

CART OPERATING AGREEMENT

THIS AGREEMENT is made and entered into as of July 1, 2009, between **FRESNO UNIFIED SCHOOL DISTRICT** and **CLOVIS UNIFIED SCHOOL DISTRICT**, each, a "District," and hereinafter collectively referred to as "the Districts," and the **CENTER FOR ADVANCED RESEARCH AND TECHNOLOGY**, hereinafter referred to as "CART."

WHEREAS, CART is a collaborative initiative of the Districts created to better prepare high school graduates to compete for jobs, increase the proficiency of articulation to higher education, and enhance student abilities to function in an increasingly technological society; and

WHEREAS, the Districts are members of a Joint Powers Authority and have entered into a Joint Exercise of Powers Agreement to provide for the financing and operation of facilities to be used for CART; and

WHEREAS, students of the Districts will attend their Districts of residence schools for partial days and attend CART for partial days to meet their instructional needs and plans, and to meet the minimum day requirements set forth in Education Code sections 46201 and 42238.20; and

WHEREAS, CART and the Districts desire to allow the participation of their students in the CART programs without loss of average daily attendance ("ADA"), or any benefits flowing therefrom, to the Districts, while funding CART to a level to be agreed herein.

NOW THEREFORE, in consideration of the conditions, covenants, terms, agreements, and recitals contained herein, it is mutually agreed by and between the parties as follows:

1. Recitals. All of the above recitals are true and correct.
2. Scope of Services. Each District shall provide educational and administrative services to those students attending CART and residing within that District. These services shall include the following:
 - A. Students attending CART shall meet the full minimum instructional day requirements set forth in Education Code section 42238.20 in the students' District of residence. Specifically, each District agrees that it shall provide instructional minutes to CART students such that each CART student residing within that District shall meet the minimum number of minutes of instruction as set forth in Education Code section 42238.20.
 - B. Each District shall ensure that the students residing within that District shall participate in state testing programs specified in Education Code sections 60600 et al.
 - C. Each District shall provide other administrative services to CART students residing within that District to the same degree as to other District students.
 - D. To the extent that any student attends CART and requires special education or related services, those services shall be provided and all costs related thereto shall be funded by the District of residence, and not by CART, pursuant to terms to be agreed between the District of residence and that District's Special Education Local Plan Area.
 - E. Students attending CART shall be considered students of the District in which they reside for all purposes except as set forth herein.
3. Duration. This Agreement shall be effective for the 2009-2010 fiscal year. The term shall be for a one (1) year period, commencing July 1, 2009 and terminating June 30, 2010. The Agreement shall renew for additional one year terms as mutually agreed by all three parties.
4. Savings Clause. If any provisions of this Agreement are held to be contrary to law by final legislative act or a court of competent jurisdiction inclusive of appeals, if any, such provisions will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.
5. ADA Claims by Districts. Districts shall claim each student attending CART in all reports of enrollment and average daily attendance to any government agency for the purpose of determining any funding and shall forward all required reports to the County Office of Education and/or the California Department of Education at such times as necessary or appropriate to receive funding as contemplated by this Agreement. CART shall report to each District the hours of attendance at CART for that District's students. The Districts shall report attendance for the periods ending December 31, April 1 and June 30, as specified in the Education Code, including section 42238.20.
6. District's Payment of Fees to CART. The Districts shall each pay CART a fee of \$664,823 per fiscal year. This amount shall be paid in twelve (12) equal monthly installments of \$55,401.92 each.
7. Assignment. This Agreement is made by and between CART and the Districts and any attempted assignment by them, their successors or assigns shall be void unless approved in writing by all parties.

8. Captions. The clause headings appearing in this agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the clauses to which they appertain.
9. Indemnification by Fresno Unified. Fresno Unified School District shall indemnify and hold harmless CART and Clovis Unified School District, including the officers, employees, agents, and volunteers of those parties, from and against all claims, damages, losses, expenses, including reasonable attorney fees and costs, arising out of the performance of the terms of this Agreement, caused in whole or in part by any negligent act or omission or the willful misconduct of Fresno Unified School District, any subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, except to the extent caused by the negligent act or omission or willful misconduct of the party seeking to be indemnified or held harmless under this paragraph.
10. Indemnification by Clovis Unified. Clovis Unified School District shall indemnify and hold harmless CART and Fresno Unified School District, including the officers, employees, agents, and volunteers of the parties, from and against all claims, damages, losses, expenses, including reasonable attorney fees and costs, arising out of the performance of the terms of this Agreement, caused in whole or in part by any negligent act or omission or the willful misconduct of Clovis Unified School District, any subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, except to the extent caused by the negligent act or omission or willful misconduct of the party seeking to be indemnified or held harmless under this paragraph.
11. Indemnification by CART. CART shall indemnify and hold harmless Clovis Unified School District and Fresno Unified School District, including the officers, employees, agents, and volunteers of the parties, from and against all claims, damages, losses, expenses, including reasonable attorney fees and costs, arising out of the performance of the terms of this Agreement, caused in whole or in part by any negligent act or omission or the willful misconduct of CART, any subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, except to the extent caused by the negligent act or omission or willful misconduct of the party seeking to be indemnified or held harmless under this paragraph.
12. Individuals Working at CART. Individuals working at CART are considered employees of their respective Districts, except that they may be subject to evaluation, discipline and/or reassignment by CART.
13. Amendment. The terms of this Agreement shall not be amended in any manner except by written agreement signed by the parties.
14. Definitions. "Residence" shall refer to compliance with residency requirements in a District as set forth in Education Code sections 46600, et seq., 48200 and 48204.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Fresno County, California, on the date first above written.

CLOVIS UNIFIED SCHOOL DISTRICT

FRESNO UNIFIED SCHOOL DISTRICT

By: _____

By: _____

Printed Name: Dr. David Cash

Printed Name: Michael Hanson

Title: District Superintendent

Title: District Superintendent

Address: 1450 Herndon Avenue, Clovis, CA 93612

Address: 2309 Tulare Street, Fresno, CA 93721

Phone: 559-327-9100 Email: davidcash@clovisusd.k12.ca.us

Phone: 559-457-3882 Email: michael.hanson@fresnounified.org

CENTER FOR ADVANCED RESEARCH AND TECHNOLOGY

By: _____

Printed Name: Susan Fisher

Title: Chief Operating Officer

Address: 2555 Clovis Avenue, Clovis, CA 93612

Phone: 559-248-7400 Email: sfisher@cart.org