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ATTEST: Lee Price, City Clerk

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
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City

RDE # 011  
11/01/2006  
10:11 AM

By Robyn Joseph,  
Robyn Joseph, Deputy

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**SECOND AMENDMENT TO  
AGREEMENT FOR OWNERSHIP AND OPERATION OF  
JOINT LIBRARY BUILDING  
AND  
GRANT OF EASEMENT**

**By and Between**

**CITY OF SAN JOSE**

**and**

**THE TRUSTEES OF  
THE CALIFORNIA STATE UNIVERSITY  
ON BEHALF OF  
SAN JOSE STATE UNIVERSITY**

October 17, 2006

**Second Amendment to Agreement for  
Ownership and Operation of Joint Library Building and Grant of Easement  
Between City of San Jose and  
Trustees of the California State University On Behalf of San Jose State University**

This SECOND AMENDMENT TO AGREEMENT FOR OWNERSHIP AND OPERATION OF JOINT LIBRARY BUILDING AND GRANT OF EASEMENT (this "Second Amendment") is made as of October 17, 2006, by and between the CITY OF SAN JOSÉ (the "City") and THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY on behalf of SAN JOSÉ STATE UNIVERSITY (the "University"), with reference to the following facts:

A. On December 17, 1998, the City and the University entered into that certain Agreement for Ownership and Operation of Joint Library Building and Grant of Easement (the "Operating Agreement") that established the terms of ownership, management, maintenance and operation of the Joint Library, the Library Building and the Library Land.

B. On June 10<sup>th</sup>, 2003, the City and the University entered into the First Amendment to the Operating Agreement, pertaining to space designation and allocation, and the procedures and process for funding of maintenance and utilities for the Joint Library (the "First Amendment").

C. The City and the University have mutually determined that it is in the best interests of the Parties to amend certain provisions of the Operating Agreement to modify the process for payment of Library Utilities in addition to other costs of the Joint Library.

D. Capitalized terms used and not otherwise defined in this Amendment have the meaning respectively ascribed to them in the Operating Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the City and the University hereby agree on the following amendments to the Operating Agreement:

Subsections 6.1.1, 6.1.2, 6.1.3, and 6.1.4 of the Operating Agreement as amended in the First Amendment, are hereby amended to read as follows:

**6.1 Maintenance of the Library Building and the Library Land.**

**6.1.1 Base Library Maintenance Obligations.** The University shall arrange for the performance of the "Base Library Maintenance Obligations", which shall mean the work specified on Exhibit D attached hereto. The Base Library Maintenance Obligations shall exclude maintenance of any program specific systems or

equipment, maintenance of any escalators, and maintenance of any interior plants. In the event that the University is unable to cause the performance of the Base Library Maintenance Obligations for the aggregate of the City Facility Funds and the University Facility Funds, the Parties shall meet and confer to determine whether to increase the funds for maintenance or reduce the scope of the Base Library Maintenance Obligations. The City Manager on behalf of City, and a duly authorized representative of the University, shall memorialize in writing each parties' revised contribution for the Base Library Maintenance Obligations. The Parties hereby agree that the specific standards set forth in Exhibit D may be amended from time to time by mutual agreement of the Parties. Any such amendment shall be reflected in writing between the Parties.

6.1.2 **Utilities.** The University shall arrange for and cause to be provided to the Library Building, the Library Utilities. "Library Utilities" shall mean electricity, natural gas, domestic water, chilled water, sewer, refuse removal, and steam, and shall specifically exclude all computer, telephone, data and video services. The City shall pay to the University an amount equal to the City Percentage of Total Library Square Footage of the total cost of the Library Utilities per year ("City Library Utility Cost") which amount represents the City's share of the total cost of the Library Utilities based on the total square footage of the Library Building allocated to the City.

6.1.3 **Funds for Base Library Maintenance and Utility Obligations.** The City shall pay to the University an amount equal to the same per square foot rate that the University receives for maintenance of and utility services to the Library Building from the California State University, as such rate may change from time to time (the "University Facility Rate") multiplied by the Total City Square Footage per year (the "City Facility Funds"). The University shall be obligated to spend the City Facility Funds and an amount equal to the University Facility Rate multiplied by the Total University Square Footage per year (the "University Facility Funds") on the Base Library Maintenance Obligations, Supplemental Library Maintenance Obligations and Library Utilities. Each University fiscal year the University shall pay all costs of the Base Library Maintenance Obligations and the Library Utilities as they become due and payable out of the University Facility Funds until the University Facility for that year are expended. Thereafter, the costs of the Base Maintenance Obligations and the Library Utilities shall be paid out of the Library Maintenance and Utility Account.

- 6.1.4 **Library Maintenance and Utility Account.** The University shall establish a separate interest bearing account (the "Library Maintenance and Utility Account") in which to hold the City Facility Funds together with any other funds deposited by either Party for the maintenance, utilities, and Capital Repair of the Library Building and the Library Land. In the event that any portion of Library Maintenance and Utility Account funds are not expended during the University fiscal year in which such funds were deposited, such funds shall remain in the Library Maintenance and Utility Account until such time as the Parties mutually agree as to how to utilize such funds; provided, however, such funds and any interest accrued thereon may only be used for Base Library Maintenance Obligations, Supplemental Library Maintenance Obligations, Library Utilities or Capital Repairs.
  
- 6.1.5 **Escalators.** The University shall be responsible for maintaining the escalators in the Library Building; and the cost therefore shall be shared evenly between the Parties.
  
- 6.1.6 **Supplemental Library Maintenance Obligations.** The Parties shall have the right from time to time to mutually agree to have the University perform Supplemental Library Maintenance Obligations. Any such mutually agreed upon Supplemental Maintenance Obligations shall be funded either by the Parties or from funds in the Library Maintenance and Utility Account, both by mutual agreement. The City Manager on behalf of City, and a duly authorized representative of the University, shall jointly memorialize in writing each parties' revised contribution to fund the Supplemental Library Maintenance Obligations. In addition, either Party may elect to have Supplemental Library Maintenance Obligations performed if such electing party desires to pay for such Supplemental Library Maintenance Obligations, and such work does not unreasonably interfere with the other Party's proper use of the Joint Library and the Library Building or materially increases the cost of operating the Joint Library or maintaining the Library Building and the Library Land.

**2. Full Force and Effect.** The Operating Agreement shall continue in full force and effect, without amendment or modification except as herein expressly set forth.

*Signatures appear on following page.*

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IN WITNESS WHEREOF, the City and the University have duly executed this Second Amendment as of the date first written above.

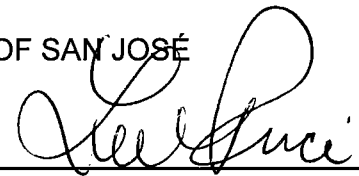
"University"

THE TRUSTEES OF THE CALIFORNIA  
STATE UNIVERSITY On Behalf Of  
SAN JOSÉ STATE UNIVERSITY

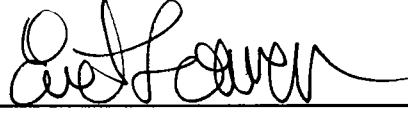
By:   
Don Kassing  
President, San José State University

"City"

CITY OF SAN JOSÉ

By:   
Lee Price, MMC  
City Clerk

APPROVED AS TO FORM:

By:   
Evet Loewen  
Chief Deputy City Attorney

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

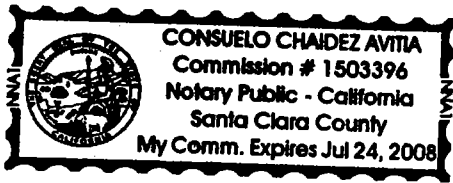
State of California }  
County of SANTA CLARA } ss.

On October 25, 2006, before me, Consuelo Chaidez Avitia, Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Lee Price,  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Consuelo Chaidez Avitia  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

State of California

County of Santa Clara

On October 11, 2006, before me, D Roxanne Hood, Notary  
DATE NAME, TITLE OF OFFICER - E.G. JANE DOE, NOTARY PUBLIC

a notary in and for such state, personally appeared

Don W. Kassing, President of San Jose State University  
NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledges to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity ~~(ies)~~, and that by ~~his/her/their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

D Roxanne Hood  
SIGNATURE OF NOTARY

