

**MEMORANDUM OF UNDERSTANDING  
BY AND AMONG  
THE LONG BEACH UNIFIED SCHOOL DISTRICT  
NEW CITY SCHOOL  
AND  
NEW CITY PUBLIC SCHOOLS, INC.**

This Memorandum of Understanding (“MOU”) is made and entered into this 30<sup>th</sup> day of August, 2012 by, between and among the Long Beach Unified School District (“LBUSD”), the New City School (“New City” or “Charter School”), and New City Public Schools, Inc. (“NCPS”). Hereinafter, LBUSD, New City, and NCPS shall be collectively referred to as “the parties.”

WHEREAS, New City is a charter school operated pursuant to a charter (the “Charter” or “New City Charter”) approved by the LBUSD Board of Education (“LBUSD Board”) in accordance with the Charter Schools Act of 1992 (Ed. Code §47600, *et seq.*), which Charter was last renewed by the LBUSD Board in 2010 for a five (5) year charter term from July 1, 2010 through June 30, 2015; and

WHEREAS, New City is operated by NCPS, a California non-profit public benefit corporation that is responsible for New City’s compliance with its Charter; and

WHEREAS, the LBUSD Board issued a Notice of Violations pursuant to Education Code section 47607(d) to New City on May 2, 2012, which stated that New City has: (1) violated the conditions and standards set forth in the New City Charter; (2) failed to meet or pursue the pupil outcomes identified in the New City Charter; (3) failed to meet generally accepted accounting principles (“GAAP”) or engaged in financial mismanagement; and (4) violated the law (“May 2 Notice”); and

WHEREAS, New City submitted a response to the Notice of Violations on June 8, 2012; and

WHEREAS, via a letter dated June 21, 2012, LBUSD provided New City an opportunity to submit a supplemental response to the Notice of Violations by July 5, 2012; and

WHEREAS, New City submitted a supplemental response (“Management Report”) to the May 2 Notice on July 5, 2012, which includes the following statement:

“New City Public Schools (NCPS) unconditionally agrees with Long Beach Unified School District’s concerns about NCPS’ serious financial and academic deficiencies as communicated by the District to NCPS on May 2 and June 21, 2012. This report proposes a viable, practical 24-month process—the School Quality Improvement Plan—for permanently fixing the deficiencies’ root causes so they do not recur. NCPS’ goal, however, is to be far beyond fixing the deficiencies and become an exceptional “shining star” among Long Beach schools”; and

WHEREAS, the LBUSD Board held a public meeting on July 16, 2012, and voted to authorize the LBUSD Superintendent of Schools Chris Steinhauser (“Superintendent”) to send a Notice of Intent to Revoke and Notice of Facts in Support of Revocation to New City in accordance with Education Code Section 47607(e); and

WHEREAS, New City received a Notice of Intent to Revoke and Notice of Facts in Support of Revocation dated July 20, 2012, which identified LBUSD’s findings that New City has: (1) committed material violations of the conditions and standards set forth in the New City Charter; (2) failed to meet or pursue some of the pupil outcomes identified in the New City Charter; (3) failed to operate in accordance with generally accepted accounting principles and engaged in fiscal mismanagement; and (4) violated provisions of law (“July 20 Notice”); and

WHEREAS, on August 16, 2012, New City submitted to LBUSD an executed commitment letter from the Low Income Investment Fund (“LIIF”) dated August 14, 2012, which commits LIIF, subject to satisfaction of conditions contained in the commitment letter, to enter into a forbearance agreement with New City and to modify the documents that govern the loan made by LIIF to New City in the amount of \$5,428,000 secured by a first deed of trust on property located at 1621-1647 Long Beach Boulevard, Long Beach, California 90813; and

WHEREAS, on August 20, 2012, the LBUSD Board held a public hearing concerning revocation in accordance with Education Code section 47607(e) and the Superintendent stated

his recommendation that the LBUSD Board not pursue revocation against New City contingent upon the parties' execution of a mutually agreed upon MOU that addresses the outstanding concerns of the LBUSD staff; and

WHEREAS, the parties recognize that New City and LBUSD staff have worked diligently together to reach resolution of all concerns; and

WHEREAS, New City reaffirms its commitment to meeting all applicable California state standards and participation in the Standardized Testing and Reporting ("STAR") Program as required by Education Code sections 47605(c)(1), 60605, and 60851; and

WHEREAS, New City further reaffirms its commitment to resolve all outstanding concerns of LBUSD, compliance with GAAP, and to operate the School in a fiscally sound manner and in full compliance with the law and the terms of the Charter and this MOU; and

WHEREAS, LBUSD continues to have serious concerns regarding the academic and fiscal well-being of the School and believes that the violations previously identified in the May 2 and July 20 Notices, the law and its Charter are not yet fully remedied, but is satisfied that New City is taking steps towards remedying the violations; and

WHEREAS, the NCPS Board acted on August 29, 2012, to authorize Richard Koffler, NCPS Board President, to approve this MOU; and

WHEREAS, the LBUSD Board acted on September 4, 2012, to approve this MOU and adopt Resolution No. 090412-E to not proceed with the revocation process against New City at this time, and adopted findings that New City has remedied some of the findings as identified in the July 20 Notice, but that the LBUSD Board further adopted findings that academic and fiscal issues remain and shall be addressed by New City in accordance with this MOU as more fully discussed and agreed upon below; and

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

1. The above-listed recitals are hereby incorporated herein by this reference.

2. This MOU shall constitute a valid and binding agreement among the LBUSD, New City, and NCPS. This MOU is incorporated into the New City Charter and made a part thereof as if set forth in full in the Charter. A violation of the MOU shall constitute a violation of the Charter.
3. Throughout this MOU and any attachments, exhibits, and/or appendices hereto, any and all references to New City School and/or New City and/or the Charter School and/or the School shall apply with full force and effect to New City Public Schools, Inc. and any and all references to New City Public Schools, Inc. or NCPS or the corporation shall apply with full force and effect to New City School, and for all purposes related to this MOU or the operations of New City School, both New City and NCPS shall be fully obligated to comply with the provisions of this MOU and any attachments, exhibits and/or appendices hereto, without regard to whether one or both of those entities is referenced or specifically listed or identified therein.
4. New City shall at all times remain in full compliance with all of the terms of the August 16<sup>th</sup> commitment letter and all related documents between New City and LIIF. LIIF and New City shall enter into a forbearance agreement by no later than September 30, 2012, and a copy of such agreement shall be immediately provided upon execution of the document. New City expressly agrees to comply with the terms of the forbearance agreement.
5. New City shall submit to LBUSD by the 5<sup>th</sup> of each month, written verification (e.g., check receipt and/or bank statements) that payments are made and current to LIIF and in compliance with the terms of the forbearance agreement with LIIF.
6. New City shall submit to LBUSD monthly written updates regarding negotiations between New City, LIIF, and 5G, LLC for the sale—purchase by 5G, LLC of the New City property located at 1621-1647 Long Beach Blvd, Long Beach, CA. Such written updates are due to LBUSD by the 5th day of the month, ending December 31, 2012.

7. If no agreement is reached between New City, LIIF, and 5G, LLC by December 31, 2012, for purchase of the property, New City shall submit to LBUSD a written alternative arrangement plan by January 8, 2013. Such plan must specify the manner in which New City will address the repayment of the LIIF loan by June 30, 2013, as well as repayment all of the other outstanding loans owed by New City while continuing to operate New City in a fiscally sound manner, including the maintenance of a balanced budget and reserves. LBUSD will in its sole discretion, approve or disapprove of this plan. Regardless of the plan chosen, New City must, by April 30, 2013, submit documentation to LBUSD demonstrating that all current New City outstanding debts, including the LIIF loan, Raza Development Fund, and Westbrook Family, have been paid or are otherwise satisfied such that New City establishes it is fiscally stable and able to continue operating in a fiscally sound manner, including a balanced budget and reserves. If such documentation is not provided by April 30, 2013, or as otherwise agreed upon by LBUSD, LBUSD may in its sole discretion proceed with the revocation process as specified in sections 32-33, below.
8. New City shall provide monthly budgets and financial statements to LBUSD by the 30th day of each month for the preceding month. If LBUSD finds that such reports do not accurately report the current and budgeted financial condition of New City, LBUSD staff shall notify the New City Executive Director in writing and the parties shall meet and discuss the issues within five (5) days of LBUSD's notice. New City must address the concerns identified by LBUSD to LBUSD's satisfaction.
9. New City shall continue to timely and accurately submit all required fiscal reporting as described in the LBUSD's Fiscal Oversight Timelines.
10. New City shall submit all formal, written communications not considered confidential according to agreements with lenders, and/or not protected by statute or regulation, regarding late payments, renegotiations, refinancing or

noncompliance from LIIF, Charter School Capital and any other lenders to LBUSD within two (2) business days of receipt.

11. If LBUSD staff has any concerns with the documentation submitted by New City in accordance with subsections 3 through 10, above, LBUSD staff shall notify the New City Executive Director in writing no later than five (5) business days after receipt and New City shall have five (5) business days from receipt of such notice to address such concerns to the reasonable satisfaction of LBUSD.
12. By October 1, 2012, New City shall contract with the Fiscal Crisis and Management Assistance Team (“FCMAT”) to conduct an audit of New City’s financial operations, which shall be due to LBUSD and New City upon completion. All costs associated with this audit shall be borne solely by New City. The parties shall agree upon the scope of the FCMAT audit by September 21, 2012 and New City shall ensure all measures are taken to complete and submit the final audit report by December 31, 2012. LBUSD acknowledges the final audit report and any findings issued in the audit report, if any, are not part of the LBUSD May 2 or July 20 Notices and shall not be used as a basis for revocation of the New City Charter pursuant to the process outlined in this MOU.
13. New City shall submit Board Agendas and Board Minutes to LBUSD via e-mail immediately after such documents are posted and/or made available to the public.
14. To the extent New City’s service provider can provide such service, New City shall provide LBUSD with full, read only, online access to all New City financial records.
15. New City shall inform and provide written documentation to LBUSD regarding all fiscal decisions in excess of \$50,000 no less than five business (5) days before such decisions are made.
16. New City shall pay LBUSD twelve (12) monthly installments of \$600 beginning September 30, 2012, for data services (use of LBUSD’s circuits for online access

and use of GENESIS access). If New City declines this service, New City shall return all LBUSD equipment to LBUSD by October 5, 2012.

17. New City shall provide Attendance Reports daily throughout the first twenty (20) days of school of each school year covered by this MOU.
18. New City shall have no authority to enter contracts for or on behalf of LBUSD. Any contracts, purchase orders, or other documents which are not approved or ratified by the LBUSD Governing Board as required by law, including, but not limited to, Education Code section 17604, shall be unenforceable against LBUSD and shall be New City's sole responsibility.
19. New City and NCPS shall require that the following language is included in any and all contracts entered into by either of those entities:

New City School and/or New City Public Schools, Inc. have no authority to enter contracts for or on behalf of the Long Beach Unified School District. Any contracts, purchase orders, or other documents which are not approved or ratified by the Long Beach Unified School District Governing Board as required by law, including, but not limited to, Education Code section 17604, shall be unenforceable against the Long Beach Unified School District and shall be the New City School/New City Public School Inc.'s sole responsibility.

20. New City shall administer quarterly LBUSD Assessments: English Language Arts, Trimester Exams grades 2-5, English Language Arts Quarterly Exams grades 6-8, Math Trimester Tests grades 1-5, and Math quarterly exams grades 6-8 ("quarterly assessments"), in accordance with a separate written agreement to be reached between the parties by September 21, 2012. The parties acknowledge that (1) LBUSD will pay for all costs of the quarterly assessments and LBUSD processes for administering and scoring; (2) New City will explore and provide information to LBUSD regarding its ability to import quarterly assessment results into OARS for use by New City; and (3) New City shall abide by all copyright laws and execute a confidentiality agreement to not disclose any copyrighted materials; and (4) LBUSD shall not revoke the New City Charter based on results

of the quarterly assessments, which may vary due to New City's differing instructional calendar and curriculum from that of LBUSD. New City shall be responsible for any costs associated with conversion to OARS.

21. New City, as an independent charter school, has adopted standards for re-designation of English Language Learners that are aligned with state standards but are different from LBUSD's adopted standards. The parties acknowledge that data comparisons shall not be made in this regard between New City and LBUSD.
22. New City will continue to use the Monthly Academic Oversight protocol it adopted last year, and will continue to submit OARS assessment results to LBUSD.
23. LBUSD staff will conduct at least four classroom observations at New City each school year. Such visits may occur with or without prior notice to New City. LBUSD staff shall notify the New City Executive Director in writing if LBUSD staff identifies any concerns and the parties shall meet and discuss the issues within five (5) days of LBUSD's notice. New City must address the concerns identified by LBUSD staff to the reasonable satisfaction of the District.
24. New City will provide LBUSD a full copy of the data CD and Student Master List Summary and Student Master List of the Spring STAR results within twenty-four (24) hours of receipt by New City, ensuring confidentiality of student data, as applicable. New City shall submit the 2012 STAR results to LBUSD upon execution of this MOU.
25. New City will comply fully with federal Program Improvement requirements. Prior to implementation, LBUSD will review processes for compliance and, if LBUSD is mentioned in process, LBUSD must first approve its proposed role.
26. New City shall meet all applicable California state standards and participate in the Standardized Testing and Reporting ("STAR") Program as required by Education Code sections 47605(c)(1), 60605, and 60851.

27. The New City Executive Director and Director of Education Programs shall meet quarterly with LBUSD staff to review professional development programs, summary classroom supervision reports and teacher evaluation reports, subject to appropriate redaction to maintain confidentiality of personnel records. LBUSD staff shall notify the New City Executive Director in writing if LBUSD staff identifies any concerns and the parties shall meet and discuss the issues within five (5) days of LBUSD's notice. New City must address the concerns identified by LBUSD staff to the reasonable satisfaction of LBUSD.
28. New City shall complete the Academic Audit, as described in the Management Plan, by December 1, 2012, and submit the results to LBUSD immediately upon receipt.
29. New City shall submit Gomez y Gomez summary visitation reports, as well as any other summary academic reports from any other curriculum advisor/contractor, within two (2) business days of receipt.
30. New City will implement all instructional strategies as specified in the July 5<sup>th</sup> Management Report, and as subsequently amended by New City as reflected in Appendix A to this MOU. Should New City consider implementing alternate or amended instructional strategies, New City shall notify and consult with LBUSD staff prior to implementation of the same.
31. The parties acknowledge and agree that LBUSD is not proceeding at this time with the revocation proceeding against New City that commenced with the issuance by LBUSD of the May 2 Notice as New City has agreed to remedy the concerns of LBUSD as set forth in this MOU.
32. The parties further acknowledge and agree that LBUSD may proceed with the revocation process if at any time LBUSD determines New City has (1) committed material violations of the conditions and standards set forth in the New City Charter, (2) failed to meet or pursue some of the pupil outcomes identified in the New City Charter, (3) failed to operate in accordance with generally accepted

accounting principles or engaged in fiscal mismanagement and/or, (4) violated provisions of law, and that a failure to cure all such violations in the manner set forth in New City's Management Report and to comply fully with the terms of this MOU would constitute a sound and valid basis for LBUSD to proceed with revocation of the New City Charter.

33. If LBUSD staff determines that New City has (1) committed material violations of the conditions and standards set forth in the New City Charter, including this MOU; (2) failed to meet or pursue any of the pupil outcomes identified in the New City Charter, including this MOU; (3) failed to operate in accordance with generally accepted accounting principles or engaged in fiscal mismanagement, including by a failure to fully comply with the terms of this MOU; and/or (4) violated provisions of law as identified in the May 2 and July 20 Notices and/or directly related thereto and/or otherwise violated the terms and/or requirements of this MOU, the parties acknowledge and agree that LBUSD is not required to recommence the process for charter revocation set forth in Education Code section 47607 and California Code of Regulations, title 5, section 11968.5.2, *et. seq.*, but rather, the parties mutually agree that LBUSD Board may proceed with the revocation process against New City as follows. The parties expressly agree that the provisions of the dispute resolution process as set forth in the Charter have been satisfied:

- a. At a public meeting the LBUSD Board shall issue or authorize the Superintendent to issue a written notice to New City of the LBUSD Board's intent to conduct a hearing to revoke the New City Charter if the LBUSD Board finds that New City and/or NCPS (1) committed a material violation of the conditions and standards set forth in the New City Charter, including this MOU; (2) failed to meet or pursue any of the pupil outcomes identified in the New City Charter, including this MOU; (3) failed to operate in accordance with generally accepted accounting principles or engaged in fiscal mismanagement, including by a failure to fully comply with the terms of this MOU; and/or (4) violated provisions of

law (“Notice of Hearing”). The Notice of Hearing shall include a description of the violation(s) to be considered by the LBUSD Board at the public hearing and the date and time at which the LBUSD Board will hold the public hearing concerning revocation. The Notice of Hearing shall be sent to New City at least fifteen (15) calendar days prior to the scheduled hearing.

b. New City shall have the option to respond in writing to the Notice of Hearing, which written response shall be due to LBUSD no later than 5:00 p.m. on the fifth (5<sup>th</sup>) calendar day after New City’s receipt of the Notice of Hearing.

c. The LBUSD Board shall hold the hearing concerning revocation at the date and time specified in the Notice of Hearing. The LBUSD Board may take final action on the revocation matter at the same meeting or at a subsequent regular or special meeting no more than thirty (30) calendar days after the hearing (or sixty (60) calendar days by written mutual agreement between the LBUSD Superintendent or designee and New City). The LBUSD Board’s final action shall include written factual findings supported by substantial evidence specific to New City that supports the LBUSD Board’s findings.

34. This MOU shall remain in full force and effect through June 30, 2015, unless earlier terminated by specific agreement of all of the parties hereto. Provided, however, that in the event the New City Charter is revoked by the LBUSD Board or the New City Charter is otherwise terminated, this MOU shall likewise terminate simultaneously.

35. New City and NCPS reserve all rights to appeal a revocation decision made by the LBUSD Board in accordance with Education Code Section 47607(f) and pursue all available legal remedies. The parties hereby agree that the process for revocation as specified in sections 32-33 of this MOU for any of the causes set forth in and related to the May 2 and July 20 Notices and the provisions of this

MOU is an agreed to and acceptable process and does not violate the due process as required by Education Code section 47607 and the California Code of Regulations, Title 5, sections 11965 and 11968.5.2. New City and NCPS further agree that in any appeal they expressly waive their right to assert or allege that the process for revocation as specified in sections 32-33 of this MOU violates the due process requirement of Education Code section 47607 and the California Code of Regulations, Title 5, sections 11965 and 11968.5.2.

36. This MOU shall be construed and enforced in accordance with the laws of the State of California and the terms of this MOU shall not be construed for or against either party by reason of the authorship of this MOU or any other rule of construction which might otherwise apply.
37. This MOU may be altered, amended, changed, or modified only by mutual agreement in writing executed by LBUSD, New City, and NCPS's duly authorized representatives with a specific reference to this MOU. Such amendments may be adopted and implemented by the parties at any time.
38. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.
39. In the event of a conflict between a term of this MOU or the Charter and NCPS's corporate bylaws or other rule, regulation or procedure of New City or NCPS, the terms of the Charter and this MOU, in that order of priority, shall control.
40. No waiver of any provision of this MOU shall be deemed or shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.
41. The persons executing this MOU on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this MOU on behalf of said party, (iii) by executing this MOU said party is formally bound to the provisions of this MOU, and (iv) the entering into

of this MOU does not violate any provision of any other agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date and year first above written.

THE NEW CITY SCHOOL/  
NEW CITY PUBLIC SCHOOLS

LONG BEACH UNIFIED  
SCHOOL DISTRICT

By: \_\_\_\_\_  
Richard Koffler, President  
New City Public Schools Governing Board

By: \_\_\_\_\_  
Jon Meyer, President  
Long Beach Unified School District  
Board of Education

Attachment: Appendix A – New City Instructional Strategies