

CHARTER MIDDLE SCHOOL CONTRACT

THIS CONTRACT, dated this 16th of April 2003, is made and entered by and between HARRISON SCHOOL DISTRICT NO. 2 ("District") and JAMES IRWIN CHARTER MIDDLE SCHOOL ("Charter Middle School").

A. The Colorado General Assembly has enacted the Charter Schools Act ("Act"), § 22-30.5-101, et seq., C.R.S., for certain purposes as enumerated in § 22-30.5-102(2) and (3); and

B. On December 12, 2002 an Application (attached as Exhibit "A") was approved by the District's Board of Education ("the Board"), with an Addendum.

C. The Board has determined that the Application, as amended by the terms of this Agreement, complies with the purposes and requirements of the Act and should be approved by the District, subject only to the appeal process set forth in the Act and subject to a determination by the Colorado State Board of Education regarding the waivers requested from the Colorado State Board of Education as set forth in this Agreement. The terms of the addendum, as modified herein, have been incorporated into this Agreement.

As required by the Act, it is the desire of both the Charter Middle School and the District that the Charter Middle School shall remain accountable to the Board and subject to the ultimate authority of the Board, but that the Board should grant the Charter Middle School substantial flexibility to achieve successful educational results in new and innovative ways.

D. The Act contemplates that the Application, as amended by a contract ("Agreement") between the Charter Middle School and the District, will constitute the agreement between the parties regarding the governance and operation of the Charter Middle School.

E. The Charter Middle School seeks certain waivers from and clarification of Board policy and/or state law.

F. The District has the authority to waive only those board-approved policies and/or regulations to the extent permitted by law.

G. The authority of the State Board of Education to provide waivers from requirements of state law only extends to provisions contained in Title 22 of the Colorado Revised Statutes.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual understandings, releases, covenants and payments herein described, the District and

the Charter Middle School mutually agree and accept the following terms and conditions:

Mission Statement

1. Mission Statement: The mission statement contained in Section (a) of the Charter Middle School's Application is hereby accepted by the District to the extent it is consistent with the principles of the General Assembly's declared purposes for enacting the Charter Schools Act as set forth in § 22-30.5-102(2) and (3), C.R.S. That statement is: The mission of James Irwin Charter Middle School is to help guide and motivate students in the development of their character and academic potential through academically rigorous, content-rich educational programs.

Article II Nonreligious, Nonsectarian Status

2. Nonreligious, Nonsectarian Status: The educational program of the Charter Middle School shall be nonreligious, nonsectarian and shall not discriminate against any student on the basis of race, creed, color, gender, national origin, religion, ancestry, disability or need for special education services.

Article III Goals, Objectives, and Pupil Performance Standards

3.1 Curriculum. The Charter Middle School agrees to implement the instructional programs as outlined in its Application attached hereto.

a. The Charter Middle School shall have the authority and responsibility of designing and implementing its educational program, subject to the conditions of this Contract, in a manner, which is consistent with state law, including, without limitation, requirements regarding content standards.

b. The educational program, pupil performance standards and curriculum designed and implemented by the Charter Middle School shall meet or exceed any content standards adopted by the District and shall be designed to enable each pupil to achieve such standards.

c. The Charter Middle School agrees to comply with all state statutory requirements concerning subjects of instruction, unless specifically waived by the State Board of Education, including, without limitation, instruction in the areas of state and federal history and civil government, § 22-1-104, C.R.S., honor and use of the United States Flag, § 22-1-106 C.R.S., the federal constitution, § 22-1-108, C.R.S., and the effect of use of alcohol and controlled substances, § 22-1-110, C.R.S.

d. The Charter Middle School shall establish a process for resolving public

complaints, including complaints regarding curriculum, which will provide an opportunity to be heard. The final administrative appeal shall be heard by the Charter Board, not the District's Board of Education.

e. The Charter Middle School shall notify the District of any curriculum change which deviates from the concept of material that is incremental, coherent, sequential and content-rich.

3.2 Records.

a. The Charter Middle School agrees to comply with all record keeping requirements of the District's Board and/or federal or state law and shall provide any reports, as necessary, to meet the District's reporting obligations to the State Board and Colorado Department of Education. Student records include, without limitation, immunization records, class schedules, records of academic performance, disciplinary actions, attendance and standardized test results and documentation required under federal and state law regarding the education of students with disabilities.

b. The Charter Middle School shall comply with all Board-approved policies and regulations, and applicable federal and state laws, concerning the maintenance, retention and disclosure of student records, including, without [imitation. the Colorado Open Records Act § 24-72-201. et seq. C.R.S., and the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g. The Charter Middle School shall have access for student recruitment purposes to the District's student mailing list but shall comply with all confidentiality and access requirements of state and federal law as to such records.

3.3 Open Enrollment. Enrollment shall be open to children who reside within the District and as outlined in the Admission Process in Article VII.

3.4 Tuition. Tuition shall not be charged to students who attend the Charter Middle School. The Charter Middle School may set fees for programs, books, transportation, and extracurricular activities.

3.5 Participation in Nonacademic Activities of Other Schools: The Charter Middle School students may participate in nonacademic activities at other schools in the District, provided that the prerequisites for participation are met and there is space available in the desired activity or program. Where such participation requires payment of a fee, the Charter Middle School student shall be responsible for payment of the fee. Charter Middle School students shall not be eligible for enrollment in academic courses at District schools on a part-time basis.

3.6 Education Accountability. The Charter Middle School shall be accountable to the District and subject to all Board approved policies and regulations unless specifically waived. The Charter Middle School agrees to participate in the District accountability process and will be granted representation on the District Accountability Advisory Committee in the same proportions as other District schools. All records established and maintained in

accordance with the provision of this Contract, Board policy, and federal and state law shall be open to inspection by the District.

3.7 Pupil Performance Standards. All students of the Charter Middle School will be required during the fall of 2003 to take the ITBS. The Charter Middle School will then tabulate the median test scores in each subject area, cross-referenced by race/ethnic guidelines and gender. This will establish the baseline for the Charter Middle School's program. This process will be repeated each spring,

The disabled, if they have an individual education plan (SEP) can be exempted from baseline and annual testing based on a recommendation from the teacher, Alternative assessment methods will be used consistent with their staffing requirements. However, they are required to take the Colorado Student Assessment Program (CSAP) tests.

The Charter Middle School will meet or exceed the standards adopted by the School Board of the District. It will participate in the Colorado Student Assessment Program. The assessments will measure four academic areas, math, reading, writing, and science. These results will be reviewed and compared to the academic achievement of students throughout the District.

ARTICLE IV

Evidence of Support

4. Community Support: The Charter Middle School has demonstrated that sufficient support for the formation of the Charter Middle School exists, as evidenced by the list of families, teachers and community members supporting the school and letters of support filed with the District.

ARTICLE V

Statement of Need

5. Statement of Need: The Charter Middle School has satisfied the statutory requirements for a statement of need as required by the Act, specifically that there are District parents who wish, among other things, a content-rich, back-to-basics learning environment for their children.

6.1 Evaluation of Pupil Performance and Procedures for Corrective Action: The Charter Middle School shall implement those methods for evaluating pupil-performance and procedures for corrective action contained in Section (f) of the Applications, and subject to the conditions below and otherwise set forth in this Contract.

6.2 The Charter Middle School will implement the plan for assessment of student performance as set forth in Section (f) of the Application, and the Charter Middle School agrees to cooperate with the District and its administrators to coordinate testing with the District's statistical needs.

Article VII Admissions Process

7.1 Admissions Process. The Charter Middle School shall adhere to the procedures set forth in Section (1) of the Application relating to the Admissions process subject to the conditions set forth below.

a. The first preference for enrollment is those students who are residents of the District and who enroll by January 31, 2003 and each year thereafter, who enroll by January 31 of each year. However, in the second year and thereafter, students who are currently enrolled shall have preference over all other new applicants.

b. The second preference for enrollment is those students whose parents helped form the Charter Middle School

c. The third preference for enrollment is for students whose parents signed letters of intent before the Application was submitted to the District.

d. The fourth preference for enrollment is for students whose parents sign a letter of intent by March 15, 2003 for the 2003/2004 school year.

e. The fifth preference for enrollment is for students whose parents sign a Letter of intent after March 15, 2003, but before the start of the first school year. This preference is based on a first-come, first-served basis.

f. If at any time (during the third and fourth step) the enrollment exceeds the capacity of the Charter Middle School, all subsequent applications for enrollment will be put on a waiting list. When space becomes available the Charter Middle School will conduct a lottery to determine which students are allowed to enroll.

The lottery will be governed by the following rules:

1. All students who are on the waiting list will be allowed to enter.
2. If a student is chosen in the lottery and there is a sibling or siblings who want to attend the Charter Middle School, those siblings will be given preference so the family can all attend the same school.

3. The lottery will be conducted January 31 of each year. Each student's lottery draw will determine the number that student has on the waiting list for the following school year,

7.2 Expulsion,

The authority to hold expulsion hearings will be delegated by the District's Board of Education to the Board of Directors of the Charter Middle School or its designee. However, the Board of Directors or its designee shall make findings of fact and recommendations to the District's superintendent, who shall then render a written opinion as to whether or not the student should be expelled from the District as provided by § 22-33-105(2)©, C.R.S. The decision as to whether or not a student will be expelled from the District will be made by the District's superintendent and a decision to expel a student from the District may be appealed to the Board of Education.

ARTICLE VIII

Release from Mandates and District Policies

8.1 No Release Not Otherwise Stated. Except as expressly set forth herein or as may be subsequently set forth in a written agreement between the District and the Charter Middle School, the Charter Middle School shall comply with all applicable federal, state, local or District laws, rules, regulations and policies that may exist from time to time during this Agreement.

8.2 Waivers. The Charter Middle School has been granted certain waivers from Board approved policies and/or regulations as described in Section (m) of the Application attached hereto. In addition, the Charter Middle School has proposed requests for waivers from certain state statutes from the State Board of Education as identified in Section (m) of the Application and the Board has jointly agreed to request waivers for the Charter Middle School of certain such laws.

8.3 Release from District Policies. In addition to the other waivers of District policies expressly provided for herein, the District hereby agrees to waive the policies set forth in the Application subject to all other terms and conditions of this Agreement. Additional waivers of District policies may be requested as provided herein. The District shall exercise good faith when adopting future District policies, procedures, rules and regulations and shall give the Charter Middle School notice of any such policy, procedure, rule or regulation that may materially conflict with the Charter Middle School's educational program.

8.4 Process of Future Waivers. From time to time, the Charter Middle School may determine that other waivers are desirable to enable the Charter Middle School to efficiently and effectively achieve its mission. Additional waivers from specific Board approved policies or regulations and/or state laws or regulations may be requested by the Charter Middle School by submitting such a request, in writing, to the District's superintendent. The request shall include the reasons why the Charter Middle School is in need of or desires the waiver. The superintendent shall have ten (10) school days to review the request and, thereafter, will present the matter before the Board at its next regular meeting. The Board shall consider the matter in accordance with its regular procedures for taking action. Waivers of Board approved

policies and regulations may be granted only to the extent permitted by law. In the event the District policy or regulation from which the Charter Middle School seeks a waiver is required by state law, or where the Charter Middle School otherwise requests release from a state regulation, the District agrees to jointly request such a waiver from the State Board of Education, if the District's Board first approves the request.

Article IX Governance and Operation

9.1 The Charter Middle School shall implement the governance and operation procedures outlined in Section (h) of the Application, as amended, attached hereto, except as may be modified herein.

9.2 Lunch Program. The Charter Middle School may participate in the federal free and reduced lunch program. Applications will be available for those who wish to apply for the free and reduced lunch program and qualification for this program will be determined by the state and federal guidelines. The Charter Middle School may contract with the District's nutrition service department or other outside vendors to provide the lunch program. Should the Charter Middle School seek to contract with the District's nutrition service program, additional contract negotiations will occur.

9.3 Dress Code. The Board of Directors will enact a Uniform requirement for the Charter Middle School prior to opening the school. During the first year, the Discipline and Dress Code Committee ("DDC") will review the uniform requirement, monitor discipline concerns and report their findings to the Board. If a uniform is required, the Board of Directors will take into consideration the projected cost of compliance with any such uniform requirement and will take steps to ensure that any requirement enacted will not have a disparate impact on economically disadvantaged families. Qualification for any assistance will be based on the same criteria used to determine eligibility for the free and reduced lunch program.

ARTICLE X

Funding and Budget

10.1 Subject to the non-appropriations language of Article XII, the District shall fund the Charter Middle School and the Charter Middle School shall undertake the financial obligations set forth in Section (g) of the Application as amended, attached hereto.

10.2 Per pupil funding. Per pupil funding will be annually based on the October 1 student count. The District will make 12 equal payments and will follow the state's process of making any necessary funding adjustments due to student enrollment in December of each year. In the event a Charter Middle School student is forced by expulsion or other legal requirement to return to the District and the District becomes responsible for providing educational services to the student, the District shall retain all remaining per pupil funding for that student for the remainder of the school year.

10.3 Start up costs. On pages 30 and 33 of the Application, all references to start up costs or start up cost grants are to be deleted. In addition, since the District cannot provide start up costs or grants, any references to such throughout the Application are hereby deleted.

10.4 Line of credit. Section (g) IV. ("Line of Credit and Grant") in the Application is hereby deleted.

10.5 Enrollment projections. Section (g) VI ("Enrollment") of the Application is modified as follows:

2003-04 Enrollment projections. First year enrollment is projected at 200 students. Approximately one-third of these students are projected to be District students. In 2003-2004 enrollment is projected to be between 260 and 300 students. The Charter Middle School could open with as few as 100 students and as many as 240. On or before April 15 of each year the Charter Middle School shall report to the District the anticipated enrollment for the ensuing school year.

10.7 Audit. Section (g) SVI. ("Annual Audit of Finance and Administration") is hereby amended by the addition of the following sentence:

The Charter Middle School shall provide monthly financial statements to the District in accordance with Colorado Department of Education reporting criteria. It will be the responsibility of the Charter Middle School to select its own fiscal auditing firm and to pay for those services. The Charter Middle School shall conduct its annual audit in conjunction with the District's audit in order to provide for parallel reporting to the Colorado Department of Education. The District's Finance Department will contact the Charter Middle School annually to inform it of this date due deadline.

ARTICLE XI

Employment Matters

11.1 Hiring of Personnel.

- a. It is understood that all employees hired by the Charter Middle School shall

be employees of the Charter Middle School and not the District and shall be employees at will. All employee discipline decisions will be made by the Charter Middle School. The District shall have no obligation to employ Charter Middle School employees who are released or leave the Charter Middle School. Other terms of the employment relationship are described in the Application, attached hereto and incorporated herein.

b. Section (i) LA. ("Hiring of Personnel") of the Application is amended by the addition of a new paragraph as follows:

The Charter Middle School will conduct at its expense background checks of all applicants for employment consistent with State law and District policies and procedures. The District agrees to provide information to the Charter Middle School with respect to how such background checks are conducted and who conducts them.

11.2 Employee Records. The Charter Middle School shall comply with all District policies and regulations, and applicable federal and state laws, concerning the maintenance and disclosure of employee records, including, without limitation, the requirements of the Colorado Open Records Act, § 24-72-201, et seq., C.R.S.

11.2 Payroll. Employees shall be paid through the payroll department of the Charter Middle School, which will maintain its own advertisement/recruitment, hiring, payroll, salary schedules, employee records/files, and record keeping with respect to its employees. The Charter Middle School will house and maintain all its employment records and files.

ARTICLE XII

Legal, Insurance and Contracting Issues

12.1 Legal Organization of James Irwin Charter Middle School.

a. The Charter Middle School is organized and shall be maintained as a separate legal entity from the District for all purposes of this Agreement. As provided by the Act, the Charter Middle School shall constitute a public school in the state of Colorado. Notwithstanding its existence as a separate legal entity, the Charter Middle School and the District acknowledge that the educational programs conducted by the Charter Middle School are considered to be operated by the Charter Middle School as a part of the District to the extent so provided by the Act. The parties further acknowledge that the Charter Middle School is a public entity within the meaning of § 24-10-106, C.R.S., and is therefore entitled to the protections of the Colorado Governmental Immunity Act.

b. The Charter Middle School shall promptly provide written information to the District regarding the initial composition, and any change in the composition, of its Board of Directors

("Charter Board") and of any other policy making or advisory board reporting to the Charter Board. The Charter Middle School's governing bylaws shall contain provisions which permit the public served by the Charter Middle School a reasonable opportunity to remove Board members of the Charter Middle School in a manner similar to the removal of the District's Board members by the public.

c. The Charter Middle School shall promptly provide the District with copies of all written bylaws, policies, procedures and rules in effect from time to time with respect to the Charter Middle School. The bylaws shall not be inconsistent with terms of the Application, and this Agreement.

12.2 Operation of the Charter Middle School. To the extent reasonably possible, the Charter Middle School shall be organized and operated in such a manner as to: 1) eliminate any liability to the District for the actions and activities of the Charter Middle School and 2) properly disclose to all third parties dealing with the Charter Middle School that the District has no legal responsibility for the debts or actions of the Charter Middle School. The operations of the Charter Middle School, including the meetings of the Board of Directors, shall be subject to the Colorado Open Meetings Act § 24-6-401, et seq., C.R.S.

12.3 Contracting by the Charter Middle School.

a. The Charter Middle School will not extend the faith and credit of the District to any third person or entity. The Charter Middle School acknowledges and agrees that it has no authority to enter in a contract that would bind the District, and that the Charter Middle School's authority to contract is limited by the same provisions in law that apply to the District itself.

b. Unless otherwise expressly agreed in writing by the District, each contract or legal relationship entered into by the Charter Middle School in connection with the Charter Middle School shall include the following provisions:

1. Contractor acknowledges that the Charter Middle School is not an agent of Harrison School District No. 2, and accordingly contractor expressly releases Harrison School District No. 2 from any and all liability under this agreement.

2. Any financial obligation of the Charter Middle School arising out of this agreement is subject to annual appropriation by the Charter School Board of Directors and the school district to which it is accountable by state law.

3. This agreement is not intended to create a multiple fiscal year debt or other obligation and the Charter Middle School's obligations hereunder shall be interpreted and limited in such a manner as to avoid creation of a multiple fiscal year debt or other obligation under the terms of Article X, Section 20, Paragraph 4(b)

of the Colorado Constitution.

12.4 Legal Powers of the Charter Middle School.

a. The Charter Middle School shall be fiscally responsible for its own operations within the limitations of any funding provided by the District and other revenues derived by the Charter Middle School consistent with law.

b. The Charter Board and its properly authorized agents and officers, acting on behalf of the Charter Middle School, shall have power and authority to independently exercise, consistent with federal and state law and subject to the other terms and conditions of this Agreement, the powers (including such other powers as provided for elsewhere in this Agreement to the extent consistent with this Agreement) to: 1) contract for goods and services; 2) prepare a budget; 3) select personnel and determine their compensation; 4) procure insurance; 5) lease facilities for school purposes; 6) purchase, lease or rent furniture, equipment and supplies; 7) accept and expend gifts, donations or grants of any kind in accordance with such conditions prescribed by the donor as are consistent with law and not contrary to any of the terms of this Agreement; and 8) generally, take such other actions as may be necessary or desirable to properly and efficiently operate the Charter Middle School, in exercising these powers, the Charter Middle School shall comply with all applicable Board approved policies unless a specific waiver is obtained.

c. The Charter Board is hereby delegated the authority to approve contracts to which the Charter Middle School is a party, subject to the requirements and limitations of the Colorado Constitution, state law, Board approved policies and the provisions of this Agreement.

12.5 Insurance.

a. The Charter Middle School shall cooperate in good faith to coordinate risk management activities with the District to the extent that the District has reasonable good faith concerns regarding its own risk and exposure with respect to activities of the Charter Middle School. Such cooperation may include without limitation; 1) the prompt reporting by the Charter Middle School to the District of any major pending or threatened claims against the Charter Middle School, and 2) the provisions by the Charter Middle School to the District of all accident or injury claims reported by students, employees and others, including without limitation any notice of a claim normally covered by a professional liability policy providing coverage for such things as employment issues, sexual and other harassment, discrimination and similar issues.

b. Section (j) I.A. ("insurance and Liability Insurance") of the Application is hereby deleted and replaced by the following: The Charter Middle School will obtain policies for its errors and omissions, workers compensation, unemployment, liability insurance, and any other insurance required by law and will handle all claims and hearings related to worker's compensation, unemployment or other insurance claims. The Charter Middle School will provide a copy of all such policies to the District as soon as coverage is obtained.

12.6 Conflicts of Interest. Members of the Charter Board shall comply with the Colorado Code of Ethics, § 24-18-101, et. seq., C.R.S., and District policies and regulations concerning ethics and conflicts of interest.

12.7 Legal Representation and Costs.

a. Except as expressly provided herein, the Charter Middle Schools shall be responsible for its own legal representation and legal costs. The District shall not be obligated to provide any legal representation to, or to pay any legal cost of the Charter Middle School except to the extent expressly provided in connection with insurance coverage or other contracted services provided by the District to the Charter Middle School.

b. The Charter Middle School agrees to keep the District reasonably informed of any litigation.

12.8 Indemnification. To the extent not covered by insurance to otherwise barred by the Colorado Governmental immunity Act, the Charter Middle School agrees to indemnify and hold the District and its agents and employees harmless from all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever which arise out of or are in any manner connected with the Charter Middle School's operations. The foregoing provision shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided by the Colorado Governmental Immunity Act.

Article XIII

Site

13.1 The choice of site for the Charter Middle School is the responsibility of the Charter Board. In the event the Charter Board chooses a site outside the District, the District acknowledges that it has the authority to allow the Charter Middle School to be located outside the District pursuant to §22-32-109(v), C.R.S.

13.2 The lease signed by the Charter Middle School for the site shall be the sole responsibility of the Charter Middle School. The Charter Middle School will indemnify the District and hold it harmless from all liability, claims, and demands of any kind whatsoever which could arise out of or are in any manner connected to the Charter Middle School's location or operations.

13.3 The Charter Middle School will comply with § 22-32-124, which requires that the facility conform with the standards of the Colorado Division of Labor, The Charter Middle School will not operate a school in any location not approved by the Colorado Division of Labor and any other applicable governmental department or agency.

Article XIV
Special
Education

14.1 Section (g) II. D. ("Funding of Federally Mandated and Optional Programs") is hereby amended by the additional of the following additional language:

The Charter Middle School will be responsible for all costs incurred for out of District students related to due process hearings or avoidance of due process. However, the Charter Middle School will not be responsible for such costs if it has substantially complied (complied in all material respects with) the recommendations of the District's special education director.

The District will agree to provide special needs for students utilizing the per student dollar allocation through the insurance model. At the end of the one year, the parties will review this arrangement and determine whether to extend it and if so, whether it needs to be modified. The parties shall subsequently negotiate the terms of this arrangement in good faith.

The Charter Middle School shall not reject any applicant based on a student's handicapping condition or special education needs as provided by statute.

Article XV

Term and Termination

15.1 Term. This Agreement is effective as of the date first written above and shall continue for a term of five school years until June 30, 2008, unless earlier terminated or extended as provided herein. The term of the Charter Middle School may be renewed for an additional period by mutual written agreement of the parties, it is understood that the Charter Middle School intends to purchase facilities during the first five years and it may request that the Board extend the length of the Charter beyond five years for the purpose of enhancing the terms of any lease or financial obligation as provided in the Act. Beginning June 30, 2007, the Charter Middle School will provide the Board with best information available concerning continuation of the Charter Middle School.

Thereafter, the parties will consult in good faith concerning the renewal or extension of the Charter.

15.2 Termination

a. This Agreement may be terminated by the Charter Middle School prior to the end of its terms with the approval of the District.

b. This Agreement may be terminated, and the Charter revoked, by the Board,

at any time for any of the following reasons:

- 1.. If any grounds exist for termination of the Charter Middle School as may be now or subsequently provided in C.R.S. SS 22-30-5.110(3) and (4) or other applicable *law*, or
2. If the Charter Middle School otherwise materially breaches any of the terms and conditions of this Agreement, and such material breach has not been cured subject to Article 17.2 © below.

c. Notwithstanding Article 17.2(b)(2) above, in connection with any material breach of this Agreement committed by the Charter Middle School, the District shall give the Charter Middle School written notice of the breach and of the requirements for correction of the breach, and shall give the Charter Middle School 30 days to remedy the breach or reach agreement with the District on a plan of cure. If the breach, is not corrected within the time period specified by the District in the notice of the breach, then the District may terminate the Agreement in accordance with Article 17,2(b) above. The provisions of this Article 17.2(c) shall only apply to a termination under Section 17.2(b}(2), and shall not apply to any other termination of this Agreement.

15.3 Termination and Dissolution.

a. if the Charter Middle School is terminated for any reason, all unexpended funds, supplies, textbooks, media resources, equipment, and any other assets used in connection with the Charter Middle School shall be promptly transferred to the District.

b. If the Charter Middle School should cease operations for whatever reason, including the nonrenewable or revocation of the Charter, the District may at its option elect to, but shall not be required to, supervise or conduct directly the winding up of the business and affairs of the Charter Middle School; provided, however, that in doing so, the District does not assume any liability incurred by the Charter Middle School beyond the funds allocated to it by the District under this Agreement. The District's authority in connection with the winding up of the Charter Middle School shall include without limitation the power to direct payment of the expenses and liabilities of the Charter Middle School out of the remaining assets of the Charter Middle School, the power to sell, transfer, or otherwise dispose of the assets of the Charter Middle School, and to apply any proceeds therefrom to the expenses and liabilities of the Charter Middle School, and the power to return any remaining assets of the Charter Middle School to the District. The District shall have no obligation to employ any employees of the Charter Middle School in the event the Charter Middle School dissolves or otherwise ceases to operate.

c. Upon termination and dissolution, all records of the Charter Middle School shall become the property of the District,

Article XVI
Miscellaneous
Provisions

16.1 Bidding Requirement Unless purchased from or through the District, contractual services and purchases of supplies, materials and equipment shall be procured through a system of competitive bidding, as required by District policy and state law.

16.1 (a) Section (g) II.B. ("Central Administrative Overhead Costs") is hereby deleted and replaced by the following language:

The District will supply no ancillary services to the Charter Middle School. The Charter Middle School shall be responsible for procurement and purchasing of all supplies. Any accounts established by the Charter Middle School will be maintained by the Charter Middle School.

16.2 Interpretation of Agreement. This Agreement shall be interpreted consistent with the provisions of the Colorado Constitution and the Act.

16.3 Transportation. Transportation to and from the Charter Middle School by the Charter Middle School is not required by law and will not be provided by the Charter Middle School. Parents of students will be encouraged to carpool.

16.4 Dispute Resolution. The Charter Middle School and the District agree that in the event a dispute arises concerning implementation of the charter school contract, they will submit to a non-binding mediation process conducted by an agreed-upon third party mediator. In the event the parties cannot agree upon the selection of a mediator, the parties shall file a request with the chief judge of the El Paso County District Court asking that the chief judge appoint a mediator. The parties shall pay equally the cost of mediation.

16.5 Relationship of the Parties. The District and the Charter Middle School are independent contractors with respect to each other, and neither has the authority or right to incur obligations of any kind in the name of or for the account of the other, nor to commit or bind the other to any contract. Nothing in this Agreement shall be deemed to create a partnership, joint venture or other joint relationship between the District and the Charter School.

16.6 Binding Obligation. The Charter Middle School hereby represents and warrants to the District that the Charter Middle School Applicants' execution of this Agreement shall constitute a valid and binding obligation of the Charter Middle School and its Board, and the Applicants shall expressly cause the Charter Middle School Board to acknowledge and assume this Agreement on behalf of the Charter Middle School. Upon the incorporation by the Charter Middle School, this Agreement shall be assigned to and obligations assumed by such corporation.

16.7 Entire Agreement. This Agreement, including the Application and all attachments thereto, contains the entire agreement among the parties relating to the matters addressed in this Agreement, and all prior representations, understandings and agreements are merged herein and superseded by this Agreement.

16.8 Incorporation of Charter Application. The James Irwin Charter Middle School Application as amended and submitted to the District and approved by the District is expressly incorporated in this Agreement by reference. It is the intent of the parties that this Agreement and the Application be construed consistently with each other. In the event of any inconsistency between this Agreement and the Application, the terms of this Agreement shall take precedence.

16.9 Severability. If any provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of the Agreement shall remain in full force and effect, unless otherwise terminated by either party in accordance with the terms contained herein,

16.10 Assignment. Neither party to this Agreement shall be permitted to assign its interest in this Agreement without the express written consent of the other party.

16.11 Amendment. This Agreement may only be modified by written agreement of the parties.

16.12 General Limitations on District Obligations.

a. Any financial commitment of the District arising out of this Agreement is subject to annual appropriation by the Board.

b. This Agreement is not intended to create a multiple fiscal year debt or other obligation and the District's obligations hereunder shall be interpreted and limited in such a manner as to avoid creation of multiple fiscal year debt or other obligation under the terms of Article X, Section 20, Paragraph 4(b) of the Colorado Constitution.

16.13 No Third Party Beneficiary Rights. No third party, whether a constituent of the District or otherwise, may enforce or rely upon any obligation of, or the exercise of any right of, the District in this Agreement. This Agreement is not intended to create any rights of a third party beneficiary.

16.14 Right of Setoff. The District may deduct and setoff against any payment due from the District to the Charter Middle School hereunder any amount due from the Charter Middle School to the District under this Agreement, any other agreement or otherwise.

16.15 Notices. All notices required or permitted by this Agreement shall be in writing and shall be either hand delivered, sent by facsimile or telecopy, sent by U.S. mail, postage prepaid, addressed as set forth on the signature page hereof (except that a party may from time to time give notice changing the address for this purpose). A notice shall be effective either when personally delivered, on the date set forth on the receipt of a telecopy or facsimile, or

upon the earlier of the date set forth on the receipt of registered or certified mail or the fifth day after mailing. Each party shall designate from time to time a contract person or persons for the party with respect to this Agreement. Initially, the contact person for each party shall be as follows:

District: Superintendent Victor Meyers; copy to Board President
1060 Harrison Road, Colorado Springs, CO 80906

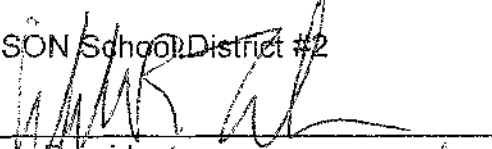
Charter Middle School: Principal; copy to Board President

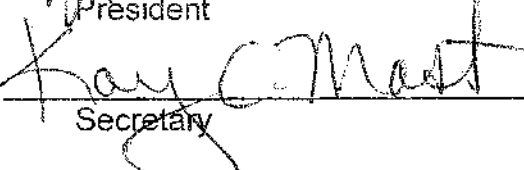
IN WITNESS WHEREOF, the Applicant Representatives have executed this Agreement to be effective as of the date first set forth above. This Agreement shall become effective upon execution by the District after proper approval by the Board.

APPLICANT REPRESENTATIVES:

(Signed by Jonathan Berg and Dawn Batteiger 4/16/2003)

HARRISON School District #2

Date: April 16, 2003 BY: 
President

Date: April 16, 2003 BY: 
Secretary

