

RESOLUTION OF EAST MOUNTAIN GOVERNING COUNCIL

**APPROVING CERTAIN AGREEMENTS RELATING TO FINANCING FOR A
MIDDLE SCHOOL FACILITY; AUTHORIZING CERTAIN OFFICERS TO TAKE
ADDITIONAL ACTION; AND OTHER MATTERS RELATING THERETO**

This Resolution is adopted this _____ day of _____, 2026 by the Governing Council of East Mountain ("Governing Council" and "School"), a duly chartered New Mexico public charter school, at a duly called Governing Council meeting, at a public meeting held in compliance with the New Mexico Open Meetings Act, NMSA 1978, §10-15-1, *et seq.*

WHEREAS, the Governing Council of School recognizes that Each Mountain High School Foundation ("Foundation") is a New Mexico nonprofit corporation with an Internal Revenue Service designation as a 501(c)(3) organization, whose primary purpose is to receive and maintain a fund or funds to acquire real or personal property or both and to use and apply the whole or any part of the income therefrom and the principal thereof for the purpose of supporting the public educational purposes of the School, including providing suitable facilities for the operation of East Mountain.

WHEREAS, the Governing Council is aware that the Foundation intends to acquire, construct, expand, remodel, renovate, improve, furnish and equip a new facility for the School to use as a middle school.

WHEREAS, the Governing Council has been informed that to facilitate the project, the Foundation has applied for and been approved for a loan from a nonprofit social impact fund (Equitable Facilities Fund) whose mission is to help high performing public charter schools. The loan will provide funding for the Foundation to construct and equip an approximately 27,302 square foot new building of multi-purpose space, a new learning commons, and middle school classrooms, and related space for grades six through eight, parking, and related structures (together the "Middle School Facility"). The Foundation's loan to construct the Middle School Facility will be an amount not to exceed \$_____,000 (the "Loan") and amortized over thirty (30) years with a five-year maturity. In addition, the Loan includes funding for capitalized interest during construction of the Middle School Facility and the costs of issuance.

WHEREAS, upon completion, the Middle School Facility will meet the Statewide Adequacy Standards required to house a public charter school as the term is defined and as it applies to charter schools according to 6.27.30 NMAC [1.14.2025].

WHEREAS, the Foundation has approved the construction and renovation of the Middle School Facility, the execution of the Loan Agreement for the Middle School Facility, including approving the forms of Deeds of Trust, Assignments of Leases and Rents, Security Agreements and Fixture Filings as security for the Loan, and related matters.

WHEREAS, the Governing Council has been generally informed about the terms and conditions of the financing sought by the Foundation to construct the Middle School Facility.

WHEREAS, the Foundation has represented to the School that the Foundation's obligations related to the Loan are solely the obligation of the Foundation and that neither the School, nor the Governing Council or any of its individual members, officers, employees, agents or other representatives of the School, will be obligated for any outstanding debt as contemplated by Art. 9 §11 of the New Mexico Constitution, or be required to give or pledge a guaranty, security or other credit as may be contemplated in Art. 9 §14 of the New Mexico Constitution.

WHEREAS, the Council, upon verification by a subsequent review of the closing documents to be signed by the Foundation, intends to lease the Middle School Facility according to a lease agreement, which will be separately considered and approved by the Governing Council at or before closing of the Foundation's Loan. The Governing Council has been advised by administration and its business manager that the lease payments, plus additional rents, as projected are reasonable and necessary to provide a facility that meets the needs of the School's educational program and the School's facility obligations as required by NMSA 1978, §22-8B-4.2 (2024).

WHEREAS, it is the School's intent to acquire the Middle School Facility by entering a Lease Purchase Arrangement with the Foundation pursuant to the Public School Lease Purchase Act, NMSA 1978, §22-26A-1, *et seq.* (2024), which acquisition will ensure that the School has a permanent middle school facility as contemplated by NMSA 1978, §22-8B-4.2. A draft form of the Lease Purchase Arrangement was presented to the Governing Council along with this Resolution.

WHEREAS, to further the Council's objective to secure a public middle school facility that meets the School's education program and requirements of state law, the Governing Council

agrees, to the extent permitted by law, to cooperate in the Foundation's acquisition of the funding to construct the Middle School Facility.

NOW THEREFORE BE IT RESOLVED by the Governing Council of East Mountain as follows:

1. The Middle School Facility described in Exhibit "A" attached hereto is approved as suitable for expansion and use as School facilities.

2. The terms of the Middle School Facility Lease are approved in substantially the form attached hereto as Exhibit "B".

3. The terms of the Deposit Agreement are approved in substantially the form attached hereto as Exhibit "C".

4. The terms of the Master Covenant Agreement are approved in substantially the form attached hereto as Exhibit "D".

5. The terms of the respective Subordination, Non-Disturbance and Attornment Agreements ("SNDA's") made by the School, as Lessee, in favor of the Trustee related to the Middle School Facility and the Existing Facility, to be dated on or near _____ are approved in substantially the form attached hereto as Exhibit "E";

6. The terms of the federal Tax Certificate (the "Tax Certificate") insofar as they apply to the School as user and lessee of the Middle School Facility and Existing Facility are approved in substantially the form attached hereto as Exhibit "F"

7. The source of funds which the School will utilize for the payments to be made under the Middle School Facility Lease is currently appropriated expenditures of the School as set forth in the Middle School Facility Lease, Deposit Agreement and Master Covenant Agreement but excludes State of New Mexico funding under the Charter Schools Act which is specifically dedicated to the payment of expenses of the School, which do not include the payment of amounts due under the Middle School Facility Lease, and funding for all such operating expenses of the Charter School required under State or federal laws to provide required educational program expenditures.

8. The Governing Council understands that the Foundation intends to fund the Property by incurring a debt secured by a loan agreement and deed of trust encumbering the Property. The Governing Council has been advised that to secure the funding described in the Recitals, the Foundation will borrow the proceeds from EFF in accordance with various documents

(the "Loan Documents"); however, the Governing Council shall have no financial obligations under the Loan Documents and is not a signatory thereto.

9. If financing for the Property is approved, at closing the Foundation and the School intend to enter into a lease agreement (the "Lease") which will be considered by the Governing Council in an open meeting before voting to accept the terms and conditions of the Lease. The School will occupy and pay rent for the Property according to the Lease and base rent schedule that will be attached to the Lease and will subsequently take occupancy of the Property or portion(s) thereof upon issuance of a certificate of occupancy. The School will be expected to commence rent to the Foundation for the Property according to the terms of the Lease.

10. The Governing Council understands that the Foundation is incurring the obligations under the Loan Documents for the benefit of the School for the sole purpose of providing the School a public school facility.

11. The Governing Council has determined that leasing the Property from the Foundation is in the School's best interest, and, therefore, the Governing Council hereby agrees to enter into an acceptable lease agreement for the Property, if the Foundation completes the construction of the Middle School Facility. In addition, the Governing Council acknowledges that the Foundation must report certain financial information about the Foundation and the School to the Foundation's lender at such times, in such form and to such designees as set forth in the Loan Documents. The Governing Council and School will cooperate in reporting requirements necessary for Foundation to secure and comply with the terms of the Loan Documents.

12. Based upon the Recitals above which are incorporated herein and determinations made in this Resolution, the Governing Council authorizes any one of the Officers designated below, in consultation with the School's legal counsel, to review, negotiate, execute and deliver, on behalf of the Governing Council, all certificates and other documents which in such Officer's or Officers' discretion may be necessary and proper to consummate the transactions described in this Resolution, including but not limited to the Middle School Facility Lease, **the Deposit Agreement**, the Master Covenant Agreement, the General Certificate, the Tax Certificate, **the SNDAs**, and such other related documents, certificates or instruments which are consistent with the intent of this Resolution, but in no event shall any document have the consequence of creating a financial obligation to the School, the Governing Council or any of its officers, directors, employees, agents, attorneys or assigns.

13. The Governing Council President, Vice President, and Executive Director, (collectively, “Officers”), and each of them acting alone, is hereby authorized and directed to review, negotiate, finalize, execute, seal, attest and deliver the documents identified above, and any and all other documents pertaining to this transaction. Any one or more of the Officers may consent to this transaction, or consent to any change or modification in or to the form of documents described herein, as he, she or they deem reasonable and appropriate and such approval shall be conclusively evidenced by his, her or their execution thereof.

14. All actions heretofore taken by the Officers in connection with the Middle School Facility construction and the leasing of the Middle School Facility are hereby ratified and confirmed, including without limitation the employment of legal counsel.

15. This Resolution shall take immediate effect upon its adoption by the Governing Council.

APPROVED AND ADOPTED THIS _____ day of _____, 2026
by the Governing Council of East Mountain as follows:

**MEMBERS VOTING IN
FAVOR OF THE RESOLUTION**

**MEMBERS VOTING
AGAINST THE RESOLUTION**

**MEMBERS ABSTAINING
FROM THE VOTE ON THE
RESOLUTION**

**GOVERNING COUNCIL OF
EAST MOUNTAIN:**

By: _____,
Dr. Glenn Hushman, President
and authorized representative

Date: _____

Attest: _____
Governing Council Secretary

Date: _____

**PRESIDENT'S CERTIFICATE REGARDING
GOVERNING COUNCIL RESOLUTION**

I hereby certify that I am the President of the Governing Council of East Mountain, a New Mexico public charter school authorized pursuant to the Charter Schools Act, NMSA 1978, §22-8B-1, *et seq.*, and that the forgoing is a true copy of a resolution duly adopted by the Governing Council of the East Mountain at a meeting held the _____ day of _____, 2026, at which meeting a quorum was present acting throughout, and that the resolution has not been rescinded or modified and is in full force and effect.

Dr. Glenn Hushman, President