

JOINT DEVELOPMENT AND USE AGREEMENT FOR MCCOY ARTS AND CULTURAL CENTER

This JOINT DEVELOPMENT AND USE AGREEMENT ("Agreement") is entered into this _____ day of _____, 2025 ("Effective Date"), between the **TOWN OF MAMMOTH LAKES**, a California municipal corporation whose mailing address is P.O. Box 1609, Mammoth Lakes, California 93546 ("Town"), and the **KERN COMMUNITY COLLEGE DISTRICT**, a political subdivision of the State of California, with its principal place of business located at 2100 Chester Avenue, Bakersfield, CA 93301 ("District") on behalf of its Cerro Coso Community College ("CCCC"), which includes the Eastern Sierra College Center, located at 101 College Parkway, Mammoth Lakes, CA 93546 ("Mammoth Campus") Town and District shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

This Agreement is based upon the following facts and understandings of the Parties:

A. In November 2000, voters of the District approved a ballot measure known as "Measure C" to authorize the sale of bonds by District to generate funds to expand, improve and renovate facilities in Mammoth Lakes.

B. District has previously entered into a "Joint Development and Use of Facilities Agreement" dated November 30, 2018 ("MLF Agreement") with the Mammoth Lakes Foundation, a nonprofit corporation based in Mammoth Lakes ("MLF").

C. The MLF Agreement contemplated that MLF would construct an "events center facility" on real property owned by MLF located at 100 College Parkway, in Mammoth Lakes, California, consisting of APN 035-010-049-000 ("Property").

D. The MLF Agreement further contemplated that District would contribute \$7,500,000 in funds from Measure C to the construction of the events center facility, and would obtain certain rights in return. The MLF Agreement contained further provisions setting forth the rights and obligations of District and MLF, respectively.

E. MLF has concluded that the Mammoth Lakes community is best served by MLF conveying the Property to Town and Town constructing a facility to be known as the McCoy Arts and Cultural Center ("MACC"). A draft site plan for the MACC is attached as Exhibit A.

F. Town and MLF intend to enter into an agreement for the conveyance of the Property to Town, and construction of the MACC by Town, and the provision of certain funds to Town by MLF for the MACC project.

G. Town and District have concluded that their shared goal of ensuring the construction and operation of the MACC can best be accomplished by construction of the MACC

by Town, pursuant to Town's agreement with MLF. Accordingly, Town and District wish to enter into this Agreement to supersede and replace the MLF Agreement.

H. The purpose of this Agreement is to specify the Parties' rights and obligations with respect to the funding, construction, and use of the MACC.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, District and Town agree as follows:

1. Term. This Agreement shall be in effect for a period of 99 years from the date of its execution by the Parties, subject to earlier termination as provided herein.

2. Construction of the MACC.

A. The MACC shall be designed by a licensed architect retained by Town and acceptable to District. The MACC shall be designed and constructed to meet all applicable building codes. The MACC shall consist of a 250-seat theater, approximately 7,500 square feet in size. Town shall pay for design and development of the MACC with funds derived from any source other than District's contribution as set forth herein.

B. Town intends to commence construction of the MACC in 2025.

C. District shall have the right to review all payment requests from the prime contractor constructing the MACC.

3. Title to MACC. Town shall retain title to the Property (following its acquisition from MLF) and to the MACC, subject to the District's right to use the MACC as set forth herein.

4. Disbursement of Funds by District. District shall provide to Town \$7,500,000 in Measure C funds to support construction of the MACC ("District Contribution"). Town may request disbursement of the District Contribution at any time following the execution of this Agreement. Town's request shall include evidence of Town's right to acquire the Property upon completion of the MACC, and District acknowledges that Town will not own the Property prior to completion of the MACC. District shall promptly disburse the District Contribution following Town's request. District acknowledges that Town will request disbursement of the District Contribution prior to awarding the contract for construction of the MACC, and that Town cannot award the contract prior to having received the District Contribution.

5. Operating Costs and Maintenance of the MACC. Town shall be solely responsible for all costs and expenses relating to operation of the MACC, including without limitation water, electricity, gas, sewage, plumbing, heating, building repairs, waste remove, Internet connections, snow removal, security, janitorial, parking lot repair and maintenance, and landscaping

maintenance. Town shall maintain the MACC in compliance with all public health, safety, and building laws and regulations, and shall repair any damage as soon as is practicable.

6. Operation and Use of the MACC.

- A. Town shall be responsible for the day-to-day operations of the MACC and scheduling its use.
- B. Town shall provide District with use of the MACC free of charge, as set forth herein. Provided that District has requested use of the MACC not less than 60 days in advance and no other events or uses are already scheduled for the requested date(s), Town shall reserve the MACC for District's use and allow District to use the MACC. District shall execute Town's standard facility use agreement in connection with each use of the MACC by District. District shall not use the MACC to host classes or for other educational uses.
- C. District and Town shall endeavor to develop and enter into a separate agreement for use and management of the Mammoth Campus parking lot for events occurring at the MACC, whether or not such events are affiliated with District.

7. Insurance and Indemnity.

- A. Each Party shall defend, hold harmless and indemnify the other Party (and its officers, employees, trustees, agents, successors and assigns) against all claims, suits, expenses (including reasonable attorneys' fees), losses, penalties, fines, costs and liability whether in contract, tort or strict liability (including without limitation personal injury, death, and property damage) arising out of or made necessary by the indemnifying party's performance of this Agreement or breach of its terms.
- B. Except as set forth below, each Party shall obtain, pay for and maintain in effect during the term of this Agreement the following policies of insurance issued by an insurance company rated not less than A-, VI in Best's 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 California law. Each Party's policies shall contain endorsements naming the other Party as an additional insured with respect to this Agreement, and (if such endorsement is available) provide that written notice shall be given to the other Party at least 30 days prior to cancellation or material change in the form of the policy or reduction in coverage. Each Party shall furnish the other Party with a certificate of insurance containing the endorsements required under this paragraph, and each Party shall have the right to inspect the other Party's original insurance policies upon request. Upon notification of receipt of a notice of cancellation, change or reduction in coverage, the

Party giving notice shall immediately file with the other Party a certified copy of the required new or renewal policy and certificates for such policy.

- C. Nothing in this section concerning minimum insurance requirements shall reduce a Party's liabilities or obligations pursuant to the indemnification provisions of this Agreement.
- D. Town shall require any contractor engaged to construct or modify the MACC to furnish District with a separate certificate of insurance and endorsements showing commercial general liability insurance and workers' compensation insurance with minimum coverage in the same amounts required in paragraph B above, naming Town and District as additional insureds. Town shall further require the prime contractor constructing the MACC to obtain builder's risk insurance with a coverage limit not less than the construction cost listed in Town's contract with the prime contractor, naming Town and District as additional insureds.
- E. Town may increase the policy limits of all policies of insurance required hereunder in Town's sole discretion.

8. Damage to MACC.

- A. In the event of damage to the MACC from fire or other insurable loss, Town shall apply all available insurance proceeds to repair or restore the MACC. If repair or restoration is prohibited or infeasible pursuant to existing laws, either Party may terminate this Agreement by providing notice to the other Party.
- B. If the cost of restoration or repair exceeds the amount of available insurance proceeds, a Party may give notice to the other Party of its intent to terminate this Agreement within 30 days of determining that the restoration cost will exceed the insurance proceeds. Upon receipt of such notice, the non-noticing Party can elect to pay the difference between the available insurance proceeds and the actual cost of restoration or repair, in which case this Agreement shall not terminate.

9. Alterations and Additions to MACC. Town shall not make physical changes to the MACC during the term of this Agreement that preclude or prevent District from exercising its rights hereunder without District's written consent.

10. Signage and Naming. Town shall create and maintain a donor wall within the MACC listing significant donors to the construction of the MACC. The donor wall shall list "Eastern Sierra Community College" or such other name or entity as is designated by KCCD, as a major donor to the MACC. A portion of the theater within the MACC shall be named in such a way as to include "Eastern Sierra Community College" or such other name or entity as is designated by KCCD.

11. Naming Rights and Donor Wall. Town agrees that upon completion of construction, the MACC shall be named the "McCoy Arts and Cultural Center." The Town and MLF shall also

agree upon the location, design, and content of a "donor wall" within the MACC, which lists the names of individuals and entities that have made (or will make) significant financial contributions to the construction and/or operation of the MACC, including but not limited to the Town, KCCD, MLF, and the Tambour Foundation. MLF shall be solely responsible for the cost of the donor wall, including any information or displays attached thereto. For purposes of this paragraph, "donor wall" refers only to a decorative and informational fixture attached to an interior wall of the MACC, not to the interior wall itself or any other structural component of the MACC.

12. Termination. Except as expressly provided herein, a Party may terminate this Agreement prior to its expiration only: (i) upon the mutual written consent of both Parties; (ii) upon the failure of District to provide funding as required by this Agreement; (iii) upon the failure of Town to proceed with or complete construction of the MACC following receipt of the District Contribution. In the event of a termination by District due to Town's failure to proceed with or complete construction, Town shall return any portion of the District Contribution that remains unspent as of the effective date of the termination.

13. Default and Remedies. In addition to the rights granted pursuant to section 12 hereinabove, and except as set forth below, either Party may exercise whatever legal and equitable rights may exist for the enforcement of this Agreement, including without limitation initiation of an action to compel specific performance of this Agreement. Notwithstanding the foregoing, neither Party shall be liable for claims for damages, including, without limitation, compensatory damages, special damages, consequential damages (including, without limitation, damages for lost profits, delay, changes in market conditions, etc.) or punitive damages, based upon any breach or default under this Agreement or any other act, error or omission by a Party. The Parties each expressly waive the defense to a specific performance action that a remedy in damages will be adequate.

14. Notices. Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by reputable private courier or delivery service, or given by mail or email. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the Party to receive at the following address or at such other address as the Party may from time to time direct in writing:

DISTRICT: KERN COMMUNITY COLLEGE DISTRICT
2100 Chester Avenue
Bakersfield, CA 93301

TOWN: TOWN OF MAMMOTH LAKES
Attn: Town Manager
P.O. Box 1609
Mammoth Lakes, CA 93546

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service, certified or registered,

return receipt requested. Email notices actually received by a Party shall be deemed to be given upon receipt.

15. Waiver of Breach. A waiver by either Party of a breach by the other Party of any covenant or condition of this Agreement shall not impair the right of the Party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either Party to insist upon strict performance of any term, covenant or condition of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or right.

16. Time of the Essence. Time is of the essence of this Agreement.

17. Governing Law and Venue. This Agreement shall be governed in all respects by the laws of the State of California. The venue for any action to interpret or enforce this Agreement shall be the Mono County Superior Court.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and assigns.

19. Severability. In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to affect the intent of the Parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

20. Drafting. The Parties agree that this Agreement is the product of joint draftsmanship and negotiation, and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous, and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting Party. As used in this Agreement, “including” or “such as” means “including without limitation” or “such as without limitation”.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Party by electronic means) as against the Party signing such counterpart, and all of which together shall constitute one and the same instrument. An electronic or DocuSign signature to this Agreement shall have the same force and effect, for all purposes, as the original signature.

22. Entire Agreement. It is understood and agreed that all prior understandings and agreements, whether written or oral, between the Parties are merged into this Agreement, which alone fully and completely expresses their agreement, that neither Party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both Parties.

23. Effect on MLF Agreement. District represents that as of the effective date of this Agreement, District has the right to terminate the MLF Agreement pursuant to its terms, such

termination will not breach the MLF Agreement, and that District's execution of this Agreement will not place District in breach of any contractual obligation.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the Effective Date first herein written.

DISTRICT:

KERN COMMUNITY COLLEGE DISTRICT,
a political subdivision of the State of California

By: _____

Printed Name: _____

Title: _____

TOWN:

TOWN OF MAMMOTH LAKES,
a California municipal corporation

By: _____

Printed Name: _____

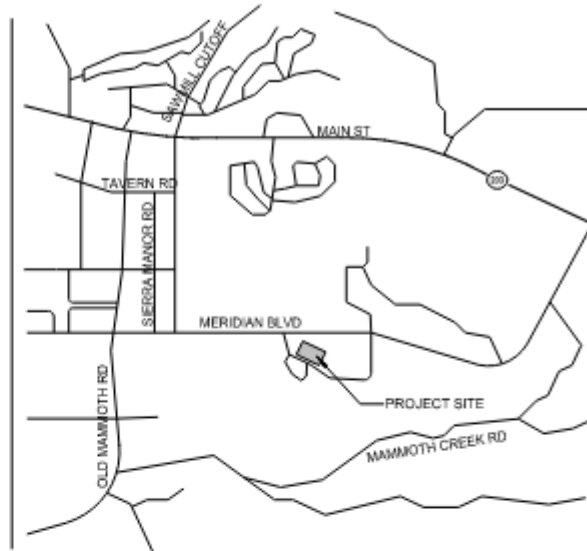
Title: _____

EXHIBIT A

STATE MAP



VICINITY MAP



OVERALL SITE PLAN



