

CHARTER FACILITIES AGREEMENT BY AND BETWEEN  
NEWPORT-MESA UNIFIED SCHOOL DISTRICT AND  
INTERNATIONAL SCHOOL FOR SCIENCE AND CULTURE

THIS AGREEMENT (“Agreement”) is made this \_\_\_ day of June, 2019 (the “Effective Date”), by and between the Newport-Mesa Unified School District, a public school district organized and existing under the laws of the State of California ("District") and International School for Science and Culture, a California public charter school operated by ISSAC ORG Inc., a California non-profit public benefit corporation (“Charter School”). The District and Charter School are collectively referred to as “the Parties.”

RECITALS

WHEREAS, Charter School received approval of its Petition and Charter (“Charter”) from the Orange County Department of Education on or about March 6, 2019;

WHEREAS, on or about November 1, 2018, Charter School submitted to the District a request for facilities under the provisions of Education Code section 47614 and its implementing regulations set forth in Title 5 of the California Code of Regulations section 11969.9(a) *et seq.* (the “Proposition 39 Request”) for the 2019-2020 academic year;

WHEREAS, the Charter School and District failed to agree upon the projected number of Charter School’s in-District ADA and agreed to settle this dispute and enter into an arrangement in lieu of Proposition 39, whereby the Charter School will occupy a portion of the District’s Harper Assessment Center site, located at 425 E. 18<sup>th</sup> Street, Costa Mesa, California 92627 (“Harper Site” shall refer to the total site and “Subject Property” shall refer to that portion offered to the Charter School), depicted in Exhibit “A” hereto and incorporated herein by this reference, for the 2019-2020 academic year (“Applicable Year”), pursuant to the conditions set forth below;

WHEREAS, the Parties desire to set forth the terms and conditions herein, pursuant to which the Charter School will occupy classrooms and use facilities at the Subject Property for the Applicable Year.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

1. Use of the Subject Property. District agrees to allow Charter School use of the Subject Property, for the sole purpose of operating the Charter School educational program as set forth in the Charter and associated uses such as after-school programs. Charter School's right to use of the Subject Property shall be for the Applicable Year, beginning on August 1, 2019 except that Charter School may occupy Room G1 by July 15, 2019, and shall conclude at the expiration of this Agreement on June 30, 2020.

A. Reversion to District. Upon the termination or expiration of this Agreement by its terms, the right to use and occupation of the Subject Property and the facilities and District equipment thereon, if any, shall revert to the District, unless the Parties mutually negotiate a successor agreement regarding the Charter School's continued use of the Subject Property for its educational program. If the Charter School desires to have facilities provided by the District for the 2020-2021 academic year, the Charter School must submit a facilities request pursuant to Proposition 39 no later than November 1, 2019, or the then-applicable submission deadline. Upon termination of this Agreement, the District shall recoup the full rights and benefits of its ownership of the Subject Property, including, but not limited to, use of such Subject Property for District programs and services.

B. Civic Center Act. After 6:30 pm during the week and all day on weekends and holidays, the Subject Property shall be subject to use by the public pursuant to the Civic Center Act (Education Code section 38131 *et seq.*) and/or any joint use or recreational program use that has been deemed appropriate by the District. Charter School and District shall meet prior to the beginning of each semester and prior to the beginning of summer vacation to schedule Charter School activities directly related to the Charter School's educational program (such as back to school nights, board meetings, school plays and similar) outside of the times specified above. For any use not scheduled at the beginning of the semester, or for any use not directly related to the Charter School's educational program, Charter School must submit a facilities request through the District's online system. Civic Center Act use requests, for use of the Subject Property by users other than Charter School, shall be evaluated and handled by the District, but coordinated with the Charter School. The District will consult with Charter School prior to scheduling any Civic Center Act use of space allocated to Charter School's exclusive use, and shall ensure that no uses are scheduled when the Charter School has, either at the meeting at the beginning of the semester or through the District's online system, already scheduled use of the requested space. Charter School shall direct all Civic Center Act requests for use of the Subject Property to the District's Chief Business Official. All proceeds derived from the use of the Subject Property pursuant to the Civic Center Act shall be the property of the District.

C. Drill Notice. In the event that Charter School conducts a fire, earthquake or other emergency drill, Charter School shall provide District with reasonable notice of the time and nature of the drill and confirm that a District representative is aware of the time and nature of said drill.

D. Full and Complete Satisfaction. Although the parties dispute whether the District is obligated to provide facilities to the Charter School, Charter School agrees that the provision of the Subject Property pursuant to this Agreement constitutes full and complete satisfaction of any obligation of the District to provide facilities, including furnishings and equipment, to Charter School under Education Code section 47614 and the Proposition 39 regulations for the Applicable Year. Charter School agrees that the District has fully and completely satisfied any obligation of the District to provide furnishings and equipment by providing the items listed in Section 1E below. Charter School agrees that, by accepting the Subject Property, it certifies that the District has fully and completely satisfied any obligation of the District to provide facilities, including furnishings and equipment, to the Charter School

under Education Code section 47614 and all Proposition 39 implementing regulations for the Applicable Year. The Charter School waives and forever releases the District from any claim that the Charter School, or any successor entity, may have against the District regarding any allegation that the District has taken action to impede the Charter School from expanding its enrollment to meet pupil demand for the Applicable Year. Furthermore, the Charter School waives any rights it may have to subsequently object to the District's perceived failure to offer facilities, including furnishings and equipment, in accordance with applicable law and waives any rights it may have to challenge those aspects of the District's offer of facilities, including furnishings and equipment, that the Charter School believes violates the substantive or procedural requirements of Proposition 39 and its implementing regulations for the Applicable Year. Notwithstanding the foregoing, the Charter School preserves the right to argue that a similar allocation of facilities for a future academic year does not satisfy the obligations of Proposition 39 and the Implementing Regulations for that future year.

E. Furniture and Equipment. The District will provide the furnishings and equipment identified in Exhibit "B," attached hereto and incorporated by this reference. The District will retain ownership of all furniture and equipment provided to Charter School and will expect all furniture and equipment to be returned to the District at the end of its occupation in the same condition as received, reasonable wear and tear excepted. Furniture and equipment will be replaced in accordance with District schedules and practices. Any additional furniture or equipment required for discretionary use shall be at the sole cost and responsibility of the Charter School.

F. District and Harper Assessment Center References. Under no circumstances may the Charter School or any of its board members, administrators, employees, agents, representatives, volunteers, subcontractors, invitees, successors and/or assigns obscure, remove, paint over, permanently conceal or otherwise alter any sign, decal, mural, mascot or other reference, including but not limited to references to "Harper Assessment Center," "Newport-Mesa Unified School District" and/or any other District, City or third-party program on the Subject Property ("Harper/District Reference") in any way. Charter School must specifically communicate this to its on-site staff. In the event that any Harper/District Reference is damaged or obscured in any way during the Charter School's use of the Subject Property by Charter School or its board members, administrators, employees, agents, representatives, volunteers, subcontractors, invitees, successors and/or assigns, Charter School shall be responsible for all costs associated with the full restoration of the Harper/District Reference.

G. Signs and Murals. Charter School shall not have the right to place, construct or maintain any sign, advertisement, awning, banner, mural or other external decorations on the improvements that are a part of the Subject Property without District's prior written consent, which shall not be unreasonably withheld, but may be conditioned. Subject to District's approval as described herein, and subject to any other applicable laws or regulations, the Charter School may install signage customarily used by other schools in the District at the Subject Property. Charter School may not install signage at any other locations on the Harper Site.

H. Allocation of Facilities. The allocation of classrooms and space at the Subject Property is based upon an assumption of 213.75 in-District ADA for the Subject Year. In the event that the space allocated to the Charter School has been “overallocated” in accordance with 5 C.C.R. Section 11969.8, the Charter School shall reimburse the District accordingly. The Charter School must report actual ADA to the District every time that the Charter School reports ADA for apportionment purposes. The reports must include in-district and total ADA and in-district and total classroom ADA. The Charter School must maintain records documenting the data contained in the reports. These records shall be provided as noted above and available upon request by the District. The records must specify which ADA are enrolled at the Subject Property and/or receiving services from the Subject Property. Additionally, the District may request backup documentation confirming in-District ADA in a manner that is reasonably acceptable to the District at any time, including, but not limited to, information collected by the Charter School to establish each student’s residency such as property tax bill or lease agreement with parent/guardian name and property address and current utility bill, phone bill, income tax documents, vehicle registration, medical letter of approval, or WIC letter.

I. Early Termination. This Agreement shall terminate prior to June 30, 2020 upon the revocation or expiration for any reason of Charter School's Charter, except that in the case of a revocation of the Charter School's charter, this Agreement shall not terminate until the Charter School has exhausted all of its statutory rights to appeal said revocation or non-renewal, or the term of this Agreement expires, whichever occurs first.

2. Fees. The Parties agree that use of the Subject Property shall be substantially rent-free and as such, the District shall charge the Charter School two percent (2%) of the revenue of the Charter School ("Fee"). All charges and payments due and owing from the Charter School to the District shall be invoiced by the District to the Charter School, and shall become due thirty (30) calendar days thereafter. Late payments shall be subject to interest at the rate of ten percent (10%) per annum. If the Charter School does not pay the invoice within thirty (30) calendar days, the amount owed may be deducted by the District from any state or federal revenues of the Charter School which are passed through the District, in-lieu property tax allocations or from the Charter School’s State Apportionment.

3. Utilities. Charter School will be responsible for utilities costs of Sixteen Thousand Dollars (\$16,000.00) per year. Charter School may purchase internet service from the District at a rate of One Thousand Two Hundred Dollars (\$1,200.00) per year or obtain its own internet service provider. District will invoice Charter School for such costs and payment shall be due within thirty (30) days of receipt of invoice by Charter School. Charter must obtain its own telephone service provider. Charter School shall assume sole responsibility for upkeep and maintenance of all Charter School telephone systems, data lines, and related equipment, software and hardware.

4. Taxes. Charter School shall be responsible for all taxes associated with its use of the Subject Property. In the event possessory interest taxes are assessed, Charter School shall be solely responsible for the payment of all Charter School’s possessory interest taxes, if any, during the term of the Agreement. Pursuant to Section 107.6 of the California Revenue and

Taxation Code, District hereby notifies Charter School that: (i) the Subject Property is subject to possessory interest taxes, and that such taxes shall be paid by Charter School; and (ii) Charter School may be subject to the payment of property taxes levied on the possessory interest obtained by Charter School. The parties acknowledge that during the term of this Agreement, Charter School shall be solely responsible for any and all possessory interest taxes and related charges and expenses (collectively, "Possessory Interest Taxes") imposed with respect to the Subject Property, and shall indemnify, defend and hold harmless District against all possessory interest taxes. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code

5. Maintenance. Facilities provided to the Charter School shall remain the property of the District. The ongoing operations and maintenance of the facilities, as well as major maintenance and any items that would previously have been considered deferred maintenance under Education Code Section 17582, shall be the responsibility of the District. This includes HVAC, electrical, plumbing, roofing, exterior and interior painting, and floor systems. The District shall also provide custodial and groundskeeping services, inclusive of all supplies and equipment, at a rate of Seventy Eight Thousand Five Hundred Dollars (\$78,500.00) per year. District will invoice Charter School for such costs and payment shall be due within thirty (30) days of receipt of invoice by Charter School. The Subject Property will be maintained and receive custodial and groundskeeping services in a similar manner as other District school sites. The Charter School shall be responsible for any equipment or technology purchased by the Charter School.

Notwithstanding the District's maintenance obligations, Charter School shall be responsible for and shall pay for any repairs, replacements or services of any character whatsoever which are occasioned or are made necessary by reason of the negligence or misuse of the Subject Property by Charter School. Charter School shall not run a recycling program or collect recyclables at the Subject Property.

In the event that the Charter School requires the District to perform maintenance and repairs, as allowed for above, Charter School must submit such request via appropriate District processes. Currently, and until further written notice, the Charter School must submit such requests via the District website at <http://web.nmusd.us/maintenance>. For an emergency request for service, Charter School should call (714) 424-7520 between 7:30 a.m. and 4:30 p.m. and (714) 936-0244 at all other times. Emergency request is defined as a situation requiring immediate attention, generally characterized by a dangerous or hazardous condition. Emergency work should be of such importance that immediate action is required to prevent a safety or health hazard, or prevent significant damage to District property. The District reserves the right to implement a different process for submission of maintenance/repair requests. The District will need to access the Subject Property during normal District hours of operation, which may coincide with Charter School's hours of operation, in order to perform maintenance and repairs. District staff shall be allowed to access the Subject Property during Charter School's hours of operation, provided that such entries do not unreasonably interfere with the operation of the Charter School or interrupt instruction to students.

6. Installation of Improvements by Charter School. Charter School shall not construct or install any improvements (as defined in Civil Code 660) on the Subject Property or otherwise alter the Subject Property without the prior written consent of District, and if required, the Division of the State Architect ("DSA"). District's approval of any improvements, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute discretion, and District may disapprove of such improvements for any reason. Unless otherwise specified in this Agreement, in each case where prior written consent of the District is required under Section 5 or any other provision of this Agreement, such consent shall be obtained exclusively from the District's Superintendent or designated representative and consent obtained from any other source shall be invalid. Contractors retained by Charter School with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with District construction requirements. The construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable including, but not limited to building codes, fingerprinting requirements and prevailing wage laws. District or District's agent shall have a continuing right at all times during the period that improvements are being constructed or installed to enter the premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students. Charter School shall indemnify, defend and hold harmless District, its directors, officers and employees from any loss, damage, claim, cause of action, cost, expense or liability arising out or caused by any violation by the Charter School or its directors, officers, employees or contractors of any applicable federal, state or local statute, ordinance, order, governmental requirement, law or regulation that applies to any work, including, without limitation, any labor laws and/or regulations requiring that persons performing work on any improvements be paid prevailing wage.

Charter School shall deliver to District, promptly after Charter School's receipt thereof, originals or, if originals are not available, copies of any and all of the following instruments and documents pertaining to any testing, construction, repair or replacement of improvements on the Subject Property: (a) plans and specifications for the subject improvements, (b) test results, physical condition and environmental reports and assessments, inspections, and other due diligence materials related to the subject improvements, (c) permits, licenses, certificates of occupancy, and any and all other governmental approvals issued in connection with the subject improvements, (d) agreements and contracts with architects, engineers and other design professionals executed with respect to the design of the subject improvements, (e) construction contracts and other agreements with consultants, construction managers, general and other contractors, and equipment suppliers pertaining to the construction, repair or replacement, as the case may be, of the subject improvements and (f) all guaranties and warranties pertaining to the construction, repair or replacement, as the case may be, of the subject improvements.

Charter School will not permit any liens or claims to stand against the Subject Property for labor or material furnished in connection with any work performed by Charter School. Upon reasonable and timely notice of any such lien or claim delivered to Charter School by District, Charter School may bond and contest the validity and the amount of such lien, but Charter School will immediately pay any judgment rendered, will pay all proper costs and charges, and

will have the lien or claim released at its sole expense. Additionally, Charter School may not use or operate the improvements until the project is closed-out and certified by DSA, if applicable, and/or final approval is received from any applicable agency. Charter School shall provide evidence of close-out and certification or approval, in a form reasonably acceptable to the District.

7. Provision of Facilities. The facilities to be provided by the District to the Charter School for the Applicable Year are as follows:

A. Charter School shall have exclusive use of rooms, as specified in Exhibit "A," totaling approximately 8,640 square feet.

B. Charter School shall have exclusive use of four (4) restrooms, as specified in Exhibit "A."

C. Charter School shall have exclusive use of the blacktop play area and a portion of the shade structure, as specified in Exhibit "A." Prior to the first day of school, the District agrees to re-stripe the blacktop play area with mutually agreed upon play area stencils, such as hopscotch or four square, and install fencing, of the District's choosing, to separate the lunch area/blacktop play area from the parking lot.

D. Charter School shall have exclusive use of parking spaces equal to the number of full-time Charter School staff working full-time at the Subject Property plus three (3), as specified in Exhibit "A." Parking lots and parking spaces shall not be used for student drop-off and pick-up; rather student drop-off and pick-up shall occur on Tustin Avenue at the entrance to the Subject Property. Charter School shall submit documentation of the number of full-time Charter School staff working full-time at the Subject Property at least two (2) weeks prior to the beginning of each semester.

E. Charter School shall have shared use of the multipurpose room (MPR), as specified in Exhibit "A," on Mondays and Fridays between the hours of 8:00 a.m. and 4:00 p.m. Additionally, Charter School shall be provided six (6) additional evening uses ("Additional Uses") of the MPR. Charter School must request such Additional Uses from the District in writing at least five (5) days in advance of the proposed Additional Use. Alternatively, the parties may meet prior to the beginning of the Applicable Year, to schedule such Additional Uses in advance. The District has the sole discretion to approve or deny the date and time of any Additional Uses if they conflict with an already-scheduled or planned use.

F. Charter School shall have shared use of the field space, as specified in Exhibit "A," between 8:00 a.m. and 12:30 p.m. Monday through Friday.

8. Security. The Parties acknowledge that the Charter School is responsible for ensuring the security of the Subject Property through security systems and devices, including, but not limited to, locks, gates, and a monitored security system. The Charter School is required at all times to maintain the security of the Subject Property by the proper use of all such security systems and devices. Charter School must contract for its own security system, which must be

based on internet protocol, not hard-wired, and run through Charter School's internet system. No locks or keys shall be changed without first obtaining approval from the District's Director of Maintenance & Operations. Within five (5) working days after new alarm codes, locks or keys have been changed or added, the Charter School shall provide new alarm codes, locks or keys to the District's Director of Maintenance & Operations. Contact information can be found at <http://web.nmusd.us/maintenance>.

9. Conduct of Charter School Employees, Contractors, Volunteers and Invitees. Charter School shall ensure that all employees, contractors, volunteers, invitees, and all others in attendance have appropriate background and medical clearance and will adhere to proper standards of public conduct and comply with all District policies. There is to be no consumption of intoxicating liquors or other controlled substances, smoking, gambling, quarreling, fighting, use of profane language, or indecent exposure on or near the Subject Property. In the event the District determines, in its sole and absolute discretion, that an employee, contractor, volunteer or invitee of Charter School is failing to adhere to proper standards of public conduct, is in violation of any applicable District Policies and/or Administrative Regulations and/or is in any way materially disrupting the activities of the District's employees, students and/or invitees, the District reserves the right to remove said individual, and/or require Charter School to remove said individual from the District's Harper Site. The District shall then identify its specific concerns to the Charter School in writing and meet with the Charter School to discuss its decision to request removal of the individual from the Harper Site, in order to identify good faith solutions to the District's concerns. The District may prohibit future access to the Harper Site, as allowed by applicable law and consistent with the relevant District policies. The Parties agree that it is the intent of this provision to protect the health and safety of both District and Charter School students, and that the Parties will work together to identify solutions that achieve this goal.

10. Condition of Subject Property. The District is not aware of any defect in or condition of the Subject Property that would prevent its use for the Charter School's purposes. The District has not received any notice of violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Subject Property that calls into question the appropriateness or sufficiency of the Subject Property for their intended purpose. The District, at its expense, shall remain responsible for compliance with all applicable laws regarding the Subject Property during the Term of this Agreement. Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Subject Property, including, without limitation, those relating to health, safety, noise, environmental protection, zoning compliance and approvals, waste disposal, and water and air quality. The Charter School shall not be responsible for any and all environmental conditions that existed prior to the Charter School's occupancy of the Subject Property, so long as such environmental conditions are not exacerbated by the Charter School's negligence or willful misconduct. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards for any existing compliance issues prior to the date of execution of this Agreement or that are not triggered by any modifications or improvements made by the Charter School. The Charter School shall only assume responsibility for compliance with ADA and FEHA access rights to the extent of any modifications or improvement made by the Charter School. Should any modifications or improvements made by the Charter School

change or affect the character of any existing improvements, Charter School shall be responsible for bringing said existing improvements into compliance with ADA, FEHA, and other applicable building code standards. Charter School shall comply with all licensing, payment and performance bond and prevailing wage laws with respect to all modifications.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Subject Property due to the Charter School's use and occupancy thereof, Charter School, at its expense, shall be obligated to clean all the property affected, including, if applicable, any properties in the vicinity of the Subject Property, to the satisfaction of District and any governmental agencies having jurisdiction over the Subject Property or any other properties affected by the discharge, leakage, spillage, emission, or pollution. If the Charter School fails to take steps to clean the property(ies) or otherwise fails to comply with any requirements regarding the clean up, remediation, removal, response, abatement or amelioration of any discharge, leakage, spillage, emission, or pollution of any type, or fails to pay any legal, investigative, and monitoring costs, penalties, fines and disbursements the District reserves the right to takeover the required action and to take all necessary steps to recoup any and all costs associated therewith from the Charter School.

Upon termination or expiration of the Agreement, Charter School shall return the Subject Property and any then-existing improvements to the District in clean, good order condition and repair, ordinary wear and tear excepted, free and clear of all liens, claims, and encumbrances. Charter School shall remove from the Subject Property all of Charter School's personal property and trade fixtures. All property not so removed shall be deemed abandoned by Charter School and Charter School shall be responsible for any costs incurred by the District for the removal of such abandoned property.

11. Title to Subject Property. The Parties acknowledge that title to the Subject Property is held by the District and shall remain in the District's name at all times.

12. Insurance. The District will maintain its current levels of insurance on the structures on the Subject Property. Parties agree that self-insurance through a Joint Powers Authority shall satisfy District's obligations under this section. District shall not be responsible for insuring any of the Charter School's personal property or persons (including without limitation students or members of staff). Charter School shall procure and maintain, for the duration of this Agreement insurance coverage as set forth in Exhibit "C", attached hereto and incorporated by this reference, with insurance carriers that are admitted or authorized non--admitted insurers by the State of California and with a rating equivalent to an A:VII by A.M. Best Company. Charter School may use a self-insurance and/or joint powers authority mechanism to meet the described insurance requirements.

Each policy required above shall be endorsed to provide for thirty (30) days prior written notice of cancellation to the District by the Charter School and to establish that coverage is primary and that any insurance or self-insurance held by the District, its officials, employees and agents shall be excess and shall not contribute to it.

District's insurance shall be primary for claims for damage to the Subject Property's physical structures caused by the actions of third parties, except to the extent that the third party's actions arose as a result of the negligence, intentional disregard or malfeasance of the Charter School.

District may, at its reasonable discretion, require additional coverage or additional limits based upon the nature of the services provided. Any waiver or modification of these insurance requirements can only be made with the prior written approval of the Superintendent or his or her designee.

The coverage and limits required hereunder shall not in any way limit the liability of the Charter School nor are the insurance requirements herein intended to represent adequate or sufficient coverage for the Charter School's risks hereunder.

Prior to taking occupancy of the Subject Property, Charter School will provide District with duplicate originals of each policy of insurance and/or each memorandum of coverage required by the foregoing provisions of this Agreement, including all declarations, forms, and endorsements. This documentation shall be received and approved by the District at least ten (10) days prior to Charter School taking occupancy of the Subject Property and again by October 1, January 7, and April 1, and at any other time that a policy of insurance and/or memorandum of coverage is changed and at any other time a request is made by the District for such documents.

13. Indemnification. With the exception of any liability, claims, or damages caused by the negligence or willful misconduct of the District, the Charter School shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and costs, including legal costs, attorney's fees and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the District, its trustees, officers, employees and agents, that may be asserted or claimed by any person, firm or entity for any injury, death or damage to any person or property occurring in, on or about the Subject Property after the Effective Date, arising from, or in connection with, the Charter School's use of the Subject Property or from the conduct of its business, including conduct of its board of directors, administrators, employees, agents, representatives, volunteers, subcontractors, invitees, successors and/or assigns or from any activity, work, or other things done, permitted or suffered by Charter School in or about the Subject Property. Charter School's obligation to defend the District and the other indemnitees identified herein is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

With exception of any liability, claims or damages caused by the negligence or willful misconduct of the Charter School, the District shall indemnify, hold harmless, and defend the Charter School, its trustees, officers, employees and agents against and from any and all claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions, and costs, including legal costs, attorney's fees and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the Charter School, its trustees, officers, employees and agents, that may be asserted or claimed by any person, firm or entity for

any injury, death or damage to any person or property occurring in, on or about the Subject Property after the Effective Date, arising from, or in connection with, the District's use of the Subject Property or from the conduct of its business, including conduct of its board of directors, administrators, employees, agents, representatives, volunteers, subcontractors, invitees, successors and/or assigns or from any activity, work, or other things done, permitted or suffered by the District in or about the Subject Property. The District's obligation to defend the Charter School and the other indemnities identified herein is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

Nothing herein shall serve to modify or reduce the insurance and indemnification requirements contained in the Charter. This section shall survive the termination or expiration of this Agreement.

14. Damage and Destruction of Facilities.

A. Partial Damage. If the Subject Property is damaged by any casualty which is covered by applicable insurance, and the Charter School still has access to at least sixty percent (60%) of the usable classroom space, then the Subject Property shall be restored provided insurance proceeds are available to pay for the cost of restoration, and provided such restoration can be completed within one hundred twenty (120) days after the commencement of the work in the opinion of a registered architect or engineer approved by District. In such event, this Agreement shall continue in full force and effect, except that Charter School shall be entitled to proportionate reduction of all fees and payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School's business on the Subject Property.

B. Total Destruction. If the Subject Property is totally destroyed (defined as the destruction of more than forty percent (40%) of the usable classroom space), or the Subject Property cannot be restored as required by Section 14.A, notwithstanding the availability of insurance proceeds, then this Agreement may be terminated effective the date of the damage.

15. Cooperation to Address Any Traffic Concerns. Charter School agrees to cooperate with District, the City of Costa Mesa, and the neighborhood surrounding the Subject Property to address concerns that may arise regarding traffic near the Subject Property during student drop-off and pick-up times during the school day, brought about by operations of the Charter School. Charter School will monitor traffic conditions surrounding the Subject Property and will be proactive in taking steps to maximize safety and minimize any congestion affecting the surrounding community. Uses contemplated under this Agreement will remain within the designed capacity of the Subject Property. Charter School administration and staff shall park in the designated parking spaces within the Subject Property, and not in the surrounding neighborhood.

16. Access. Charter School shall permit District, its agents, representatives or employees, to enter upon the Subject Property for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Subject Property. District shall attempt to

give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants.

17. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

If to the District:

Newport-Mesa Unified School District  
Attention: Dr. Fred Navarro, Superintendent  
2985 Bear St.  
Costa Mesa, CA 92626

With copies to Russell Lee-Sung, Deputy Superintendent, CAO, and Tim Holcomb, Assistant Superintendent, COO, at the same address as above.

If to the Charter School:

International School for Science and Culture  
Attention: Patricia Gould  
15229 Youngwood Dr  
Whittier, CA 90605

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

18. California Environmental Quality Act. Charter School acknowledges that the California Environmental Quality Act ("CEQA") may require the District to undertake certain studies and/or seek certain exemptions with regard to any projects described herein. Charter School acknowledges that obtaining CEQA approval for a project may cause delays and/or require that a project be modified or abandoned. The Charter School waives any claims against the District regarding delays, modifications or abandonment of a project or use due to any inability to meet CEQA requirements.

19. No District Affiliation/Endorsement. Charter School shall not imply, indicate or otherwise suggest that Charter School's use and/or any related activities are connected or affiliated with, or are endorsed, favored or supported by the District. No signage, flyers or other material may reference the District, any school name, logo or mascot without the District's prior written consent, except that Charter School may indicate the physical address of the Charter School.

20. Subcontract and Assignment. Charter School may not assign or sublet this Agreement or any rights, benefits, liabilities and obligations hereunder, to any person or business entity without District's express written consent, which consent shall be granted at District's sole and absolute discretion and, if granted, may be conditioned or delayed.

21. Independent Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

22. Entire Agreement of Parties. This Agreement, together with its attachments, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. In the event of a conflict between this Agreement and the Charter, this Agreement shall control. This Agreement may be amended or modified only by a written instrument executed by the Parties.

23. Legal Interpretation. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Orange County, California. The Parties expressly understand and agree that this Agreement constitutes a license for use of the Subject Property, and is neither intended by the Parties, nor shall it be legally construed, to convey a leasehold, easement, or other interest in real property. Should either Party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other Party's failure or refusal to perform or fulfill any of the covenants or conditions of this Agreement on its part to be performed or fulfilled, the Parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings, except that the District agrees to comply with the provisions set forth in this Agreement.

24. Waiver. The waiver by any Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

25. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the parties hereto.

26. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

27. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are incorporated herein by reference.

28. Scanned/Electronic Signatures. This Agreement may be executed and transmitted to any other party by PDF, which PDF shall be deemed to be, and utilized in all respects as, an original, wet-inked document.

29. Board Approval. In accordance with Education Code section 17604, this Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the District's Governing Board of Education.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the Effective Date.

**NEWPORT-MESA UNIFIED SCHOOL DISTRICT**

By \_\_\_\_\_

Its \_\_\_\_\_

**INTERNATIONAL SCHOOL FOR SCIENCE AND CULTURE**

By \_\_\_\_\_

Its \_\_\_\_\_

EXHIBIT "A"  
MAP DEPICTION OF SUBJECT PROPERTY



EXHIBIT "B"  
FURNITURE AND EQUIPMENT

<b>Furnishings and Equipment to be Provided</b>	<b>Comments</b>
Drinking Fountains	District to add one fountain outside near play area
Ceiling tiles need replacing – MPR, classrooms	District to repair/replace damaged/missing ceiling tiles over the summer
Fencing	District to install fencing around Charter School play area on playground
Eating Tables to seat 140 under solar panels	District to provide twelve (12) standard aluminum lunch tables
Garbage bins	District to provide garbage bins
Storage (emergency, PE)	Charter School to provide storage bin and District to approve location and coordinate installation on site
Partitions	Installed partitions will remain as-is, and movable partitions will be removed by District
Clocks	District to provide one (1) in each room
Telephone infrastructure	Charter School must obtain VoIP services
Ceiling Mounted Projectors	All existing ceiling mounted projectors will remain
Whiteboards	All whiteboards currently in classrooms will remain and District to install whiteboard in front office
Shelves	Built-in shelves in rooms will remain and Charter School may request low shelves, as available
Fire extinguishers and sprinkler system	Per Fire Code
MPR seating	Charter School may request MPR set up for events with available furniture and in compliance with Fire Code
Conference table	Existing table and chairs will remain
Office Counter	Existing office counter and chairs will remain
Lateral file cabinet	Existing lateral file cabinets will remain
Office desks and chairs	One (1) desk and one (1) chair will be provided for each full-time front office employee, up to six (6) pairs

Front Office waiting area	Existing couch and chairs will remain
Work tables for teacher work room	Existing tables and chairs will remain
Classroom furniture	Classrooms will be provided with the District-standard, grade-appropriate classroom set up (excluding teacher desks), as described below
Bulletin Boards	District will provide one (1) per classroom and Charter School may request additional bulletin boards, as available
Literacy library shelves in teaching area	District will provide up to eight (8) low shelves, as needed

1. Student drop off and pick up will occur along Tustin Avenue.
2. District and Charter School will work together to develop Safety Plan.

Per Classroom Set Up

1 Teacher Chair

1 Horseshoe Activity Table 60" x 66"

1 Rectangle Activity Table 36" x 72"

1 Storage Cabinet with lock 72" x 36" x 24"

1 Bookcase 48"

1 2-drawer letter-size filing cabinet with lock, 29" x 15" x 26.5"

Student Chairs (1 per student at appropriate size- 11.5" (pre-K), 13.5" (grades K -2), 15.5" (grades 3-4), 17.5" (grades 5-6))

Student Desks (1 per student)

EXHIBIT "C"  
CHARTER SCHOOL INSURANCE REQUIREMENTS

I. General Liability:

A. Commercial General Liability - \$5,000,000 per occurrence, \$10,000,000 aggregate For Bodily Injury, Personal and Advertising Injury and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01 10 93).

II. Automobile Liability:

- A. \$1,000,000 per accident for Bodily Injury and Property Damage.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles ("Any Autos").
- C. Coverage shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Symbol 1 ("Any Autos").

III. Workers' Compensation and Employer's Liability:

- A. Certificate of Insurance indicating "statutory" limits, as required by the State of California.
- B. Employer's Liability - \$1,000,000 each accident for bodily injury by accident; \$1,000,000 each employee for bodily injury by disease; \$1,000,000 coverage period aggregate.

IV. Property Insurance: Ø Limit: Replacement Value:

- A. Certificate of Insurance evidencing coverage for all property owned and controlled by the Charter School which resides on the District's premise(s).

V. Sexual Abuse or Molestation Liability:

- A. \$3,000,000 per occurrence, \$6,000,000 aggregate

VI. Crime Insurance:

- A. Money and Securities: \$1,000,000 per occurrence
- B. Forgery and Alteration: \$1,000,000 per occurrence
- C. Employee Dishonesty: \$1,000,000 per occurrence

VII. Directors' and Officers' Liability/Educator's Legal Liability (ELL):

- A. \$1,000,000 minimum limit per occurrence or claim, \$2,000,000 aggregate.

28. Scanned/Electronic Signatures. This Agreement may be executed and transmitted to any other party by PDF, which PDF shall be deemed to be, and utilized in all respects as, an original, wet-inked document.

29. Board Approval. In accordance with Education Code section 17604, this Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the District's Governing Board of Education.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the Effective Date.

**NEWPORT-MESA UNIFIED SCHOOL DISTRICT**

By \_\_\_\_\_

Its \_\_\_\_\_

**INTERNATIONAL SCHOOL FOR SCIENCE AND CULTURE**

By Emily Mackubo

Its TREASURER