, Chair of the New Mexico Public Education Commission.