



BULLIS CHARTER SCHOOL

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August 19, 2013

Doug Smith
Board President
Los Altos School District
201 Covington Road
Los Altos, CA 94024

Re: 2013-2014 Facilities; BCS's Continued Efforts of Good Faith Negotiation Pursuant to Pub. Res. Code § 21167.8(b), 5 Cal. Code Regs. § 11969.9(k)

Dear Doug:

On behalf of BCS, I am responding to your August 16, 2013 letter. It is unfortunate that the Los Altos School District Board of Trustees ("LASD" or "the District") persists in denying its obligations to BCS and the status of the Proposition 39 offer for 2013-2014. To recap the sorry events of the last fifteen days: LASD belligerently locked out our teachers and staff on August 2, 2013, the day after the District was required to provide fully furnished and equipped facilities per your own Proposition 39 offer. Your illegal, egregious lock-out remained in place until August 13, 2013, which is two business days beyond the last possible date you could have made the facilities fully available under Proposition 39 under any circumstance, and exposing the District to monetary damages for the disruption to our school. You claim to have done so under the guise of a Facilities Use Agreement ("FUA") requirement, wherein you unilaterally and unlawfully attempted to more than double the use fee, impose additional (and illegal) conditions on our use of the facilities, and implied that BCS should disenroll a number of children who have every right to attend the charter, presumably to force them to enroll in LASD-run schools. Before I conclude this letter by accepting LASD's August 9, 2013 FUA (signed by Superintendent Baier August 11) **under protest and duress**, I offer the following responses to your repeated inaccurate statements about the 2013-2014 offer and our pending legal action, and your feigned ignorance of the mandatory obligation under law to negotiate in good faith.

Contrary to your assertions otherwise, no court has ever upheld LASD's so-called "terms of use" for 2013-14, or that LASD's "process" and "offer were made in full compliance with the law." I have no idea why you state something so plainly false, other than perhaps to mislead the public. LASD's 2013-2014 offer is the subject of pending litigation, which is at the beginning stages. BCS just recently requested a hearing as required by statute, which to my knowledge has not yet been calendared by the court. You may be attempting to distort a much more narrow court ruling. After BCS filed its lawsuit in May, we immediately brought a motion seeking immediate judgment on the basis that we believe LASD should have offered BCS a single, contiguous site. We took that expedited step to save both BCS and District resources in that issuance of the judgment sought would have ended the 2013-14 litigation altogether and the remaining issues (caps, grade restrictions, etc.) would be moot. Unfortunately, the court denied our motion, which means there is no judgment for either party and BCS must fully litigate the dispute to final judgment. As you know since you were present in the courtroom, the court spent considerable time urging the parties to negotiate a settlement.

The law requires that LASD negotiate in good faith concerning the disputed matters for 2013-2014. Public Resources Code section 21167.8 mandates that LASD "*shall attempt in good faith to settle the litigation and the dispute that forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.*" That is exactly what BCS has been trying to do. It is disturbing that LASD repeatedly refuses to negotiate in good faith despite the legal mandate that it do so. Your response to our effort was to

lock us out of the facilities that BCS children have just as much right to enjoy as children who attend District-run programs. Worse, LASD's communications imply that BCS should disenroll children from the charter school to meet your unlawful demands, thereby forcing children who have chosen BCS back into LASD schools.

Concerning the FUA in particular, BCS's rights under Proposition 39 are provided by statute, not by contract. LASD is required to "negotiate" terms of an FUA, if the parties decide together that they want one. (See, 5 Cal. Code Regs. § 11969.9(k).) As you know, there has been no FUA for the past four school calendar years. LASD's April 1, 2013 final offer explicitly referenced the form and substance of the "2008-2009" FUA, which is substantially different from what you have now proposed.

For purposes of this letter, we do not need to get into the details and reasons why we believe certain conditions of LASD's offer are unlawful and unenforceable. It is enough that we have timely filed our legal challenge which is currently pending in the courts. We are confident that the court will ultimately set aside the District's CEQA document and action, which of course includes the 2013-2014 Proposition 39 offer itself. BCS continues to desire to discuss and negotiate a settlement in good faith, and we are hopeful that LASD will change its position and strive for the same.

In light of the foregoing and BCS's continued and consistent efforts to negotiate in good faith, we are enclosing the FUA dated August 9, 2013 unilaterally imposed by the District, which we sign under protest and duress so as to avoid another disruptive lock-out or the other harms you have so egregiously threatened our school and families. It is our position that LASD cannot impose otherwise unlawful requirements upon BCS as a condition of Proposition 39. There is no surprise here about BCS's projected and actual enrollment numbers. BCS will most likely have even greater enrollment next year. We intend to hold you to your commitment in this FUA to negotiate terms, particularly relating to grade level restrictions and "caps" on enrollment. We expect you to negotiate the disputed matters in good faith.

Sincerely,



Ken Moore
Board Chair, Bullis Charter School

cc BCS Board of Directors
LASD Board of Trustees

**FACILITIES USE AGREEMENT
BY AND BETWEEN
LOS ALTOS SCHOOL DISTRICT AND
BULLIS CHARTER SCHOOL**

THIS AGREEMENT is made this 9th day of August, 2013, by and between the Los Altos School District, a public school district organized and existing under the laws of the State of California ("District") and Bullis Charter School, a California public charter school operating as a non-profit public benefit corporation ("Charter School"). The District and the Charter School are collectively referred to as "the parties."

RECITALS

WHEREAS, the Charter School is a charter school approved by the Santa Clara County Office of Education ("County Office") as per Education Code section 47605(j) and is located within the boundaries of the District as per Education Code section 47605(j)(1); and

WHEREAS, pursuant to the requirements of California Education Code section 47614 and its implementing regulations ("Proposition 39"), on November 1, 2012, the Charter School submitted to the District a written request for facilities for the 2013-2014 school year. A true and correct copy of the request is attached as **Exhibit A** and incorporated herein by reference; and

WHEREAS, pursuant to the requirements of Proposition 39 and its implementing regulations, on February 1, 2013, the District Board of Trustees made a written preliminary offer to provide the Charter School with facilities for its in-District students, a true and correct copy of which is attached as **Exhibit B** and hereby incorporated by reference.

WHEREAS, pursuant to the requirements of Proposition 39 and its implementing regulations, on March 1, 2013, the Charter School provided its response to the preliminary proposal, a true and correct copy of which is attached as **Exhibit B-1** and hereby incorporated by reference.

WHEREAS, pursuant to the requirements of Proposition 39 and its implementing regulations, on or about April 1, 2013, the District Board of Trustees made a written final offer to provide the Charter School with facilities for its in-District students, a true and correct copy of which is attached as **Exhibit C** and hereby incorporated by reference.

WHEREAS, the Charter School sent a written "Intent to Occupy" on April 5, 2013, a copy of which is attached as **Exhibit D**, and herein incorporated by reference; and

WHEREAS, the Facilities to be provided shall be in the locations depicted on the Proposed Site Plans attached hereto as **Exhibit E**, and

WHEREAS, the parties desire to set forth the terms and conditions pursuant to which the Charter School will occupy classrooms and use facilities, including recreation, sports and play space, and all furniture and equipment installed therein by the District (collectively "Facilities") at Egan Junior High School, 102 W. Portola, Los Altos, California; and Blach Junior High School, 1120 Covington Road, Los Altos, California (collectively hereafter "Site") for the 2013-2014 school year;

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

Section 1. Use of the Site and Facilities. District hereby permits the Charter School to occupy and use the following facilities, generally depicted and described in Exhibit E at Egan and Blach Junior High Schools for the purpose of operating the Bullis Charter School educational program. The Facilities are described in the April 1 final offer.

The Charter School shall have the exclusive use of the Site and Facilities, except as explicitly limited herein, for the term of this Agreement only, unless extended.

Upon the expiration of this Agreement or the earlier termination thereof in accordance with Section 11 hereof, the Charter School's right to exclusive use and occupation of the Site and Facilities shall cease and terminate, and Charter School shall surrender possession of the Site and Facilities and the Site and Facilities shall revert to the District, except that Charter School shall retain its ownership rights with respect to the Multiuse Room and any other site improvements that the Charter School has paid for, subject to any liens or other encumbrances allowed by law. Any such improvements or signage must be approved by the District pursuant to Section 15 of this Agreement prior to installation. However, should the District offer the use of Site and Facilities to BCS for the following school year and BCS provides notification of its intent to continue to occupy the said site and facilities, the Charter School may store and access its possessions on the site and in the facilities during the summer months subject to the terms of this agreement. As titleholder to the Site and Facilities, 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 Site and Facilities, except that Charter School shall retain its rights with respect to the Multiuse Room and any other site improvements that the Charter School has paid for. Any such improvements must be approved by the District pursuant to Section 15 of this Agreement. The parties understand and agree that the Charter School owns the Multiuse Room and the playground equipment that was paid for by the Charter School.

Section 2. Limits on Use. Charter School's use of the Site and Facilities shall be limited to the operation of its education program as described in its Charter and related educational activities consistent with those that are allowed by the District at its other school sites; provided, however, that:

- (a) At no time shall the Site and/or Facilities be used to house animals or livestock without the express written consent of the District, which consent will not be unreasonably withheld; provided, however, that Charter School may have small animals in classrooms contained in cages, for educational purposes.

- (b) Site Maximum Capacity:

The allocation of facilities for BCS at Blach is based on a District projection of 129 in-District ADA, grades 6-8. If as part of its educational program BCS wishes to place more than 149 students at the Blach site more than twice per calendar month, the parties agree to negotiate in good faith and implement in a timely fashion reasonable provisions that will mitigate the impact, if any, on the site and neighborhood. BCS agrees not to exceed the site limitation of 149 prior to reaching such an agreement.

The allocation of facilities for BCS at Egan is based on a District projection of 443 in-District ADA, grades K-5. If as part of its educational program BCS wishes to place more than 469 students at the Egan site more than twice per calendar month, the parties agree to negotiate in good faith and implement in a timely fashion reasonable provisions that will mitigate the impact, if any, on the site and neighborhood. BCS agrees not to exceed the site limitation of 469 students more than twice per month until such an agreement is negotiated and any required changes are completed.

- (c) Specialized Teaching Space at Blach (Grades 6-8):

Use of and access to the following facilities at Blach are limited to BCS' sixth, seventh and eighth graders: **Home Arts** and **Drama/Chorus Room**. The **science classroom** is restricted to seventh and eighth graders, consistent with District allocation of science classrooms at District schools. The basis for these restrictions is promotion of student safety by limiting access to facilities traditionally used by junior high students to students falling within the appropriate age range for those facilities. These restrictions are consistent with the historical separation of primary grade students and junior-high aged students in District schools, for safety, supervision and programmatic reasons.

- i. BCS K-5 students may not have access to the following specialized teaching space: **Home Arts, Science Lab and Drama/Chorus Room**.

(d) Specialized Teaching Space (Grades 6-8):

BCS 6-8 grade students may have access to the shared P.E. facilities (**track, field, tennis courts, blacktop, gymnasium and Multi-Purpose Room [P.E. use]**) within BCS' allocated sharing time.

- i. BCS' K-5 students will not have access to the shared P.E. facilities (**track, field, tennis courts, blacktop, gymnasium and Multi-Purpose Room [P.E. use]**). This access is based on age-appropriate access to those facilities, as is generally replicated in District schools, and avoids having students of disparate age ranges simultaneously sharing physical education space. The parties agree to negotiate in good faith to identify and provision some alternative play area space that BCS' younger students may use on the Blach site.

(e) Limited Use of Blach Facilities By Grades K-3:

BCS students in grades K-3 may access exclusive BCS facilities at Egan only. Bullis acknowledges that the District has not configured the Blach location for K-3 students. The parties agree to negotiate in good faith regarding reasonable additional safety measures to be followed by BCS during any period when K-3 students are placed on the Blach site, as well as any necessary legal indemnification or other provisions. This condition is consistent with the separation of primary and junior high school students in District schools, and is intended to promote student safety, optimal supervision and the grouping of programmatic resources into age-appropriate groups. Any costs of such modifications shall be borne by BCS, unless agreed otherwise during negotiations. BCS agrees not to allow students in grades K-3 to access facilities at Blach prior to reaching such an agreement.

- (f) Start/End times for BCS school day at Blach: BCS must maintain a school day starting at 8:00 a.m. and ending at 4:30 p.m. BCS will also be required to enlist parent volunteers or other personnel to monitor the parking lot at BCS's facilities at Egan during drop-off and pickup times.

Section 3. Term. The term of this Agreement shall commence on July 1, 2013 and end on June 30, 2014. Should the Charter School require facilities for the subsequent school year, Charter School shall submit a request for facilities pursuant to Code section 47614 and 5 C.C.R. sections 11969 et seq.

Section 4. Education Allocation of Site and Facilities. Pursuant to the requirements of Proposition 39, the allocation of space is based upon the District's counter-projection of 572 in-District ADA for the 2013-14 school year. The District makes this allocation of space to the Charter School with its understanding and on its assumption that the total space provided pursuant to this Agreement is based upon square footage that the District believes to be in excess of Proposition 39 requirements for the comfortable housing of in-District ADA only. The Charter School may utilize the space provided (both classroom and nonclassroom space) in any configuration and for any purpose to meet the educational goals of the charter, subject to the express terms of this Agreement, the terms of the District's Final Offer of Facilities, and District policy and practice with respect to the use of facilities, and applicable law. Any physical changes to the space must conform to the requirements of this Agreement regarding repairs and modifications.

The placement of additional facilities on the Site is subject to approval by the District, and if such approval is given, the construction or installation of additional facilities shall occur at the sole cost and expense of the Charter School in accordance with Section 15 hereof. Fair market rent, as calculated by the District, shall be required for any additional land that is requested by Charter School to construct or install additional facilities.

Section 5. Civic Center Act Compliance. Unless otherwise provided in this Agreement, Charter School shall also have full, exclusive, and primary use of the Site and above-described Facilities on regular school days (7:30 a.m. through 4:30 p.m.) from Monday through Friday; provided, however, that access to the facilities by third parties after 4:30 pm during the week and all day on weekends and holidays shall be governed by the terms of the Civic Center Act. (Ed. Code section 38130 et seq.) The District shall make all determinations with respect to all requests to use the Site and above-described facilities under the Civic Center Act.

Section 6. Reimbursement. In the event that the space allocated to the Charter School has been "over allocated" in accordance with 5 C.C.R. Section 11969.8, the Charter School shall reimburse the District accordingly. For purposes of monitoring compliance with these regulations, Charter School shall provide the District with its actual ADA count and the number of in-District students of Charter School at the time of the filing of the P-1 state attendance report and at the time of the filing of the P-2 state attendance report. The Charter School shall additionally provide to the District on the foregoing dates the names and addresses of in-District students in a manner consistent with applicable law, including FERPA. The District shall only use the names and addresses for the purpose of verifying residency, and will not use the information to contact such students except upon the consent of the Charter School.

Section 7. CEQA Mitigation Measures. Where applicable, the Charter School shall comply with the mitigation measures applicable to the Site prepared

in accordance with the California Environmental Quality Act, and as described in the excerpts of the Mitigated Negative Declaration for the Egan and Blach Schools Relocatables Use (2005), and Addendum thereto, attached as **Exhibit G**.

Section 8. Furnishings and Equipment. The District shall provide furniture and equipment described in **Exhibit H** hereto. Furniture and equipment will be provided from existing District inventory, and will remain the property of the District. The Charter School shall return all furniture and equipment to the District at the end of the term in the same condition as received, with the exception of reasonable wear and tear. The parties shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Site.

Section 9. Telecommunications. District is responsible for assuring that the Facilities are wired for telephone and computer data connectivity. The responsibility to provide all communications equipment, including telephones, computers and related hardware, software, and all required services, shall be the responsibility of the Charter School.

Section 10. Bell Schedule/Intercom System. It is recognized that Charter School will have a separate bell schedule from the District's programs. In addition, the Site and Facilities shall have a separate alarm schedule or access panel. Charter School shall be solely responsible for the ongoing routine operations and routine minor maintenance and repair of the intercom, bell and alarm systems located or installed in the Facilities pursuant to Section 12.

Section 11. Default, Notification, Termination. Upon forty five (45) days written notice, either party may terminate this Agreement upon any material default of the other party, unless the default specified in the notice has been cured or cure has been commenced within the forty five (45) day notice period. If notice is so given, neither party shall be relieved of its duty to perform its obligations under this Agreement up to the date of termination.

The Agreement shall not be terminated until written notice has been received by the designated party pursuant herein to this Agreement and the period of time for the opportunity to cure has passed without resolution as noted above.

This Agreement will automatically terminate upon the final termination or the effective date of revocation of the Charter School's charter or the permanent cessation of the Charter School's operations for any reason. Upon termination or expiration of this Agreement, Charter School shall promptly remove all personal property, fixtures and appliances and surrender the Site and Facilities to the District, including but not limited to the Multi-Use Room installed by BCS under Section 15 of this Agreement, and any other buildings or structures installed thereafter. Any damage caused to the Site or Facilities as a result of the removal

of Charter School's fixtures shall be repaired at the sole cost and expense of Charter School.

If Charter School fails to surrender the Site and Facilities at the termination of this Agreement, Charter School shall defend and indemnify District from all liability and expense, including attorney's fees, resulting from the failure to surrender.

Any holding over by Charter School after expiration of the term shall not constitute a renewal or extension or give Charter School any rights in or to the Site and/or Facilities.

Section 12. Maintenance of Site/Facilities. Charter School shall be solely responsible for the ongoing routine operations and routine minor maintenance and repair of the Site and Facilities, including all personal property installed in the Facilities or on the Site, and including all landscape and grounds maintenance. The Site and Facilities shall be kept in good repair and appearance, in accordance with the District's standards, policies and procedures for its school sites. In addition, any repairs required as a result of intentional or negligent damage caused by Charter School, its students, employees, agents or representatives shall also be paid for by Charter School, notwithstanding the following paragraph.

Other than for the multi-purpose building installed and owned by the Charter School pursuant to section 15 of this Agreement, for which the Charter School agrees to assume full cost and responsibility for all maintenance, repair, removal, and clean-up, District shall assume the cost and responsibility for major maintenance and the replacement of furnishings and equipment supplied by the District in accordance with District deferred maintenance schedules and practices. For purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, intercom, alarm, bell, and communications systems (other than equipment provided by the Charter School), roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582 and pursuant to the rules and regulations of the State Allocation Board. All other kinds of maintenance and repairs shall be considered routine maintenance to be conducted and paid for by Charter School in accordance with the preceding paragraph.

Section 13. Pro-Rata Share of Facilities Costs. The Charter School agrees to pay the District a pro-rata share of the District's facilities costs paid from unrestricted general fund revenues. The Charter School's pro-rata share for the 2013-2014 school year shall be \$ 98,179,54 due to the District in ten (10) equal monthly installments beginning September 1, 2013. A breakdown of the calculation of the pro-rata share is attached as Exhibit I.

Section 14. Utilities. The Charter School shall be solely responsible for the cost of utilities used or consumed by the Charter School on the Site. The parties

shall develop a procedure for monitoring, metering, and billing Charter School for use of District utilities currently serving the Site.

Section 15. Installation of Improvements. Charter School shall not construct or install any improvements on the Site or otherwise alter the Site without the prior written consent of District, and if required, the Division of the State Architect. 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. Professionals and contractors retained by Charter School with respect to the design, construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability, and/or 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. District or District's agent shall have a continuing right at all times during the period that improvements are being constructed or installed to enter the premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students.

The Charter School has installed a single multi-purpose building on the area at the Egan Site. Upon installation, this building shall be for the exclusive use and occupation of the Charter School. It is the intent of the parties that the Charter School's installation, maintenance, and/or removal of such building shall be at no cost to the District, and subject to the provisions of this Section 15, the Insurance and Indemnification provisions in Sections 18 and 19 of this Agreement, and to all other applicable legal authority, including but not limited to the pertinent sections of the California Building Code, the California Environmental Quality Act, and applicable zoning requirements. Charter School expressly agrees that, to the extent required by law, it shall comply with the requirements imposed by the Division of the State Architect applicable to public school buildings, as well as the requirements of the Department of Toxic Substances Control. Upon termination or cessation of this Agreement, of the Charter School's use of the Site, or of its charter, the Charter School shall bear all responsibility for removal and clean-up of the building on the Site, and for restoring the Site to its original condition. The District reserves the right to require that the Multi-Purpose Room remain at the Egan Site upon terms to be mutually agreed upon by the parties.

Section 16. Condition of Property. The District is not aware of any defect in or condition of the Site or Facilities that would prevent their use for the Charter School's purposes. District has received no notice of any violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Site and Facilities that calls into question the appropriateness or sufficiency of the Site and Facilities for their intended purpose. The Charter School, at its sole cost and expense, shall comply with all

applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site that arise after the Charter School takes possession of the Site and Facilities, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site in whole or in part as a result of 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 Site. However, if the discharge, leak, spillage, emission or pollution is caused by a latent defect in the condition of the property, then District shall be responsible.

Section 17. Title to Property. The parties acknowledge that title to the Site is held by the District and shall remain in the District at all times.

Section 18. Insurance. The Charter School shall, at its sole costs and expense, commencing as of the date of this Agreement, and during the entire Term hereof, procure, pay for and keep in full force and effect the following insurance:

- (a) **General Liability Insurance.** The Charter School shall maintain throughout the Term of this contract, at its own expense, general liability insurance with limits of liability of \$3,000,000 per occurrence and \$6,000,000 in the aggregate. This insurance shall include products and completed operations of the same limits as the policy limits. This insurance shall be endorsed to include the following: (i) the District, its officers, officials, employees, agents and volunteers as additional insureds; (ii) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (iii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.
- (b) **Automobile Liability.** The Charter School shall maintain throughout the Term of this Agreement at its own expense, automobile liability insurance with limits of liability of \$3,000,000 per occurrence and \$6,000,000 in the aggregate. Such insurance shall apply to any automobile, Symbol 1 of the ISO Form. Such insurance shall be endorsed to include the following: (i) the District, its officers, officials, employees, agents and volunteers as additional insureds; (ii) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (iii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.
- (c) **Property Insurance.** The Charter School shall maintain throughout the Term of this Agreement, at its own expense,

property insurance insuring real and personal property of the named insured with a blanket limit applying to all property of \$5,000,000 owned, rented, leased, or borrowed by the Charter School covering perils. Such insurance shall be endorsed to (i) include as additional insured and loss payee the District and Mobile Modular as their interests may appear; and (ii) provide a written notice mailed to the District at least 30 days prior to the effective date of a cancellation or non-renewal.

Any and all deductibles or self-insured retentions applicable to the above required insurance shall be specifically approved by the District prior to its application, except the Property Insurance required above may include a deductible of not more than \$10,000 without prior approval.

The insurances required above shall be provided by a company or insurance joint powers authority with the consent of the District prior to commencement of such insurance.

The Charter School shall provide proof of such insurance prior to taking possession of the Site and Facilities, including copies of the endorsements specifically required above. The Charter School shall provide proof of renewal of any insurance required above, including any endorsements required, at least 15 days prior to the expiration of such insurance.

Section 19. Indemnification/Hold Harmless/Duty to Defend. 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 Site and Facility after District delivers possession of the Site and Facility to Charter School, arising from the Charter School's presence, conduct, use of and activities on the Site and Facility or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Charter School in or about the Site and Facility, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating to obligations of District as they relate to the Site and Facility.

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 Site and Facility after District delivers possession of the Site and Facility to Charter School, arising from the District's presence, conduct, use of and activities on the Site and Facility or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by District in or about the Site and Facility, excepting those claims, demands, actions, suits, losses, liability,

expenses and costs arising out of or relating to obligations of Charter School as they relate to the Site and Facility.

Any reasonable costs incurred (including filing fees, attorney's fees etc.) after providing written request for indemnification to the indemnifying party for indemnification shall be owed to the requesting party if it is determined the indemnification was owed.

Section 20. Enforcement of MOU. The Charter School's indemnity and insurance obligations described herein shall not in any way be read or construed as being limited or superseded by the indemnity or insurance provisions specified in the Charter School MOU with the Santa Clara County Office of Education.

Section 21. Access. The Charter School shall permit the District, its agents, designees, representatives or employees, to enter upon the Site and Facilities for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site and/or Facilities. The District shall give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants.

Section 22. 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: Randy Kenyon
Assistant Superintendent
Los Altos School District
201 Covington Road
Los Altos, CA 94024

If to the Charter School: Wanny Hersey
Superintendent/Principal
Bullis Charter School
102 West Portola Avenue
Los Altos, CA 94022

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 23. 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 on any third

party, without the written consent of the other party. Charter School shall not encumber, mortgage, or pledge the Site or Facilities for any purpose whatsoever, except for the multi-use room.

Section 24. 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, joint employer, or association.

Section 25. 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 Santa Clara County, California.

Section 26. Entire Agreement of Parties. This Agreement, including all Exhibits, constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written concerning the subject matter contained herein. In the event of any inconsistency between this Agreement and any Exhibit hereto, this Agreement shall control. This Agreement may be amended or modified only by a written instrument executed by the parties.

Section 27. 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 28. 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 29. 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 30. 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 31. 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 32. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are incorporated herein by reference.

Section 33. No Release of Claims. Charter School has initiated litigation concerning the District effort to comply with Proposition 39 and related matters, and those matters remain in dispute. The Charter School does not waive or release its claims, including the right to bring future litigation disputing the legality of any terms herein. Further, portions or all of this Agreement may be found void or set aside.

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

LOS ALTOS SCHOOL DISTRICT

Dated: 08.11.13



Jeffrey Baier, Superintendent
Los Altos School District

BULLIS CHARTER SCHOOL

Dated: 8/19/13



Wanny Hersey, Superintendent/Principal
Bullis Charter School

.... under protest and
duress, see attached
Ken Moore's letter
dated August 19, 2013.