

AGREEMENT BETWEEN LOS ALTOS SCHOOL DISTRICT AND BULLIS CHARTER SCHOOL FOR A TWO-YEAR CHARTER SCHOOL FACILITIES SOLUTION

This agreement for a Two-Year Facilities Use Agreement (“Agreement”) is made by and between Los Altos School District, a public school district organized and existing under the laws of the State of California (“District” or “LASD”), and Bullis Charter School (“Charter School” or “BCS”), a California non-profit public benefit corporation operating as a public charter school. The District and the Charter School are collectively referred to as “the Parties.”

RECITALS

WHEREAS, on September 3, 2003, the Santa Clara County Board of Education approved the Bullis Charter School’s petition to operate within the boundaries of the Los Altos School District, effective October 18, 2003; and

WHEREAS, Education Code section 47614 and its implementing regulations (Cal. Code Regs., tit. 5, section 11969.1 et. seq.) (collectively “Proposition 39”) require a school district to make available, to each charter school operating therein, facilities sufficient for the charter school to accommodate all of the charter school’s in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the district; and

WHEREAS, Charter School is located within the District’s boundaries; and

WHEREAS, the District has been providing to BCS facilities at Egan Junior High School (“Egan”) since the 2004-2005 school year, and jointly at Egan and Blach Intermediate School (“Blach”) since 2012-2013; and

WHEREAS, pursuant to Proposition 39, on November 1, 2018, the Charter School submitted to the District a written request for facilities for the 2019-20 school year, projecting an in-district classroom enrollment of 1058 students (“Request”); and

WHEREAS, pursuant to the requirements of Proposition 39 and its implementing Regulations, the District evaluated the Request and approved a preliminary offer of facilities to Charter School (“Preliminary Offer”) which was provided to the Charter School on February 1, 2019; and,

WHEREAS, the Parties wish to enter into this Agreement to eliminate disputes and uncertainty about their respective facilities rights and duties, satisfy any facilities duties that might otherwise apply under Proposition 39 or any other applicable laws, eliminate the need for the time-consuming and costly annual Proposition 39 process for proposing and negotiating a facilities allocation for each school year, so that they may focus on their core mission of providing a world-class education for their respective students, and to provide the parties assurance and predictability in the District’s facilities allocation to the Charter School during the term of the Agreement; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which the Charter School will occupy and use District school facilities, including recreational space and installed furniture and equipment, for the two-year period beginning with the 2019-20 school year; and

WHEREAS, the Parties desire that the requirements of the California Environmental Quality Act be met by systematically identifying any significant adverse environmental effects of this Agreement and any feasible mitigation measures that would avoid or substantially lessen such significant effects; and

WHEREAS, the Parties have a common interest in providing all students with a free and appropriate public education of the highest possible quality; each plays a valuable role in the community; each deserves the respect and support of the other; and the Parties resolve to avoid conflict and pledge to work together to the greatest possible extent for the mutual good.

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

1. **TERM.** The term of this Agreement shall be two (2) years, starting July 1, 2019, and ending June 30, 2021.
2. **FACILITIES ALLOCATION.** BCS shall be allocated the same facilities at Egan and Blach as it occupies in the 2018-19 school year, and shall further be entitled to the following, collectively set forth in Exhibit 1:
 - a. **Additional Egan Facilities**
 - i. Five (5) Portable Classrooms (@ 960 ft² each) located on or near the tennis courts;
 - ii. Three (3) Portable Classrooms (@ 1440 ft² each) located on or near the tennis courts;
 - iii. BCS will have the option to have LASD place up to 4 additional 960 ft² portables in the same area at BCS's cost, to be reimbursed to LASD, with notice of the number of additional portables it wishes to have installed provided no later than May 1, 2019;
 - iv. BCS will have use of the PE facilities and Egan MPR on the Egan campus on a shared basis similar to that allowed BCS under the 5 Year Agreement at Blach, amounting to 1 PE rotation and exclusive use of the MPR on up to 20 days per school year, the schedule of which use will be agreed upon prior to the start of each school year;
 - v. BCS may use the Egan MPR during after-school or weekend hours up to twenty (20) days per school year, subject to District approval; and,
 - vi. Dedication of space allocated to BCS as set forth in Exhibit 2 shall be for BCS's use as a lunch area with BCS to provide all corresponding furnishings. To the extent BCS would like to install shade structures, it shall submit a request to the District for the District's consideration.

- b.** Additional Facilities at Blach
 - i.** Two (2) additional classrooms, and
 - ii.** BCS may use the Blach MPR during after-school or weekend hours up to twenty (20) days per school year, subject to District approval.
 - iii.** Should the District, in its sole discretion, determine that it can provide BCS with an additional indoor space of 480 or more square feet without detriment to Blach's program, it will consider doing so. If it does so provide, in return BCS would surrender the two-period allocation of a Blach chemistry classroom.
- c.** The District will in good faith allow BCS the opportunity to provide input into the design and layout of the facilities contemplated for BCS under this Agreement, with the final decision to rest in the District's sole discretion.
- d.** Except as expressly provided herein, any modification(s) of the Egan or Blach Sites, interior or exterior, will require prior LASD approval, not to be unreasonably withheld, and shall be at BCS's expense. Any improvements or modifications made by BCS to District facilities shall belong to the District and the District shall not be obligated to reimburse BCS for same, except as otherwise provided in this Agreement. To the extent BCS fails to secure prior approval for any construction or modification of the Sites or Facilities, the Charter School shall bear all responsibility for restoring the District's facilities to their original condition should the District prefer, including removal and clean-up

3. USE OF SITES AND FACILITIES.

- a.** District shall permit the Charter School to occupy and use the certain school facilities ("Facilities") at Blach Intermediate School ("Blach") and Egan Junior High School ("Egan") (collectively, the "Sites") as described and depicted in Exhibits 1, 2, and 3, for the purpose of operating the Charter School's educational program. District will consider in good faith Charter School proposals for summer use of the allocated Facilities and Sites but shall retain sole discretion with regard to approval of any such proposal.
- b.** The Charter School shall have shared and separate use of the Site and Facilities as set forth in this Agreement for the term of this Agreement only, unless extended or modified thereafter by mutual written agreement between the Parties. Except as specified otherwise herein, Charter School shall not use or otherwise intrude upon District facilities.
- c.** The District Site principals and Charter School principal may by mutual agreement revise the schedule and arrangements for shared use of the allocated Facilities. District and Charter School designees shall meet no less than quarterly to exchange information regarding scheduling, calendaring, sharing arrangements, and other operational details. To the extent necessary to access facilities that they are permitted to use, Charter School and District students will be allowed shared access to space at the Sites such as parking, walkways and common areas as

needed to access specialized teaching space and non-teaching space as set forth herein. Each school's principal shall be responsible for ensuring that his or her students do not disrupt the programs at the other school. The District and Charter School shall provide adult supervision to any of their students moving through, or adjacent to, spaces being used by the neighboring school's students, and through appropriate supervision shall ensure that students, registered visitors, teachers, and other staff shall adhere to agreed-upon access routes and shall otherwise not disrupt or impede the District's and Charter Schools' educational programs. The District and Charter School principals will be notified of any disruptions and will take reasonable steps to ensure that they do not recur.

- d.** Upon the expiration of this Agreement or the earlier termination thereof in accordance with this Agreement, the Charter School's right to separate use and occupancy of the Sites and Facilities shall cease and terminate, except for buildings or other facilities owned by Charter School, and Charter School shall surrender possession of the Sites and Facilities and separate use and possession of the Sites and Facilities shall revert to the District. Buildings and facilities owned by Charter School shall remain the property of the Charter School and be handled in accordance with Section 14 herein.
- e.** As titleholder to the Sites 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 Sites and Facilities, except that Charter School shall retain its rights with respect to the BCS MPR and any other temporary site improvements or additions that the District has approved and for which Charter School has paid. Any such improvements must be approved by the District pursuant to Section 14 of this Agreement.
- f.** BCS may provide before- or after-school care using the facilities allocated to it through its normal 4:45 p.m. school day. Any before- or after-school program that BCS operates after that time must share the track, blacktop and other outdoor spaces consistent with the District's practice at all other LASD schools pursuant to the Civic Center Act.
- g.** Except as otherwise provided in this Agreement, Charter School shall have allocated use of the Facilities to which it has been assigned access only, and not shared access, from no earlier than 7:00 a.m. through no later than 4:45 p.m. from Monday through Friday, during regular school days. Access to Charter School's allocated Facilities by third parties shall be governed by the terms of the Civic Center Act (Ed. Code, § 38130 et seq.) before and after these scheduled times during the week and all day on weekends and holidays. The District shall make all determinations with respect to any requests to use the Sites & Facilities and above-described facilities under the Civic Center Act, after reasonable consultation with Charter School.

the Sites (except for those resulting from the intentional conduct, negligence, or recklessness of the District) to any Charter School students, parents, staff, or visitors.

- e. Charter School shall have the exclusive responsibility to implement safety measures to ensure that all of its students use the allocated Facilities in a manner that promotes student safety, including the adoption of any necessary measures to separate students of different age ranges by space or time but shall coordinate with the District to ensure health and safety plan(s) that do not impede or undermine the District's health and safety plan(s) at the Sites and Facilities. Charter School shall work with District to ensure coordination of fire and life safety systems.
- f. To the extent necessary to access facilities that they are permitted to use, Charter School and District students will be allowed shared access to space at each of the Sites such as parking, walkways, and common areas as needed to access specialized teaching space and non-teaching space as set forth below. Each school's principal shall be responsible for ensuring that such school's respective students do not disrupt the programs at the other school. Neither school shall unreasonably block access required for public use of school facilities outside of school hours.
- g. The District reserves the right to reclaim possession of any indoor shared Facility allocated (as described in Section 2 above) in the event that Charter School fails to use such facility at least once within 90 consecutive calendar days from a scheduled use, excluding recess periods and holidays. Charter School's failure to use as set forth herein, excluding recess periods and holidays, shall be deemed to constitute a waiver of the continued right to use that facility for the remainder of the school year unless Charter School provides the District with a reasonable written explanation and specific plans to use that facility later in the school year.
- h. The Parties recognize that maintaining flexibility in the scheduling of shared space benefits both Parties. If either Party wishes to vary, on occasion, its allocation or schedule of shared space, its Principal or authorized designee should make a written request to the Principal at the co-located school, and copy the District's Assistant Superintendent for Business Services, no less than 10 (ten) school days prior to the first date of proposed use.

5. ENROLLMENT.

- a. Throughout the duration of this Agreement, unless and until terminated as specified herein, BCS will not enroll more than 1,111 total students. By September 1st of each school year, BCS shall notify LASD of its in-district and out-of-district student counts. By October 15th, BCS shall provide its list of all

students actually enrolled at BCS for that year as of the enrollment on the first Wednesday in October. BCS provides the list pursuant to the discretionary Family Educational Rights and Privacy Act (“FERPA”) exemption which allows the disclosure to another local educational authority under limited circumstances. (34 CFR § 99.31(a)(3)(iv)) As the recipient, LASD agrees to be bound by the FERPA conditions and requirements for the disclosures. As such, only the District’s authorized representatives may have access to the student information. Further, the information may only be used for the narrow purpose for which it is disclosed: Confirmation of district residency of enrolled students on the date stated above.

- b. In the event that BCS’s enrollment drops below 800 in-district students, LASD shall have the option to terminate this Agreement, effective upon giving notice by October 30 of the school year in which BCS’s total enrollment falls below the 800 in-district minimum, with the termination to be effective upon the expiration of the school year following that in which notice is given. Similarly, if the percentage of in-district students attending BCS drops below 92% in-district to 8% out of district, LASD will have the option to terminate the Agreement upon giving notice by October 30 of the school year in which BCS enrolls students in a ratio that fails to satisfy the 92% in-district condition, with the termination to be effective upon the expiration of the school year in which notice is given.
 - c. In the event LASD gives BCS notice of such termination as described in this section, all Proposition 39 deadlines will be pushed back one month for both BCS and LASD. For purposes of this Agreement, those students enrolled in BCS who reside within the boundaries of the Palo Alto Unified School District (“PAUSD”), and for whom LASD has received a full allocation of per pupil funding from PAUSD, shall be counted as out of district for purposes of determining whether BCS has fallen below the 800 in-district minimum and in-district for purposes of determining the 8% out of district percentage (i.e. these students will count towards the 92% in-district percentage). If LASD enters into similar agreements with other districts where LASD receives a full allocation of per pupil funding similar to PAUSD, these students will be counted in the same way as PAUSD students.
6. **SITE LOADING.** The parties agree that BCS shall not place more than 500 students at Blach and 775 students at Egan at any one time without prior approval from the District. With prior approval from the District in the quarterly meetings or written approval by the District, BCS shall be allowed to increase student count at Egan Site to 835 twice a month, and shall take steps to mitigate the resulting increase in traffic on those days.

7. SITE COORDINATION & SHARED USE.

- a.** BCS and the District shall create subcommittees that shall meet no less than quarterly to exchange information regarding scheduling, calendaring, sharing arrangements, and other operational details regarding BCS's and the District's school facilities.
- b.** Prior to the start of each school year, the Parties shall jointly prepare a mutually agreed schedule for BCS's up to twenty (20) days shared-use of the MPR space at Egan and Blach. The PE rotation and scheduled MPR use by BCS at Blach and Egan will be negotiated between the Parties and shall be similar to the schedule in place at Blach for the 2018-2019 school year.
- c.** BCS shall have continued use of the Blach Drama/Chorus room between 7am-8am and 3-5pm on M, W, F. BCS shall have continued use of a Blach science room during 2 class periods per day. The schedule for that time will be worked out by staff prior to the start of the school year.
- d.** The District will provide bathrooms for BCS's use as designated by the District.
- e.** At Blach, BCS shall have access to outdoor space daily from 3:10 p.m. to 4:30 p.m. including the blacktop, and other spaces subject to seasonal availability, with access to be enumerated in advance by no later than the start of the school year.

- 8. CIVIC CENTER ACT.** Unless otherwise provided in this Agreement, Charter School shall have full and primary use of the allocated Facilities to which it has been assigned separate access only, and not shared access, from no earlier than 7:00 a.m. through 4:45 p.m. from Monday through Friday, during regular school days through the District's designated school year. Access to Charter School's allocated Facilities by third parties shall be governed by the terms of the Civic Center Act (Ed. Code, § 38130 et seq.) before and after these scheduled times during the week and all day on weekends and holidays. To the extent that the District receives requests for use of Charter School classroom spaces, the District will meet and confer with the Charter School before allocating any such space. The District shall make all determinations with respect to all requests to use the Sites and Facilities and above-described facilities under the Civic Center Act on a substantially similar basis to which it makes similar determinations with respect to its own school sites and facilities.

- 9. FURNISHINGS AND EQUIPMENT.** The District shall provide furniture and equipment necessary for use of the Facilities to support the 1,111 students and Charter School staff members in conditions and ratios reasonably equivalent to those provided in District-run schools. As to any portables that the District is allowing Charter School install, at Charter School's expense, Charter School shall bear the additional expense for any furnishings and equipment in those portables/facilities. Charter School shall provide a complete list of requested furnishings not later than May 1, 2019. District shall review the list(s) but agrees only to provide reasonably equivalent furnishings and equipment.

Furniture and equipment may be provided from existing District inventory, and will remain the property of the District. The Charter School shall return all furniture and equipment owned by the District 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 provided to the Charter School.

10. TELECOMMUNICATIONS.

- a.** The District shall ensure that the Facilities are sufficiently prepared and wired for telephone and computer data connectivity, at the District's cost, to at least the same standards, reliability, performance, and level of service as that provided to District-run programs at the Sites, except to the extent that Charter School has attempted to install or reconfigure its own technological infrastructure. The District shall provide the telephone system(s) and all telephones and related equipment required for the telecommunications infrastructure. The District shall provide all physical layer data communications infrastructure equipment. To the extent feasible and the expense is reasonable, District will provide phone and SCCOE fiber network connectivity in facilities allocated to Charter School at Charter School's expense. The responsibility to provide all other communications equipment, including computers and related hardware, software, and all required services, shall be the responsibility of the Charter School.
- b.** The Parties shall meet and confer whenever modification of the infrastructure is required due to construction or District replacement of existing equipment. Final determination of equipment to be provided and the method of provision shall be the sole right of the District. Any modification to and maintenance of equipment installed by the Charter School shall be the sole responsibility of the Charter School. Replication or replacement of said equipment by the Charter School shall absolve the District of all responsibility for providing the equipment so replaced for the remaining term of this Agreement.
- c.** For the term of this Agreement, District will maintain the broadband connectivity performance level currently available to the Charter School at the Blach and Egan Sites.

11. MAINTENANCE OF SITES/FACILITIES.

- a.** The District shall perform routine repair, general maintenance, and deferred maintenance of the Sites and Facilities, including landscape and grounds maintenance, so as to maintain the Sites and Facilities, and the structural aspects of the improvements at or on the Sites and Facilities, in a manner consistent with the guidelines and requirements promulgated by District from time to time relating to the maintenance, cleanliness and operations of schools within the District and in compliance with applicable law. However, repairs required as a result of intentional or negligent damage caused by Charter School, its students,

employees, agents or representatives, or repairs and maintenance of facilities or other improvements installed by the Charter School, shall be paid for by Charter School. The Charter School shall provide its own day-to-day custodial services for its allocated space, and shall be responsible for keeping its allocated space and grounds clean and maintaining good appearance consistent with the District's policies or practices regarding its other school sites. District shall have full access at any time to inspect and maintain the Site and Facilities as set forth in Section 22.

- b.** Other than for the portables and improvements installed and/or owned by the Charter School, for which the Charter School agrees to assume the full cost and responsibility for all maintenance, repair, removal, and clean-up, the 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, including those established pursuant to Education Code section 17582. For purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be considered routine maintenance.

12. SHARE OF FACILITIES COSTS.

- a.** The District shall charge a pro-rata fee in accordance with California Code of Regulations, title 5, section 11969.7 for the facilities offered by the District to BCS and outlined in Sections 2. The Charter School shall pay the District a facilities fee of \$245,833.00 per year in lieu of the pro rata share as calculated under 5 C.C.R. § 11969.7. For 2020-21 the facilities fee shall increase by 3%.
- b.** This fee will be payable to the District in eight (8) equal monthly installments first due to the District beginning on October 1, 2019, and by the first day of each month thereafter.

13. UTILITIES. The Charter School shall be solely responsible for the cost of utilities used or consumed by the Charter School on the Sites. The Parties shall continue to use the existing procedure for monitoring, metering, and billing Charter School for use of District utilities currently serving the Sites. For power supplied by the solar panels on the Egan campus, the Charter School shall be billed at the rates the District currently pays under the Power Purchase Agreement ("PPA").

14. INSTALLATION OF IMPROVEMENTS.

- a.** Charter School shall not construct or install any improvements on the Sites or otherwise alter the Sites without the prior written consent of the District, which shall not be unreasonably withheld, and if required, the Division of the State

Architect. This proscription includes, without limitation, any permanent art on District Site and Facilities. 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 the Charter School with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with the 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 public works construction by District schools, including approval by the Division of State Architect, or local building codes, as applicable, prevailing wage, environmental quality, and competitive bidding requirements. Charter School shall defend, indemnify and hold harmless the District from all claims that arise from failure by the Charter School to comply with applicable public works contracting requirements. The 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.

- b.** The Charter School has installed a MPR portable/structure at the Egan Site. This building is for the exclusive use of the Charter School. It is the intent of the Parties that the Charter School's installation, maintenance, and/or removal of this and any other improvements shall be at no cost to the District, and are subject to the provisions of the Insurance and Indemnification provisions of this Agreement, and to all other applicable laws and regulations, including but not limited to CEQA and the California Building Code, as applicable to each particular project. 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 provisions of CEQA.
- c.** Any other improvements provided directly by the Charter School shall remain the property of the Charter School, including play structures, lunch area covers, and the like. Except as otherwise provided in this Agreement, the Charter School shall bear all responsibility for removal and clean-up of all such improvements, and for restoring the relevant portion of the Site(s) to its original condition upon termination or cessation of this Agreement.

15. 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 Agreement, at its own expense, general liability insurance with

limits of liability of \$5,000,000 per occurrence and \$10,000,000 in the aggregate. This insurance shall include products and completed operations with limits of not less than the aggregate limit specified above. 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; Charter School shall mail a written notice 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 automobiles owned, non-owned, and hired. 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; Charter School shall mail a written notice 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 for any improvements it constructed or constructs at Egan, as well as any other improvements installed or constructed by Charter School at its own expense. Property insurance for the remainder of facilities is carried by the District, and Charter School's share is included in the cost of the use as set forth in Section 13, above.
- d.** 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 \$30,000 without prior approval.
- e.** The coverage required above shall be provided by an A-rated insurance company or insurance joint powers authority with the consent of the District. The District consents to CharterSAFE JPA as the provider so long as all conditions set forth in this Section are complied with.
- f.** The Charter School shall provide proof of such insurance, including copies of the endorsements specifically required above, upon request. 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.

16. INDEMNIFICATION/HOLD HARMLESS/DUTY TO DEFEND.

- a.** 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 Sites and Facilities after District delivers possession of the Sites and Facilities to Charter School, arising from the Charter School's presence, conduct, use of and activities on the Sites and Facilities 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 Sites and Facilities, 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 Sites and Facilities.

- b.** 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 Sites and Facilities after District delivers possession of the Sites and Facilities to Charter School, arising from the District's presence, conduct, use of and activities on the Sites and Facilities 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 Sites and Facilities, 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 Sites and Facilities.
- c.** 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.
- d.** 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 any Charter School agreement with the Santa Clara County Office of Education.

17. COMPLIANCE WITH LAWS.

- a.** BCS shall not use the Site and/or Facilities, or permit anything to be done in or about the Site and/or Facilities, that will in any way conflict with any applicable law, statute, applicable ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated, except to the extent that such inconsistent use is permitted as grandfathered. LASD and BCS shall each do all acts required to comply with all applicable laws, applicable ordinances, regulations and rules of any authority relating to their respective maintenance obligations as set forth herein. LASD is fully responsible for full compliance with

Environmental Laws (defined below) and the CEQA related to the Site and/or Facilities except as otherwise stated herein.

- b.** BCS's use of the Site and Facilities shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Site and Facilities, including but not limited to, air, soil and ground water conditions. BCS shall not use hazardous materials on, under or about the Site and/or Facilities; provided, however, that BCS may use normal and customary cleaning solutions and office supplies so long as the use of such solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that BCS may use normal and customary chemicals for classroom use so long as the use of such chemicals are in quantities and in a manner wholly consistent with all applicable school standards. Without limiting the generality of the foregoing, BCS shall not, nor shall BCS allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous material upon or about the Site and/or Facilities in violation of Environmental Laws, nor permit any employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Site and/or Facilities, during the Term of this Agreement.
- c.** "Environmental Laws" means and refers to all applicable federal, state and local laws, ordinances, court orders and administrative directives, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the Hazardous Substance Account Act, California Health & Safety Code §§ 25300, et seq.; the Hazardous Waste Control Law, California Health & Safety Code §§ 25100, et seq.; the Medical Waste Management Act, California Health & Safety Code §§ 15015, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000, et seq.; and California Education Code §§ 17210, et seq., and California Code of Regulations, Title 5, §§ 14010, et seq.
- d.** LASD certifies that it has maintained the Site and Facilities in compliance with all Environmental Laws, including lead and asbestos abatement and containment. Should BCS perform work that disturbs these materials, it is BCS's responsibility to handle and dispose of this material in accordance with the regulations. LASD agrees to immediately remediate

any environmental hazard that is present in the Site and/or Facilities that is not the result of the BCS's modification or improvement of the Site and/or Facilities.

- e. BCS, at its sole expense, shall comply with all applicable laws, regulations, rules and orders with respect to its modification of, use and occupancy of the Site and Facilities, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, directly triggered by its use of the Site and Facilities. BCS shall assume responsibility for complying with legal mandates triggered by any modifications or improvement made or requested by BCS and shall indemnify LASD for any claims, costs, or judgments related thereto.
- 18. BCS LOTTERY PREFERENCE.** BCS agrees that for the years covered by the term of this agreement it shall not pursue changes to its admission preferences without the express consent of the Board of Trustees of the Los Altos School District.
- 19. COMMITMENT TO SERVE ALL STUDENTS.** The Parties agree to the following provisions with respect to their shared commitment to serve all students:
- a. Both BCS and the District are committed to successfully meeting the educational needs of their students. The District and BCS agree to add and/or maintain a section to their respective websites and other promotional materials providing more information as to how they successfully educate various groups of students, and all students, with unique needs, including those requiring the full spectrum of special education services and/or classroom accommodations.
 - b. The District and BCS are committed to meeting the unique needs of all their respective students, including special education services for students with exceptional needs pursuant to Ed. Code §§56026, 56031. Throughout this Agreement, BCS and the District agree to maintain on-site access to an Occupational Therapist, a Speech Therapist, a psychologist, and a teacher with an Educational Specialist Credential to work with their respective students with disabilities. As a public school and a public school district, respectively, BCS and the District are committed to meeting the needs of their students along the full spectrum of disabilities covered by the Individual with Disabilities Education Act (20 U.S.C. § 1400 et seq.)
 - c. BCS and the District shall include in their respective promotional materials language similar to that currently used, respectively, by the District and BCS in their respective comparable promotional materials,

and shall adhere to the California Department of Education “Fiscal Management Advisory 12-02” with respect to the charging of fees and access to field trips.

- 20. REGISTRATION PERIOD.** BCS agrees that its registration period will remain open at least until, and its enrollment lottery will be conducted no earlier than, the second Friday in January of each year. This provision does not apply if in the event BCS provides notice of early termination as set forth in this Agreement, nor does it apply in connection with planning for the school year following the expiration of this Agreement.
- 21. ADDITIONAL REPORTING REQUIREMENTS.** In addition to the other reporting requirements currently in place, within 30 days after completing its enrollment lottery, BCS will provide to LASD a list with the grade levels of all students that it anticipates enrolling in the ensuing school year, along with the LASD school that the student would have attended if the student were not enrolling at BCS. This provision does not apply if in the event BCS provides notice of early termination as set forth in this Agreement, nor does it apply in connection with planning for the school year following the expiration of this Agreement.
- 22. ACCESS.**
- a.** Charter School shall permit the District, its agents, designees, representatives or employees, to enter upon the Sites and Facilities for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Sites and/or Facilities. The District shall give reasonable notice and will check in at the office where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants. The District shall permit Comcast or other appropriately trained professionals to access, on Charter School’s behalf, the Charter School’s networking gear contained within District facilities and may modify and replace equipment as needed to maintain its networks. Charter School staff shall have key or keycard access to Shared Use Facilities.
 - b.** Repairs or modification of Charter School equipment within shared facilities shall be conducted outside of normal school hours and reasonable notice of required access shall be given in writing to the District Site principal. Charter School shall take reasonable measures to ensure that access to shared facilities is restricted to only those staff who require such access. No students shall be allowed to use shared facilities without certificated-teacher supervision. Charter School shall retain an inventory of keys and/or list of persons provided access codes at all times and shall immediately notify the District if these controls are compromised.

23. EMERGENCY PLANNING.

- a.** NO later than September 1 of each school year, the Charter School's principals and District's principals at Blach and Egan shall negotiate and finalize site security plans that specify how each Site will respond in the case of natural or other emergency or in the case of student injury requiring access by emergency services personnel including fire, ambulance or police. The plan shall at a minimum require notification of office personnel at the corresponding facility as soon as possible.
- b.** Nothing herein limits the Charter School's sole responsibility for the safety of students enrolled in the Charter School as set forth in Section 17, above.

24. CONDITION OF PROPERTY.

- a.** The District is not aware of any defect in or condition of the Sites 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 Sites and Facilities that calls into question the appropriateness or sufficiency of the Sites and Facilities for their intended purpose. The Charter School shall comply with all applicable laws, regulations, rules, and orders with respect to its use and occupancy of the Sites and Facilities that arise after the Charter School takes possession of the Sites and Facilities, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality.
- b.** Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Sites as a result of the Charter School's misuse, negligence, or intentional misconduct, 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 Sites. However, if the discharge, leak, spillage, emission or pollution is caused by a latent defect in the condition of the property, or the District's misuse, negligence, or intentional misconduct, then District shall be responsible.

25. TITLE TO PROPERTY. The Parties acknowledge that title to the Sites is held by the District and shall remain in the District at all times.

26. WAIVER OF PROPOSITION 39: This Agreement is intended to operate as a substitute for, and not in supplement to, the Parties' rights and obligations under Proposition 39. For the duration of this Agreement and for so long as BCS receives facilities from the District under this Agreement, the Parties expressly waive any claims, rights, responsibilities, objections, or obligations arising from Proposition 39, including

but not limited to the right to claim facilities under Proposition 39 or any objections to the sufficiency of the facilities afforded under this Agreement to the requirements set forth in Proposition 39 or its implementing Regulations.

27. ATTORNEYS FEES: Each party shall bear its own attorney's fees and costs incurred in the course of reaching and executing this Agreement.

28. 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: Superintendent
Los Altos School District
201 Covington Road
Los Altos, CA 94024

If to the Charter School: Superintendent
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.

29. SUBCONTRACT AND ASSIGNMENT. Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall a Party attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of the other Party. Charter School shall not encumber, mortgage, or pledge the Sites or Facilities for any purpose whatsoever, except for the BCS MPR at the Egan Site or any other facilities owned and paid for by the Charter School.

30. INDEPENDENT STATUS. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, joint employer, or association.

31. 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 subject to the Dispute Resolution procedures detailed in Section 26.

32. **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. This Agreement may be amended or modified only by a written instrument executed by the Parties.
33. **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.
34. **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.
35. **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, with copies of signatures deemed as original for all purposes.
36. **HEADINGS.** The headings 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.
37. **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.
38. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals and each exhibit attached hereto are incorporated herein by reference.
39. **AUTHORITY TO EXECUTE.** The governing board of each Party authorizes its board president or authorized designee, as reflected in the signatures blocks, infra, to execute this agreement on behalf of each Party.
40. **NON-ADMISSION OF LIABILITY:** The parties enter into this Agreement without in any way acknowledging any fault, liability or wrongdoing of any kind. Neither this Agreement nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be referred to, offered as evidence, or received in evidence in any pending or future action or proceeding, except in a proceeding to enforce this Agreement.

41. NOT CONSTRUED AGAINST THE DRAFTER: Neither party shall be considered the drafter of this Agreement or any of its exhibits or provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

42. REPRESENTATIONS AND WARRANTIES: Each of the parties represent and warrant: (a) that he/she has the full legal capacity and authority to enter into and perform all obligations under this Agreement and has conferred with legal counsel of his/her choosing as to the significance and legal effect of this Agreement, and (b) that the party has read this Agreement, is fully aware of its contents and legal effect, and has entered into this Agreement freely, without coercion or duress, and based on the parties' own judgment. The governing board of each party authorizes its board president or authorized designee to execute this agreement on behalf of each party.

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

LOS ALTOS SCHOOL DISTRICT

Dated: _____

Board President
Los Altos School District

BULLIS CHARTER SCHOOL

Dated: _____

Board Chair
Bullis Charter School