PROPOSITION 39 CHARTER FACILITIES USE AGREEMENT
BY AND BETWEEN
ALAMEDA UNIFIED SCHOOL DISTRICT AND
NEA COMMUNITY LEARNING CENTER

THIS AGREEMENT ("Agreement") is made this 22nd day of May, 2013, by and between the Alameda Unified School District, a public school district organized and existing under the laws of the State of California ("District") and Nea Community Learning Center, a California public charter school ("Charter School"). The District and the Charter School are collectively referred to as "the parties."

RECITALS

WHEREAS, the Charter School is a non-profit public benefit corporation that is operating a charter authorized by the District;

WHEREAS, pursuant to the requirements of California Education Code section 47614 and its implementing regulations (also known as "Proposition 39"), the Charter School has made a written request for facilities for the 2013-2014 school year, a true and correct copy of which is attached as Exhibit C and hereby incorporated by reference; and

WHEREAS, pursuant to the requirements of Proposition 39 and its implementing regulations, the District Board of Education has made a preliminary written offer to provide the Charter School with facilities for its in-district students, a true and correct copy is provided as Exhibit D and hereby incorporated by reference, and the Charter School received the terms of that offer; and

WHEREAS, the parties desire to set forth the terms and conditions pursuant to which the Charter School will occupy classrooms and use facilities (the "Dedicated Space") at the District’s Longfellow Education Center located at 500 Pacific Avenue, Alameda, CA, sharing the Site with Woodstock Child Development Center (the "District School") and Chipman Middle School located at 401 Pacific Avenue, Alameda, CA sharing the site with Nea Community Learning Center Charter School, commencing with the 2013-2014 school year. See Exhibit A (Site Map) and district final offer dated 3/29/13 for a breakdown of dedicated and shared spaces.

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

Section 1. Use of Dedicated Space. The District agrees to allow the Charter School exclusive use of the Dedicated Space (see Exhibit A) for the sole purpose of operating the Charter School educational program in accordance with the Charter School’s charter. The Charter School’s right to exclusive use of the Dedicated Space shall be coterminous with the term of this Agreement and shall be for the 2013-2014 school year only. Upon the termination of this Agreement, the right to exclusive use and occupation of the Dedicated Space and the facilities and equipment thereon shall revert to the District subject to the parties’ negotiation of a successor Agreement, if necessary, containing the terms of the District’s provision of facilities to the Charter School in accordance with the provisions of Proposition 39. As titleholder to the Dedicated Space and the facilities and equipment located thereon, the District reserves the right at the termination of this Agreement to recoup the full rights and benefits of such ownership, including, but not limited to, use of such Dedicated Space, facilities and equipment for District services.
The Charter School shall otherwise have full use of the Dedicated and Shared Space. The Charter School shall comply with District policies and/or practices regarding the operations and maintenance of the facilities, furnishings, and equipment.

Although the Charter School shall have the exclusive use of the Dedicated Space, with the prior consent of Charter School the District may agree to make the Dedicated Space available to members of the community in accordance with the provisions of the Civic Center Act (Education Code section 38131 et seq.). If Charter School authorizes access to the Dedicated Space pursuant to the Civic Center Act, Charter School assumes the risk of loss or damage to property as a result of that access.

The District shall have the right to provide use of Shared Space to members of the community in accordance with the provisions of the Civic Center Act (Education Code section 38131 et seq.); however, Charter School shall have first right of use of Charter School Shared Premises if Charter School has timely scheduled use of the Charter School Shared Premises with the local District school principal by September 15 for the period of November through February, by January 15 for the period of March through June, and by May 15 for the period of July through October or prior to the District granting use access to a third party.

For purposes of compliance with the Civic Center Act with respect to the Dedicated Space only, the Charter School Governance Council shall hold the same powers and obligations applicable to School District Boards of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making use of the facilities accessible to members of the community.

Pursuant to the requirements of Proposition 39, the allocation of space as set forth in this Section is based upon an assumption of 418 in-District classroom ADA for the 2013-2014 school year. Future requests for additional facilities based on enrollment increases may be made in the manner specified in Section 11969.9 of the Proposition 39 regulations (Cal. Code Regs., tit. 5, § 11969.9).

The parties agree that the provision of facilities pursuant to this Agreement constitutes full and complete satisfaction of the District’s obligation to provide facilities to Charter School under Proposition 39 for the 2013-2014 school year.

Section 2. Shared Space. The District hereby grants to the Charter School the right to joint use of the following “Shared Space” solely for the purposes set forth in the Charter School’s charter and on the terms and conditions set forth herein:

COMMON HALLWAYS: The District shall allow the Charter School students to use common hallways, to the extent necessary, for ingress and egress to the Charter School Dedicated Space described herein and to other shared spaces. Said use of common hallways by the Charter School students shall be pursuant to a set schedule and under the supervision of a Charter School employee.

PARKING: The District shall allow Charter School staff and faculty to access the employee parking at the Site on the same basis as that permitted to District employees. The District shall make parking available for Charter School staff and visitors on the same basis as that permitted to other schools on the Site. The District shall distribute the number of parking spaces equitably between the Charter School and the District School.
ATHLETIC FACILITIES: The District shall allow the Charter School to schedule supervised student use of the Site’s gymnasium/MPR, locker rooms, and basketball/blacktop area as the Charter School will provide its own Physical Education programs within the school day using these shared spaces. The Charter School shall coordinate with the Shared Site Committee (2 people from each site user group to be formed once final proposal is approved) to schedule its use of said athletic facilities for Physical Education. The athletic fields will be made available for use consistent with existing and future revised MOUs with the District School located on the site. Use of said fields will be in a manner defined by and distributed equally within the MOU.

DINING AREA/CAFETERIA: The District shall allow the Charter School to schedule supervised student use of the Site’s dining area as outlined below.

COORDINATING SHARED USE: Charter School use of the parking area, shared bathrooms, athletic facilities, and dining area/cafeteria shall be coordinated through the Shared Site Committee. A clear and reasonable process shall be developed and adopted prior to the start of school in August 2013. This process will include expectations for notification of school events; clean up of shared use areas after such events and common procedures and expectations of community behavior during the events. This committee will co-construct a written agreement in August which states the expectations of both schools when it comes to issues around shared use. The District shall provide the Charter School with appropriate keys to access shared space no fewer than seven days prior to the start of school in August 2013. The Charter School will notify the Assistant Superintendent or designee in writing by September 30, 2013 of any concerns regarding either access to keys or coordination of use for the shared space.

STUDENT DISCIPLINE: The Principal of the District School at the Site, the site user and Charter School designee will collaborate to resolve any student disciplinary issues that involve students and/or property of both the Charter School and other District programs. The District shall otherwise have no responsibility as it relates to student discipline of Charter School students.

BELL SCHEDULE/ALARMS/ANNOUNCEMENTS: It is recognized that the Charter School will have a separate bell schedule from the District’s programs and that the existing intercom and bell system cannot accommodate Charter School’s bell schedule.

EMERGENCY: The principal/designee of the Charter School and the principal of the District School shall immediately inform one another or their designees of any health and/or safety emergency as they relate to the safety of the schools on Site. This includes reports of any serious incident that takes place on the Site where the police, fire department, or paramedics are involved, including, but not limited to, incidents of physical or sexual abuse, bomb threats, weapons on the school Site, and the sale of narcotics on the school Site. Charter School staff, faculty, and students shall cooperate with and participate in any lockdowns, exigent security procedures, and emergency response training, procedures, and protocols required by the District at the Site. District will provide Charter School with emergency procedures and/or equipment.

The Charter School will be notified two operating days in advance of scheduled fire drills and emergency drills on the Site which may disrupt the Charter School and its operations. The Charter School will provide notification two operating days in advance to the District School of scheduled fire drills and emergency drills on the Site which may disrupt the District School and its operations. Fire and other security and emergency alarm testing will be limited to after-school hours or non-teaching/training days. The principal/designee of the Charter School and the principal of the
District School shall meet in September to identify appropriate dates and times through the year for these tests. Charter School shall notify district/MOF of all scheduled drills.

Section 3. Facility & Amenities – Occupancy & Use.

FURNISHINGS AND EQUIPMENT: The District shall provide, in accordance with the Proposition 39 regulations, furnishings and equipment at the Site. These furnishings and equipment shall remain the property of the District. The furnishings and equipment provided shall be equivalent to those furnishings and equipment provided in the comparison group of schools in accordance with 5 C.C.R. Section 11969.2. The District and the Charter School shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Site. Charter School is responsible for any damage to furnishings and equipment in excess of normal wear and tear.

BATHROOMS: The Charter School students and staff shall have equal access to bathrooms in the shared space as determined by the Shared Site Committee.

SECURITY: The Dedicated Space shall be wired to the Site’s alarm system. The Charter School shall be responsible for costs incurred due to false alarms and security breaches that are related to the Dedicated Space. The Charter School shall operate a closed campus and cooperate with the District on security issues. The Charter School may have a unique security code. If there is a fire at the property, the Charter School shall immediately notify the District but no later than within one business day. Charter School shall exercise reasonable care to ensure that facility keys are not misplaced or stolen. Charter School shall notify the District within 5 hours of discovering that a key is no longer in Charter School’s custody and control and shall assume the full cost of re-keying all portions of the facility which can be accessed using the lost or stolen key, including those portions of the facility which are Shared Space and space reserved exclusively for District use.

EMERGENCY: In an emergency, including if the Space is destroyed or damaged in any material way, the District reserves the right to temporarily interrupt the Charter School’s use of the Space or any Site facilities or systems.

CUSTODIAL: If Charter School chooses to provide their own custodial services to clean their dedicated space, District designee shall retain the right to periodically inspect Site. District designee will inform Charter School designee of deficiencies and provide a reasonable opportunity for Charter School to correct the deficiency. Charter School’s repeated and persistent failure to correct deficiencies in a timely manner will require that Charter School use District custodial services and pay its proportional cost.

MAINTENANCE AND OPERATIONS: Maintenance and Operations ("M&O") are broadly and generally defined as maintaining, repairing, and operating buildings (including the classrooms therein) and grounds efficiently on a regular basis, in a manner that promotes learning in a safe, clean, and healthy environment.

The District shall solely be responsible for performing M&O on the Site, including the Dedicated Space, to maintain a good, safe and sanitary condition. Charter School shall not be responsible to perform any M&O services. The District shall provide M&O services to the Charter School pursuant to the District’s M&O standards and policies and shall provide these services at a service level similar to that provided to the District public schools. Costs of M&O services are included in
the Pro Rata share which are paid by the Charter School and determined by calculating the actual square footage of the Dedicated Space and the percentage of Charter School’s usage of the Shared Space. The Pro Rata Share rate and calculation methodology for the upcoming school year is attached hereto as Exhibit A. If the Charter School requests any additional facilities-related services that are above and beyond the service level provided to the District public schools and which are not included in the M&O Pro-Rata Share but have been agreed to be provided by the District, costs of said services will be charged to the Charter School on a fee-for-service basis. Fee-for-service charges shall be based upon rates that will be updated by the District and circulated to the Charter School prior to July 31 and which shall be in effect through at least July 31 of the next year.

If and when the Charter School needs additional M&O services and these have been agreed to be provided by the District, Charter School may request said services from the District’s Maintenance and Operations Division through District’s work order system along with an estimate for the requested services which will be delivered to Charter School within a reasonable amount of time. To the extent a service is being delivered on a long-standing or continuous basis, it is understood and agreed by the Parties that such request for services must be renewed at the outset of each school year to be a validly enforceable obligation.

DEFERRED MAINTENANCE PLAN AND SERVICES: “Deferred Maintenance” shall mean facilities repair or replacement projects as described in Education Code section 17582(a) or additionally approved by the State Allocation Board; this is further detailed by the Office of Public School Construction Deferred Maintenance Program Handbook, and it is updated from time to time. Those projects include, but are not limited to, work necessary to restore or replace deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and wall systems. The exterior and interior painting of school buildings; asphalt paving; the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials; the encapsulation or removal of asbestos-containing materials; the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials; the control, management, and removal of lead-containing materials; or other such items may be approved by the Board, to such condition that the school buildings may be effectively utilized for their designated purposes.

PEST MANAGEMENT: Notwithstanding anything provided in this Agreement, the District shall provide the pest management for the Site in accordance with the District pest management policy upon written notice to Charter School of its intention to do so, the schedule upon which the pest management service will be provided and the estimated cost of such pest management service. Charter School shall pay the reasonable and customary fee or charge for said pest management service.

SCHOOL SAFETY OFFICER: If School Safety Officer services are to be provided, the District will be given the first opportunity to provide service. If the District deems it is unable to provide service, the Charter School may retain services from an external provider as defined by an MOU. The Charter School will be responsible for all associated costs of this service.

Section 4. Reimbursement. In the event that the space allocated to the Charter School is considered “over-allocated” in accordance with 5 C.C.R. Section 11969.8, the Charter School shall follow the notification and reimbursement procedures outlined in 5 C.C.R. Section 11969.8.
Section 5. Modernization. In the event that the District designates matching facilities funds for the facility and begins modernizing the facility, the District and the Charter School will meet to discuss the issue of modernization for the Site.

Section 6. Term. The term of this Agreement shall begin on its date of execution and shall end on June 30, 2014.

Notwithstanding the term of this Agreement, the Charter School’s right to renew this Agreement shall be subject to compliance with the annual notification requirements of Education Code section 47614 and 5 C.C.R. sections 11969 et seq. and compliance with the terms of this Agreement. Upon timely notification of the Charter School’s facilities needs in accordance with 5 C.C.R. sections 11969 et seq., the parties shall amend the terms of this Agreement, if necessary, and the parties shall execute a new Agreement. The District reserves the right to provide alternative facilities at the end of the term of this Agreement that meet the requirements of Prop. 39, and the District makes no guarantee that the Dedicated Space will be available for any additional term beyond the current term.

Section 7. Termination. The Agreement shall automatically terminate only after the charter is either revoked or not renewed by the district, and the Charter School has fully exhausted any administrative or judicial appeals of the charter school’s renewal or revocation.

Section 8. Fees and Payment. A. Oversight Fee: Charter School shall pay the District an oversight fee in accordance with Education Code section 47613, which shall not exceed three percent (3%) of the “revenue of the charter school.” Oversight fees shall be altered by the parties in accordance with any change in applicable law during the term of this Agreement. The District will invoice the Charter School, and the Charter School will make installment payments on this invoiced amount payable to “Alameda Unified School District” to be delivered to the District Office (attn: Chief Business Officer) according to the following schedule:

- 25% by October 1, 2013
- 25% by December 1, 2013
- 25% by April 1, 2014
- 25% by July 1, 2014

B. The Fee does not include the Special Education encroachment fee which is calculated annually. In the event the Charter School uses a third party Special Education service provider outside of the District, the District will not assess a Special Education encroachment fee.

C. The Fee does not include Site-specific costs which the school must include in its own budget. The Fee does not include, among other items, the cost of computers, computer lab, laptop carts, server equipment, internet service, phone service, audio-visual equipment, custodial service, or campus security.

D. The Fee does not include Site-specific costs which are not school-specific, which the Charter School will negotiate with the Shared Site Committee and formally record in an annual Inter-Connected School Agreement by the end of September.

E. Either the Charter School or the District may call, at any time, for a meeting to discuss adjustments or reconciliation of these figures whenever there is reason to believe that these estimates do not reflect actual amounts owing.
F. If the Charter School disputes any fee or charge, it shall send written notification to the District. The Charter School has the right to submit the issue for resolution in accordance with the dispute resolution procedures outlined herein. Pending resolution of any dispute resolution procedures relating to the fee or charge, the Charter School shall only be required to continue paying any undisputed amount. Upon resolution of the dispute relating to the fee or charge, and based upon the ultimate resolution thereof, the Parties shall reconcile the amounts owed. The Charter School withholding disputed funds is not grounds for revocation.

Section 9. Utilities. The Charter School shall be solely responsible for the cost of all utilities used or consumed by the Charter School on the Site. With respect to internet connectivity, the Charter School shall assume use of the pre-existing T-1 line and shall transfer billing for the use of such line over to the Charter School. The Charter School shall obtain its own internet service provider and shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware. The Charter School will be billed according to the utilities billing cycle for its pro rata share of the total Site utilities costs where billing is unable to be separately billed.

Section 10. Maintenance. Facilities, furnishings, and equipment provided to the Charter School shall remain the property of the District. The ongoing operations and routine maintenance of the facilities and equipment are the responsibility of the Charter School. Projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with District schedules and practices shall remain the responsibility of the District. The Charter School may purchase operations and maintenance services from the District as provided in a separate written agreement.

The District shall be responsible for the major maintenance of the facilities used by the Charter School. For purposes of this section, “major maintenance” includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be considered routine maintenance.

Section 11. Installation of Improvements. During the Term of this Agreement, the Charter School has no right to make alterations, additions, or improvements to the Site, which shall include modular classrooms, (“Improvements”) , without the prior written consent of the District, and if required, the Division of the State Architect. The Charter School may submit a request to make Improvements to the Site, and the District agrees to act upon a timely and complete request by the Charter School within ninety (90) days. If the District fails to provide a response to the Charter School within ninety (90) days regarding any such timely and complete request, the request shall be deemed approved. The 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 without reason. Contractors retained by the Charter School with respect to the construction or installation of Improvements must be paid prevailing wages; 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 to charter schools, including building codes and prevailing wage laws. The District or the 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.

Section 11(A). Signage. The Charter School may install signage at the Site, including the following: one sign at the Charter School’s main entrance stating the charter school name and other pertinent information, a sign indicating the main office of the Charter School, and other directional signs as appropriate. The signage shall not require any Improvement to the Site in order to erect such signage. Such signage shall be in compliance with any District standards previously made available to Charter School and Charter School’s receipt of any applicable permits and approvals required under any municipal or other governmental laws, ordinances, rules or regulations; provided, that in the event of any conflict between the District’s standards and any applicable municipal or governmental permit and/or approval, the terms and conditions of the municipal or governmental permit and/or approval shall prevail. The Charter School may place additional signs on the property with prior District approval.

Section 12. Condition of Property. The Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Dedicated Space, including, without limitation, those relating to health, safety, noise, environmental protection, 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 Dedicated Space. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards regarding access for any existing compliance issue prior to the date of execution of this Agreement. 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 discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Dedicated Space due to the Charter School’s use and occupancy thereof, the Charter School, at its expense, shall be obligated to clean all the property affected, to the satisfaction of the District and any governmental agencies having jurisdiction over the Dedicated Space.

Section 13. Title to Property. The parties acknowledge that title to the Dedicated Space is held by the District and shall remain in the District at all times.

Section 14. Fingerprinting. The Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. Verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements shall be provided in writing to the District prior to each individual’s commencement of employment or participation in any activity of the Charter School on the Dedicated Space and prior to permitting contact with District pupils.

Section 15. Insurance.
A. Charter School’s Insurance. Charter School, at Charter School’s sole cost and expense, shall both obtain and keep in full force and effect, beginning on the Commencement Date and continuing until this Agreement terminates, the following insurance policies for the Site, or, in lieu of maintaining coverage through an insurance company, use a self-insurance mechanism that meets the following criteria:
(1) Liability Insurance. Commercial general liability insurance with respect to the Site and Dedicated Space, if any, and the operations of or on behalf of the Charter School in, on or about the Site, including but not limited to: bodily injury, product liability (if applicable), blanket contractual, broad form property damage liability coverage and host liquor liability in an amount not less than Five Million Dollars ($5,000,000) in the aggregate, and excess liability coverage on a basis consistent with coverage for schools or a type similar to the School as required by the District as a school district. Coverage shall be maintained with no Self-Insurance Retention above $15,000 without the prior written approval of the District. The policy shall be endorsed to name the Alameda Unified School District and the Board of Education of the City of Alameda as named additional insured and shall provide specifically that any insurance carried by the District which may be applicable to any claims or loss shall be deemed excess and the charter school’s insurance primary; provided, however, that District’s insurance shall be primary for claims 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.

(2) Property Insurance. Property insurance against fire, vandalism, malicious mischief and such other additional perils as now are or hereafter may be included in a standard “All Risks” coverage, including sprinkler leakage, insuring all of the Charter School’s trade fixtures, furnishings, equipment, stock, loss of income or extra expense, and other items of personal property (“Charter’s Property”) in an amount not less than one hundred percent (100%) of replacement value. Such insurance shall contain: (i) coinsurance or contribution clauses, (ii) a replacement cost endorsement, and (iii) a waiver of subrogation in favor of the District. With regard to such property insurance, the District agrees that the Charter School shall have the right to participate in insurance policies obtained by the District where such policies are less expensive or otherwise more advantageous to the Charter School than coverage otherwise available in the marketplace. Any such participation shall be in a separate written agreement. The Parties further acknowledge and agree that the Charter School has no obligation hereunder to purchase earthquake coverage.

(3) Workers’ Compensation, Employer Liability. Workers’ compensation insurance in accordance with provisions of the California Labor Code adequate to protect the charter school from claims that may arise from its operations pursuant to the Workers’ Compensation Act, and employer’s liability insurance in an amount not less than One Million Dollars ($1,000,000).

(4) Fidelity Bond. Fidelity bond coverage for all of Charter School’s employees who handle, process, or otherwise have responsibility for Charter School’s funds, supplies, equipment or other assets. Minimum amount of coverage shall be $50,000 per occurrence, with no self-insurance retention.

B. Insurance Policy Criteria. All policies of insurance required to be carried by Charter School shall be written by responsible insurance companies authorized to do business in the State of California, rated no less than the standard the District requires for non-charter public schools [A.M. Best A-, VII or better]. Any such insurance required of the Charter School hereunder may be furnished by the Charter School under any blanket policy carried by it or under a separate policy therefore. A true and exact copy of each paid-up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required and containing the provisions specified herein, shall be delivered to the District prior to the date the Charter School is given the right to possession of the Site, and upon renewals, not less than thirty (30) days prior to the expiration of such coverage. In addition, the District and the Board of Education of the City of Alameda shall be named as an additional insured on the liability policies and a loss payee on the property coverage for the Site. The District may, at any time and from time
to time, upon reasonable notice to the Charter School and at no cost to the Charter School, inspect and/or copy any and all insurance policies required hereunder, and in no event shall the then-limits of any policy be considered as limiting the liability of the Charter School under this Agreement.

C. Failure to Obtain Insurance. If the Charter School fails to procure, maintain and/or pay for at the times and for the durations specified in this Agreement, the insurance required hereunder, or fails to carry insurance required by any applicable law, the District may (but without obligation to do so), and with concurrent notice to the Charter School, perform such obligations on behalf of the Charter School, and the cost thereof, together with interest thereon at the Interest Rate from the date of demand until paid, shall become due and payable as additional payment by Charter School to the District.

D. Reimbursement. Charter School shall reimburse the District for cost of the premiums paid by the District for the insurance carried by the District pursuant to the terms of section C herein. Such amounts will be payable by check and may not be deducted by the District from the Charter School’s Revenue account.

E. District Insurance. During the Term of this Agreement, the District shall maintain insurance or shall self-insure against claims for injuries to persons or damages to property (real and personal, including the structures on the Site and any District-owned personal property) in amounts equal to that which would be in place if the Site were occupied by another school of the District. For services provided by the District to the Charter School, the District shall maintain responsibility for these services and such services shall be covered by the District’s self-insurance or any insurance that the District may maintain.

Section 16. Indemnification. 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, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Dedicated Space after District delivers possession of the Dedicated Space to the Charter School, arising from the Charter School’s use of the Dedicated Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Charter School in or about the Dedicated Space; provided, however, that the Charter School shall not have any obligation to indemnify, hold harmless or defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Dedicated Space after the District delivers possession of the Dedicated Space to the Charter School, resulting from or arising out of the sole negligence or willful malfeasance of the District, its trustees, officers, employees and agents or any person or entity not subject to the Charter School’s control and supervision.

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, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Dedicated Space after District delivers possession of the Dedicated Space to the Charter School, arising from the District’s use of the Dedicated Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the District in or about the Dedicated Space; provided, however, that the District shall not have any obligation to indemnify, hold harmless or defend the Charter School, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Dedicated Space after the District delivers possession of the Dedicated Space to the Charter School, resulting from or arising out of the sole negligence or willful malfeasance of the District, its trustees, officers, employees and agents or any person or entity not subject to the Charter School’s control and supervision.
negligence or willful malfeasance of the Charter School, its trustees, officers, employees and agents or any person or entity not subject to the Charter School’s control and supervision.

Section 17. Access. The District and its authorized representatives shall have the right, after twenty-four (24) hours prior written notice to the Charter School, to enter the Site during normal business hours for the purpose of inspection and audit (“Inspection”) or to perform Deferred Maintenance in or on the Site. Nothing in this section shall prevent the District from entering the Site to address an emergency upon the Site, nor shall this provision restrict the District’s authority to enter the Site without advanced notice to perform its general oversight responsibilities under the terms of Charter School’s charter and applicable law. An “emergency” shall be defined to include circumstances that risk the health and safety of students, personnel or other persons on the Site; or circumstances that risk further imminent damage or destruction to the Site; or circumstances that otherwise jeopardize the operation of the Site, including, but not limited to, the safety and sanitary condition of the Site.

Section 18. Surrender of Dedicated Space. Upon the Termination Date or other termination of this Agreement, the Charter School shall peaceably quit and surrender to the District the Dedicated Space together with the Charter School improvements and all alterations approved by the District in good order and condition, except for normal wear and tear after the Charter School’s having made the last necessary repair required on its part under this Agreement, and further except for any portion of the Dedicated Space condemned and any damage and destruction for which the Charter School is not responsible hereunder.

Section 19. Holding Over. Charter School shall surrender possession of the Site immediately upon the expiration of the Term or earlier termination of this Agreement. Absent a written agreement to the contrary, Charter School will not be permitted to hold over possession of the Site after such expiration or earlier termination of the Term without the express written consent of the District, which consent the District may withhold in its sole and absolute discretion. Any holdover by Charter School shall constitute a breach of this Agreement by Charter School entitling the District to pursue any and all remedies available at law and in equity, including without limitation consequential damages resulting therefrom.

During any hold over period, Charter School shall: (i) not occupy and use the premises during the hold over period except to remove its personal property and Alterations as it has coordinated with District; and (ii) authorize District to deduct $100 per day (or any portion thereof) from charter school’s monthly revenue account commencing on the sixth day of the hold over and said per day rate shall increase by 100% for each 15 day period thereafter; provided, however, that these hold over provisions shall not apply to those situations where Charter School previously made a timely and legally sufficient request under Prop. 39 for the school year to commence after the last day of the Term of this Agreement, the District made a facilities offer and Charter School accepted, and there is a delay in the delivery of the facilities.

Section 20. Liens. Charter School shall not suffer or permit any liens to stand against the Site, or any part thereof, by reason of any work, labor, services or materials done, supplied, or claimed to have been done or supplied. If as a result of work performed by or under the direction of the Charter School any such lien shall at any time be filed against the Site, the Charter School shall provide written notice thereof to the District as soon as notice of such lien or action comes to the knowledge of the Charter School. The Charter School shall cause the lien or action to be discharged of record within thirty (30) days after the date of the filing of same, either by payment, deposit or bond, unless a bond therefore is already in effect. Nothing in this Agreement shall be construed as consent or agreement by the District to subject its estate in the Site or any estate that
may be construed in favor of the Charter School under this agreement to liability under any mechanics’ lien law or to any contractor or laborer for work performed.

Section 21. Release of Liens. If any such liens are not so discharged within thirty (30) days after the date of the filing of the same, the District, without waiving its rights and remedies based on such breach by the Charter School whose dealings gave rise to the lien and without releasing the Charter School from any of its obligations, cause such liens to be released by any reasonable means, including payment in satisfaction of the claim giving rise to such lien.

Section 22. Damage and Destruction.
A. Notice to the District. Charter School shall provide written notice to the District immediately of any casualty that wholly or partially damages or destroys the Charter School Premises or Charter School Shared Premises.

B. If there is damage or destruction, in whole or in part, to the Charter School Premises or Charter School Shared Premises:

(1) Unsafe Access or Use. If Charter School and the District determine that all or substantially all of the Charter School Premises and/or Charter School Shared Premises are inaccessible or unusable by Charter School in a safe manner, then the parties may mutually agree to terminate this Use Agreement.

(2) Safe Access or Use. If Charter School and the District determine that Charter School can safely continue its educational program from the Charter School Premises, Charter School may elect to continue the Use Agreement in effect; provided, that Charter School’s Pro Rata Share Charge shall be adjusted proportionately for that portion of the Charter School Premises and/or Charter School Shared Premises that Charter School cannot use and relinquishes use of.

(3) Upon mutual agreement between the parties, Charter School may elect to pay the District for the full estimated cost and expense to repair such damage or destruction, or pay in accordance with a structured payment schedule agreed to by the District. If Charter School exercises such option, this Use Agreement shall continue in full force and effect, but the Pro Rata Share Charge and all other charges, expenses and fees shall be proportionately reduced as provided in Section 14.2(b).

(4) If this Use Agreement is terminated pursuant to this Section 14.2, the District shall make best efforts to house Charter School’s entire program that was conducted at the Charter School Premises in a single facility for the remainder of the Charter School’s planned school year. If the District cannot provide Charter School with a single facility, the District shall make best efforts to provide Charter School with classrooms sufficient to house the Charter School’s entire program that was conducted at the Charter School Premises across multiple facilities or by temporary use of DSA compliant modular classrooms, as permitted by law, either on the Site or at other District real property that the District deems appropriate; provided, that pursuant to Section 47614(b)(1) of the Education Code nothing herein shall obligate the District to expend unrestricted general fund revenues.

Section 23. Eminent Domain.
A. Termination of Use Agreement. This Use Agreement shall terminate if all of the Charter Schools Premises or Charter Schools Shared Premises are permanently taken under the power of eminent domain. If only a part of the Charter Schools Premises or Charter Schools Shared Premises
is permanently taken under the power of eminent domain, the District or Charter School may elect
to terminate this Use Agreement by providing sixty (60) days’ written notice to the other party. In
the event of a permanent partial taking which does not result in termination of this Use Agreement,
the Pro Rata Share Charge shall be proportionately reduced based on the portion of the Charter
Schools Premises or Charter Schools Shared Premises rendered unusable, and the District shall
restore the Charter Schools Premises or Charter Schools Shared Premises by constructing a
demising wall deemed necessary by the District to separate the Charter Schools Premises or Charter
Schools Shared Premises from the portion permanently taken. In the event the District terminates
this Use Agreement pursuant to this Section, the District shall make best efforts to house Charter
School’s entire program in a contiguous facility for the remainder of the Charter School’s planned
school year. If the District cannot house the Charter School’s entire program in a single contiguous
facility, the District shall make best efforts to provide Charter School with classrooms sufficient to
house the Charter School’s entire program across multiple facilities or by use of temporary modular
classrooms.

B. Allocation of Condemnation Award. In the event of a permanent condemnation or taking of
all or part of the Site, the District shall be entitled to any and all awards which may be made in such
taking or condemnation relating to all interests, including the fee title, to the Site. Nothing
contained in this Article 15 shall be deemed to give the District any interest in or to require Charter
School to assign to the District any separate award as designated by the condemning authority made
to Charter School for (i) the taking of Charter School’s personal property, (ii) interruption of or
damage to Charter School’s business, or (iii) amounts attributable to Charter School’s relocation
expenses.

C. Temporary Taking. No temporary taking of the Charter Schools Premises or Charter
Schools Shared Premises or any part of the Charter Schools Premises or Charter Schools Shared
Premises and/or of Charter School’s rights to the Charter Schools Premises or Charter Schools
Shared Premises or under this Use Agreement shall terminate this Use Agreement or give Charter
School any right to any abatement of any payments owed to the District pursuant to this Use
Agreement, provided that such temporary taking does not continue for more than five (5)
consecutive days or a total of five (5) non-consecutive days in any thirty (30) day period. Any
award made by reason of such temporary taking shall belong entirely to the District, except as to
compensation for (i) the temporary taking of Charter School’s personal property, (ii) interruption of
or damage to Charter School’s business, or (iii) amounts attributable to Charter School’s temporary
relocation expenses.

Section 24. Charter School’s Default; the District’s Remedies.

A. Charter School’s Default. The occurrence of any one of the following events shall be
considered a default of this Agreement by Charter School:

(1) The failure of Charter School to pay any charges or fees due and payable hereunder pursuant to
the provisions of sections 4.4 or 5.2, as applicable, or otherwise provided herein; provided,
however, that any such notice shall be in lieu of, and not in addition to, any notice required under
Code of Civil Procedure section 1161, and such ten (10) day cure period shall run concurrently with
any cure period required under California law, including Code of Civil Procedure section 1161;

(2) The failure of Charter School to observe or perform any of its covenants or obligations
hereunder, which failure continues past the notice and cure period provided herein. The District
shall provide Charter School with written notice of default and Charter School shall have ten (10)
business days to provide a response to the District, either evidencing compliance with the terms of this Agreement or a plan to cure the default and a reasonable timeline acceptable by the District within which Charter School will diligently prosecute the same to completion. In no event shall such default continue for more than ninety (90) days after written notice thereof by the District to Charter School without prior written agreement by the District. Any such notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161; and such cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

(3) Charter School’s abandonment of the Charter Schools Premises for a period of thirty (30) consecutive days, it being agreed that the fact that any of Charter School’s property remains in the Charter School’s Premises shall not be evidence that Charter School has not vacated or abandoned the Charter School’s Premises; provided, however, any normal school holidays including summer and inter-term breaks shall not constitute abandonment of the Charter School’s Premises;

(4) The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School of a petition to have Charter School adjudged bankrupt or a petition for reorganization or arrangement under any law relation to bankruptcy (unless the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of the Charter School’s assets located at the Charter Schools Premises, or of Charter School’s interest in this Agreement, where possession is not restored to Charter School within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Charter School’s assets located at the Charter School’s Premises or of Charter School’s interest in this Agreement, where such seizure is not discharged within thirty (30) days.

(5) Any failure by Charter School to execute and deliver any statement or document described in Article 20 below within a reasonable period of time after the District’s written request for such statement or document. Any such notice shall be in lieu of and not in addition to any notice required under Code of Civil Procedure section 1161, and such thirty (30) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

(6) The assignment, subletting or other transfer of this Agreement in violation of Article 18.

(7) The cessation of the Charter School’s program after a revocation, nonrenewal or surrender of the charter to the granting agency. However, the Charter School shall not be in default of this Use Agreement until after the Charter School has exhausted all appeals subsequent to the revocation or nonrenewal of its charter.

B.  The District’s Remedies.

(1) In the event of any default by Charter School and if Charter School fails to cure such default within the time period specified in this Agreement after receipt of written notice from the District of such default, the District shall have the right, in addition to all other rights available to the District under this Agreement or now or later permitted by law or equity, to terminate this Agreement by providing Charter School with a ninety (90) day prior written notice of termination. Upon termination, the District may recover any damages proximately caused by Charter School’s failure to perform under this Agreement, or which are likely in the ordinary course of business to be incurred, including any amount expended or to be expended by the District in an effort to mitigate
damages, as well as any other damages which the District is entitled to recover under any statute now or later in effect.

(2) In accordance with Civil Code section 1951.4 (or any successor statute), Charter School acknowledges that in the event Charter School has breached this Agreement and abandoned the Site, this Agreement shall continue in effect for so long as the District does not terminate Charter School’s right to possession, and the District may enforce all its rights and remedies under this Agreement, including the right to recover the Pro Rata Share Charge as it becomes due under this Agreement and the reasonable costs incurred to preserve the property. Acts of maintenance or preservation of the Charter School’s Premises or Charter School Shared Premises or the appointment of a receiver upon initiative of the District to protect the District’s interest under this Agreement shall not constitute a termination of Charter School’s right to possession. In addition to its other rights under this Agreement, the District has the remedy described in Civil Code section 1951.4.

(3) In the event of any default by Charter School and if Charter School fails to cure such default within the time period specified in this Agreement after receipt of written notice from the District of such default, the District shall also have the right, with or without terminating this Agreement, to enter the Charter School Premises or Charter School Shared Premises and remove all persons and personal property from the Site, such property being removed and stored in a public warehouse or elsewhere at Charter School’s sole cost and expense. No removal by the District of any persons or property in the Site shall constitute an election to terminate this Agreement. Such an election to terminate may only be made by the District in writing, or decreed by a court of competent jurisdiction. The District’s right of entry shall include the right to remodel the Charter School Premises or Charter School Shared Premises and re-let the Charter School Premises or Charter School Shared Premises. Any payments made by Charter School or third party to whom the facilities are re-let shall be credited to the amounts owed by Charter School under this Agreement. No entry by the District shall prevent the District from later terminating this Agreement by written notice.

(4) If Charter School fails to perform any covenant or condition to be performed by Charter School within the time period specified in this Agreement after Charter School received written notice of such failure from the District, the District may perform such covenant or condition at its option, after notice to Charter School. In the event of an Emergency, the District has the right to perform such activity to mitigate the impact of the Emergency. All reasonable costs incurred by the District in so performing shall be reimbursed to the District by Charter School in accordance with section 5.2 hereof. Any performance by the District of Charter School’s obligations shall not waive or cure such default. All out-of-pocket, reasonable costs and expenses actually incurred by the District in collecting payments due or enforcing the obligations of Charter School under this Use Agreement shall be paid by Charter School to the District in accordance with section 5.2 hereof.

(5) The rights and remedies of the District set forth herein are not exclusive, and the District may exercise any other right or remedy now or later available to it under this Agreement, at law or in equity.

Section 25. The District’s Default; Charter School’s Remedies.

A. The District’s Default. The District shall be considered in default of this Agreement for failure by the District to observe or perform any of its covenants or obligations hereunder which continue beyond the notice and cure period provided herein (except in the event of an emergency, in
which case the District shall perform its obligations immediately). Charter School shall provide the District with written notice of default and the District shall have ten (10) business days to provide a response to Charter School either evidencing compliance with the terms of this Agreement or a plan to cure the default and a reasonable timeline acceptable to Charter School within which the District will diligently prosecute the same to completion. In no event shall such default continue for more than ninety (90) days after written notice thereof by Charter School without prior written agreement by Charter School.

B. Charter School’s Remedies. If the District fails to perform any covenant or condition to be performed by the District within the time period specified in section 17.1 after the District received written notice of such failure from Charter School, Charter School shall have the right to withhold payment as its remedy for the District non-performance, as specified in Article 4 or Article 5 of this Agreement. In the event of an Emergency, Charter School has the right to perform such activity to mitigate the impact of the Emergency. All out-of-pocket, reasonable costs and expenses actually incurred by Charter School as a result of the District’s failure to perform under this Use Agreement, in collecting payments due or enforcing the obligations the District under this Use Agreement shall be paid by the District to Charter School within thirty (30) days of written demand therefor.

The rights and remedies of Charter School set forth herein are not exclusive, and Charter School may exercise any other right or remedy now or later available to it under this Agreement, at law or in equity.

Section 26. Capacity to Sign. All parties represent and warrant that they possess all necessary capacity and authority to sign and enter into this Agreement. Each individual signing this Agreement for a party which is a public agency, a corporation, a partnership, a limited liability company, or other legal entity, or signing under a power of attorney or as a trustee, guardian, conservator, or in any other legal capacity, represents and warrants that he or she has the necessary capacity and authority to act for, sign, and bind the respective entity or principal on whose behalf he or she is signing.

Section 27. 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:  
Alameda Unified School District  
2060 Challenger Way  
Alameda, CA 94501  
Attn: Chief Business Officer, Robert Shemwell

If to the School:  
Nea Community Learning Center Charter School  
500 Pacific Avenue  
Alameda, CA 94501  
Attn: Paul Bentz, CLCS Executive Director

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.
Section 28. Dispute Resolution. Notwithstanding anything in this Agreement to the contrary, disputes between Charter School and the District regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of this Agreement, Proposition 39, or State Regulations shall be resolved using the dispute resolution process identified below.

The party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the party (the designated representatives must be employees(s) of Charter School or the District); (2) a statement of the facts of the dispute, including information regarding the parties’ attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute; and (4) the specific resolution sought by the party. Within ten (10) business days from receipt of the notice of dispute, the representatives from Charter School shall meet with representatives from the District in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute, the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the State Mediation and Conciliation Service to appoint a mediator within ten (10) business days to assist the parties in resolving the dispute (if the State Mediation and Conciliation Service (“SMCS”) is unable or refuses to provide a mediator, the parties shall mutually agree upon a mediator with fifteen (15) days from notice that SMCS will be unable to provide a mediator). The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than 30 calendar days after receipt of the request for appointment. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven business days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply, and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and Charter School.

Either party may seek equitable or injunctive relief prior to the mediation to preserve the status quo or prevent irreparable injury pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 calendar days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

Section 29. Subcontract and Assignment. Neither party shall assign its rights, duties or privileges under this Agreement, nor shall a party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) on any third party, without the written consent of the other party.

Section 30. 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.

Section 31. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral...
or written. This Agreement may be amended or modified only by a written instrument executed by the parties.

Section 32. California Law. 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 Alameda County, California.

Section 33. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.

Section 34. 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.

Section 35. 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.

Section 36. Modifications. Modifications of this Agreement may be made by mutual written agreement at any time and must express intent to modify this Agreement. Any modification of this agreement must be in writing and executed by duly authorized representatives of both parties.

Section 37. Force Majeure. Whenever either party hereto shall be required by the terms of this Agreement or by law to perform any contract, act, work, construction, labor or services, or to perform and comply with any laws, rules, orders, ordinances, regulations or zoning regulations, said party shall not be deemed to be in default herein and the other party shall not enforce or exercise any of its rights under this Agreement, if and so long as nonperformance or default herein shall be directly caused by strikes, non-availability of materials, war or national defense preemptions or civil disobedience, governmental restrictions, alien invasion, or other similar causes beyond the reasonable control of the non-performing party.

Section 38. 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.

Section 39. 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.

Section 40. Construction. Nothing in this Agreement shall affect the number of positions held by or reduce the amount of work performed by District employees covered by a collective bargaining agreement with the District.

Section 41. 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.
Section 42. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ALAMEDA UNIFIED SCHOOL DISTRICT

Niel Tam, President, Board of Education

Kirsten Vital, Secretary, Board of Education

APPROVED AS TO FORM:

Danielle Houck, General Counsel

CHARTER SCHOOL

By: ________________________________

Date: ________________________________

Title: ________________________________

Date: ________________________________
Exhibit A

Legend
C  Classroom
MP  Multi Purpose Room
MU  Music Room
ST  Stage
L  Library

Square Footage

Property Line

Original Facility Built: 1965
Building Area: 44,229 SF
Re locatable Area: 960 SF

Note:
1. Canopies and covered areas are not included in total square footage.
2. Classroom square footage above is gross footage.
Exhibit A

LONGFELLOW ELEMENTARY SCHOOL
ALAMEDA UNIFIED SCHOOL DISTRICT
500 PACIFIC AVENUE, ALAMEDA, CALIFORNIA 94501

LEGEND
C  CLASSROOM
PC  PORTABLE CLASSROOM
MCL  MEDIA CENTER / LIBRARY
MP  MULTI-PURPOSE

SQUARE FOOTAGE

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NOTE:
1. CANOPIES AND COVERED AREAS ARE NOT INCLUDED IN TOTAL SQUARE FOOTAGE.
2. CLASSROOM SQUARE FOOTAGE ABOVE IS USABLE FOOTAGE.
March 29, 2013

Re: Nea Community Learning Center Request for Proposition 39 Facilities
Alameda Unified School District Final Facilities Offer

Dear Mr. Bentz:

The Alameda Unified School District ("District") hereby provides its Final Facilities Offer to the Nea Community Learning Center ("Nea") for the 2013-2014 school year in accordance with Education Code 47614 and Title 5, California Code of Regulations ("CCR") sections 11969.1 through 11969.11, as amended ("Implementing Regulations"). The District’s allocation of space is based on Nea’s request for a projection of 418 in-District classroom ADA. This offer only pertains to the 2013-2014 school year.

Nea and the District have mutually agreed to continue the current operating agreement that consists of a split facility offer giving Nea space on two District facilities. Nea will remain in the space at the current Longfellow Education Center ("LEC") facility and space on the Chipman Middle School ("CMS") facility that is currently shared with the Academy of Alameda Middle School ("AOA").

The additional issues raised by Nea’s legal counsel regarding the District’s Preliminary Offer of Facilities will be resolved given the adjustments made in the final offer and the effort to work collaboratively with Nea to reach a mutually agreeable offer.

Final Facilities Offer

This letter constitutes the District's Final Facilities Offer as part of the District’s obligation to provide reasonably equivalent facilities. In Nea’s Prop 39 request for facilities, Nea requested to “stay put” and states that Nea believes with its modest planned growth for 2013-14 that its current facilities are adequate. Nea’s Prop 39 offer includes the space it already occupies at Longfellow Educational Center and the space it occupies at the Chipman Middle School ("CMS") facility that is currently shared with the Academy of Alameda Middle School ("AOA").

The additional issues raised by Nea’s legal counsel regarding the District’s Preliminary Offer of Facilities will be resolved given the adjustments made in the final offer and the effort to work collaboratively with Nea to reach a mutually agreeable offer.

1. Teaching Stations
The District offers the following:

At the LEC facility:

Nea will have exclusive use of eight (8) classrooms for teaching space located in Building E (rooms C15-C22). See Attachment “A”.

At the CMS facility:

Nea will have exclusive use of nine (9) classrooms for teaching space located on the ground level in quad 2 at the back of the building. (rooms C1-C9). See Attachment “A”.

2. Specialized Classroom Space

The District offers the following:

At the LEC facility:

Nea will have exclusive use of a 2,979 square foot multi-purpose room for specialized classroom space (AUSD kitchen will be excluded) as follows:

(1) Stage room (Plan room 101)

(2) Two rooms (rooms 23 and 24, which also have a restroom)

(3) Plan rooms 205 and 206

(4) Multi-purpose room (Plan room 103)

(5) AUSD will retain exclusive use of the small kitchen (room 102) and the floor space in front of the small kitchen to the nearest exit.

At the CMS facility:

Nea will have use of the industrial arts room (MU on site map) during the school day. Details regarding use of this room will be spelled out in an MOU as was mutually agreed upon last year by Nea and AOA representatives.

3. Non-Teaching Space

The District offers the following:

At the LEC facility:

Nea will have exclusive use of the following facilities at Longfellow for non-teaching space, administrative, and/or other purposes:

(1) Two office rooms: office with a restroom (Plan room 201) and office (Plan room 202).

(2) Reception (Plan room 203)
(3) Boys and girls student restrooms (Plan rooms 9 and 2) and an additional restroom for staff (Plan Room 209)

(4) Storage/janitorial/other rooms (Plan rooms 211, 1, 5, 8, 7, 128, 134, 136, 137, and 214) (Nea has its own custodial services. This will be specified in the terms of the Facilities Use Agreement to be entered into by and between the District and Nea. Should Nea change its mind and decide to obtain custodial services from the District, it may be necessary for Nea to share with the District one or more of the janitor rooms offered.)

(5) Staff Kitchen (Plan room 212)

(6) Elevators (Plan rooms 210 and 138b)

(7) Paved play area space at the site

At the CMS facility:

Nea will have exclusive use of the media center for office space, computers and meeting space.

Exclusive use of the portable on the yard for office space, services to students and storage.

4. Shared Use

(1) Space for Athletic Activities

The District offers the following:

The District offers Nea shared use of the gymnasium/multi-purpose room at the CMS facility to be scheduled in advance with AOA. Specific details of shared access to the gymnasium/multi-purpose room at CMS will need to be arranged at a future date with AOA who will also be located at the CMS facility. The terms of such shared use still need to be arranged but will be included in the Facilities Use Agreement to be entered into between the District and Nea. Nea may also arrange for time during the school day for use of the new Boys and Girls Club gym. This time must be scheduled through AUSD during the school year.

2. Other Non-Teaching Space

At the LEC facility:

The District will continue to house the Woodstock Child Development Center as well as District Special Education pre-school classes and services at the LEC. All other spaces at LEC will be used to meet required state licensing and regulations required for pre-school children.

Nea will be able to utilize the following space on a shared-use basis with the programs that will continue to operate at the Longfellow site:

Parking Lot The District has reconfigured the parking area at the Longfellow site. While Nea will share the available spaces in the Lincoln Avenue parking lot with the other programs operating at the site, the District anticipates that there will be adequate parking spaces to meet Nea's parking needs for staff.
**Kitchen (Plan room 102)** Nea will not have access to the District warming kitchen in the multi-purpose room or the space in front of the multi-purpose room kitchen from the door to the nearest exit. Nea will have exclusive use of the small staff kitchen adjacent to the office space (#212).

The arrangements will be specified in the Facilities Use Agreement to be entered into between the District and Nea.

**Hallways (Building A)** Limited sharing with other program(s) operating at the site.

**Adult Restroom (Plan room 135, Building E)** Shared with other program(s) operating at the site.

**Additional student restrooms** Student restrooms adjacent to Room 11 to be shared with other program(s) operating at the site.

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**Student Drop-Off**

The District offers the same location area along Pacific Avenue as a student drop-off area during Nea’s school hours. The District also believes that this location will serve the needs of Nea and its students given that all of the space offered to Nea, including the administration/office space in Building A, is located on Pacific Avenue. 

NEA’s parents should not be given access to the parking lot. This lot is reserved for the sole use of NEA staff, Woodstock Child Development Center parents and staff, and AUSD enrollment and professional development participants.

**Facilities Use Agreement**

The District and Nea shall enter into a Facilities Use Agreement regarding such matters as insurance, indemnity, access, safety, utilities, maintenance and use of the facilities for the 2013-2014 school year. Any conditions pertaining to the space not addressed in this Final Facilities Offer will be included in the Facilities Use Agreement entered into by and between the District and Nea.

**Estimated Pro-Rata Share**

Pursuant to Title 5, Section 11969.9, the District is obligated to include in its preliminary proposal the projected pro-rata share cost to Nea for facilities offered. Section 11969.7 prescribes the methodology to be used by the District for determining the pro-rata share amount to be charged to Nea in correlation to the space allocated by the district. In accordance with section 11969.7, the District has calculated the pro-rata share Nea will be responsible to pay for teaching spaces as follows:

<table>
<thead>
<tr>
<th>Space Description</th>
<th>Size (sq ft)</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>960 square feet (size of average classroom/portable) LEC</td>
<td>960</td>
<td></td>
</tr>
<tr>
<td>1000 square feet (size of average classroom at CMS)</td>
<td>1000</td>
<td></td>
</tr>
<tr>
<td>X 8 classrooms to be offered to Nea on the Longfellow facility to house projected in-District Classroom ADA C15-C22</td>
<td>7,092</td>
<td>$6.81 x 17,086 = 471,270.86</td>
</tr>
<tr>
<td>X 9 classrooms to be offered to Nea on the Chipman facility C1-C9</td>
<td>9,994</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>17,086</strong></td>
<td><strong>$6.81 x 17,086</strong> (District’s cost per square foot)</td>
</tr>
</tbody>
</table>

4 www.alameda.k12.ca.us
Respectfully submitted,

Robert Shemwell
Chief Financial Officer

= $116,355.66 cost to Nea for 8 teaching spaces (classrooms) at Longfellow and
9 teaching spaces (classrooms) at Chipman

Please note that the District has not included the cost for use of non-teaching and specialized classroom space
in the above total. Also note that this pro-rata cost amount is based on an average square foot per classroom
amount, and this total amount may increase or decrease once a determination of which specific classrooms will
be utilized at Longfellow by Nea and the exact square footage of such space is ascertained.

The District will not charge Nea a pro-rata cost for its use of the facilities offered at Longfellow. Instead,
because the District will provide Nea with “substantially rent free” facilities for the 2013-2014 school year, the
District shall charge Nea the actual costs of supervisorial oversight in an amount not to exceed three (3) percent
of the revenue of Nea pursuant to Education Code section 47613(b).

Conclusion

The above represents the District’s Final Facilities Offer to Nea for the 2013-2014 school year. The District
believes that it has fully complied with the requirements of the Education Code, the Proposition 39
implementing regulations and the provisions of the “mutual agreement” clause in CCR 11969.1(b) in making
this offer. AUSD has done so in order to meet its obligation to provide reasonably equivalent facilities.