

## **SETTLEMENT AGREEMENT AND RELEASE**

This **SETTLEMENT AGREEMENT AND RELEASE** (“**Agreement**”) is entered into by and between **CAMINO NUEVO CHARTER ACADEMY** (“**CNCA**”), a California public benefit corporation, operating that public charter school known as Camino Nuevo High School (Miramar) (“**Charter School**”), and the **LOS ANGELES UNIFIED SCHOOL DISTRICT** (“**LAUSD**”), a school district duly organized and existing under laws of the State of California. This Agreement is effective on the last date signed by CNCA and LAUSD (“**Effective Date**”). CNCA and LAUSD are sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

### **RECITALS**

A. LAUSD acquired the real property located at 1215 Miramar, Los Angeles, CA (previously identified as 1217 Miramar but corrected to USPS address of 1215 Miramar “**Miramar**”) with the intention to construct a school facility to relieve overcrowding and assist in LAUSD’s objective to have its schools on a two-semester education format.

B. LAUSD obtained Division of the State Architect (“**DSA**”) approval on the design for a 19-classroom high school on the 1.28-acre site. DSA approval included a condition that physical education at Miramar would be based on use of certain physical education facilities of the neighboring school facility currently known as Miguel Contreras Learning Complex (“**Contreras**”). However, due to changes in student demographics and increased costs, LAUSD later determined that it did not need to construct a new school facility at Miramar.

C. On March 13, 2012, LAUSD’s Board of Education (“**Board**”) authorized, pursuant to a public Request for Proposals (“**RFP**”) process, the execution of a long-term lease and other instruments with CNCA, to finance the construction of what was then known as the Central Los Angeles High School No. 12 project, and the subsequent operation and occupancy of the Miramar site. CNCA agreed to provide partial financing for construction of the new school through from the State of California Charter School Facilities Program (“**CSFP**”). CNCA contributed \$21,875,667 in CSFP funds, which included a loan from the State to CNCA as CNCA’s local matching share in the amount of \$10,000,000. LAUSD funded the balance of the project budget with bond program funding earmarked for charter school facilities.

D. LAUSD completed construction of the Miramar school facility in 2013. CNCA began operating its Charter School at Miramar on July 1, 2013, under a Lease and Joint Use Agreement dated April 27, 2012, for a term of forty (40) years, as amended by the First Amendment dated December 14, 2012, the Second Amendment dated April 15, 2014, and Third Amendment dated August 8, 2014 (collectively referred to as the “**Lease**”).

E. Pursuant to the Lease, LAUSD was obligated to provide operations and maintenance services to the Miramar facility for the first three (3) years of the Term and CNCA was obligated to pay LAUSD for such operations and maintenance services. After the first three (3) years of the Term, CNCA could elect to opt out of LAUSD operations and maintenance services.

F. CNCA sent an e-mail on June 9, 2015, informing LAUSD that it was terminating LAUSD custodial services effective June 30, 2016, which CNCA contends terminated all operations and maintenance services.

G. LAUSD terminated custodial services to the Miramar facility because the CNCA message was specific to custodial services. LAUSD continued to provide other operations and maintenance services to the Miramar facility. CNCA also placed service calls to the LAUSD service desk requesting maintenance services.

H. There is now a dispute between the parties as to whether CNCA terminated all LAUSD operations and maintenance services, as contended by CNCA, or whether CNCA terminated only LAUSD's custodial services, and the charges arising from those services, as contended by LAUSD, (the "**Disputed Matter**").

I. On November 14, 2018, LAUSD delivered to CNCA invoices for the pro rata share payments owed for 2016-2017, 2017-2018 and 2018-2019. CNCA claimed the invoices were incorrect and LAUSD provided a new invoice on April 5, 2019, removing the custodial line item from the Facilities cost work sheet for those years.

J. LAUSD delivered to CNCA a letter dated August 18, 2020, requesting payment of \$1,177,434.06 for LAUSD operations and maintenance services for 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021 to the Miramar facility ("**Disputed Amount**") to resolve the Disputed Matter. On or about October 7, 2021, CNCA submitted a payment to LAUSD in the amount of \$211,293 leaving a difference of \$966,141.06 between the CNCA payment and the Disputed Amount.

K. CNCA disagrees with the Disputed Amount. CNCA claims LAUSD should have known that CNCA intended to terminate all LAUSD operation and maintenance services at the Miramar facility. LAUSD claims that if CNCA intended to terminate all services then CNCA had several opportunities over the years to question LAUSD's continued presence at the Miramar facility and continued provision of services.

L. The parties met on November 2, 2020, and December 2, 2020, to discuss the Disputed Amount. At the meeting on December 2, 2021, CNCA informed LAUSD that it had not met its enrollment projection for any year at Miramar and over the years CNCA borrowed approximately \$600,000 to meet funding deficiencies for the Charter School. CNCA further informed LAUSD that its Board would meet on December 8, 2021, to decide whether to close the Charter School.

M. On December 8, 2020, CNCA's board decided to close the school at Miramar as of June 30, 2021, due to low enrollment and the corresponding impact on its ability to meet its financial obligations for the Charter School.

N. The State of California, by and through California School Finance Authority and the Office of Public School Construction (collectively referred to as the "**State**"), requested and

worked with LAUSD to conduct a Notice of Intent to locate a qualifying successor charter school to step into the shoes of CNCA at the Miramar facility.

O. On February 2, 2021, via electronic mail, CNCA delivered to LAUSD a letter dated February 1, 2021, in which CNCA offered to settle the Disputed Amount.

P. The Parties now wish to resolve and settle all of LAUSD's claims, demands, actions, causes of action, rights, and obligations against CNCA with regard to the Disputed Amount and in any way arising out of the Disputed Matter, through June 30, 2021.

**NOW THEREFORE**, in consideration of the foregoing Recitals, in reliance on the foregoing representations, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

### **TERMS AND CONDITIONS**

1. **Recitals.** The above Recitals are fully incorporated into the Terms and Conditions portion of this Agreement.

2. **Definitions.** As used in this Agreement, the definitions set forth below apply to the defined terms where capitalized.

A. **Claims:** The terms "**Claim**" and "**Claims**" are used in their broadest sense to include any and all claims for relief, rights, actions, suits, causes of action, damages, debts, costs, demands, losses, liens, offsets, charges, contracts, agreements, promises, changes, change requests, change order proposals, retention, withholdings, contract funds and balances, time related claims, extended overhead, credits, attorneys' fees, expenses, liabilities, and obligations of whatever nature, whether legal or equitable, known or unknown, past, present, or future, fixed or contingent, choate or inchoate, whether or not asserted and whether asserted affirmatively or defensively, that relate to, or arise out of the Disputed Matter or the Disputed Amount arising out of the Lease or the work performed in connection with the Lease.

B. **CNCA Parties:** The term "**CNCA Parties**" includes (i) CNCA; (ii) the Charter School (iii) any all present and past officers, directors, shareholders, agents, representatives, predecessors, successors, assigns, affiliated entities, sureties, bonding companies, insurance companies, principals, employees, and attorneys of CNCA; and (iv) each of them, in any and all capacities.

C. **LAUSD Parties:** The term "**LAUSD Parties**," includes (i) LAUSD; (ii) any and all present and past LAUSD officers, Board members, directors, executors, agents, employees, representatives, predecessors, successors, assigns, affiliates, attorneys, guarantors, and indemnitors; and (iii) each of them, in any and all capacities.

3. **Settlement Payment.** For and in consideration of the promises, agreements, and other considerations set forth herein, CNCA agrees to pay to LAUSD the amount of **two hundred**

**sixteen thousand one hundred forty-one U.S. Dollars and no/100 cents (\$216,141.00)** within ten (10) days after the Effective Date of this Agreement (“**Settlement Payment**”) as full and final payment of the Disputed Amount and to fully resolve the Disputed Matter. LAUSD is willing to accept the Settlement Payment as full and final payment of the Disputed Amount to fully resolve the Disputed Matter because of CNCA’s representations herein and all of the following conditions:

A. CNCA hereby relinquishes all right, title, and interest in the Lease and use of Miramar. CNCA shall execute any reasonable instrument requested by LAUSD to effectuate the full and final closure of the Charter School, terminate the Lease and wind-up of its occupancy at Miramar, and effectuate the objectives of this Settlement Agreement.

B. CNCA agrees that it voluntarily terminated its charter pursuant to Element 15 of the charter petition, effective June 30, 2021. CNCA also agrees that for a period of five (5) years after the Effective Date of this Agreement, CNCA shall not submit a Proposition 39 facilities request for any new charter school that it may form by itself or in conjunction with another person or entity. For an avoidance doubt, CNCA Castellanos (now at 1723 W, Cordova St., Los Angeles) and CNCA Cisneros (at 1018 Mohawk St., Los Angeles) are not new schools, and are excluded from the prohibition in this paragraph.

4. Full and Final Release. In consideration of the promises, agreements, and other consideration set forth in this Agreement which the Parties each represent, and warrant are good and sufficient consideration, the Parties, individually and on behalf of CNCA Parties and LAUSD Parties, hereby generally releases and forever discharges the other, individually, and collectively, from any and all Claims that relate to, or arise out of, the Disputed Matter and the Disputed Amount. The Parties intend the foregoing release to extend to all Claims the Parties have or may have, whether known or unknown, against the other arising out of the operations and maintenance services for the Miramar facility, and shall be binding notwithstanding the discovery of (i) facts not presently known by the Parties or (ii) Claims of which the Parties are not presently aware.

5. Civil Code Section 1542. The Parties hereby acknowledge that they are familiar with and fully understand section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

The Parties waive and relinquish any and all rights and benefits each may have under, and which may be conferred on it by, the provisions of section 1542 of the Civil Code regarding any and all Claims to the fullest extent it may lawfully waive such rights or benefits. In connection with such waiver and relinquishment, the Parties, individually and on behalf of CNCA Parties and LAUSD Parties, hereby acknowledge they may hereafter discover Claims or facts in addition to, or different from, those they now know or believe to exist with respect to any and all Claims, but the Parties intend to and do fully, finally, and forever settle and release all of the disputes and differences against the other, whether known or unknown, suspected or unsuspected, matured or contingent which concern, arise out of, or are in any way connected with the Outstanding Amount.

6. Authority to Enter into Agreement: Each Party represents and warrants that it is the sole owner of all rights, title, and interests in and to the Claims settled under this Agreement and it has not assigned, transferred, or purported to assign or transfer, to any person any matters, or portions thereof, settled and released under this Agreement.

7. Advice of Counsel: The Parties acknowledge that they have read this Agreement in its entirety, that they have had an opportunity to be advised by counsel of their choice, and that they have full, complete, and total comprehension of the provisions hereto and are in full agreement with each and every one of its terms, conditions, and provisions.

8. Disputed Claims: The settlement, releases, and other matters set forth herein are a compromise and settlement of disputed and contested Claims between the Parties, and nothing contained herein shall be construed as an admission by any Party of any obligation or liability of any kind to any other Party.

9. Entire Agreement: This Agreement contains and embodies the entire agreement of the Parties with regard to the obligations under this Agreement, and the matters released in this Agreement, and no representations, inducements, or other agreements, oral or otherwise, not embodied herein, exist nor shall they be of any force or effect. This Agreement supersedes all prior agreements between the Parties and controls all rights and obligations between the Parties. This Agreement can only be modified or amended by a subsequent written agreement signed by the Parties.

10. Benefit of Binding Agreement on Others: This Agreement is binding on and shall inure to the benefit of the Parties, their respective agents, employees, boards, representatives, shareholders, officers, directors, partners, divisions, corporations, subsidiaries, parents, affiliates, assigns, heirs, predecessors and successors, past, present, and future.

11. Interpretation of Jointly Drafted Agreement: The language of this Agreement is the result of negotiations between the Parties. Therefore, the presumption that language shall be construed against the drafter shall not apply to this Agreement.

12. Acts to Effectuate Purposes of Agreement: The Parties agree to execute all such other documents and perform such other acts necessary to give effect to the intent and purposes of this Agreement.

13. Governing Law Consent to Jurisdiction: The Agreement (and any disputes arising under this Agreement) shall be governed by, construed, and enforced in accordance with the laws of the State of California without giving effect to the provisions, policies, or principles relating to choice of law or conflict of laws. Each of the Parties consents to personal jurisdiction in the Superior Court of the County of Los Angeles, California, with respect to any dispute relating to, or arising out of, this Agreement, and this shall be the exclusive forum for disputes. The Parties waive any right to remove any such dispute to federal court.

14. Execution in Counterparts: This Agreement may be signed in counterparts. Facsimile and PDF signatures shall constitute original signatures.

15. Costs and Expenses: Each Party hereto shall bear its own costs, expenses, and fees, of all kinds including without limitation, attorneys' fees, witness fees, consultant fees, expert fees, and costs incurred related to (a) the Lease, (b) Projects, (c) the negotiation and execution of this Agreement, and (d) any dispute(s) arising under this Agreement.

16. No Third-Party Beneficiary. This Agreement is solely for the benefit of the Parties hereto. The Parties do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone who is not a Party to this Agreement or who is not a successor to the rights or obligations of a Party.

17. Savings Clause: Should any one part of this Agreement be determined to be illegal or unenforceable, such clause shall be severable from the rest of this Agreement. The remainder of the Agreement shall be given full force and effect insofar as is practicable.

18. Approval of LAUSD's General Counsel: The Parties acknowledge and agree that an express condition precedent to the validity and enforceability of this Agreement is the approval by LAUSD's General Counsel, or designee, which shall be indicated by the signature below.

19. Authority to Execute Agreement: Each signatory hereto represents and warrants that he or she is authorized to sign this Agreement, bind the Party on whose behalf this Agreement is signed, and all acts necessary to confer such authority have been duly, properly, and legally taken.

**[Signatures on the following page]**

**IN WITNESS WHEREOF**, the Parties have caused their authorized representatives to execute this Agreement.

DATED: \_\_\_\_\_, 2021

**LOS ANGELES UNIFIED SCHOOL DISTRICT**,  
a school district duly organized and existing under laws of  
the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2021

**CAMINO NUEVO CHARTER ACADEMY**,  
a California public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_