

SETTLEMENT AGREEMENT AND
MUTUAL RELEASE IN FULL AND INDEMNIFYING AGREEMENT

1. The Board of Education for the Gallup-McKinley County Schools (“Board of Education”) is the statutory governing body of the public schools under Section 22-5-1 of the Public School Code geographically located in and around Gallup, New Mexico. The Governing Council of Middle College High School is the statutory governing body of locally-chartered charter school under Section 22-8B-4(B) of the Charter Schools Act located in Gallup, New Mexico (“Governing Council”). The Board of Education is currently the Chartering Authority over Middle College High School under the provisions of Section 22-8B-6(A) of the Charter Schools Act.

2. A dispute has arisen between the Board of Education and the Governing Council, as to which there is an actual controversy. On or about July 6, 2018, the Board of Education’s Superintendent of Schools initiated formal action under Sections 22-8B-5.3(G) and (H)(5) and 22-8B-12 of the Charter Schools Act to have the Board of Education determine whether an Order of Revocation terminating the charter contract and/or denying renewal of a charter contract for Middle College High School should issue, so that it may no longer have the ability or authority to operate as a charter school under the jurisdiction of the Board of Education. Middle College High School has sought a hearing and the Board of Education has scheduled a hearing. However, no revocation order has been issued by the Board of Education. The parties have now agreed to amicably settle the issues between them, and, as of June 30, 2019, to end the chartering relationship between the Board of Education and the Governing Council under the Charter Schools Act pursuant to the terms set forth in this Settlement Agreement (“Agreement”).

3. Board President Charles Long, on behalf of the Board of Education for the Gallup-McKinley County Schools, by and through the Board's legal counsel, Cuddy & McCarthy, LLP (Andrew M. Sanchez) and Council Chair, W. Anthony Major, Jr., on behalf of the Governing Council of Middle College High School, by and through the Council's legal counsel, Matthews Fox, P.C. (Susan B. Fox) have reached a settlement of an existing dispute, the terms of which are provided in their entirety in this Agreement.

4. In consideration for the Board of Education's execution of this Agreement, including its Mutual Release in Full and Indemnifying Agreement ("Release"), the Governing Council agrees to the following:

- a. On or before October 1, 2018, or the deadline specified by the Public Education Commission ("PEC") for applications to be chartered by the PEC, the Governing Council will take all actions under its authority necessary to apply for a charter from the PEC pursuant to Section 22-8B-6 (C) and 22-8B-16 of the Charter Schools Act. The charter sought in its application to the PEC is for a State-chartered charter contract with the PEC, as the chartering authority, to begin no later than the beginning of the 2019-2020 school year;
- b. The Governing Council shall enter into a charter contract with the Board of Education for the 2018-2019 school year pursuant to Section 22-8B-9(A) of the Charter Schools Act that terminates by its terms and by the provisions of this Agreement on June 30, 2019, and it will not be renewed by the parties. The Contract agreed to and executed by the parties is attached as Exhibit A.

- c. The Governing Council acknowledges and agrees that the Board of Education is only suspending its revocation action pending the satisfaction of this Agreement;
- d. The Governing Council acknowledges and agrees that if it fails to obtain charter approval from the PEC by June 30, 2019, the Governing Council will accept the immediate revocation of its charter by formal action of the Board of Education under Sections 22-8B-5.3(G) and (H)(5) and 22-8B-12 of the Charter Schools Act making no further challenges and hereby specifically waives any and all rights to appeal the revocation action under the provisions of the Charter Schools Act or under any contract claim to challenge the revocation action before any agency or court of competent jurisdiction. In addition, the Governing Council acknowledges and agrees that it will take all necessary actions to cease all school operations on or before June 30, 2019, if it fails to obtain a charter from the PEC;
- e. Governing Council agrees to accept a corrective action plan to address issues deemed necessary by the Board of Education to facilitate the successful completion of the one school year charter contract in accordance with the Charter Schools Act and the oversight required by Board of Education to allow the School sufficient time to seek a State-chartered charter from the PEC;
- f. Governing Council agrees to refrain and shall direct its Chief Executive Officer, Dr. Rob Hunter, from making, publishing, causing or encouraging to be made or to be published by others offensive, derogatory, disparaging or critical comments or statements about the Board of Education for the Gallup-McKinley County Schools, its representatives or employees and specifically its Superintendent of Schools,

Mike Hyatt, whether verbally, electronically or in writing, relating to or regarding the contemplated revocation action, or the previous interactions between the Gallup-McKinley County Schools and Middle College High School leading to the contemplated revocation action;

- g. On or before June 30, 2019, Middle College High School shall return all property and equipment of the Gallup-McKinley County Schools that it may have in its possession or control, and items/property purchased with Middle College High School funds prior to June 30, 2019, will remain the property of MCHS, if and when the School is chartered through the PEC; and
- h. Governing Council agrees to the promulgation of a joint statement, the language of which will be approved by each party, announcing the settlement set forth herein and that the parties are limited to announcement that an amicable settlement has been reached that will facilitate the end of the relationship between Middle College High School and the Gallup-McKinley County Schools as of June 30, 2019.

5. In consideration for Governing Council's execution of this Agreement, including its Mutual Release in Full and Indemnifying Agreement ("Release"), the Board of Education agrees to the following:

- a. The Board of Education for the Gallup-McKinley County Schools will take a neutral position before the PEC on the application for a charter from the PEC by the Governing Council;

- b. The Board of Education shall enter into a charter contract with the Governing Council for the 2018-2019 school year pursuant to Section 22-8B-9(A) of the Charter Schools Act that terminates by its terms and by the provisions of this Agreement on June 30, 2019, and it will not be renewed by the parties;
- c. The Board of Education shall suspend its contemplated revocation action pending the satisfaction of this Agreement;
- d. Should the Governing Council fail to obtain a charter from the PEC by June 30, 2019, the Board of Education shall take official action at a duly-called open meeting of the Board of Education to issue an order for the immediate revocation of the charter to Middle College High School under Sections 22-8B-5.3(G) and (H)(5) and 22-8B-12 of the Charter Schools Act. In addition, the Board of Education shall supervise the actions of the Governing Council and its administration to cease all school operations on or before June 30, 2019, if it fails to obtain a charter from the PEC;
- e. The Board of Education shall impose a corrective action plan on Middle College High School to address necessary issues arising from the revocation action to facilitate the successful completion of the one school year charter contract in accordance with the Charter Schools Act and shall direct the necessary oversight of the corrective action plan;
- f. Board of Education agrees to refrain and shall direct its Superintendent of Schools, Mike Hyatt, from making, publishing, causing or encouraging to be made or to be published by others offensive, derogatory, disparaging or critical

comments or statements about the Governing Council for the Middle College High School, its representatives or employees and specifically its Chief Executive Officer, Dr. Rob Hunter, whether verbally, electronically or in writing, relating to or regarding the contemplated revocation action or the previous interactions between the Gallup-McKinley County Schools and Middle College High School leading to the contemplated revocation action; and

- g. Board of Education agrees to the promulgation of a joint statement, the language of which will be approved by each party, announcing the settlement set forth herein and that the parties are limited to the announcement that an amicable settlement has been reached that will facilitate the end of the relationship between Middle College High School and the Gallup-McKinley County Schools as of June 30, 2019.

6. No further action by either party outside of that required by this Agreement shall be necessary to affect the tender or the acceptance of the revocation.

7. W. Anthony Major, Jr., on behalf of Middle College High School, its Governing Council and its representative agents, attorneys, heirs, successors, assigns, and any persons or parties subrogated to its rights, hereby forever release and indemnify the Gallup-McKinley County Schools, its Board of Education and individual members (past and present), administrators and officers thereof, past and present, in their individual and official capacities, and any entity related to any of the foregoing and their respective agents, predecessors, attorneys, servants, employees, contractors, consultants, officers, directors, attorneys, affiliates, successors, assigns, executors,

insurers and reinsurers, from any and all claims of any kind or character which the Governing Council has or might have against the Gallup-McKinley County Schools, its Board of Education and individual members, administrators and officers thereof, past and present, and including without limitation any claims under the United States and New Mexico Constitutions, contract, statute, ordinances, regulations, common law, or otherwise, for personal injury, property damages, lost wages, income or benefits, compensatory damages, damages for emotional distress, punitive damages, attorneys' fees, costs and interest, equitable relief, any other form of damages or relief, or injuries to the person or property of the Governing Council, or both, whether known or unknown, and whether developed or undeveloped, in any way relating to or resulting from Governing Council's time and experiences as the governing body of Middle College High School related to the Board of Education serving as the chartering authority from the beginning of time to the date of the execution of this Agreement, including any and all claims which could have been asserted by the Governing Council in any agency, administrative forum or court of competent jurisdiction.

8. Council Chair W. Anthony Major, Jr., on behalf of Middle College High School, its Governing Council and its individual members, administrators and officers thereof, past and present shall fully release the Gallup-McKinley County Schools, its Board of Education and individual members, administrators and officers thereof, past and present, as provided in this Release in Full and Indemnifying Agreement (hereinafter referred to as the "Release") and shall forever forebear and refrain from filing any action, claim, charge or lawsuit of any kind whatsoever against the Gallup-McKinley County Schools, its Board of Education and individual members, administrators and officers thereof, past and present, for anything related to or arising from the governance of Middle College High School. The Governing Council agrees to indemnify, defend and to hold the

Gallup-McKinley County Schools, its Board of Education and individual members, administrators and officers thereof, past and present, harmless from any and all past, present and future claims, demands, causes of action, in law or in equity, whether known or unknown, which may be made or brought by the Governing Council or any other person or entity acting on its behalf, claiming damages, reimbursement, subrogation, indemnity, or contribution against the Gallup-McKinley County Schools, its Board of Education and individual members, administrators and officers thereof, past and present, which might be filed or claims as a result of or in any way arising directly or indirectly from the events, claims, incidents or occurrences giving rise to the revocation action referenced herein but does not limit or prohibit any claims arising from Charter Contract required under this Agreement. This indemnification agreement shall also include costs of defense and attorneys' fees, it being the intent of this Release to completely and fully terminate any exposure for claims of damages, liability, costs, expenses, attorneys' fees or any other monetary recovery on the part of the Gallup-McKinley County Schools, its Board of Education and individual members, administrators and officers thereof, past and present.

9. Board President Charles Long, on behalf of the Gallup-McKinley County Schools, its Board of Education and individual members, administrators and officers thereof, past and present, and its representative agents, attorneys, heirs, successors, assign, and any persons or parties subrogated to its rights, hereby forever release and indemnify Middle College High School, its Governing Council and individual members (past and present), administrators and officers thereof, past and present, in their individual and official capacities, and any entity related to any of the foregoing and their respective agents, predecessors, attorneys, servants, employees, contractors, consultants, officers, directors, attorneys, affiliates, successors, assigns, executors, insurers and

reinsurers, from any and all claims of any kind or character which the Board of Education has or might have against Middle College High School, its Governing Council and individual members, administrators and officers thereof, past and present, and including without limitation any claims under the United States and New Mexico Constitutions, contract, statute, ordinances, regulations, common law, or otherwise, for personal injury, property damages, lost wages, income or benefits, compensatory damages, damages for emotional distress, punitive damages, attorneys' fees, costs and interest, equitable relief, any other form of damages or relief, or injuries to the person or property of the Board of Education, or both, whether known or unknown, and whether developed or undeveloped, in any way relating to or resulting from the Board of Education's time and experiences as the governing body of the Gallup-McKinley County Schools and the chartering authority for the School from the beginning of time to the date of the execution of this Agreement, including any and all claims which could have been asserted by the Board of Education in any agency, administrative forum or court of competent jurisdiction.

10. Board President Charles Long, on behalf of the Gallup-McKinley County Schools, its Board of Education and its individual members, administrators and officers thereof, past and present shall fully release Middle College High School, its Governing Council and individual members, administrators and officers thereof, past and present, as provided in this Release in Full and Indemnifying Agreement (hereinafter referred to as the "Release") and shall thereafter forever forebear and refrain from filing any action, claim, charge or lawsuit of any kind whatsoever against Middle College High School, its Governing Council and individual members, administrators and officers thereof, past and present, for anything related to or arising from the governance of the Gallup-McKinley County Schools. The Board of Education agrees to indemnify, defend and to

hold Middle College High School, its Governing Council and individual members, administrators and officers thereof, past and present, harmless from any and all past, present and future claims, demands, causes of action, in law or in equity, whether known or unknown, which may hereafter be made or brought by the Board of Education or any other person or entity acting on its behalf, claiming damages, reimbursement, subrogation, indemnity, or contribution against Middle College High School, its Governing Council and individual members, administrators and officers thereof, past and present, which might be filed or claims as a result of or in any way arising directly or indirectly from the events, claims, incidents or occurrences referenced herein giving rise to the revocation action referenced herein. This indemnification agreement shall also include costs of defense and attorneys' fees, it being the intent of this Release to completely and fully terminate any exposure for claims of damages, liability, costs, expenses, attorneys' fees or any other monetary recovery on the part of Middle College High School, its Governing Council and individual members, administrators and officers thereof, past and present.

11. The Parties acknowledge that by agreeing to this compromise and settlement, the Parties do not admit any liability of any kind and that liability has at all times been denied, and that the settlement evidenced by this Agreement is a compromise of an actual but disputed claim made to avoid further expenses of litigation and to terminate all further controversy and claims between Middle College High School and the Gallup-McKinley County Schools of whatsoever nature, known or unknown, arising before the date of executing this Agreement. The Parties further acknowledge and understand that no representation of fact or opinion has been made by any of the Parties or anyone on their behalf to induce this settlement, and that Parties have entered into this Agreement knowingly and voluntarily and upon the opportunity to obtain the

advice of legal counsel of their own selection. The Parties have made no agreement of any kind or promised to do or omit to do any act or thing not herein set forth.

12. Each party represents and warrants that it has the sole right and exclusive authority to execute this Agreement and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action referred to in this Agreement. In addition, both parties represent and warrant that their representatives executing this Agreement are both physically and mentally competent to execute this Agreement on its behalf.

13. Each Party hereto shall bear its own attorneys' fees and costs in connection with this Agreement and the matters and documents referred to herein and all related matters.

14. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico and the venue for any disputes or actions arising from this Agreement shall be brought in the Eleventh Judicial District Court for New Mexico in McKinley County. A copy of this Agreement shall have the same effect and will be as enforceable as the original.

15. As further consideration and inducement for this compromise settlement and agreement, Middle College High School or any reorganized or derivative charter school arising from Middle College High School agrees that it will not apply for a future charter in any capacity with the Gallup-McKinley County Schools as a locally-chartered charter school for a period of five (5) years.

16. As a further consideration and inducement for this compromise settlement, the Parties and their attorneys further agree that other than the joint public statement set forth herein neither they nor anyone else on their behalf will cause to be made public or release to any news media or to any other person not a party referenced hereinabove, any information about this

settlement, including but not limited to, the names of the parties released, the details of the settlement, the terms of this Agreement, or any characterization of the settlement, except as may be required pursuant to applicable public records laws, as ordered or directed by the Attorney General's office of the State of New Mexico or the New Mexico Public Education Department, or pursuant to order from a court of competent jurisdiction, and in such instances only after notifying the other party to this Agreement in writing. The Parties recognize that confidentiality is a provision of this settlement, and that such confidentiality shall be maintained to prevent damages to the other Party's reputation, standing in the community, and credibility. The Parties agree and stipulate that any unauthorized disclosure, as outlined hereinabove, will damage the reputation, standing in the community and credibility of the other Party. The Parties further agree and stipulate that this confidentiality provision is in all respects fair, proper and reasonable under the circumstances. If either Party is asked by the press, their employees, former employees, or any other persons to discuss the terms and conditions of the settlement, they agree that they will simply respond that the matter has been amicably resolved. The parties acknowledge and understand that each will be limited by the provisions and requirements of the New Mexico Inspection of Public Records Act ("IPRA"), N.M. Stat. Ann. § 14-2-1 *et seq.*, with regard to the confidentiality provisions of this Agreement. Disclosure of this Agreement or its contents to public officials or agents of the Parties, such as auditors, attorneys, taxation or funding entities for official purposes or to the media or member of the public under a lawful request under the IPRA shall not violate this provision.

17. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms, covenants, and provisions shall remain in full force and effect and be in no way affected, impaired, or invalidated.

18. THE DESIGNATED REPRESENTATIVES OF THE GOVERNING COUNCIL AND OF THE BOARD OF EDUCATION HAVE FULLY READ THE FOREGOING AGREEMENT, FULLY UNDERSTAND IT, HAVE HAD THE OPPORTUNITY TO OBTAIN THE APPROVAL OF EACH GOVERNING BODY AND TO SEEK AND OBTAIN THE LEGAL ADVICE OF ATTORNEYS OF THEIR OWN CHOOSING FOR EACH GOVERNING BODY IN ACCEPTING AND UNDERSTANDING THE AGREEMENT, AND AGREES ON BEHALF OF EACH PARTY TO BE BOUND BY ITS TERMS AND CONDITIONS.

 W. ANTHONY MAJOR, JR.
 ON BEHALF OF THE GOVERNING COUNCIL
 FOR MIDDLE COLLEGE HIGH SCHOOL

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

The foregoing Settlement Agreement was subscribed, sworn to and acknowledged before me this 10th day of August, 2018, by W. Anthony Major, Jr., as Council Chair and authorized representative of the Governing Council, the governing body of Middle College High School, who is personally known to me.


 Notary Public

Seal

REVIEWED BY:


MATTHEWS FOX, P.C.

By: _____


SUSAN B. FOX
ATTORNEYS FOR THE GOVERNING COUNCIL FOR
MIDDLE COLLEGE HIGH SCHOOL
1925 Aspen Drive, Suite 301A
Santa Fe, New Mexico 87505

CUDDY & MCCARTHY, LLP

By: _____


ANDREW M. SANCHEZ
ATTORNEYS FOR THE BOARD OF EDUCATION
FOR THE GALLUP-MCKINLEY COUNTY SCHOOLS
201 Third Street, Suite 1300
Albuquerque, New Mexico 87102