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**Agreement for Bookstore Services  
between  
College of the Sequoias  
and  
Barnes & Noble College Booksellers, LLC**

**1. Engagement of Barnes & Noble College:**

College of the Sequoias hereby engages Barnes & Noble College Booksellers, LLC (“Barnes & Noble College”) to operate and provide services for the Bookstores of College of the Sequoias (the “Bookstores”) on the terms and subject to the conditions set forth herein, and Barnes & Noble College hereby accepts such engagement.

**2. Term and Termination:**

This Agreement shall govern the relationship between College of the Sequoias and Barnes & Noble College with regard to the Bookstores for the period July 1, 2018 through June 30, 2023 and from year to year thereafter.

College of the Sequoias and Barnes & Noble College shall have the right to terminate this Agreement at any time by giving one hundred and twenty (120) days written notice to the other party.

**3. College of the Sequoias Shall Provide to Barnes & Noble College at College of the Sequoias’s Expense:**

- a) Heat, light, utilities, and air conditioning as is reasonably required for operation of the Bookstores.
- b) Office equipment, safe, furniture, fixtures, file cabinets, telephone equipment and service (including campus telephones and wiring), and campus Wi-Fi available within the Bookstores.
- c) All repairs and maintenance for the buildings and the physical structures in which the Bookstores are located.
- d) Trash and recycling (cardboard) removal and extermination services for the Bookstores.
- e) All financial services made available by College of the Sequoias to its students for the purchase of educational materials and other products within the Bookstores.
- f) The placement of an electronic link on the College of the Sequoias’s home page, registration system, and within the College of the Sequoias’s learning management system (“LMS”) to the Bookstores’ web site.

**4. Barnes & Noble College Shall Provide to College of the Sequoias at Barnes & Noble College’s Expense:**

All operating expenses of the Bookstores including those related to:

- a) Employees, including payroll and payroll system costs, and employee benefits.
- b) Bill paying and accounting, including sales tax collection, reporting and payment for merchandise sold, except any property, excise, or municipal taxes on the Bookstores.
- c) Maintenance, upgrades and repair of technology systems within the Bookstores.

- d) General custodial services.
- e) Loss prevention services.
- f) Long distance telephone services through a vendor selected by Barnes & Noble College.

## **5. Management and Staff:**

Barnes & Noble College shall staff the Bookstores with experienced and qualified managerial and customer service personnel. During peak “rush” periods, Barnes & Noble College shall utilize sufficient additional employees at the Bookstores to avoid unnecessary lines and to expedite making educational materials available to students.

College of the Sequoias Bookstore personnel shall continue service only so long as their work and personal behavior are acceptable to Barnes & Noble College and College of the Sequoias. Barnes & Noble College will comply with written requests by College of the Sequoias to remove or reassign store personnel for good cause.

## **6. Staff Relations, Wages, and Benefits:**

Barnes & Noble College has the right to set its own wages and benefits for Bookstore employees. Barnes & Noble College will employ students of College of the Sequoias at the Bookstores whenever reasonably possible.

Barnes & Noble College agrees to hire Charles Slaght as Bookstore Manager, effective 3/21/18 and to retaining Karyl Johnson until her retirement-eligible date of June 30, 2019. Barnes & Noble College will reimburse the District for Karyl’s salary and benefit costs, including any step-increase or negotiated salary increase that may come in 2018-19.

## **7. Services Expected:**

Barnes & Noble College shall operate the Bookstores as an independent contractor and with its own credit and preferred vendors. Services of the Bookstores shall include the following:

- a) The Bookstores shall be College of the Sequoias’s exclusive retail buyer and seller of all required, recommended or suggested course materials and supplies, including books delivered in all formats (digital, rental, new, or used), course packs, interactive or other courseware, computer software containing learning content, textbook rentals, open educational resources (“OER”) available for purchase, and materials published or distributed electronically, through the LMS, sold over the Internet, or through hosted e-commerce links. Barnes & Noble College will provide exclusive on-line services through the Bookstores’ website including fulfillment of any distance learning material needs during the term of this Agreement.
- b) In order to expand affordability to students, Barnes & Noble College will work with College of the Sequoias if it opts to provide a “First Day” (inclusive access) program to its students. In such event, College of the Sequoias and Barnes & Noble College shall work together to negotiate publishers’ pricing of textbooks and course materials. Additionally, the parties acknowledge and agree (i) Barnes & Noble College shall be the exclusive retail (e-commerce) entity permitted to either place a link on the LMS or accept sales directly from College of the Sequoias students and/or as a fee added to tuition through the LMS and (ii) College of the Sequoias shall prohibit all third parties, including but not limited to publishers and sellers of textbooks and course materials, from placing direct links within the LMS or soliciting sales directly from College of the Sequoias students and faculty through the LMS. Finally, in the event any such third parties place a link

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on the LMS permitting direct sales of textbooks or course materials to College of the Sequoias students, College of the Sequoias shall remove and disable such links and retail functionality.

- c) The Bookstores shall be designated the exclusive agent to accept all campus debit card and financial aid transactions for bookstore merchandise typically sold in college bookstores. Payments for charge sales will be guaranteed by College of the Sequoias and are payable within 30 days of invoice date. Any unpaid balances days will be subject to 1% interest per month.
- d) The Bookstores shall also be College of the Sequoias's exclusive retail "on-campus" and Internet seller of other items typically sold in college bookstores, such as books in addition to those described in (a) above, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and clothing, including any and all such items bearing a College of the Sequoias emblem, logo, insignia or other identifying mark.
- e) COS Foundation will have the right to sell COS logo merchandise such as clothing, alumni rings, and small gifts including items bearing a College of the Sequoias emblem, logo, insignia or other identifying mark online only on the Foundation website, and at Foundation sponsored events (when applicable).
- f) COS Athletics will have the right to sell COS logo merchandise such as clothing, hats, jackets, shoes, championship rings, and sports-related items including items bearing a College of the Sequoias emblem, logo, insignia or other identifying mark online only on the COS Athletics website, and at Athletic events held on campus or off campus.
- g) College of the Sequoias shall not contract with any third party to provide any services of the type outlined in this Agreement whether on or off campus, through e-commerce sites, hyperlinks to alternate sources, or otherwise endorsed or supported by College of the Sequoias. College of the Sequoias acknowledges and agrees any attempt to circumvent Barnes & Noble College by entering into any verbal or written agreement or arrangement with a third party could materially and detrimentally impact the revenue stream of this Agreement. In such event, and in the event of materially reduced enrollment or elimination by College of the Sequoias of significant programs or departments, the parties agree to discuss the renegotiation of the financial terms of the Agreement.
- h) The Bookstores shall be the exclusive agent for the rental and/or sale of graduation caps and gowns and commencement invitations.
- i) The Bookstores shall also have a non-exclusive right to sell convenience store items such as food, health and beauty items, and other sundries.
- j) Barnes & Noble College will provide exclusive custom publishing services for College of the Sequoias. Such services will include the development of course packs for faculty members, securing the appropriate copyright clearances, printing and binding of course packs and distribution and sale of the course packs in the Bookstores. Complimentary desk copies of course packs will be provided to faculty members.
- k) Barnes & Noble College shall provide special book order services for students, faculty, and staff and make every effort to obtain the earliest possible delivery of such books.
- l) Barnes & Noble College shall provide charge sales for supplies for College of the Sequoias departments and offices. Payments for such charge sales shall be guaranteed by College of the Sequoias and payable within 30 days. Any unpaid balances will be subject to 1% interest per month.
- m) Barnes & Noble College will allow full-time faculty and staff of College of the Sequoias a 10% discount on all merchandise available at the Bookstores except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.

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- n) Barnes & Noble College will offer a 20% discount on all authorized departmental purchases except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
  - o) College of the Sequoias shall not accept advertising, permit tabling or other promotional activities by any seller of college textbooks and/or course supplies other than the Bookstores at any event sponsored by College of the Sequoias or located on the College of the Sequoias campus.
  - p) Barnes & Noble College will work with College of the Sequoias in new student orientation, alumni and faculty outreach through the Igniting the New Student Connection, Igniting the Alumni Connection and Igniting the Faculty Connection programs. To facilitate these programs, College of the Sequoias will provide Barnes & Noble College with all enrolled student, parent, alumni and faculty email lists on an annual basis.
  - q) Barnes & Noble College, in conjunction with College of the Sequoias, will implement Barnes & Noble College's Campus Connect Technologies, including but not limited to registration, student financial aid, LMS and FacultyEnlight integrations, and enrollment feeds.

## 8. Calculated Commission:

On an annualized basis, Barnes & Noble College will pay College of the Sequoias the following Calculated Commission:

**10.0%** of all gross sales up to **\$1,500,000**

**11.5%** of all gross sales over **\$1,500,000**

Gross sales is defined as all collected in-store and online/website sales and textbook rentals at the Bookstores, including the amounts earned from (i) processing transactions for publishers related to the rental of their property and (ii) Barnes & Noble College's marketing programs and relationships with its brand partners, less voids, refunds, sales tax, handling fees associated with non-return of rental textbooks, campus debit card fees, contractually discounted sales (such as discounted department and faculty/staff sales), pass-through income, merchandise sales at less than a 20% initial gross margin, and other merchandise mutually designated as non-commissionable.

If annual gross sales shall materially decrease as a result of legislation, conflicting or other campus agreements, material changes in College of the Sequoias policy or the business model of the industry (such as digital books or direct publisher sales), removal by College of the Sequoias of significant programs or departments, declining enrollment at College of the Sequoias (defined as decreased full- and part-time student enrollment of five percent (5%) or more over the prior year), or other reasons outside the reasonable control of Barnes & Noble College, College of the Sequoias agrees to negotiate in good faith with Barnes & Noble College on an appropriate reduction or other change to the Calculated Commission.

## 9. Payment Schedule:

The applicable Calculated Commission as set forth above hereof shall be made monthly by Barnes & Noble College to College of the Sequoias and shall be paid within thirty (30) days after the close of the month in which they were earned. The final payment for any year shall be made within thirty (30) days after the end of the applicable contract year and will include any adjustments required by the calculation set forth above.

Each payment shall be accompanied by a detailed statement of its computation and Barnes & Noble College shall furnish supporting documentation to College of the Sequoias upon request.

**10. Textbook Scholarships and Donations:**

Barnes & Noble College will provide **\$5,000** for annual textbook scholarships and donations to be awarded at the discretion of College of the Sequoias.

**11. Signing Bonus:**

Barnes & Noble College will provide a **\$50,000** one-time signing bonus to College of the Sequoias to be used at its discretion. Payment of the one-time signing bonus is contingent upon, and shall be made within ninety (90) days after, the successful implementation of Barnes & Noble College's Campus Connect Technologies, including but not limited to registration, student financial aid, and LMS and FacultyEnlight integrations, and enrollment feeds, and College of the Sequoias providing Barnes & Noble College all student email addresses (including incoming students) by agreed upon dates.

Barnes & Noble College will amortize the one-time signing bonus on a straight-line basis over the \_\_\_\_ year period of this Agreement. Should College of the Sequoias cancel or fail to renew this Agreement before the end of that period, then College of the Sequoias shall reimburse Barnes & Noble College for any amount of the investment not yet amortized.

**12. Final Approval of Renovations:**

In order to provide the best possible service for College of the Sequoias's students, faculty and other customers, final approval and necessary alterations of any store plans will be granted to Barnes & Noble College to ensure they meet with Barnes & Noble College's minimum operational and retailing standards.

**13. Sales Markup Basis:**

Barnes & Noble College represents that the sale markup basis at the Bookstores will be as follows:

- a) New textbooks will be sold at no greater than (i) the publisher's list price or (ii) a 25% gross margin on net priced books, inclusive of restocking fees. Net priced books are defined as books purchased from publishers that do not have a publisher's suggested list price or when the publisher's discount to the Bookstores is less than 20%.
- b) Used textbooks will be sold at or less than 25% of the new selling price.
- c) Course packs and textbooks purchased from publishers with restrictive or non-returnable text policies or are single use products will be priced at up to a 30% gross margin.
- d) Barnes & Noble College will set rental fees for each textbook title, and any given title's fee may vary as a percentage of the retail selling price.
- e) School supplies will be priced at or below manufacturers' suggested retail prices.

Barnes & Noble College shall, upon request, provide proof of conformity to pricing policies as specified herein.

**14. Calendar of Operating Hours:**

Barnes & Noble College shall maintain a schedule of operating hours and weeks of business for the Bookstores in accordance with the official College of the Sequoias calendar and in mutual agreement with College of the Sequoias in meeting the needs of the students, faculty and staff. The Bookstores' hours will be extended during each registration period, during the first two weeks of the fall and spring terms, and the first week of each summer session.

For Tulare and Hanford that the hours of operation will be the week before each fall/spring semester start and the first three weeks of each semester, six hours per day. Each campus location will also be staffed during finals week of each semester. Summer hours for these campus locations will be the first two weeks of each session.

**15. Book Orders and Deadlines:**

Barnes & Noble College shall fill orders for books and required supply items from term to term in accordance with textbook and supply adoptions by the faculty. The Bookstores shall be given notice by the faculty or authorized department designees of the textbook and supply adoptions for all courses offered as follows:

- a) On or before October 1 for the spring term.
- b) On or before March 1 for the summer sessions.
- c) On or before April 1 for the fall term.

Barnes & Noble College shall be responsible, at its cost and expense, for contacting in a timely manner all faculty members for their textbook and supply adoptions. College of the Sequoias shall not be responsible for compiling, nor shall it maintain, a list of such adoptions.

**16. Booklist:**

In the course of providing the services contracted for in this Agreement, Barnes & Noble College collects certain information from the faculty through its online research and adoption tool, FacultyEnlight, and/or on its Course Book Information forms. Barnes & Noble College also creates a computer database containing, among other things, course book information (all such information, the "Booklist"). These forms and the database are Barnes & Noble College's proprietary information, created at substantial cost and expense to Barnes & Noble College and used in connection with its business, the retail sale of textbooks.

Should College of the Sequoias require any information that may be contained within the forms or the database either for its educational purposes, or in order to comply with any public records request where no exemption is available (such as an exemption for commercial information), College of the Sequoias understands that it will be responsible for collecting that information from the faculty.

Subject to the "exclusive campus bookseller provision" set forth above, nothing set forth in this paragraph shall be construed to limit in any manner the right of any other off-campus vendor to use its own course book information form to obtain this information from the faculty.

**17. Used Book Purchase and Resale:**

Barnes & Noble College shall buy books from College of the Sequoias faculty, staff and students at the following prices:

- a) When the Bookstores have been notified that the book will be used at College of the Sequoias the following term: 50% of the customer's purchase price (provided the book is a good used copy) until the Bookstores have filled their quota.
- b) In the absence of such notification, or if the book will not be used for the following term, or is to be replaced shortly by a revised edition according to an announcement of the publisher, the book will be purchased at the wholesale price.
- c) Used books in good condition will be sold by Barnes & Noble College at 25% less than the new selling price.

**18. Refunds and Exchanges:**

Barnes & Noble College shall offer refunds and exchanges as follows:

- a) Textbooks and Required Course Materials

The Bookstores will issue refunds in the original form of payment for textbooks and required course materials purchased at the Bookstores if returned in the original condition, with an original receipt and within the first week of classes. Within 30 days of the first day of classes, textbooks and required course materials will be refunded with an original receipt and with a valid proof of add/drop.

- b) General Reading Books, Medical and Specialty Reference Books, Software, Audio, Video, & Small Electronics

The Bookstores will issue refunds in the original form of payment if returned in the original condition, with an original receipt and within fourteen (14) days of purchase. Opened software, audio books, DVDs, CDs, music and small electronics may not be returned for a refund but can be exchanged for the same item if defective.

- c) All Other Merchandise

The Bookstores will issue refunds in the original form of payment any time during the semester for other merchandise purchased at the Bookstores if returned in the original condition and with the original receipt. If without a receipt, a store credit will be issued at the current selling price.

Refunds or exchanges will not be issued for the following items: food and beverages, unwrapped loose leaf books or shrink wrapped titles which do not have the wrapping intact, digital content once accessed or activated, custom course materials, outlines, study guides, school guides, magazines, gift cards, phone cards, newspapers, magazines, and prepaid cards.

**19. Policy Posting:**

Barnes & Noble College shall post conspicuously policies concerning refunds, buybacks, and exchanges.

**20. Repurchase of Inventory**

College of the Sequoias shall repurchase, or require a successor contractor to purchase, Barnes & Noble College's inventory at cost in the event of cancellation of this Agreement, in the same manner as purchased by Barnes & Noble College.

In the event of cancellation of this Agreement, College of the Sequoias shall purchase, or require a successor contractor to purchase, Barnes & Noble College's rental inventory outstanding at the time of the transition, at the buyback value (50% of the retail price).

Should College of the Sequoias change logo or contracted athletic apparel provider/licensee, College of the Sequoias will either give Barnes & Noble College six months written notice or will allow Barnes & Noble College to automatically deduct from commissions due the cost of unsold emblematic merchandise.

**21. Access to Point of Sale (POS) Financial and Accounting Information:**

College of the Sequoias shall be provided access, with sufficient notice, to the Bookstores accounting records. This may include sales information captured by Barnes & Noble College's POS system. This will be done in compliance with PCI guidelines that protect card holder information. Store POS reports are available by register. All POS activity is verified daily by the Home Office Sales Audit system. In addition, all registers have:

- a) Transaction number controls with further security level restrictions by cashier type.
- b) Electronic Journal, receipt and detail tape provisions, with required PCI protection.
- c) Display window for customer viewing.

**22. Insurance:**

Barnes & Noble College shall procure at its own expense, and maintain during the existence of this Agreement, the following policies of insurance in connection with the operation of the Bookstores:

- a) Worker's Compensation and Employer's Liability Insurance and such other insurance as may be required under applicable state statutes.
- b) Comprehensive General Liability Insurance subject to \$3,000,000 limits.
- c) Property Damage Liability Insurance in the amount of \$1,000,000.
- d) Motor Vehicle Liability Insurance with limits of \$100,000 per person, \$300,000 per occurrence, and \$50,000 property damage.

At the request of College of the Sequoias, Barnes & Noble College shall obtain and deliver certificates evidencing such insurance from its insurers. Barnes & Noble College shall indemnify, defend, and save College of the Sequoias harmless from claims which may arise in connection with the operation of the Bookstore facilities specified herein and sales of products or performance of any service under this Agreement or injuries or death caused by Barnes & Noble College vehicles on the Bookstores' premises, except for claims caused by College of the Sequoias or any of its employees, agents or representatives, for which College of the Sequoias shall indemnify, defend, and save Barnes & Noble College harmless.



Barnes & Noble College's insurance policies for the Bookstores shall name College of the Sequoias as an additional insured, but only with respect to liability arising out of operations performed for such insured by or on behalf of the name insured.

### 23. General Terms and Conditions:

- a) Confidentiality. During the term of this Agreement, each party may be provided information that relates to the other party's financial, marketing, or customer information, research, development, business activities, products, services, technical knowledge, and personally identifiable student and employee information. To the extent permitted by law, including any public record disclosure law that may be applicable, all such information (including the Agreement itself) shall be deemed "Confidential Information". Each party may use the Confidential Information of the other party only in connection with the specific duties authorized by this Agreement and shall not, directly or indirectly, use, copy, disclose, or disseminate to any other person or entity any Confidential Information. Each party agrees to protect the confidentiality of the Confidential Information in the same manner that it protects its own confidential information but with no less than a reasonable standard of care. The obligations set forth herein shall not apply to any Confidential Information that becomes known to the public through lawful means and without violation of any law or agreement not to disclose such Confidential Information.

Each party further agrees it shall cause its personnel and representatives to agree to be bound by the terms of this Agreement and be responsible for any of their breach thereof. To the extent legally permissible, each party agrees to notify the other party of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure. If a party is required by an interrogatory, subpoena, civil investigative demand, or similar process to disclose any Confidential Information, to the extent legally permissible, such party shall promptly provide written notice to the other party so the other party may seek to avoid or minimize the required disclosure or, in the discretion of the disclosing party, waive compliance with the provisions of this Agreement. The terms of this section shall survive the expiration or termination of this Agreement.

- b) Notices. All notifications pursuant to this Agreement shall be sent to the following individuals by certified mail or overnight delivery service:

College of the Sequoias  
**[Name, Title/Department, Address]**

Barnes & Noble College  
 Kim Otte  
 Vice President, Stores  
 2605 Sagebrush Drive, Suite 102  
 Flower Mound, TX 75028

with a courtesy copy to:  
 Barnes & Noble College Booksellers, LLC  
 120 Mountain View Blvd.  
 Basking Ridge, NJ 07920  
 Attn: Legal Department

- c) Environmental Matters. To the best of its knowledge, College of the Sequoias is not aware of any health or environmental problems which currently exist or are likely to develop in the buildings or physical facilities which house the Bookstores. College of the Sequoias shall be responsible for remedying promptly any health or environmental problem at the Bookstores, other than those caused by Barnes & Noble College, and notifying Barnes & Noble College accordingly.

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- d) Compliance with Laws. Barnes & Noble College and College of the Sequoias shall comply with all laws, ordinances, rules, orders, and regulations of federal, state and municipal governments, and of any and all of their departments, divisions, bureaus, and subdivisions, applicable to their performance under this Agreement.
- e) Independent Parties. The relationship established under this Agreement between College of the Sequoias and Barnes & Noble College is that of independent third parties. This Agreement shall not be construed to create a partnership, joint venture, agency, or other association between the parties or their respective employees. Unless otherwise provided in this Agreement, neither party nor its employees, agents, or subcontractors has any authority to bind or act on behalf of the other party.
- f) Marks. The names, trademarks, and logos of each party are the exclusive property of such party, and each party reserves all rights in and to its own marks. Each party shall use the marks of the other party only in connection with its performance under this Agreement, provided, however, Barnes & Noble College may use College of the Sequoias's name in any of its required public filings.
- g) Force Majeure. Barnes & Noble College and College of the Sequoias shall be excused for the period of any delay in performance of any obligations hereunder when prevented from doing so by the wrongful or negligent acts or omissions of the other party or by causes beyond either party's control, which shall include civil disturbances, extreme weather conditions, war, invasions, military or usurped power, sabotage, governmental regulations or controls (including bona fide delays in obtaining building and similar permits and approvals), fires or other casualty, or acts of God.
- h) Limitation of Liability. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY BARNES & NOBLE COLLEGE TO COLLEGE OF THE SEQUOIAS IN THE PREVIOUS SIX MONTHS (OR PORTION THEREOF IF THIS AGREEMENT HAS BEEN IN EFFECT LESS THAN SIX MONTHS) UNDER SECTION 8 OF THE AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR INDIRECT DAMAGES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, LOST USE, REVENUE, OR PROFIT, OR OTHER ECONOMIC LOSSES) EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- i) Waiver; Amendment. No change, modification or amendment of this Agreement shall be valid unless the same shall be in writing and signed by both parties hereto. No express waiver will affect any provision other than that to which the waiver is applicable and only for that occurrence. Failure or delay of a party to enforce any of its rights under this Agreement is not deemed a modification or a continuing waiver by such party of any of its rights hereunder.
- j) Headings and Interpretation. The headings used in this Agreement are for convenience only and do not constitute substantive matter to be considered in construing its terms. The use in this Agreement of the terms (a) "include", "includes", "including", and "such as" shall be deemed in all cases to be followed by the words "without limitation" and (b) "shall", "must", and "will" are equivalent and indicate mandatory and definitive requirements in all cases.

When used in this Agreement College of the Sequoias includes all segments of the institution including all alumni, athletic and academic departments.

This Agreement will be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either party.

- k) Severability. The presence in the text of this Agreement of any clause, sentence, provision, paragraph or article held to be invalid, illegal or ineffective by a court of competent jurisdiction shall not impair, invalidate or nullify the remainder of this Agreement. The effect of any such holding shall be confined to the portion so held invalid.
- l) Authority. Each party represents and warrants (a) it has all right, power, and authority to enter into this Agreement and to fully perform its obligations hereunder and (b) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.
- m) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all agreements, either oral or written, between College of the Sequoias and Barnes & Noble College with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure to the benefit of College of the Sequoias and Barnes & Noble College and their successors and permitted assigns.
- n) Signatures and Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but which together will constitute one and the same agreement. Counterparts and signed copies may be transmitted via electronic means and shall constitute originals for all purposes.

IN WITNESS WHEREOF, the parties, by signature below of their duly authorized agents, have executed this Agreement as of the last date written below.

**College of the Sequoias  
LLC**

**Barnes & Noble College Booksellers,**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Notices to KCAPTA should be addressed to:

Angie Dow, Executive Director  
Kings County Area Public Transit Agency  
610 W. 7th Street  
Hanford, CA 93230

Notices to COS should be addressed to:

Brent Calvin  
Vice President, Student Services  
College of the Sequoias  
915 S. Mooney Blvd.  
Visalia, CA 93277

KCAPTA or COS may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first herein above written.

**KINGS COUNTY AREA PUBLIC TRANSIT AGENCY**

Angie Dow 12/6/2017  
Name Date

Executive Director

Title

**COLLEGE OF THE SEQUOIAS:**

A. Calvin 12/13/17  
Name Date

V.P.

Title

# AGREEMENT #18-03

## FOR TRANSIT SERVICES

### BETWEEN THE KINGS COUNTY AREA PUBLIC TRANSIT AGENCY (KCAPTA) AND THE COLLEGE OF THE SEQUOIAS (COS)

This Agreement (hereinafter "Agreement") is made and entered into this \_\_\_ Day of \_\_\_\_\_ 2017, by and between the Kings County Area Public Transit Agency, hereinafter referred to as "KCAPTA" and the College of the Sequoias, hereinafter referred to as "COS".

#### RECITALS

WHEREAS, on September 23, 2010 COS students voted to implement a mandatory transportation fee that would, among other things, be used to sponsor a program under which COS students would be able to obtain an unlimited ridership fixed route transit pass for Kings County Area Public Transit Agency; and

WHEREAS, in May 2014 COS students voted to implement an additional mandatory fee to contribute to the existing COS Student Transit Pass Program (hereinafter the "Program"); and

WHEREAS, the COS Associated Student Body determined by a majority of the votes cast to implement a \$10.00 per semester fee for full time students (6 units or more) and \$9.00 per semester fee for part time students (5 units or less) which is collected from students each semester; and

WHEREAS, the COS Board of Trustees will contribute \$1.00 to the transportation fund for each COS student that is enrolled, per semester in the semester in which they are enrolled; and

WHEREAS, additional funding for the COS Student Transit Pass Program may be received from grants and other sources and may be applied during the contract period of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **TERM.** The Term of the Agreement shall commence on January 1, 2018 and continue until December 31, 2018. The Agreement may be renewable for similar or different terms and conditions upon mutual agreement between KCAPTA and COS.
2. **INDEPENDENT CONTRACTOR.** While engaged in carrying out and complying with the terms and conditions of this Agreement, KCAPTA is an independent contractor, and not an officer, agent, or employee of COS.
3. **SERVICES.** COS desires to sponsor a program with KCAPTA that will allow for



unlimited rides to COS students on KCAPTA Fixed Route System during the fall, spring, and summer COS college semesters (hereinafter "COS Sponsored Services"). COS Sponsored Services shall also include unlimited rides to COS students eligible for complimentary paratransit services pursuant to the Americans with Disabilities Act (hereinafter "ADA") on KCAPTA's Dial-A-Ride paratransit services (hereinafter "DAR"). The COS Sponsored Services performed by KCAPTA will run from August through December for the fall semester, January through May for the spring semester, and June through July for the summer semester.

4. **PAYMENT.** For COS Sponsored Services on KCAPTA Fixed Route System, COS shall pay to KCAPTA TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000) per year, payable in two separate installment invoices for which will be provided by KCAPTA. For COS Sponsored Services for ADA qualified COS students on KCAPTA's DAR service, COS shall provide KCAPTA cash cards to be utilized by qualified COS students in which COS will purchase separately from KCAPTA.
5. **DEFAULT/TERMINATION.** If KCAPTA or COS default in any of the covenants or conditions of this Agreement, either agency may terminate this Agreement upon 30 days advance written notice. Either party may terminate this Agreement for convenience upon 60 days advance notice. Notwithstanding the foregoing notice of termination requirement, services shall only be terminated at the end of the fall (ending in December) semester or spring (ending in May) semester.
6. **AMENDMENTS.** This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by both parties. The parties shall amend this Agreement in response to any regulatory or statutory or requirements imposed by any local, state or federal agency with jurisdiction over the activities of either party. If the parties are unable to agree to an amendment based upon the foregoing, either party may terminate this Agreement in accordance with the provisions of Section 5 above.
7. **JURISDICTION AND VENUE.** This agreement shall be administered and interpreted under the laws of the State of California. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Kings County, California. COS hereby expressly waives any right to remove any action to a county other than Kings County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
8. **BINDING EFFECT.** This Agreement is for the benefit of and shall be binding on all parties and their respective successors, heirs, and assigns.
9. **ATTORNEY'S FEES AND COSTS.** Each party shall bear his/its own attorney's fees and costs for all such fees and costs incurred prior to the date of execution of this Agreement.
10. **BREACH OF AGREEMENT.** If either party breaches this Agreement, the prevailing party shall be entitled to all damages reasonably flowing from the breach.

11. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy of an original, with all signatures appended together, shall be deemed a fully executed Agreement.
12. **SEVERABILITY.** If any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.
13. **INTERPRETATION.** The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.
14. **COMPLIANCE WITH LAW.** KCAPTA agrees to perform the services contemplated by this Agreement in a professional and a competent manner and in compliance with all state or federal laws or regulations governing the services to be rendered pursuant to this Agreement.
15. **BOARD APPROVAL.** The parties recognize that the effectiveness of this Agreement is contingent upon approval by the Kings County Area Public Transit Agency Board and College of the Sequoias Board.
16. **OTHER DOCUMENTS/ACTS.** The parties agree to work together diligently and to execute related documents and perform related acts necessary for the successful performance of this Agreement. COS agrees to provide KCAPTA with all documents that COS may need in order to comply with any reporting requirements related to the COS Sponsored Services imposed by the Federal Transit Administration on KCAPTA.
17. **ENTIRE AGREEMENT.** This Agreement and its attachments, if any, constitute the entire agreement and understanding between the parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed merged into this Agreement and its attachments.
18. **NOTICES TO PARTIES.** All notices to be given to the parties to this Agreement shall be in writing and served by depositing same in the United States Mail, postage prepaid, registered or certified mail.



210 North Church St. Suite B.  
Visalia, California 93291  
Phone (559)623-0450  
Fax (559)733-6720  
[www.tularecog.org](http://www.tularecog.org)

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January 29, 2014

Karen Pauls  
College of the Sequoias  
915 S. Mooney Blvd  
Visalia, CA 93291

Re: Agreement No. 2014-104 First Amendment with COS for Board Fee Increase

Enclosed for your records is your copy of TCAG Agreement No. 2014-104, First Amendment with COS for Board Fee Increase. Should you have any questions regarding this agreement, please contact Christine Chavez, Associate Regional Planner at your earliest convenience at 559-623-0452.

Thank you.

Sincerely,

  
Doreen C. Alvez  
Secretary III



**FIRST AMENDMENT TO AGREEMENT  
FOR TRANSIT SERVICES  
BETWEEN THE TULARE COUNTY ASSOCIATION OF GOVERNMENTS (TCAG)  
AND THE COLLEGE OF THE SEQUOIAS (COS)**

This is an amendment to the agreement entered into on December 13, 2010. The amendment is effective on Dec. 9, 2013 between the College of the Sequoias, hereinafter referred to as "COS" and the Tulare County Association of Governments (TCAG) hereinafter referred to as "TCAG" with reference to the following:

WHEREAS, TCAG and COS entered into Agreement on December 13, 2010, for the purpose of establishing an agreement for COS Student Transit Pass Program Transit Services; and

WHEREAS, TCAG and COS agree that there is the need to increase the revenue for the Student Transit Pass Program to cover rising costs of providing unlimited fixed route rides on transit systems in Tulare and Kings County; and

WHEREAS, TCAG and COS agree to amend the Agreement as described below.

**ACCORDINGLY, IT IS AGREED:**


- I. Item Number Three (3) "PAYMENTS" is amended to read as follows, after the already existing paragraph :

Beginning in the Spring 2014 semester, the COS Board of Trustees will contribute \$1.00 to the transportation fund for each COS student that is enrolled, per semester, in the semester in which they are enrolled.

- II. Except as provided above, all other terms and conditions of Agreement for Transit Services shall remain in full force and effect.


**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**Tulare County Association of Governments**

By   
Executive Director

Date 1/27/14

**COLLEGE OF THE SEQUOIAS**

By   
Superintendent/President

Date 12-11-13

**COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT**  
**Board of Trustees Meeting**  
August 8, 2016

**CALIFORNIA STATE UNIVERSITY FRESNO AND  
COLLEGE OF THE SEQUOIAS MEMORANDUM OF  
UNDERSTANDING**

**13**

**Status:                      Action**

Presented by:              Christine Statton  
   Vice President, Administrative Services

**Issue**

California State University, Fresno (Fresno State) offers upper division courses with a variety of educational programs leading to Bachelor's and Master's degrees through the use of on-site instruction and distance learning technology at the College of the Sequoias campus. The University also desires to expand their offerings to include Accelerated Bachelor degree offerings at the College of the Sequoias campus.

The College of the Sequoias (COS) offers lower division courses with a variety of educational programs leading to Associate of Arts degrees. Many of these degrees transfer directly into Bachelor degrees such as those offered by Fresno State.

Fresno State and COS desire to enhance the educational opportunities for the residents of Visalia, Tulare, Hanford, and surrounding communities. As such, COS plans to lease the Live Oak Building to Fresno State free of charge according to the proposed MOU, for the next five years, and in return, Fresno State will expand its offerings on the Visalia Campus, to all COS students. The array of programs offered will include non-credit professional development as well as credit-bearing course work and, when system and accrediting agency standards are met, degree programs. Fresno State will implement a two-year action plan that identifies non-credit professional certificates and other accelerated higher education degree programs through self-support (Continuing and Global Education).

The details of the facility lease, student services, library services and administrative services offered by COS, including utilities, maintenance, and technology support are spelled out in the MOU, as are the responsibilities of COS and Fresno State. The details of library services and student support services will be addressed in an addendum to this agreement, which will be submitted to the Board of Trustees this fall. COS and Fresno State desire to enter into this Memorandum of Understanding for a period of five years, commencing from the execution date through June 30, 2021, with the option of another five-year term upon the mutual agreement by both parties. This agreement may be modified, amended or cancelled at any time by the mutual written consent of all parties.

**Recommended Action**

It is recommended that the Board of Trustees approve the Memorandum of Understanding between California State University Fresno and College of the Sequoias for the use of Live Oak Building and other agreed upon services.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CALIFORNIA STATE UNIVERSITY, FRESNO  
AND  
COLLEGE OF THE SEQUOIAS**

**WHEREAS**, California State University, Fresno (hereinafter "Fresno State") offers upper division courses with a variety of certificate and educational programs at the College of the Sequoias campus, and;

**WHEREAS**, the College of the Sequoias (hereinafter "COS") offers lower division courses with a variety of educational programs leading to Associates of Arts degrees, and;

**WHEREAS**, Fresno State and COS desire to enhance the higher education opportunities for the residents of Visalia and surrounding communities.

**WHEREAS**, Fresno State and COS will work collaboratively and in partnership to provide enrollment, transition, and student success services and programs to meet student needs and support their graduation.

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual promises herein contained, the parties agree as follows:

**I. RESPONSIBILITIES OF COS**

- A. COS will provide Fresno State with the opportunity to occupy the Live Oak building which contains approximately 9,600 square feet of instructional and office spaces.
  - The building is under warranty by the general contractor for one-year expiring May 25, 2017. There is an extended warranty of the HVAC equipment and roof system; specific dates of warranty coverage may be obtained from the COS Facilities Department.
- B. COS agrees to provide use of entire building at no cost to Fresno State including electricity, natural gas, and water. COS will provide grounds and landscape service until June 30, 2019. COS will control HVAC and building lighting on an energy management system and will schedule usage as coordinated with the COS Facilities Department.
- C. COS will perform preventative maintenance and inspections as needed. COS will provide building maintenance and repairs for any items costing \$100.00 or more, excluding damages caused by occupants (Fresno State) and/or those caused by Fresno State usage. Fresno State will handle the maintenance and repair for all furniture, fixtures, and equipment.
- D. COS will provide telecommunications (low voltage) infrastructure and internal building wiring as required to provide voice, data, Wi-Fi and video services. COS will provide limited on-site technical assistance as needed.

- E. COS will advertise the availability of Fresno State offerings in COS publications to the extent possible.
- F. COS library services, parking permits, student ID cards, health services, and services for students with disabilities for Fresno State students will be outlined in an addendum to this agreement dated prior to October 31, 2016.

## **II. RESPONSIBILITIES OF FRESNO STATE**

- A. Fresno State will offer educational opportunities to students in the geographic region of Visalia. Fresno State will schedule classroom space exclusive to the program's best interest and anticipated student demand. The array of programs will include non-credit professional development as well as credit-bearing course work and, when system and accrediting agency standards are met, degree programs. Fresno State classes will operate days, nights, and weekends, and may be outside of traditional COS class hours. Revenue received from Fresno State programs remains Fresno State's exclusive income to be used according to Fresno State Policy and Policies of the California State University.
- B. Fresno State will implement a two-year action plan that identifies non-credit professional certificates and other accelerated higher education degree programs through self-support (Continuing and Global Education) in accordance with the proposed timeline.
- C. Fresno State will complete a Needs Assessment for Self-Support programs that would benefit COS students and the residents of Visalia and the surrounding communities.
- D. Fresno State will assign a staff person from the Division of Student Affairs and Enrollment Management who will be on-site weekly to coordinate student services and programs including transfer counseling services for any COS student who seeks to transfer to Fresno State.
- E. Fresno State will fund the furnishings and technology equipment required for instruction and for staff administrative needs.
- F. Fresno State will be responsible for executing a contract for custodial services, and will take responsibility for the maintenance of the landscaped areas commencing July 1, 2019.
- G. Fresno State will transfer ownership of existing portable classrooms ("as-is") owned by Fresno State to COS at no cost.

## **III. STUDENT HEALTH SERVICES**

- A. COS health services for Fresno State students will be outlined in an addendum to this agreement dated prior to October 31, 2016.

## **IV. SERVICES FOR STUDENTS WITH DISABILITIES**

- A. Services for Students with Disabilities (SSD) will provide assistance to help students receive the accommodations necessary to facilitate their learning. A variety of accommodations to meet different learning and classroom needs are available.

- B. Students with disabilities who wish to request accommodations must initiate the request personally with Fresno State SSD.
- C. Verification of the eligibility of Fresno State students with disabilities for accommodation and determination of appropriate is solely the responsibility of SSD.
- D. SSD will give the student a copy of the California State University Board of Trustees Policy on Disability Support and Accommodations - Executive Order Number 926.
- E. Communication with professors for accommodations for Fresno State students will be prepared by SSD.

## **V. TECHNOLOGY SERVICES**

- A. Fresno State will purchase VOIP handsets.
- B. Fresno State and COS will coordinate phone system service for Fresno State.
- C. Fresno State will be responsible for installing and maintaining any wireless access points.
- D. COS will provide limited technical on-site support as needed.

## **VI. MARKETING AND BRANDING OF FRESNO STATE PRESENCE AND PARTNERSHIP**

- A. The name of the site is Fresno State Visalia Campus.
- B. Fresno State will provide a logo for Fresno State Visalia Campus following the University's established brand guidelines.
- C. Fresno State will provide upon request to COS the Fresno State Visalia Campus logo for use in COS promotional materials.
- D. When the physical location is referenced, both parties will use "at College of the Sequoias."
- E. Fresno State will seek prior written design approval from COS for the furnishing and installation of any exterior or interior branding and way finding signage to ensure architectural and aesthetic compatibility with any COS architectural design standards

## **VII. TERM, MODIFICATION AND CANCELLATION**

- A. This agreement constitutes the entire statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements oral and written, between the parties relating to the subject matter of this MOU.
- B. The initial term of this memorandum of understanding shall be five (5) years commencing from the execution date through June 30, 2021, with the option of another five-year term upon the mutual agreement by both parties.
- C. This agreement may be modified, amended or cancelled at any time by the mutual written consent of all parties.

## **VIII. INDEMNIFICATION**

- A. California State University, Fresno agrees to defend, indemnify and hold harmless College of the Sequoias and its officers, agents and employee from any and all liability, claims, actions, and damages of whatever kind, arising out of any act of omission of California State University, Fresno, its officers, agents or employees arising out of or in any way connected to California State University, Fresno's performance under this agreement.
- B. College of the Sequoias agrees to defend, indemnify and hold harmless California State University, Fresno and its officers, agents and employee from any and all liability, claims, actions, and damages of whatever kind, arising out of any act or omission of College of the Sequoias, its officers, agents or employees arising out of or in any way connected to College of the Sequoias performance under this agreement.

**COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT**

\_\_\_\_\_

Superintendent/President

\_\_\_\_\_

Date

\_\_\_\_\_

President, Board of Trustees

\_\_\_\_\_

Date

**CALIFORNIA STATE UNIVERSITY, FRESNO**

\_\_\_\_\_

President

Date

\_\_\_\_\_

\_\_\_\_\_

Provost and Vice President for Academic Affairs

\_\_\_\_\_

Date



**ADDENDUM TO  
MEMORANDUM OF UNDERSTANDING  
BETWEEN  
COLLEGE OF THE SEQUOIAS  
AND  
CALIFORNIA STATE UNIVERSITY, FRESNO**

Through this addendum to the MOU between College of the Sequoias (COS) and California State University, Fresno dated August 8, 2016, COS and Fresno State agree regarding how the parties shall coordinate and/or share the following services on their Visalia campus.

**Disabilities Services**

- Fresno State and College of the Sequoias will each specify a contact person within each of our offices to spearhead service delivery as needed by our students. They will work in collaboration to meet student accommodations/needs. Fresno State contact person will be the Director of Services for Students with Disabilities. COS will be represented by Sandra Calderon, Director of the Access and Ability Center.

**Financial Aid/Enrollment/Transfer/Career Services**

- Fresno State will provide one Recruitment Counselor to visit COS (one day a week) and serve as a conduit for new transfer enrollment, advising, and provide referrals for financial aid issues. College of the Sequoias has assigned Mainou Her and Amy Pimentel to serve in collaboration with Fresno State staff to meet student needs. Fresno State has assigned Director of Undergraduate Student Recruitment (or their designee) to work with the College of Sequoias.

**Student ID Cards**

- Fresno State students will be provided College of the Sequoias student ID cards at no cost by student activities office for access to computer labs, parking (fee), library and other campus areas.

**Student Health and Counseling Center**

- Fresno State and College of the Sequoias will provide services for these students at the Fresno State main campus as needed. Assistant Vice President for Student Affairs Administration will serve as the contact person.

**Career Development Service**

- The Career Development Center at Fresno State will work with College of the Sequoias career staff to assess student career services needs and a service delivery plan will be developed. Online one-on-one career counseling services will be made available to students. The Director of Career Development Center will serve as the Fresno State contact. Mainou Her will be the COS contact.

**Testing Services**

- Fresno State will work with College of Sequoias to determine the need for standardized testing based on the educational and career paths of students. A plan will be developed for administering tests in high demand areas. The Associate Vice President for Student Success Services will serve at the contact person.

**Educational Opportunity Program**

- Fresno State and College of the Sequoias will designate staff to work in partnership on seamless transfer of Educational Opportunity Program students from College of the Sequoias to Fresno State.
- Adrian Beltran will represent College of the Sequoias and Fresno State will be represented by the Director of the Educational Opportunity Program (EOP).

**Tutoring/Supplemental Instruction**

- As program expands into second year, Fresno State will collaborate with College of the Sequoias to offer online tutoring for selected courses where tutoring is not available on the College of Sequoias campus. Staff to be assigned at a later date as needs materialize.

**Learning Resource Center/Library**

- Fresno State students will have full access to the COS Library resources and services at all three COS sites and online. Amanda Dinscore will serve as the Fresno State contact. Mary-Catherine Oxford, Director LRC, will be the COS contact. FSU will provide COS at least one staff off-campus login to ensure FSU students are able to receive the same level of FSU reference and instructional services while at COS.

**Custodial Services, Custodial Supplies, and Garbage/Waste Services**

- College of the Sequoias will provide custodial services, custodial supplies, and garbage/waste disposal services to Fresno State for a cost of \$24,000 per year, to be invoiced on July 1 and February 1 of each year. Invoices will be sent to the office of the Vice President for Administration. The annual cost of salaries and benefits for the part-time custodian (currently \$20,000 per year) will increase annually equivalent to any negotiated salary increases for COS classified staff, and any applicable mandated employer PERS contribution rate increases. The annual invoices to Fresno State will increase accordingly.

**COLLEGE OF THE SEQUOIAS**

Stan A. Carrizosa 10-10-16  
Superintendent/President Date

Xosha Beltran 10/10/16  
President, Board of Trustees Date

**CALIFORNIA STATE UNIVERSITY, FRESNO**

James A. Cu 10/26/16  
President Date

Lynette Salazar 10/25/16  
Provost and Vice President for Academic Affairs Date

Isabella Ocasio 10/25/2016  
Vice President for Administration Date

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- B. College of the Sequoias agrees to defend, indemnify and hold harmless California State University, Fresno and its officers, agents and employee from any and all liability, claims, actions, and damages of whatever kind, arising out of any act or omission of College of the Sequoias, its officers, agents or employees arising out of or in any way connected to College of the Sequoias performance under this agreement.

**COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT**

Stan A. Carrizosa  
Superintendent/President

8.8.16  
Date

Xavier B. ...  
President, Board of Trustees

8/8/16  
Date

**CALIFORNIA STATE UNIVERSITY, FRESNO**

John A. ...      8/16/16  
President      Date

Lynnette Seligson  
Provost and Vice President for Academic Affairs

8/15/16  
Date