

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

THIS AGREEMENT is made this _____ day of _____, 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") (collectively referred to as "the Parties").

RECITALS

WHEREAS, pursuant to the requirements of Proposition 39 and its implementing regulations, the District has offered facilities to the Charter School each year that the Charter School has operated a school in the District, extensive litigation has followed these facilities offers over the last decade, and the parties seek an agreement that will resolve pending disputes and avoid futures ones and thereby avoid the diversion of time and resources from their respective educational missions.

WHEREAS 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 A** and hereby incorporated by reference ("Final Offer"); and

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

WHEREAS, the Charter School and the District entered into a "Facilities Use Agreement," in or around August, 2013, a copy of which is attached as **Exhibit C**, and herein incorporated by reference; and

WHEREAS, the Charter School and the District have negotiated and agreed upon the terms herein to resolve pending disputes and in the hope of avoiding future ones.

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

1. The District agrees to make the following material revisions to its Final Offer of Facilities:

- a. Access by K-3 Students at Blach: Charter School's K-3 students may access Charter School's exclusive space at Blach, with the exception of the Home Economics Room.

b. Access to Specialized Teaching Space: Charter school's students in grades 4-8 may access the Home Economics Room, as well as the outdoor physical education space allocated in the Final Offer (Track, Field, Tennis Courts, Blacktop, Gym and MPR.) pursuant to the existing terms in the Final Offer.

c. Installation of Play Equipment: Charter School may install play equipment rated for primary grades at either the sloped grass area between the street and the track, or adjacent to the space used by Stepping Stones, as depicted on the diagram attached as **Exhibit D**, and as to be mutually agreed upon by the Parties. If Charter School installs the playground in the bark area, Charter School must remove the Oleander bushes located in that area. Any changes to landscaping will retain the screening provided by current plantings through preservation or in-kind replacement of the existing landscaping. No changes are permitted unless previously approved by the district.

d. Student Enrollment: The District will take the preliminary steps necessary, under the California Environmental Quality Act ("CEQA") and other applicable laws, to determine whether the Charter School can maintain maximum student numbers of 563 for Egan, and 175 for Blach, and to determine what steps would then be required to achieve compliance with CEQA (e.g., preparation of a modified Addendum or subsequent/supplemental negative declaration or environmental impact report). Upon determination of the required next steps, the parties shall meet and confer and mutually agree upon the next course of action.

e. Indemnification: In consideration of the additional risk assumed by the District in agreeing to modifications of a Final Offer, and to allow Charter School's K-3 students to access facilities not designed for primary-grade students, Charter School agrees to 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, arising from, or in any way related to, the negotiation, execution or implementation of any of the terms of this Agreement.

With respect to any claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property arising under CEQA, the Charter School's indemnification of the District shall take the form of Charter School agreeing to pay the District's attorneys fees, any cost or fees awarded to a petitioner/plaintiff, and any monetary judgment handed down in any proceeding, as well as the attorney's fees and consultant costs associated with the District's efforts to determine whether BCS' request to maintain student capacity limits of 563 for Egan, and 175 for Blach complies with CEQA. The District alone would maintain lead agency status under CEQA and would retain the right to select its attorneys/consultants and control the process of determining CEQA compliance, as well as litigation of any proceedings arising under CEQA.

f. Reconciliation: Only to the extent that any of the terms of this Agreement are inconsistent with the Facilities Use Agreement executed by the parties in August, 2013, the terms of this Agreement shall prevail as to the inconsistent terms only.

2. Extension of 2013-2014 Facilities Allocation to 2014-2015: Charter School agrees that the facilities offered in the Final Offer, as modified by this Agreement, shall constitute the District's allocation of facilities to the Charter School under Education Code section 47614 ("Proposition 39"), for both the 2013-2014 and 2014-2015 school years, and that Charter School shall waive its right to request any other facilities under Proposition 39 for the 2014-2015 school year, or to challenge the suitability of such facilities under Proposition 39 for the 2013-2014 and 2014-2015 school years.

3. Termination of All Pending Litigation: In consideration of the concessions made by both parties to this Agreement, the District and Charter School agree, within five (5) business days of execution of this Supplemental Agreement, to cause to be terminated all pending litigation between these parties. To effectuate a complete walk away, the parties shall take the following steps, in the following actions:

a. Santa Clara County Superior Court Case No. 1-09-CV 144569: Taking off calendar all motions for attorneys fees and any other pending motions.

b. California Court of Appeal Sixth District: Dismissing appeal No. H038982 from Hon. Patricia Lucas' September 20, 2012 order denying motion to compel compliance with judgment, and appeal No. H039038 from Hon. Patricia Lucas' November 13, 2012 order awarding monetary sanctions against Charter School. The District agrees that the Charter School need not pay the sanctions awarded and will supply the Charter School a Satisfaction of Judgment/Order after the appeal is dismissed. All dismissals shall provide that each party will bear its own attorney's fees and costs.

c. Santa Clara County Superior Court Case No.1-12-CV 232187: Dismissal of Charter School's Petition for Writ of Mandate, Dismissal of District's cross-complaint and waiver of any rights of appellate review of any pre-dismissal rulings. All dismissals shall provide that each party will bear its own attorney's fees and costs.

d. Santa Clara County Superior Court Case Nos. 1-13-CV 245575, 245000: Dismissal of Charter School's Petition for Writ of Mandate in its entirety and Dismissal of District's Complaint for Declaratory Relief, with dismissal to provide that each party bear its own attorney's fees and costs.

e. Santa Clara County Superior Court Case No. 113CV245684: Dismissal of Charter School's Petition for Writ of Mandate in its entirety.

g. Additional Long-Term Facilities Solution Terms: In order to effectuate lasting peace between the parties with respect to the provision of facilities to the Charter School, the parties agree to the following terms:

1. The District shall continue its efforts to locate a single, contiguous site for use and occupation by the Charter School on a long-term basis. **[Language to be added regarding BCS right to participate in site selection efforts/site certainty assurances]**

2. In consideration thereof, the Charter School Board agrees to pass a resolution within one week of the execution of this agreement expressing the need to fund the acquisition and development of additional school sites in the District and expressing the Charter School's full support for the District's efforts to pass a bond for that purpose.

3 Charter School further agrees to participate in the funding of the cost of the acquisition of the site that the Charter School is to occupy on terms to be agreed upon by the parties under a separate agreement; **[language providing that commitment be \$5-7 million]**

4. Charter School agrees to occupy its new site for no less than fifteen (15) years. During the duration of its occupation, Charter School agrees that the facilities allocated to it in the first year of its occupancy shall suffice to satisfy Proposition 39 for the 15 year term, and Charter School waives any and all claims to obtain further facilities from the District under Proposition 39, and to waive any and all claims based on compliance of its new site with the requirements of Proposition 39.

5. Charter School agrees that its Board shall take action to rescind any and all resolutions or other action instituting an enrollment preference for students residing in the former Bullis-Purissima attendance area.

6. Charter School agrees, within sixty (60) days of mutual execution of this Agreement, to submit a request to the Santa Clara County Board of Education to approve a material revision of the Bullis Charter School charter: 1) eliminating any admissions preference for students residing in the former Bullis-Purissima attendance area; 2) inserting meaningful and effective admissions preferences for all students defined as economically disadvantaged, English Learners, foster youth, and individuals with exceptional needs (i.e. special education students) under the 2013 Local Control Funding Formula (LCFF) legislation (Assembly Bill 97 and Senate Bill 91.)

The parties anticipate that they will enter into separate agreement(s) to effectuate the Long-Term Facilities Solution Terms set forth above.

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

LOS ALTOS SCHOOL DISTRICT

Dated: _____

Jeffrey Baier, Superintendent

BULLIS CHARTER SCHOOL

Dated: _____

Wanny Hersey, Superintendent/Principal
Bullis Charter School

(Note: This remainder of this document contains my working notes for the discussion. I am providing it publicly so that folks have some insight into why the District is discussing various issues in the long term facilities negotiations. These comments represent my own thinking, and should not be construed as official Board policy.)

BCS Board Support for a Bond

The first problem with BCS's demand for immediate approval of short term changes to the final offer and facilities use agreement is that the District "gives" everything up front, and the District doesn't really "get" what it wants until the bond passes. That's a challenge when speaking to District parents, who oppose making concessions for BCS without obtaining a long term solution in return. One big step there would be to have the BCS board express support for a bond right away. Of course we would want an official BCS board resolution closer to the actual election, but having the Board come out right away and issue a resolution of support for a bond would be huge.

Are there any concerns on the BCS side about doing that? What reasons would you expect for why the Board does not do this? How can we address it?

As we get closer to the bond, is there anything that would then prevent the BCS Board from issuing another formal resolution for the bond?

Are there any other steps the BCS Board might be willing to undertake to emphasize to the community their support for a bond?

Litigation Drop

It goes without saying, but we'll say it anyway- trying to pass a bond while we're suing one another is impossible. Many community members have stated that they don't understand why LASD is even at the table with BCS given the amount of litigation going on, and there has been ample public comment at various meetings that LASD should not agree to anything without a complete cessation of litigation first. Accurate or not, people see that we're collectively spending ~\$1-2m/ year on litigation, and they figure we could build a site out of operating capital. We need to get out of court. Would BCS be willing to drop all litigation to obtain the short term relief it is seeking and establish a climate essential to pass a bond? How would we go about doing this?

Although the bond and the elimination of conflict are the most important reasons to drop all litigation, it should also be noted that the litigation also really complicates and makes it hard to agree to BCS's short term asks. To give just two examples, BCS is arguing to the court of appeal right now that the Egan footprint is too small for some 400 plus kids, yet it is asking the District to agree that BCS can place 560 kids on Egan. BCS is also claiming in the litigation that the District did not comply with the California Environmental Quality Act in approving the final offer, yet it wants the District to approve substantial changes to the offer that raise major CEQA questions.

Site Certainty

One of the biggest mistakes any LASD Board has made was to close Bullis Purissima after the folks here in the hills worked so hard to pass a bond. They felt betrayed- that they had done their part, and that now the District wasn't doing it's part by keeping their school open. We need to ensure that never happens again. Do we agree on that point?

We're asking the community to tax themselves pretty substantially. A bond will add \$30+ per \$100,000 of assessed value. In exchange, they'd like to know that BCS will fit in this campus for a significant period of time. (We heard a lot about this during the town hall meetings last spring. Folks felt like 6 years wasn't enough certainty.) How can we work together to create more stability- a view that we're not going to be back asking the community for more facilities? The subtext here is that BCS will need to commit to the community that they'll fit into the facilities we build, and will need to do so for a long time. A bond is 30 years. What kind of assurances could you give regarding the length of time you'd fit into a facility if we found a site of 8-12 acres?

We would need to work on the site together, of course, as we have been doing in a small group over the past summer. But the goal is that we would find a site that all parties can support, and that would be part of an overall bond package that the community would support.

Drop Hills Preference/ Add for other groups

When BCS adopted the Bullis-Purissima preference, BCS justified it on the ground that BCS was designed to be a smaller neighborhood school. However, BCS has now grown into a much larger District wide school, so its need for the preference is probably less. At the same time, BCS's brand as a leader and innovator in education would be advanced if it adjusted its preferences along the lines that the District is suggesting below, and would also help those with greater educational challenges to reap the benefits of BCS's innovative offerings. While the specifics preference adjustments may be a matter for further dialog, this strikes us as an area where we surely could find a "win:win" common ground that the community, chartering authority, District and BCS could all get behind.

As you are aware, several sites under consideration are in Los Altos Hills. That works well for BCS, and it aligns with your previously expressed preference for a location. However, it also smacks up against something that causes us problems in passing a bond. The community – rightly or wrongly- does not want to pass a bond to build a school in the Hills.

At the same time, I know you're under pressure from the SCCBOE about your low enrollment of students in certain groups (low SES, English learners, and special needs come to mind) and have engaged in outreach to address this issue. I've talked with Joe Hurd about this, and the impact it all has on passing a bond. The District would like to explore ways we could work together to perhaps drop the attendance area preference in exchange for a preference that will better serve BCS and these under-served groups.

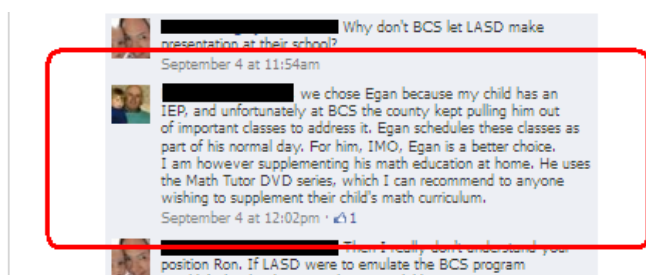
Category	Bullis	LASD	Delta
ELL	2%	13%	6x
Hispanic	4%	8%	2x
Low SES	1%	4%	4x

Source: "An Overview of Santa Clara County Office of Education Approved Charter Schools", march 2013

There is both a problem and an opportunity. Peter, at our first meeting, you talked about wanting both LASD and BCS to thrive. In return, I talked about the fact that I've long been a supporter of charter schools, but that the experiment only works if the sides can learn from one another. He's a chance for us to learn from one another, and in the process address concerns the County office of Education has raised about the BCS enrollment mix.

At BCS board meeting I attended, Wanny spoke of how BCS tried to mainstream all students with special needs. Educators I've spoken with who specialize in this area feel that is a good approach, so BCS is to be commended for it. However, those same educators caution that there is a spectrum of needs- that some of those needs can be met easily within a classroom, and that other needs are more serious, and require a specialized plan. LASD has invested heavily in our special needs program, and parents report fantastic progress for their kids. If BCS has a way of helping those same kids achieve great progress, we'd like to understand how that works.

On the flip side, we also have a number of BCS parents who have returned to LASD because their child needed more than BCS was providing. In fact, one of your most ardent supporters recently brought this child back to LASD because, as he posted on FaceBook, "at BCS the county kept pulling [his son] out of important classes to [address his IEP. Egan schedules these classes as part of his normal day. IMO, Egan is a better choice." This, by the way, is consistent with the feedback we've received from a number of BCS parents who came back to LASD.



BCS currently contracts with the county to assess special needs students and deliver their IEP's. I have a solution to propose, but I have to confess up front that it isn't my idea. It was actually suggested to me by BCS Board Member John Phelps a couple of years ago. I think John was right. He suggested that BCS contract with LASD to deliver SELPA services. We could work together on this. LASD would benefit because we can study how BCS is currently serving students "in the classroom". If there are increased efficiencies to be had, we'll have a great vantage point from which to learn and do better for our own students. Likewise, BCS will get the benefit of the massive investment LASD has made in our special services.

This is a huge win all the way around- The students get the services they need, both parties gain the insight the other has in serving those kids, and the community sees that we get along. Heck, maybe at some point we would do a joint presentation at one of the national or international conferences on these topics.

Open Meetings

One of the biggest arguments in favor of charter schools is that they are supposed to try out new ideas which can then be applied to other schools. If the public is prevented from understanding how BCS operates, that isn't possible. It isn't enough to simply view the results. The "how" is as important as the "what". If we are asking the public to raise public funds to pay for a school site, we need to be able to tell the community that BCS has embraced their expectations of what that means. That means that we need to all embrace public scrutiny.

LASD allows any member of the public to join our District-wide mailing lists. We'd suggest that BCS do the same. Likewise, any meetings you hold where parents are invited (with the exception of parent-teacher conferences or similar meetings to discuss individual students) should be public. This doesn't mean there needs to be a Brown Act notice, agendas, etc. However, if you've invited parents from BCS, it should be OK for other parents and community members to attend also.

Agreed Facilities until bond

As recent events highlight, it is time consuming, expensive and acrimonious to balance the needs of the different stakeholders in each facilities allocation and each request for adjustment of those allocation, as well as through the required vetting, public comment and input, and environmental and other legal compliance reviews. Having conducted exhaustive review just last Spring of the 2103-14 final offer, the District is now being asked to conduct yet another protracted review of BCS's request for adjustments to that final offer and facilities use agreement, with a further protracted review for 2014-15 right around the corner. It does not make sense to do this twice in such a short time frame, and the conflict each review generates is poisonous to the bond effort. Thus, for the District to make adjustments to the 2013-14 final offer, there will need to be an agreement that the same facilities on the same terms suffice and are legally compliant for 2014-15 as well. That will also give us sufficient time to secure passage of a bond. As a safety measure, we ought to be thinking about what happens if the bond doesn't pass in 2014, so we probably want to think through to 2016, which would be our next window to pass a bond at 55%.

BCS Participation in Site Cost at \$mm

Due to the litigation, it has become pretty widely known that BCS has built up a substantial "Site Fund" of \$5m-\$7m meant to pay for the acquisition of facilities for the school. In keeping with the intent of those funds, we would propose that they be donated to the construction costs for the new facility. While it represents a small percentage of the overall cost to procure and build the site, they symbolism to the community would be incredibly powerful- that BCS is committed to building public facilities, and that they embrace the wider community.

Litigation Waiver

Any agreement would need to have some sort of language that we're not going back to court again. Folks want to know that this is an agreement that is going to solve problems, not just push them around the plate. Can we agree to a litigation waiver?

What would that look like? Some of the fiercest criticism we received last spring was from lawyers in the community that didn't feel the draft language adequately assured the community that there wouldn't be another lawsuit. How do we craft language to solve that?