

COLLEGE OF THE SEQUIOIAS COMMUNITY COLLEGE DISTRICT
Board of Trustees Meeting
February 12, 2018

**CONTRACT WITH BARNES & NOBLE COLLEGE
BOOKSELLERS, INC. FOR COS BOOKSTORES
MANAGEMENT**

13

Status: Action

Presented by: Christine Statton,
 Vice President, Administrative Services

Issue

The District has partnered with Barnes & Noble to manage the COS bookstore(s) for the last nine years. The program provides books and materials necessary for classes, as well as COS-related inventory and clothing. The current four-year agreement expires March 31, 2018.

Background

Prior to partnering with Barnes & Noble, the COS Bookstore ran at a loss of approximately \$172,000 per year. The District requested proposals for an outside vendor to run a “hybrid” program at COS in 2009. Barnes and Noble College Booksellers were the only bidders willing to run a hybrid program and allow the existing classified employees to remain District employees. Under the recent contract, the bookstore has functioned at a profit in 2014-15 and prior, and has only broken even by using commissions to cover salaries and benefits overages the last two years. All employees of the bookstore remain COS employees and continue to be evaluated by COS management personnel.

The Administrative Services department issued a Request for Proposal for a five-year agreement for these services in December 2017, with proposals due January 18, 2018. The District received two proposals, one from Follett Higher Education Group, and one from Barnes & Noble College Booksellers. Follett does not offer a hybrid of bookstore management in conjunction with District-paid employees. Overall rankings of each proposal by Administrative staff were 363 points for Barnes and Noble proposal versus 307 points for Follett proposal (out of 400).

Since the current Bookstore Manager (who was a COS employee) retired December 2017, the RFP noted that new management would be employed and paid by the new Bookstore contractor. The RFP also calls for a reduction of two CSEA employees to one in the next year. However, the remaining CSEA staff would need to be paid by the new contractor until negotiated otherwise, as allowed through the collective bargaining agreement.

The Vice President of Administrative Services and Fiscal Services management/staff reviewed both proposals. The following are the major components of the proposals submitted.

RFP item:	Follett	Barnes&Noble	Notes
Will reimburse District for costs of CSEA salaries & benefits	No (said these costs were considered in their total financial offer)	Yes	See amounts listed below
Commission on Books	12.5% < \$1.5M sales 13.5% \$1.5M > < \$2.5M sales 14.5% > \$2.5M sales	10% < \$1.5M sales 11.5% > \$1.5M sales	
Commission on Digital Books	7.0%	Part of above (10.0% - 11.5%)	Minimal sales to date. May increase quickly
COS Annual Sales 2016-17			\$1.923M
Commission estimate	\$243,829	\$198,592	
Anticipated Salary+Beni Costs (one remaining employee through 5 years)	(\$78,624)	Paid	One "possible" continuing CSEA employee during contract
Net Commission after salary and benefits	\$165,205	\$198,592	Estimate of ONGOING commission
Signing Bonus	\$50,000	\$25,000	ONE-TIME (<i>B&N has offered to increase to \$50,000</i>)
Salary+Beni for second CSEA staff to June 30 2019		\$101,375	ONE-TIME (will cover salary for 2 nd CSEA staff thru 18-19)
Textbook/General Scholarship	\$10,000	\$2,000	ANNUAL (<i>B&N has offered to increase to \$5,000/year</i>)
Store Renovation	\$85,000	0	ONE-TIME
POS System (DSS for Follett)	\$42,000	Not needed if staying with B&N	
Price Match Guarantee to Amazon & local competitors	Did not address	Yes	Follett said yes when asked, but it was not in Jan 18 proposal
Will hire COS student workers when possible	Did not address	Yes	Follett said yes when asked, but it was not in Jan 18 proposal
Pays for Freight/Shipping of textbooks to students	No	Yes	
Discounts for faculty and staff	10%	10%	

- Opt-out options for either party with 120 days' notice were listed in both proposals
- Additional hours of coverage at both Center site campuses was offered
- Both proposals requested exclusivity for sales of logo merchandise, but both were willing to allow some sales by COS Foundation and Athletics online and at events. The final contract proposed with B&N spells out that allowance.

Recommended Action

It is recommended that the Board of Trustees approve the proposed five-year contract with Barnes and Noble College Booksellers Inc. to commence April 1, 2018 and end March 31, 2023.

**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

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.

- 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

**Barnes & Noble College Booksellers,
LLC**

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