

## JOINT DEVELOPMENT AND USE OF FACILITIES AGREEMENT

This Joint Development and Use of Facilities Agreement ("Agreement") is entered into between the Mono County Library Authority, a joint powers agency established by the Mono County Board of Education and the Mono County Superintendent of Schools (referred to herein as the "Library Authority"), the Mono County Board of Education, a county board of education ("County Board of Education"), Mammoth Unified School District, a political subdivision of the State of California ("School District"), and the Kern Community College District, a political subdivision of the State of California, on behalf of its Cerro Coso College (referred to herein as "Community College District").

### RECITALS

This Agreement is based on the following facts and understandings of the parties:

- A. Library Authority operates a public library in Mammoth Lakes. Community College District, through its Cerro Coso College, operates a community college center in Mammoth Lakes known as the Eastern Sierra Education Center.
- B. County Board of Education owns a parcel of land in Mammoth Lakes at the southeast corner of Meridian Boulevard and Sierra Park Road consisting of approximately 4.49 acres (net), the legal description of which is set forth in Attachment A. County Board of Education has leased approximately 1.36 acres of this parcel (the "Library Parcel") to School District for the purpose of obtaining joint use funding through School District for construction of a library (the "Joint Use Library Facility"). A copy of the lease agreement containing the legal description of the Library Parcel (the "Library Parcel Lease") is attached to this Agreement as Attachment B and incorporated by reference. Community College District owns an adjoining parcel of land consisting of approximately 20 acres developed with classroom facilities.
- C. School District, County Board of Education, and Library Authority entered into a Joint Use Agreement dated May 12, 2003, defining their relationship with respect to the Joint Use Library Facility, a copy of which is attached to this Agreement as Attachment C and incorporated by reference. Under the May 12, 2003, Joint Use Agreement, School District agrees to rent the Joint Use Library Facility to Library Authority for a minimum term of 45 years, until May 12, 2048. Community College District proposes to provide additional funding for the Joint Use Library Facility in exchange for the rights provided in this Agreement. School District, County Board of Education, and Library Authority each agree that the May 12, 2003, Joint Use Agreement is hereby modified by the provisions of this Agreement, and that this Agreement governs with respect to any discrepancy or inconsistency between the two agreements.
- D. The parties believe it would be in their best interests to jointly develop and use a public library on the Library Parcel. The parties desire to use the facilities to the

maximum extent possible for school, public library, higher education, and community purposes.

E. The purpose of this Agreement is to specify the parties' obligations with respect to the funding, construction, use, and maintenance of joint use facilities.

## TERMS

Based on the Recitals and the mutual promises contained in this Agreement, the parties agree as follows:

1. **Construction of Joint Use Facilities.**

A. In consideration of the funding and other contributions to be made by each party, the parties agree to construct a Joint Use Library Facility consisting of approximately 16,000 square feet in total area, the basic configuration of which is described in Attachment D which is attached to this Agreement and incorporated by reference, to be located on the Library Parcel.

B. The Joint Use Library Facility shall be designed by a licensed architect retained by School District (or, with School District's consent, by County Board of Education on School District's behalf) and acceptable to Community College District, who shall design the Joint Use Library Facility according to standards applicable to public school construction. The cost of design services shall be paid by School District out of construction funds established for the project. The funds contributed by Community College District shall only be used for construction of the Joint Use Library Facility and fixtures permanently attached to the buildings and facilities. None of the funds contributed by Community College District shall be used for the purchase of furniture and equipment which are not permanent fixtures of the Joint Use Library Facility.

C. School District (or, with School District's consent, County Board of Education on School District's behalf) shall undertake construction of the Joint Use Library Facility in compliance with all applicable State and local regulations, under contract with one or more experienced contractors using contract documents applicable to public school construction, and the Joint Use Library Facility shall be inspected by an approved Division of State Architect certified Inspector of Record as required under State law. It is the intent of the parties that the Joint Use Library Facility be constructed in time to be operational no later than March 2007. Community College District shall have the right to review and approve all construction payment requests before disbursement of construction funds to the contractor(s); provided, however, that if Community College District does not object to a construction payment request within ten days after receipt of a payment request signed by the contractor and project architect, School District (or, with School District's consent, County Board of Education on School District's behalf) may proceed to disburse the payment to the Contractor.

D. School District shall act as the lead agency for CEQA purposes and shall obtain all required approvals for the project.

E. The design of the Joint Use Library Facility shall include at least 1,000 square feet of enclosed space constructed with soundproofing technology (the "College Priority Use Area") to which Community College District shall have exclusive access, as roughly depicted in Attachment D, accessible to Library Authority's staff for maintenance and operations purposes at all other times. The remaining areas of the Joint Use Library Facility shall be accessible to each party at the same time on a shared use basis. The design of the College Priority Use Area shall include measures which permit separate entry and exit for students and employees of Community College District, including an electronic keyless secure entry system which tracks access into the College Priority Use Area. The design shall also include a path from the entrance of the Joint Use Library Facility to the Community College District access road, to be constructed by School District as part of the Joint Use Library Facility construction project, using a paving material acceptable to Community College District. The design shall further provide for Internet access for Community College District students in the College Priority Use Area and any supporting equipment necessary to operate the Internet access and instructional television equipment described in this Agreement. (School District/County Board of Education shall coordinate with Community College District's informational and instructional technology staff with respect to any equipment installed in connection with providing Internet access, such equipment to comply with Community College District's current technology specifications.)

F. Title to the Joint Use Library Facility shall be and remain in County Board of Education during the term of this Agreement, subject to the rights of Community College District to use the Joint Use Library Facility as provided in this Agreement.

G. Each party grants the other parties the right to use the Joint Use Library Facility as provided in this Agreement during the term of the Agreement and any extensions. The rights of the parties to jointly use the Joint Use Library Facility as provided in this Agreement shall apply notwithstanding the termination or expiration of the Library Parcel Lease or the rental of the Joint Use Library Facility to Library Authority. Library Authority agrees to record this Agreement or an abstract of the Agreement with the Mono County Recorder within 20 days after execution.

H. School District (or, with School District's consent, County Board of Education on School District's behalf) shall ensure that any general contractor engaged to construct the Joint Use Library Facility shall provide and maintain throughout the period of construction builders risk coverage naming all parties to this Agreement as additional insureds, with limits equal to 100 percent of the insurable value of the project, including all items of labor and materials in or adjacent to the structure insured, all materials in place or to be used as part of the permanent construction including surplus materials, shanties, protective fences, bridges, or temporary structures, miscellaneous materials and supplies incident to the work, and such scaffolding, staging, towers, forms, and

equipment as are not owned or rented by the contractor, the cost of which are included in the cost of the work.

I. School District, County Board of Education, and Library Authority shall each defend, indemnify, and hold Community College District harmless against all liability and loss of any type (including reasonable attorney's fees) arising out of construction of the Joint Use Library Facility, except to the extent caused by Community College District's negligent act or omission.

2. Method of Sharing Capital Costs

A. County Board of Education and Library Authority estimate the cost to construct the Joint Use Library Facility will be \$8.2 million (exclusive of any land costs). School District has received an allocation of \$1,100,000 in joint use funding from the Office of Public School Construction for the Joint Use Library Facility. Community College District will, pursuant to this Agreement, match each dollar expended on the construction by School District, County Board of Education, and/or Library Authority, up to a maximum of \$3,500,000 for construction of the Joint Use Library Facility. Any additional funding required for construction above the total of these amounts shall be obtained by County Board of Education and/or Library Authority.

B. Community College District represents that its share of the funding is currently available through the proceeds of a bond measure. Upon furnishing Community College District with confirmation of receipt of its allocation of \$1.1 million in joint use funds for construction of the Joint Use Library Facility and evidence that the Division of State Architect, California Department of Education, and Office of Public School Construction have approved the plans and specifications for the Facility, Community College shall pay to Library Authority/School District the sum of \$1.1 million for construction of the Joint Use Library Facility. After that, Community College District shall periodically pay to Library Authority/School District such portion of Community College District's remaining contribution toward the Facility as Library Authority/School District requests in writing and for which Library Authority demonstrates an expenditure of an equivalent amount by Library Authority/County Board of Education/School District, within 30 days of receipt of the written request. The total contribution of Community College District shall not exceed \$3,500,000. District may make payment of its contributions by depositing into a designated construction account, withdrawals from which require signatures on behalf of Community College District, School District, and Library Authority.

C. This Agreement is contingent upon School District's receipt of funds from the State Allocation Board to finance construction of the joint use facilities. If such funds are not allocated to and received by School District by December 24, 2005, any party shall have the right to terminate the Agreement on written notice to the other parties.

3. **Method of Sharing Operation Costs**

A. **Utilities.** Library Authority shall pay all costs for the Joint Use Library Facility, including but not limited to fees for water, electricity, gas, sewer, garbage, Internet connections adequate to meet Community College District demand at the Joint Use Library Facility, and snow removal when Community College District classes are in session to clear access to the main entrance and Community College District entrance to the Joint Use Library Facility, and the entry road to the Joint Use Library Facility entrances. Neither School District nor Community College District shall be responsible for any utilities, maintenance, or repair costs except as expressly provided in this Agreement.

B. **Maintenance.** Library Authority shall maintain the Joint Use Library Facility in good, safe, sanitary condition and repair during the term of the Agreement in compliance with applicable public health laws and inspections. Library Authority shall maintain records regarding operation and maintenance of the Joint Use Library Facility which shall be open for inspection by Community College District upon request. Library Authority's maintenance of the Joint Use Library Facility shall include a thorough weekly cleaning of the Joint Use Library Facility. If Library Authority fails to maintain the Joint Use Library Facility in good, safe, sanitary condition despite written notice from Community College District, Community College District shall have the right to provide any necessary cleaning or maintenance and charge Library Authority for its costs.

C. **Repairs.** Subject to Section 7.B, Library Authority shall promptly and fully repair any damage to the Joint Use Library Facility (including the College Priority Use Area and the equipment contained there), provided, however, that School District and Community College District shall each bear the cost of any repair (normal wear and tear excepted) caused by their respective employees, invitees, or assigns.

D. **Security.** Library Authority will provide general security for the Joint Use Library Facility. A party permitting a use outside the normal hours of operation of the Joint Use Library Facility which requires provision of security services shall make its own arrangements for such security and bear the costs of the security.

E. **Equipment and Furnishings.** Library Authority shall furnish the equipment and furnishings for the College Priority Use Area described in Attachment E at Library Authority's expense. Library Authority shall replace such equipment and furnishings at such time as the equipment is no longer functional, is obsolete for its intended purpose, or is inconsistent with Community College District's "technology architecture," subject to the financial limitations set forth in this subsection E. Library Authority shall transfer title to all items listed in Section 1 of Attachment E to Community College District upon receipt of those items.

The instructional television, computer, and network equipment described in Attachment E to be located in the College Priority Use Area shall be for the exclusive use of

Community College District's staff and students, and Library Authority shall ensure that this equipment is not used by anyone other than Community College District staff and students without the express written permission of Community College District.

Immediately upon Community College District's first payment of funds under Section 2.B, Library Authority/School District shall allocate and reserve the sum of \$200,000 for an initial purchase of some or all of the equipment listed in Attachment E, and shall authorize the purchase of such equipment as directed by Community College District. Library Authority/School District shall further allocate and reserve the sum of \$50,000 for subsequent replacement of equipment and furnishings as directed by Community College District. If any funds from the \$200,000 allocated for initial purchase of equipment remain after the equipment is purchased, those funds shall be added to the reserve for subsequent equipment replacement. Library Authority's financial obligation to purchase and replace the specified equipment shall not exceed the amounts stated in this subparagraph. When those funds have been expended, the parties shall meet and confer to determine a mutually agreed formula for sharing the cost of replacement of such equipment and furnishings.

To the extent funds remain in the reserve for initial purchase or replacement of equipment and furnishings for the College Priority Use Area, Library Authority shall also reimburse Community College District's cost to maintain the instructional television, networking, computer, and other equipment contained in the College Priority Use Area. This would include but is not limited to service contracts, Community College District staff costs, or other costs determined to be necessary by Community College District for maintenance. Notwithstanding this subparagraph, all other costs to maintain and repair the Joint Use Library Facility, including the College Priority Use Area and associated furnishings and equipment not listed in Attachment E, shall be borne by Library Authority.

The equipment specified in Attachment E is based on technologies currently available and compliant with Community College District's technology architecture and is designed to be representative of the equipment Community College District requires to meet its needs. Changes are likely to occur between the execution of this Agreement and the time when the ordering and installation of the equipment will occur. Community College District reserves the right to alter the specified equipment in order to accommodate reasonable changes due to changes in technology, standards, and construction of the Joint Use Library Facility.

F. **Taxes.** Library Authority shall be solely liable for any real property and other taxes and assessments levied with respect to the Joint Use Library Facility or the real property on which it is located.

G. **Successors and Assigns.** The obligations of Library Authority under this Section 3 shall be binding upon the successors and assigns of Library Authority. If Library Authority dissolves or reorganizes in such a way that there is no successor entity, County Board of Education shall assume responsibility for those obligations.

4. **Responsibilities for Operation of Joint Use Library Facility.**

Library Authority shall be in charge of the day-to-day operations of the Joint Use Library Facility and scheduling its use by the parties. The following priorities for use shall be observed:

A. **College Priority Use Area.** Community College District shall have exclusive use of the College Priority Use Area for its own students, employees, contractors, invitees, and programs. Library Authority shall have access to the College Priority Use Area with advance permission from Community College District and subject to such conditions as Community College District specifies. Library Authority's employees shall have access to the College Priority Use Area for maintenance and operations purposes. For purposes of this Agreement, Community College District's programs include programs sponsored by its student body or by its supporting foundation(s). (Those entities must obtain advance permission from Community College District for use of the College Priority Use Area and are subject to such conditions as Community College District may impose.)

B. **Remaining Areas.** All areas other than the College Priority Use Area shall be used by the parties on a shared use basis.

C. **Joint Use Committee.** The parties shall establish an advisory joint use committee consisting of at least two representatives of each party ("Joint Use Committee"). The Joint Use Committee shall convene from time to time (at least quarterly) to discuss issues relating to the Joint Use Library Facility (and any other facilities which may be shared by the parties), make recommendations concerning a scheduling policy, review costs, and advise the parties concerning these matters.

D. **Use by Third Parties.** Any use of the Joint Use Library Facility (excluding the College Priority Use Area) by persons or entities other than School District and Library Authority (and their supporting foundations and affiliated entities) or Community College District (and its student body, staff, supporting foundations, and affiliated entities) shall be in accordance with the use policy established by the Joint Use Committee.

5. **Responsibilities for Staffing Joint Use Library Facility.**

The Library Authority shall provide librarians to operate the Joint Use Library Facility and custodial staff for repair and maintenance of the Joint Use Library Facility. Library Authority agrees to keep the Joint Use Library Facility building open and staffed with a librarian at least 53 hours per week during hours and days agreed upon by the parties, which will include some time during the morning, afternoon, and evening. Community College District shall have the option, but not the obligation, to provide staffing to open the Joint Use Library Facility for additional hours with the advance approval of Library Authority, such consent not to be unreasonably withheld. Library Authority will also increase staffing to open the Joint Use Library Facility for additional hours if Community College District provides funding for the additional staffing, at Library Authority's actual personnel costs.

6. **Manner of Ensuring Safety of Pupils.**

In constructing and operating the Joint Use Library Facility, the parties shall take appropriate measures to ensure the safety of use. These measures shall include but are not limited to the following: Each party certifies that its employees permitted to use the Joint Use Library Facility have submitted fingerprints to the California Department of Justice for a criminal background check to the extent required by law.

7. **Damage or Destruction of Joint Use Facilities.**

A. **Risk Covered by Insurance.** In the event of damage to the Joint Use Library Facility from fire or other insurable loss, County Board of Education, School District, and Library Authority shall apply all available insurance proceeds from such damage to effect complete repair or restoration of the Joint Use Library Facility. If existing laws do not permit repair or restoration, any party may terminate this Agreement immediately by giving notice to the other parties.

B. **Risk Not Covered by Insurance.** If the cost of restoration exceeds the amount of proceeds received from the insurance required under this Agreement, a party may give notice of intent to terminate the Agreement by giving written notice to Community College District within 30 days after determining that the restoration cost will exceed the insurance proceeds. If a party gives notice of its intention to terminate the Agreement, the other parties can elect to pay to County Board of Education and School District (if School District remains a party to the Library Parcel Lease) the difference between the amount of insurance proceeds and the cost of restoration by notifying the parties in writing within 30 days of receipt of notice of intention to terminate, in which case the Agreement shall not terminate. Upon receipt of those funds, County Board of Education and School District shall restore the damaged facilities.

C. **Waiver of Civil Code Sections.** To the extent they apply to this Agreement, the parties each waive the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to destruction of the facilities.

8. **Alterations and Additions to Joint Use Facilities.**

School District, County Board of Education, Community College District, and Library Authority each agree not to make any alterations, additions, or improvements to the Joint Use Library Facility during the term of this Agreement that materially impact Community College District's use or shared use of the Joint Use Library Facility without the advance written consent of Community College District, unless required by law. School District, County Board of Education, and Library Authority shall notify Community College District at least 20 working days in advance of any such alterations, additions, or improvements, with the exception of emergency repairs.



9. **Signage and Naming Rights.**

Library Authority agrees to post signs on the construction site clearly visible to the public stating, "Partially Funded by the Kern Community College District (Cerro Coso College) and Measure C." Library Authority agrees to post a plaque containing language acceptable to Community College District concerning its contribution to the Joint Use Library Facility, to be located at a site acceptable to Community College District and Library Authority. The parties agree that the name of the Joint Use Library Facility shall be designated by Library Authority, but shall contain the words "Community College" in the primary or secondary name. If the words "Community College" appear only in a secondary name for the Joint Use Library Facility, then each party shall ensure that the secondary name appears on all signs and other public designations for the Joint Use Library Facility. No sign, building identification, or promotional materials shall be issued or posted by any party designating the building under any name other than that agreed to by all of the parties, except that the library construction project may be referred to as the "Joint Use Library Construction Project."

10. **Term.**

This Agreement shall be in effect for a period of 99 years from the date of execution by the parties, subject to earlier termination as provided in this Agreement. The Agreement shall roll over and continue in effect for an indefinite period after that, subject to termination by any party if the site on which the Joint Use Library Facility is located is no longer used as a library site.

11. **Indemnification.**

Each party agrees to defend, hold harmless, and indemnify the other parties (and the officers, employees, trustees, agents, successors, and assigns of each of them) against all claims, suits, expenses (including reasonable attorney's fees), losses, penalties, fines, costs, and liability whether in contract, tort, or strict liability (including but not limited to personal injury, death at any time, and property damage) arising out of or made necessary by the indemnifying party's breach of the terms of this Agreement or by the indemnifying party's act or omission in operating, repairing, using, or permitting the use of the Joint Use Library Facility.

In the event any action or proceeding is brought against a party by reason of any claim or demand discussed in this section, upon notice from the party, the indemnifying party shall defend the action or proceeding at the indemnifying party's expense through counsel reasonably satisfactory to the indemnified party. The obligations to indemnify set forth in this section shall include reasonable attorney's fees and investigation costs and all other reasonable costs, expenses, and liabilities from the first notice that any claim or demand is to be made.

The defense and indemnification obligations under this section shall apply regardless of whether the indemnified party (or any of its officers, employees, trustees, or agents) is alleged to have been actively or passively negligent, but shall not apply to any loss, liability, fine, penalty, forfeiture, cost, or damage determined by a court of competent jurisdiction to have resulted solely from the active negligence or willful misconduct of another party.

## 12. Insurance.

Each party shall obtain, pay for, and maintain in effect during the life of this Agreement 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 insurance business in California: (1) commercial general liability insurance (including contractual, products, and completed operations coverages, bodily injury, and property damage liability insurance) with single combined limits of not less than \$1,000,000 per occurrence; (2) commercial automobile liability insurance for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence; and (3) workers' compensation insurance as required under state law. In addition, County Board of Education and Library Authority shall each maintain at all times during the term of this Agreement an all risk policy of standard fire and extended risk property insurance coverage, including vandalism and malicious mischief endorsements, on the Joint Use Library Facility in the amount of at least the replacement cost of the Joint Use Library Facility, unless otherwise agreed by the parties.

Each party's policy(ies) shall contain an endorsement naming the other parties as additional insureds insofar as this Agreement is concerned, and provide that written notice shall be given to the other parties at least 30 days prior to cancellation, material change in the form of the policy, or reduction in coverage. Each party shall furnish the other parties with a certificate of insurance containing the endorsements required under this section, and each party shall have the right to inspect the other parties' original insurance policies upon request. Upon notification of receipt of a notice of cancellation, change, or reduction in coverage, each party shall immediately file with the other parties a certified copy of the required new or renewal policy and certificates for such policy. Should a party fail to immediately procure replacement insurance as required, another party or parties may obtain such insurance on behalf of the party who failed to procure the replacement insurance and the party who failed to procure the replacement insurance shall reimburse the party or parties who obtained the replacement insurance for all premiums paid.

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

The parties acknowledge that School District, County Board of Education, Library Authority, and Community College District are each permissibly self-insured public entities in accordance with the California Government Code. Each of the parties conforms to the requirements of the California Labor Code by legally self-insuring for workers' compensation.

For any contractor retained by School District, County Board of Education, or Library Authority to alter or modify the Joint Use Facilities, the party retaining the contractor shall furnish Community College District a separate certificate and endorsement of each such contractor showing commercial general liability insurance and workers' compensation insurance with minimum coverage at the same levels as required in this Agreement, listing each of the parties as additional insureds.

Not more frequently than every three years, a party may notify another party that in its opinion the amount of commercial liability and property damage insurance coverage of the other party is not adequate, and the other party shall consider increasing its insurance coverage.

13. **Non-Discrimination.**

During the performance of this Agreement, each party shall ensure that its employees, students, and other users do not discriminate against or harass any person while using the Joint Use Library Facility on any basis prohibited by Federal or State law, and each party shall cooperate with the other parties (to the extent permissible under the law and any applicable collective bargaining agreements) in a party's attempts to address, halt, or investigate any such harassment or discrimination, including temporary exclusion of employees, students, or other users pending an investigation of the discrimination or harassment allegations.

14. **Termination.**

Except as expressly provided in this Agreement, a party may terminate this Agreement prior to its expiration only as follows:

- A. By the mutual written consent of all parties;
- B. Upon the failure of any party to provide funding as required by this Agreement;
- C. In addition, Community College District may terminate this Agreement upon the failure by School District and/or County Board of Education to proceed in a diligent manner with construction of the Joint Use Library Facility after receipt of payment by Community College District as provided for in this Agreement. Upon such failure, and at the request of Community College District, School District, and/or County Board of Education shall return any unspent or irrevocably committed funds to Community College District up to the total amount provided for in this Agreement.

Commencing with the recording of a notice of completion of construction of the Joint Use Library Facility and continuing through the initial 99-year term of this Agreement, except as expressly permitted in this Agreement, each party shall refrain from terminating and waives its power to terminate this Agreement in the event of a material breach by another party.

If during the initial 50 years this Agreement is in effect County Board of Education or Library Authority commit a breach of this Agreement resulting in an inability on the part of Community College District to make full use of the Joint Use Library Facility as provided in this Agreement, in addition to any other damages to which Community College District may be entitled, the party(ies) committing the breach shall immediately pay to Community College District a sum equal to the total amount contributed by Community College District under this Agreement divided by 50 and multiplied by the number of years remaining in the initial 50 years at the time of the breach.

15. **Specific Performance.**

Each party's obligations under this Agreement are unique. The parties each acknowledge that if any party should default in performance of the duties and obligations imposed by this Agreement, it would be extremely impracticable to measure the resulting damage. This includes but is not limited to the duty to provide insurance under Section 11, the breach of which could result in the unavailability of educational opportunities for members of the public or students of the Community College District. Accordingly, the non-defaulting parties, in addition to any other available rights or remedies, may sue in equity for specific performance, and the parties each expressly waive the defense that a remedy in damages will be adequate.

16. **Dispute Resolution.**

The parties will attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of or relating to this Agreement. Any party may initiate negotiations by providing written notice in letter form to the other parties, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within 10 working days with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, representatives of each party with full settlement authority will meet at a mutually agreeable time and place, within 20 working days of the date of the initial notice, in order to exchange relevant information and perspectives and to attempt to resolve the dispute.

If the dispute is not resolved by these negotiations, the parties agree to submit the matter for mediation. Except as provided in this Agreement, no civil action with respect to any dispute, claim, or controversy arising out of or relating to this Agreement may be commenced until the matter has been submitted for mediation. Any party may commence mediation by providing the other parties with a written request for mediation setting forth the subject of the dispute and the relief requested. The parties will attempt to agree on a mediator, and if they are unable to do so each party shall appoint one representative and those representatives shall appoint the mediator. The parties will share equally in the costs of the mediation. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Any party may seek equitable relief prior to the mediation to preserve the status quo pending completion of that process. Except for such an action to obtain equitable relief, no party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 60 days after the date of filing the written request for mediation where no mediation session has taken place, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this clause may be enforced by any court of competent jurisdiction.

17. **Miscellaneous**

A. **Entire Agreement.** This Agreement, including any exhibits or schedules referred to in this Agreement, constitutes the final, complete, and exclusive statement of the terms of the Agreement between the parties pertaining to the funding, construction, and operation of the joint use facilities described. It supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.

B. **Amendment.** The provisions of this Agreement may be modified only by mutual agreement of all 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.

C. **Waiver.** Any of the terms or conditions of this Agreement may be waived at any time 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 either of that term or condition as it applies on a subsequent occasion or any other term or condition of this Agreement.

D. **Assignment.** No party may assign any rights or benefits or delegate any duties under this Agreement without the written consent of the other parties, except as expressly provided in this Agreement. Any purported assignment without written consent, or not provided for herein, shall be void. With the exception of the Library Parcel Lease, County Board of Education shall not re-lease the Library Parcel during the term of this Agreement without the prior written consent of Community College District, and School District shall not sublease the Library Parcel without the prior written consent of County Board of Education and Community College District.

E. **Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person or confer any right of subrogation or action against any party to this Agreement.

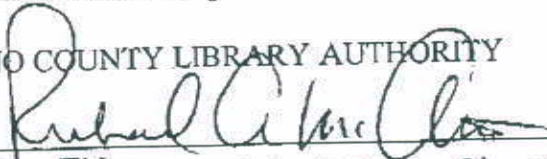
F. **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

G. **Governing Law.** The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of California, excluding any statute which directs the application of the laws of another jurisdiction.

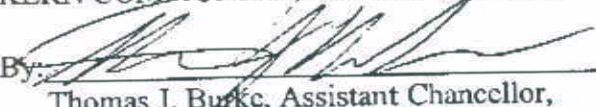
H. **Notices.** Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given on the date of personal service on the parties or on the second business day after mailing if the document is mailed by registered or certified mail, addressed 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 registered or certified shall not defeat the effectiveness of notice actually received by the addressee.

I. **Authority to Enter Into Agreement.** Each party to this Agreement represents and warrants that it has the full power and authority to enter into this Agreement 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 the Agreement.


Dated: 11-08-05

MONO COUNTY LIBRARY AUTHORITY  
By:   
Name/Title: Richard A. McAteer, Director  
Address: P O Box 477, Bridgeport, CA 93517

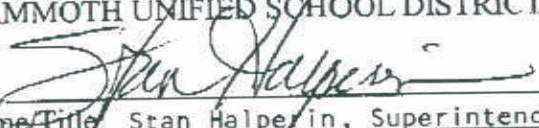
Dated: 11/3/05

KERN COMMUNITY COLLEGE DISTRICT  
By:   
Thomas J. Burke, Assistant Chancellor,  
Administrative Services  
2100 Chester Avenue, Bakersfield, CA 93301

Dated: 11/22/05

MONO COUNTY BOARD OF EDUCATION  
By:   
Name/Title: Kathryn Mandichak, President  
Address: P O Box 477, Bridgeport, CA 93517

Dated: 11/8/05

MAMMOTH UNIFIED SCHOOL DISTRICT  
By:   
Name/Title: Stan Halperin, Superintendent  
Address: P O Box 3509, Mammoth Lakes, CA 93546

## ADDENDUM TO JOINT DEVELOPMENT AND USE OF FACILITIES AGREEMENT

This Addendum to Joint Development and Use of Facilities Agreement ("Addendum") modifies the Joint Development and Use of Facilities Agreement ("the Original Agreement") entered into on or about November 22, 2005, between the Mono County Library Authority, a joint powers agency established by the Mono County Board of Education and the Mono County Superintendent of Schools (referred to herein as the "Library Authority"), the Mono County Board of Education, a county board of education ("County Board of Education"), Mammoth Unified School District, a political subdivision of the State of California ("School District"), and the Kern Community College District, a political subdivision of the State of California, on behalf of its Cerro Coso College (referred to herein as "Community College District").

### RECITALS

This Agreement is based on the following facts and understandings of the parties:

A. The parties entered into the Original Agreement for the development, construction and use of a library facility located in Mammoth Lakes, California at the southeast corner of Meridian Boulevard and Sierra Park Road (the "Joint Use Library Facility").

B. Section 1.E. of the Original Agreement provides as follows:

E. The design of the Joint Use Library Facility shall include at least 1,000 square feet of enclosed space constructed with soundproofing technology (the "College Priority Use Area") to which Community College District shall have exclusive access, as roughly depicted in Attachment D, accessible to Library Authority's staff for maintenance and operations purposes at all other times. The remaining areas of the Joint Use Library Facility shall be accessible to each party at the same time on a shared use basis. The design of the College Priority Use Area shall include measures which permit separate entry and exit for students and employees of Community College District, including an electronic keyless secure entry system which tracks access into the College Priority Use Area. The design shall also include a path from the entrance of the Joint Use Library Facility to the Community College District access road, to be constructed by School District as part of the Joint Use Library Facility construction project, using a paving material acceptable to Community College District. The design shall further provide for Internet access for Community College District students in the College Priority Use Area and any supporting equipment necessary to operate the Internet access and instructional television equipment described in this Agreement. (School District/County Board of Education shall coordinate with Community College District's informational and instructional technology

staff with respect to any equipment installed in connection with providing Internet access, such equipment to comply with Community College District's current technology specifications.)

C. The current design for the College Priority Use Area calls for a room containing 925 rather than 1,000 square feet. Community College District consents to this change in consideration of the parties providing access to additional space and certain additional amenities as described in this Addendum.

### TERMS

1. The parties agree to a design modification for the College Priority Use Area as depicted under "College Room" on Exhibit A, which is attached to this Addendum and incorporated by reference. Community College District shall have exclusive access to the College Priority Use Area at all times (24 hours per day, seven days per week), provided that Library Authority's staff shall have access for maintenance and operations purposes. The College Priority Use Area as modified shall have all other attributes as described in the Original Agreement.

2. Community College District shall have exclusive use of an area containing library stacks on the south wall of the "Children's Room" as depicted on Exhibit A, consisting of 77 square feet, and an area containing library stacks on both sides of the drinking fountains, north of the "College Room," consisting of 32 square feet, accessible 24 hours per day, seven days per week. In order to utilize the library stacks, Community College District shall also have access to the Children's Room 24 hours per day, seven days per week.

3. Library Authority shall furnish and install appropriate library stacks for Community College District's use in the Children's Room and on both sides of the drinking fountain, at Library Authority's expense.

4. Community College District shall have exclusive use of the hallway and restrooms north of the "College Room" as depicted in Exhibit A, 24 hours per day, seven days per week.

Except as modified by this Addendum or another writing signed by all parties, the Original Agreement remains in full force and effect.

Dated: 4/30/08, 2008


MONO COUNTY LIBRARY AUTHORITY

By: Catherine Hiatt  
Catherine Hiatt, Board Clerk  
P O Box 477  
Bridgeport, CA 93517



Dated: 6/17/08, 2008


KERN COMMUNITY COLLEGE DISTRICT

By: 

Thomas J. Burke, Assistant Chancellor,  
Administrative Services  
2100 Chester Avenue, Bakersfield, CA 93301

Dated: 4/24/08, 2008

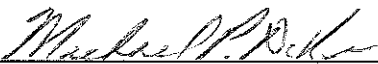
MONO COUNTY BOARD OF EDUCATION

By: 

Judy Farnetti, Board Vice-President  
P O Box 477  
Bridgeport, CA 93517

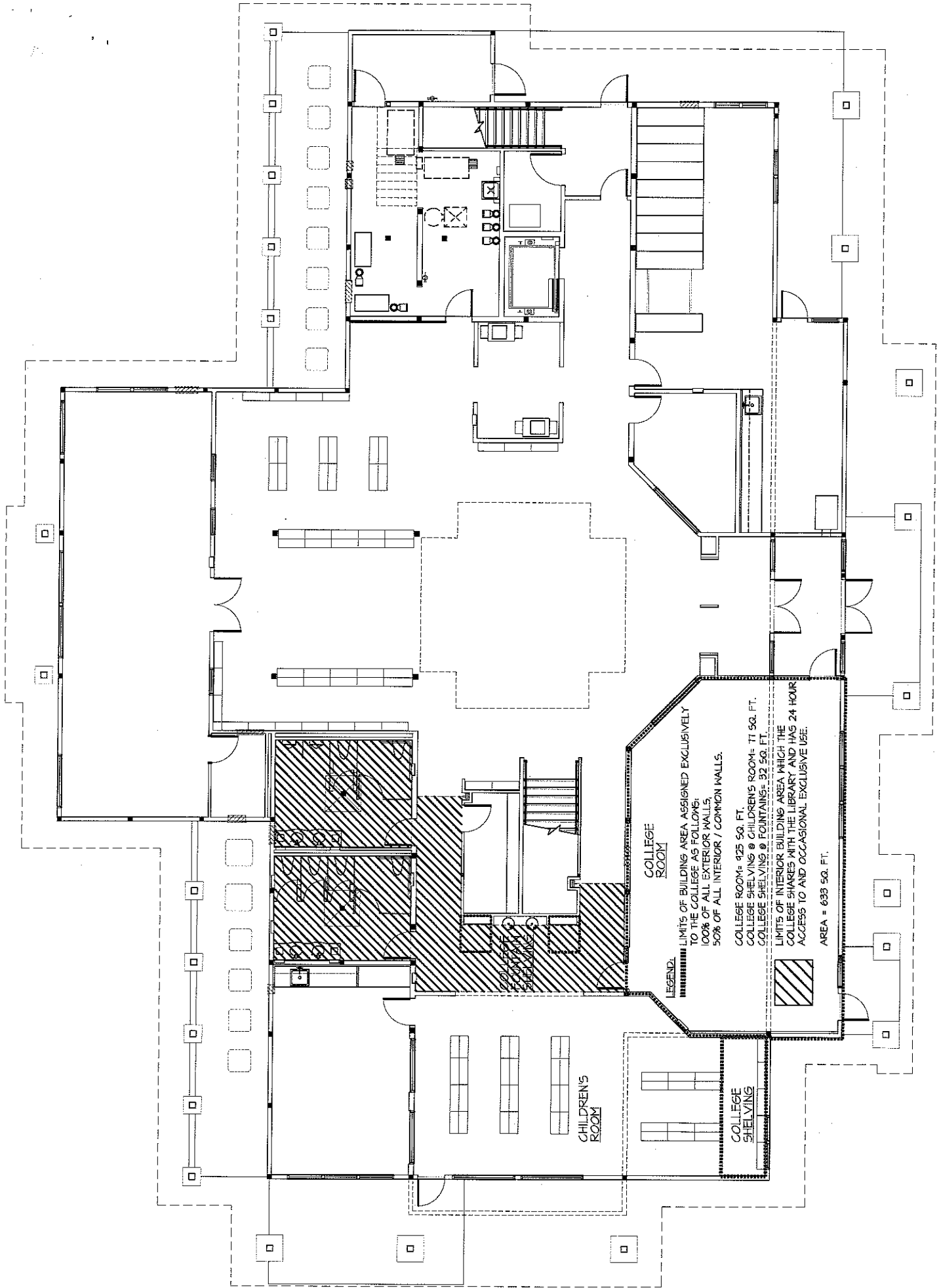
Dated: April 29, 2008

MAMMOTH UNIFIED SCHOOL DISTRICT

By: 

Mike DeRisi, Superintendent  
P O Box 3509  
Mammoth Lakes, CA 93546

APPROVED BY  
BOARD OF TRUSTEES  
MINUTES OF 6-12-08



COLLEGE ROOM

LEGEND:

LIMITS OF BUILDING AREA ASSIGNED EXCLUSIVELY TO THE COLLEGE AS FOLLOWS:  
 100% OF ALL EXTERIOR WALLS,  
 50% OF ALL INTERIOR / COMMON WALLS.

COLLEGE ROOM: 125 SQ. FT.  
 COLLEGE SHELVING @ CHILDRENS ROOM: 71 SQ. FT.  
 COLLEGE SHELVING @ FOUNTAINS: 32 SQ. FT.

LIMITS OF INTERIOR BUILDING AREA WHICH THE COLLEGE SHARES WITH THE LIBRARY AND HAS 24 HOUR ACCESS TO AND OCCASIONAL EXCLUSIVE USE.

AREA = 633 SQ. FT.

EXHIBIT A: CERRO COSO - EXCLUSIVE AREAS



Kern Community College District  
 2100 Chester Avenue  
 Bakersfield, CA 93301-4099

- Business Services
- Educational Services
- Human Resources
- Administrative

- Bakersfield College
- Cerro Coso College
- Porterville College
- District Office

## Request for Board Action

<b>Board of Trustees</b>		Date May 22, 2008	
<b>1. Action Requested</b> Authorization for the Chief Financial Officer to execute an addendum to the Joint Development and Use of Facilities Agreement between the Kern Community College District on behalf of Cerro Coso Community College, the Mono County Library Authority, the Mono County Superintendent of Schools, the Mono County Board of Education, and the Mammoth Unified School District.			
<b>2. Background/Purpose/Analysis</b> Upon completion of the Library Facility in Mammoth, California, it was discovered that the College's dedicated use space came in under 1000 square feet which was required per the terms of the agreement. To resolve this issue, KCCD recommends assignment of additional space, a shelving area dedicated to the college operation near and around the college's dedicated room.			
<b>3. Type of Agreement</b>  Addendum		<b>4. Contractor or Grantee</b> Mono County Library Authority, Mono County Supt. of Schools, Mono County Board of Education, and Mammoth Unified School District.	
<b>5. Contract or Grant Number</b> N/A	<b>6. Term</b> N/A	<b>7. Fund that financial activity will be accounted for/in:</b> N/A	<b>8. Amount of Agreement</b> <input type="checkbox"/> Income \$N/A _____ <input type="checkbox"/> Expense \$N/A _____
<b>9. Bid Process</b>  N/A			
<b>Required Signatures</b>			
Initiator's Signature		Date	
Initiator Supervisor's Signature		Date	
Vice President's Signature		Date	
Director, Business Services' Signature		Date	
College President's Signature		Date	
Director of Information Technology/Vice Chancellor, Educational Services (If applicable—See Format Instructions)		Date	

**Recommended for Board Action**

Vice Chancellor/Chief Financial Officer