

**MEMORANDUM OF UNDERSTANDING
REGARDING INSTRUCTIONAL SERVICES**

**BETWEEN THE KERN COMMUNITY COLLEGE DISTRICT AND THE SIERRA
SANDS UNIFIED SCHOOL DISTRICT**

DUAL ENROLLMENT

This Memorandum of Understanding (“MOU”) is between the Kern Community College District and its respective colleges (“KCCD”), and Sierra Sands Unified School District (“SSUSD”). For identification purposes only this MOU is dated January 1, 2014.

RECITALS

WHEREAS, KCCD is a multi-college District whose mission is to provide educational programs and services that are responsive to the needs of the students and communities within the SSUSD;

WHEREAS, SSUSD is a Unified School District located in Kern County;

WHEREAS, the parties desire to collaborate and provide college credit and stand alone courses (“Courses”). The may include, but are not limited to stand alone courses as may be determined by mutual agreement;

WHEREAS, instruction will comply with the student selection standards, curriculum guidelines, recommendations and procedures promulgated by the Legislature and KCCD;

WHEREAS, the parties desire to enter into a MOU, which sets forth their mutual rights and responsibilities and governs their business relationship regarding the subject Courses;

WHEREAS, this MOU contemplates that the parties will enter into a related instructional service agreement (ISA) for the individual subject Courses, that each ISA will fully incorporate and/or expressly modify the terms of this MOU, and that each ISA will set out the necessary details specific to the subject Programs/ Courses;

WHEREAS, the parties intend for KCCD to report full-time equivalent students (FTES) data and obtain state apportionment for the subject Courses given through this MOU in accordance with California Code of Regulations, title 5, sections 58050, 58051, and 58051.5;

WHEREAS, SSUSD intends to fund the cost of the subject Courses by providing all required personnel, services and equipment;

WHEREAS, all courses will be located within KCCD’s District boundaries;

NOW, THEREFORE, the parties mutually agree as follows:

TERMS

1. **Recitals.** The above recitals are incorporated herein and made a part of this MOU.

2. **Effective Date and Duration.** This MOU shall be effective on the date authorized representatives of both parties sign it and continue in effect until June 30, 2014, or until duly modified or terminated by the parties.

3. **Early Termination.** This MOU may be terminated by either party with cause if another party fails to comply with the insurance or indemnification requirements or otherwise commits a material breach. Termination will be effective no sooner than 15 calendar days after a written demand to cure is provided and the party fails to cure. This remedy is in addition to any other remedy which may be provided for by law.

This MOU may be terminated without cause and for any reason by any party. The party desiring early termination without cause must provide written notice to the other parties. Termination will be effective no sooner than 60 calendar days after actual receipt of the written notice. The parties agree to consider the needs of currently enrolled students when determining a termination date.

The indemnification provisions contained in this MOU shall survive termination.

4. **Instructional Service Agreements.** The terms of this MOU are deemed to be part of and fully incorporated into any and all presently existing or future ISAs pertaining to the Courses unless expressly modified by a related ISA. Related ISAs will typically address the time, date, location, number of educational hours, KCCD credits offered, number of students, and other specifics related to each Course. The terms of this MOU may be modified by individual ISAs as necessary. Any inconsistency between the MOU and an express provision of an ISA will be resolved in favor of this MOU. However, if the MOU expressly permits a modification by an ISA, the inconsistency shall be resolved in favor of the ISA.

5. **Certifications for State Apportionment Purposes Applicable to All Courses Conducted in a Cooperative Arrangement with a Public SSUSD.**

A. SSUSD certifies that the direct education costs of the activity are not being fully funded through other sources.

B. KCCD certifies that it has not received full compensation for the direct education costs for the conduct of the class from other sources.

C. KCCD certifies that a job market survey has been conducted prior to establishing the vocational and occupational training programs, and the results justify the particular vocational and occupational training programs.

D. Both KCCD and SSUSD certify that either (i) the vocational and occupational training programs have been approved by the State Chancellor's Office and the courses which make up a particular program are part of the approved program and KCCD will provide all documentation necessary to support this certification for both parties; or (ii) KCCD has received delegated authority to separately approve the subject courses locally.

E. These certifications may not be voided, modified or waived by any related ISA.

6. Regulatory Requirements for State Apportionment Purposes Applicable to All Courses Conducted in a Cooperative Arrangement with a Public SSUSD.

These provisions may not be voided, modified nor waived by a related ISA unless otherwise expressly provided herein:

A. Responsibilities of Each Party. KCCD policies and procedures apply and KCCD is responsible for the Courses. The Courses will comply with all applicable regulations, procedures, prerequisites and standards set out in the B. A. M., as well as any corresponding local policies, practices, and requirements of the SSUSD.

B. Enrollment Period. The enrollment period shall be determined by KCCD in accordance with its guidelines, policies, pertinent statutes, and regulations.

C. Number of Class Hours Sufficient to Meet the Stated Performance Objectives. In consultation with the SSUSD, KCCD will determine the performance objectives for each of the Courses and the number of class hours necessary to meet the performance objectives. The performance objectives and corresponding class hours shall be specified in the related ISA.

D. Supervision and Evaluation of Students. Supervision and evaluation of students shall be in accordance with KCCD guidelines, policies, pertinent statutes, and regulations. The supervision and evaluation of students will conform with correspondence local policies, practices, and requirements of the SSUSD.

E. Withdrawal Prior to Completion of the Course. A student's withdrawal prior to completion of the Course shall be in accordance with KCCD guidelines, policies, pertinent statutes and regulations.

F. Right to Control and Direct Instructional Activities. KCCD is responsible for the Courses and has the sole right to control and direct the instructional activities of all instructors, including those who are SSUSD personnel, although this right will be exercised in consultation with the SSUSD.

G. Minimum Qualifications for Instructors Teaching Courses. Instructors who are SSUSD personnel shall either meet the minimum qualifications to provide

instruction in a California community college, or shall work under the immediate supervision and control of a KCCD employee who has those minimum qualifications. The minimum qualifications shall be consistent with the requirements in other similar courses offered by KCCD and shall be published or otherwise listed by KCCD

H. Facilities. SSUSD will provide adequate classroom space at its facilities, or other mutually agreed upon location, to conduct the contemplated instruction and do so without charge to KCCD or students. SSUSD agrees to clean, maintain, and safeguard the SSUSD's premises. SSUSD warrants that its facilities are safe and compliant with all applicable building, fire, and safety codes. All courses will be held at facilities which are clearly identified as being open to the general public. SSUSD rules which control or prohibit public access to facilities for safety purposes or to protect proprietary information shall be observed. Pursuant to the provisions of Penal Code Section 627.9 (a) or (d) the SSUSD Board of Trustees will pass a resolution before courses are held which exempts all campuses in the District which will be used for courses under this agreement from the provisions of Penal Code Section 627.2. The exemption from Section 627.2 may be limited by the resolution to the time immediately before, immediately after and during the time classes are being held under the terms of this agreement.

I. Equipment. Unless otherwise provided for in a related ISA, SSUSD will furnish, at their own expense, all course materials, specialized equipment, and other necessary equipment for all students. The parties understand that such equipment and materials are SSUSD's sole property; however, KCCD policies may be utilized as appropriate should an individual student unnecessarily damage or fail to return such equipment. SSUSD shall determine the type, make, and model of all equipment and materials to be used during each Course. SSUSD understands that no equipment or materials fee may be charged to students except as provided for by KCCD policies and practices.

J. Enrollment. Enrollment shall be open to any person who has been admitted to KCCD and meets all applicable prerequisites. Applicable prerequisite courses, training, or experience will be determined by KCCD. Applicants must meet the standards and prerequisites of the KCCD.

KCCD and SSUSD will be jointly responsible for processing student applications. KCCD will provide the necessary admission forms and procedures and both KCCD and SSUSD will jointly ensure that each applicant accepted has met all the enrollment requirements, including liability and medical care coverage requirements, if any.

District will ensure that each recruited student completes the admissions procedure, the class enrollment process, and otherwise process student applications and enroll students in the Courses, as appropriate. KCCD will assist SSUSD as necessary. A successful enrollment requires that each student has completed an enrollment application provided by KCCD, the application has been delivered to and accepted by KCCD's Admissions and Registration Office, all enrollment and other applicable fees have been paid, and the applicant has met all requirements, to include the standard KCCD student liability and medical care coverage, if applicable.

K. Enrollment Fees. The enrollment fees must be paid to KCCD by the individual student. Enrollment fees may not be waived by KCCD unless exempted by statute or board policy. This provision may not be cancelled or modified by any related ISA. However, by mutual agreement, enrollment fees may be withheld from any reimbursement owed by the KCCD to the SSUSD. Non-resident fees may not be waived unless exempted by statute or board policy.

L. Course Outlines - Curriculum Committee and Board Approval. The outlines for all individual Courses must meet course standards set out in Title 5 of the California Code of Regulations and must be approved by KCCD's Curriculum Committee.

M. Teaching Consistent with Approved Outline and Level of Rigor. SSUSD will implement procedures to ensure that SSUSD instructors teaching different sections of the same course do so in a manner consistent with the approved outline of record for that course, and that each individual instructor shall hold all students to a comparable level of rigor.

N. Records of Student Attendance and Achievement. All records of student attendance and achievement shall be submitted to KCCD periodically, or upon demand, and shall be maintained by KCCD.

O. Ancillary Support Services for Students. Both KCCD and SSUSD shall ensure that students enrolled in the Courses are provided ancillary and support services as may be needed, including but not limited to counseling and guidance and placement assistance.

P. Courses Outside KCCD Boundaries. For locations outside the geographical boundaries of KCCD, KCCD will comply with the requirements of Title 5 of the California Code of Regulations, Sections 53000 et seq. concerning approval by adjoining high school or community college districts and use of non-district facilities.

7. Liaison. At no cost to the SSUSD, KCCD will provide the services of faculty members who will facilitate coordination and cooperation between KCCD and SSUSD. KCCD will provide SSUSD personnel with reasonable assistance, direction and instruction in how to fulfill their responsibilities under this MOU, including conducting appropriate student assessments, outreach/recruitment activities and the KCCD's application procedures.

8. Support Staff. These provisions may not be voided, modified nor waived by a related ISA unless otherwise expressly provided herein:

A. SSUSD to Provide Support Services. Unless otherwise provided for in a related ISA, SSUSD will provide personnel to perform clerical services and services associated with outreach activities, recruiting students, assessing students, processing

student applications, enrolling qualified students, and other related services as may be necessary.

B. SSUSD is Responsible for its Own Personnel. SSUSD's personnel will perform these services on duty time. SSUSD personnel performing these services will be employees solely of SSUSD, subject to the authority of SSUSD, but will also be subject to the direction of KCCD, specifically with regard to their duties pertaining to the Courses described in the related ISAs. KCCD has the primary right to control and direct such activities.

9. Instructors. These provisions may not be voided, modified nor waived by a related ISA unless otherwise expressly provided herein:

A. KCCD to Select Instructors. KCCD may select instructors from SSUSD personnel nominated by the SSUSD, or other sources. SSUSD personnel will perform instructional duties on duty time. SSUSD personnel selected to be instructors remain employees solely of the SSUSD, subject to the authority of the SSUSD, but will also be subject to the authority of KCCD, specifically with regard to their duties as instructors. KCCD will exercise this authority in consultation with the SSUSD.

B. District May Nominate Instructors. SSUSD shall ensure that all instructor nominees are experienced, competent, dedicated personnel who have the personal attributes necessary for providing instruction in the Courses. SSUSD shall ensure that all instructor/staff nominees possess any Certificates or other training indicia that may be required.

C. KCCD Shall Determine Instructor Requirements. KCCD shall determine the number of instructors, the ratio of instructors to students, and the subject areas of instruction.

D. SSUSD is Responsible for its Own Personnel. SSUSD's personnel will perform these services on duty time. SSUSD personnel performing their services will be employees solely of SSUSD, subject to the authority of SSUSD, but will also be subject to the direction of KCCD, specifically with regard to their duties pertaining to the Courses described in the related ISAs. KCCD has the primary right to control and direct such activities.

E. Orientation Meeting. Instructors shall attend an orientation meeting if scheduled and KCCD shall provide manuals, course outlines, curriculum materials, and testing and grading procedures as necessary.

10. Curriculum and Performance Objectives.

A. SSUSD shall develop performance objectives, curriculum, course outlines, and instructional methods in accordance with any applicable recommendations and guidelines offered by KCCD and also in compliance with standards set out in Title 5 of the California Code of Regulations. Performance objectives, curriculum, course outlines, and instructional methods are subject to advance approval/revision by KCCD.

B. All Courses must be approved by KCCD's Board of Trustees or KCCD personnel to whom this authority has been duly delegated. Course outlines must meet the course standards set out in Title 5 of the California Code of Regulations and must be approved by KCCD's Curriculum Committee.

C. All relevant course information and proposed course outlines shall be developed and submitted to KCCD for approval/revision no later than 30 days prior to the projected start date of a particular class or program session.

11. Instruction. The instructional services provided by SSUSD personnel shall include development of appropriate lectures. The lectures will conform to the approved curriculum and course outlines and recommendations of experienced KCCD instructors. Instructional presentations shall incorporate planned practical demonstrations, as may be necessary, and use audiovisual techniques or equipment and vocational equipment.

All instructional presentations, including practical demonstrations and demonstrations of vocational equipment, are subject to the advance approval of KCCD.

12. Facilities. The parties contemplate that primarily, the facilities of the SSUSD will be utilized to carry out the goals of this MOU and any related ISA, although from time to time KCCD facilities may be utilized subject to mutual agreement by the parties as expressed in a related ISA. SSUSD agrees to defend, hold harmless, and indemnify KCCD and its governing board, officers, employees, administrators, independent contractors, subcontractors, and other representatives from all damages, losses, or expenses, including litigation costs such as attorney's fees, should a student, instructor, or third party be injured as a result of or connected with the condition of the SSUSD's premises, in whole or in part. The indemnity shall survive termination of this MOU and is in addition to any other rights or remedies KCCD may have under law or otherwise.

13. Workers' Compensation. SSUSD shall be the "primary employer" for all its personnel who perform services as instructors and support staff. SSUSD shall be solely responsible for processing, investigating, defending, and paying all workers' compensation claims by their respective SSUSD personnel made in connection with performing services and receiving instruction under this MOU or any related ISA. SSUSD agrees to hold harmless, indemnify, and defend KCCD from any liability resulting from its failure to process, investigate, defend, or pay any workers' compensation claims by SSUSD personnel connected with providing services under this MOU or any related ISA. SSUSD is not responsible for non-District personnel who may serve as instructors or students who are not affiliated with the SSUSD. These provisions may not be voided, modified nor waived by a related ISA.

14 Indemnification.

A. SSUSD shall defend, hold harmless, and indemnify KCCD, its governing board, officers, administrators, agents, employees, independent contractors,

subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including reasonable attorney fees and costs, including but not limited to consequential damages, death, sickness, or injury to any person(s) or damage to any property, from any cause whatsoever arising from or connected with the provision of instruction pursuant to this MOU or any related ISA that may arise out of or result from, in whole or in part, the negligent, wrongful, or willful acts or omissions of SSUSD, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.

B. KCCD shall defend, hold harmless, and indemnify SSUSD, their governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including reasonable attorney fees and costs, including but not limited to consequential damages, death, sickness, or injury to any person(s) or damage to any property, from any cause whatsoever arising from or connected with its responsibilities hereunder that may arise out of or result from, in whole or in part, the negligent, wrongful, or willful acts or omissions of KCCD, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.

C. SSUSD shall have no obligation to defend, hold harmless, or indemnify KCCD, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and/or other representatives for their sole negligence or willful misconduct; and KCCD shall have no obligation to defend, hold harmless, or indemnify SSUSD, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and/or other representatives for their sole negligence or willful misconduct.

D. This indemnity shall survive termination of this MOU or any related ISA, and/or final payment hereunder and is in addition to any other rights or remedies that SSUSD or KCCD may have under law and/or otherwise.

E. These provisions may not be voided, modified nor waived by any related ISA.

15. Insurance Requirements.

A. Each party shall obtain, pay for, and maintain in effect during the life of this MOU the following policies of insurance issued by an insurance company rated not less than "A-;V" in Best Insurance Rating Guide and admitted to transact business in California: (1) commercial general liability (including contractual, products, and completed operations coverages, bodily injury, and property damage liability) with single combined limits not less than \$1,000,000 per occurrence; (2) commercial automobile liability for "any auto" with combined single limits of liability not less than \$1,000,000 per occurrence; (3) professional liability (errors and omissions) with a limit of liability not less than \$1,000,000 per occurrence; and (4) workers' compensation insurance as required under state law.

B. Each party's policy(ies) shall contain an endorsement naming the other party as an additional insured insofar as this MOU is concerned, and provide that written notice shall be given to the other party at least 30 days prior to cancellation or material change in the form of the policy or reduction in coverage. Each party shall furnish the other with a certificate of insurance containing the endorsements required under this section, and each party shall have the right to inspect the other party's original insurance policies upon request. Upon notification of receipt of a notice of cancellation, change, or reduction in a party's coverage, that party shall immediately file with the other party a certified copy of the required new or renewal policy and certificates for such policy.

C. Nothing in this section concerning minimum insurance requirements shall reduce a party's liability or obligations under the indemnification provisions of this MOU.

D. The parties acknowledge that both parties are permissibly self-insured under California law.

E. These provisions may not be voided, modified nor waived by a related ISA.

16. Discrimination and Harassment. Each party agrees it will not unlawfully discriminate, harass, or allow harassment against any employee or other person because of sex, race, color, ancestry, religious creed, national origin, mental or physical disability (including HIV and AIDS), marital status, or age, and shall comply with all applicable laws pertaining to employment.

17. Entire Agreement. This MOU and any related ISAs constitute the entire agreement between the parties with regard to the Courses and supersedes any prior or contemporaneous understanding or agreement. No party has been induced to enter into this MOU by, nor is any party relying on, any representation or promise outside those expressly set forth in this MOU and any related ISA.

18. Amendment. The provisions of this MOU may be modified only by mutual agreement of the parties. No modification shall be binding unless it is in writing and signed by the party against whom enforcement of the modification is sought.

19. Waiver. Unless otherwise precluded by the terms of this MOU, terms or conditions may be waived by the party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or satisfaction of that term or condition as it applies on a subsequent occasion.

20. Assignment. Neither party may assign any rights or benefits or delegate any duty under this MOU without written consent of the other party. Any purported assignment without written consent shall be void.

21. Parties in Interest. Nothing in this MOU, whether express or implied, is intended to confer any rights or remedies under or by reason of this MOU on any

person other than the parties to it and their respective successors and assigns, nor is anything in this MOU intended to relieve or discharge the obligation or liability of any third person to any party to this MOU, nor shall any provision give any third person any right to subrogation or action against any party to this MOU.

22. Severability. If any provision of this MOU is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of the MOU shall continue in full force and effect and shall in no way be impaired or invalidated.

23. Notices. Any notice under this MOU shall be in writing, and any written notice or other document shall be deemed to have been duly given on the date of personal service on the parties or on the second business day after mailing if the document is mailed by registered or certified mail, addressed to the parties at the addresses set forth below, or at the most recent address specified by the addressee through written notice under this provision. Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.

24. Authority to Enter Into Agreement. Each party to this MOU represents and warrants that it has the full power and authority to enter into this MOU and to carry out the transactions contemplated by it and that it has taken all action necessary to authorize the execution, delivery, and performance of this MOU.

25. Status of the Parties. Neither party is a partner, joint venturer, co-principal, employer, or co-employer of the other or of an employee of the other party. SSUSD shall be solely responsible for paying all salaries, wages, benefits, and other compensation which its employees or subcontractors may be entitled to receive in connection with performing services under this MOU and any related ISA. SSUSD shall be solely responsible for withholding and paying all applicable payroll taxes and contributions, including federal, state, and local income taxes, FICA, FUTA, and state unemployment, workers' compensation, and disability insurance in connection with performing services under this MOU and any related ISA.

SSUSD shall be free to perform similar services for others while under contract with KCCD. Nothing in this MOU shall prohibit SSUSD from taking on other jobs or performing services for other entities. The parties agree that in performing the services specified in this MOU, SSUSD shall act as independent contractors.

26. Retention and Audit of Records. Each party shall maintain records pertaining to this MOU and related ISAs as may be required by federal and state law. Each party may review and obtain a copy of the other party's pertinent records subject to federal and state privacy statutes.

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27. Governing Law and Venue. This MOU will be governed by and construed in accordance with California law and venue of any action or proceeding in connection with this MOU shall be Kern County, California.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed the day and year first above written.

**AGREED TO AND ACCEPTED:
KERN COMMUNITY COLLEGE DISTRICT**

**AGREED TO AND ACCEPTED:
SIERRA SANDS UNIFIED SCHOOL
DISTRICT**

By: _____

Thomas J. Burke
Chief Financial Officer
2100 Chester Avenue
Bakersfield, CA 93301
(661) 336-5117

By: _____

Title: _____

Address: _____

Telephone: _____