FACILITY USE AGREEMENT

This Facility Use Agreement ("Agreement") is made this 8th day of July, 2008, between Navajo County Community College District, a community college district in the State of Arizona doing business as Northland Pioneer College ("NPC"), and the Governing Board of Holbrook Unified School District No. 3, a political subdivision of the State of Arizona, by and on behalf of Triumph School and George Gardner Performing Arts Center ("Triumph"), individually, a "Party" and collectively, the "Parties".

RECITALS

1. NPC makes available to Triumph classroom space at NPC’s Painted Desert Campus located at 2251 North Navajo Boulevard in Holbrook, Arizona, for instruction of Triumph students.

2. Triumph makes available to NPC auditorium space at the George Gardner Performing Arts Center located in Holbrook, Arizona, for two major NPC activities and up to two performing arts productions each academic year.

3. Each Party represents that it will use the facility only for the purpose stated, unless agreed in a writing signed by both Parties prior to such other use.

NOW, THEREFORE, for consideration and the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

A. USE OF FACILITIES

1. Triumph use of NPC facility.

   a. NPC shall make available to Triumph classroom space at NPC’s Painted Desert Campus located at 2251 North Navajo Boulevard in Holbrook, Arizona, for the purpose of instructing students enrolled at Triumph. Such classroom space shall be available between the hours of 7:30 am and 4:30 pm, Monday through Friday of each week beginning on July 14, 2008, and ending on May 29, 2009.

   b. When using the NPC facility, or any portion thereof, Triumph agrees to comply with all applicable state, federal or city laws and regulations, and with the policies and regulations of NPC pertaining to the use and occupancy of the facility. Triumph agrees to take good care of the facility and any equipment and furniture located therein, and to leave the facility at all times in as good order and condition as existed prior to Triumph’s use thereof. Triumph shall not use or allow any portion of the facility to be used for any unlawful purpose. Triumph shall not commit or allow to be committed any waste or nuisance in or about the facility, or subject the facility to any use that would
damage any portion of the facility or raise or violate any insurance coverage maintained by NPC. Triumph shall not allow a number of persons in any portion of the facility at any time in excess of the legal or normal capacity of such portion of the facility. Triumph shall not permit any food, drink or smoking in any portion of the facility without the prior written consent of NPC.

c. Triumph shall provide an instructor for each class in which Triumph students are taking Triumph courses. The instructor shall remain an employee of Triumph, subject to the terms and conditions of its employment contract and Triumph policies and procedures.

d. Triumph shall provide classroom furniture, desks, telephones and any equipment Triumph deems necessary, and shall maintain and secure such property placed in the NPC facility.

e. Triumph students attending Triumph classes held in the NPC facility shall be required to comply with the policies and procedures of Holbrook Unified School District No. 3 while on the NPC campus.

f. Triumph students will be required to comply with NPC policy and procedures when on the NPC campus. NPC will provide orientation to Triumph students at the beginning of each semester, as needed, to familiarize the students with the NPC campus, policies and procedures, services, and the college environment.

2. NPC use of Triumph facility.

a. Triumph shall make available to NPC the George Gardner Performing Arts Center located at 455 North Eighth Avenue in Holbrook, Arizona, for the purpose of holding two major NPC activities and up to two performing arts productions by NPC each academic year.

b. When using the Triumph facility, or any portion thereof, NPC agrees to comply with all applicable state, federal or city laws and regulations, and with the policies and regulations of Triumph pertaining to the use and occupancy of the facility. NPC agrees to take good care of the facility and any equipment and furniture located therein, and to leave the facility at all times in as good order and condition as existed prior to NPC's use thereof. NPC shall not use or allow any portion of the facility to be used for any unlawful purpose. NPC shall not commit or allow to be committed any waste or nuisance in or about the facility, or subject the facility to any use that would damage any portion of the facility or raise or violate any insurance coverage maintained by Triumph. NPC shall not allow a number of persons in any portion of the facility at any time in excess of the legal or normal capacity of such portion of the facility. NPC shall not permit any food, drink or smoking in any portion of the facility without the prior written consent of Triumph.
c. Triumph shall provide all custodian services and utilities for the facility.

B. SCHEDULING

1. Prior to each academic year, NPC and Triumph shall agree on the dates and times each Party shall have use of the other Party’s facilities.

2. NPC shall provide access to its facilities at the dates and times of scheduled classes for Triumph students. NPC shall grant Triumph students enrolled in co-enrollment or concurrent enrollment classes offered by NPC the same use of and access to NPC facilities as any other student enrolled at NPC. NPC shall comply with all applicable federal and state laws that apply to post-secondary education for students with disabilities to provide reasonable accommodation and access for any student with a documented disability.

3. Triumph shall provide access to its auditorium at the dates and times of events scheduled by NPC to take place in the auditorium. Triumph shall comply with all applicable federal and state laws that apply to access for persons with disabilities to provide reasonable accommodation and access for any person with a documented disability attending an NPC event at the auditorium.

4. If either Party desires to change a date or time of use of a facility, that Party shall notify the other Party of such desired change not less than fourteen (14) days prior to the proposed date of such intended use.

C. TERM

The term of this agreement shall commence on July 1, 2008, and end on June 30, 2009, unless otherwise extended in writing signed by both Parties.

D. COMPENSATION

NPC agrees that use of Triumph’s facility by NPC is adequate and reasonable consideration for the use by Triumph of the NPC facility; and Triumph agrees that use of NPC’s facility by Triumph is adequate and reasonable consideration for the use by NPC of the Triumph facility.

E. INSURANCE

1. Pursuant to A.R.S. Section 15-1105 et seq., NPC agrees to procure, at its expense, and maintain during the term hereof, a policy of general liability insurance, against claims for bodily injury, death and property damage occurring in connection with NPC’s use of any portion of the Triumph facility, which insurance shall include Triumph as an additional insured and be primary and non-contributing to any coverage maintained
by the Triumph. NPC shall provide Triumph with a certificate evidencing such insurance coverage is in effect.

2. Pursuant to A.R.S. Section 15-1105 et seq., Triumph agrees to procure, at its expense, and maintain during the term hereof, a policy of general liability insurance, against claims for bodily injury, death and property damage occurring in connection with Triumph’s use of any portion of the NPC facility, which insurance shall include NPC as an additional insured and be primary and non-contributing to any coverage maintained by NPC. Triumph shall provide NPC with a certificate evidencing such insurance coverage is in effect.

F. LIABILITY AND INDEMNITY

1. Each Party agrees to conduct its activities in the other Party’s facility in a careful and safe manner.

2. As a material part of the consideration to NPC, Triumph hereby assumes all risk of damage to and loss or theft of property, and injury or death to persons related to Triumph's use or occupancy of any portion of the NPC facility from any cause whatsoever, and Triumph hereby waives all claims in respect thereof against NPC. Triumph shall indemnify, defend, and save harmless NPC and all of its employees, agents, and representatives from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by NPC, on account of loss or damages to any property and for injuries to or death of any person arising out of any act or omission by Triumph, its employees, agents, representatives, or subcontractors, or arising out of its use of the NPC facility, or arising out of workers' compensation claims or unemployment disability compensation claims of employees of Triumph or out of claims under similar such laws. Triumph's obligation shall not extend to any liability caused by the sole negligence of NPC, or its employees. Where both NPC and Triumph, including their employees, agents or representatives, participated in the liability causing event, each Party shall contribute to the common liability a pro rata share based upon its relative degree of fault as established by compromise, arbitration or litigation.

3. As a material part of the consideration to Triumph, NPC hereby assumes all risk of damage to and loss or theft of property, and injury or death to persons related to NPC's use or occupancy of any portion of the Triumph facility from any cause whatsoever, and NPC hereby waives all claims in respect thereof against Triumph. NPC shall indemnify, defend, and save harmless Triumph and all of its employees, agents, and representatives from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by Triumph, on account of loss or damages to any property and for injuries to or death of any person arising out of any act or omission by NPC, its employees, agents, representatives, or subcontractors, or arising out of its use of the Triumph facility, or arising out of workers' compensation
claims or unemployment disability compensation claims of employees of NPC or out of claims under similar such laws. NPC's obligation shall not extend to any liability caused by the sole negligence of Triumph, or its employees. Where both Triumph and NPC, including their employees, agents or representatives participated in the liability causing event, each party shall contribute to the common liability a pro rata share based upon its relative degree of fault as established by compromise, arbitration or litigation.

4. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, any agreement by one Party to indemnify, defend and save harmless the other Party shall be limited to, and be payable only from, the indemnifying Party’s available insurance or self-insurance coverage for liability assumed by contract, if any, available as a part of its general liability insurance program.

G. ENTIRE CONTRACT

This Agreement embodies the entire contract between the Parties concerning the subject matter of this Agreement. The Parties shall not be bound by or be liable for any statement or representation of any nature not set forth in this Agreement. Changes of any of the provisions of this Agreement shall not be valid unless reduced to writing and signed by both Parties.

H. SUSPENSION AND TERMINATION

1. In the event of force majeure, NPC may, by written notice, direct Triumph to suspend its use of the NPC facility for such period of time as may be determined by NPC to be necessary or desirable. Upon receipt of such termination notice, Triumph shall immediately discontinue use of the NPC facility under this Agreement.

2. In the event of force majeure, Triumph may, by written notice, direct NPC to suspend its use of the Triumph facility for such period of time as may be determined by NPC to be necessary or desirable.

3. Neither Party shall be liable to the other Party nor deemed to be in default under this Agreement if and to the extent that such Party’s performance of this Agreement is prevented by reason of force majeure.

4. For the purpose of this Agreement, the term “force majeure” means an occurrence that is beyond the control of the Party and occurs without the Party’s fault or negligence, including but not limited to war, fire, flood, and acts of God.

I. WAIVER

The failure of a Party to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies provided by this Agreement, or that Party’s delay in the exercise of any such rights or remedies shall not release the other Party from any of its responsibilities or obligations imposed by this Agreement and shall
not be deemed a waiver of any right of the Party to insist upon strict performance of this Agreement.

J. ASSIGNMENTS

Neither Party shall have the right to assign this Agreement or allow any other person or entity to use the Party’s right to occupy any or all of a facility without the prior written consent of the Party owning the facility, which consent may be granted or withheld at the owning Party's sole discretion.

K. DEFAULT

In the event that a Party fails to pay any fee or other sum required to be paid by the Party hereunder when due, or otherwise fails to comply with or observe any other provisions of this Agreement, in addition to any other remedy that may be available by reason of such failure, whether at law or in equity, the non-defaulting Party may immediately terminate this Agreement and all rights of the defaulting Party hereunder.

L. ARBITRATION

In the event of a dispute hereunder, the Parties agree to use arbitration insofar as required by Arizona Revised Statutes Sections 12-1518 and 12-133, and the rules promulgated thereunder.

M. CONFLICT OF INTEREST

This Agreement is subject to cancellation pursuant to Section 38-511 of the Arizona Revised Statutes, without penalty or further obligation on the part of either Party, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a Party is, at any time while this Agreement or any extension hereof is in effect, an employee or agent of the other Party, in any capacity, or a consultant to the other Party, with respect to the subject matter of this Agreement.

N. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Arizona, and the courts of the State of Arizona shall have jurisdiction of the subject matter hereof.

O. RELATIONSHIP

1. The Parties agree that neither NPC nor any employees or other personnel of NPC will for any purpose be considered employees of Triumph, and with respect to NPC and any employees or other personnel of NPC. Triumph shall not be responsible in any manner for the supervision, daily direction and control of NPC and any of its employees or other personnel or the payment of salary (including withholding income
taxes and social security), workers’ compensation and disability benefits for NPC and any of its employees or other personnel.

2. The Parties agree that neither Triumph nor any employees or other personnel of Triumph will for any purpose be considered employees of NPC, and with respect to Triumph and any employees or other personnel of Triumph, NPC shall not be responsible in any manner for the supervision, daily direction and control of Triumph and any of its employees or other personnel or the payment of salary (including withholding income taxes and social security), workers’ compensation and disability benefits for Triumph and any of its employees or other personnel.

P. AUTHORITY

Each Party represents and warrants that the individual signing below on behalf of the Party is duly authorized to execute and deliver this Agreement on behalf of the Party and that this Agreement is binding upon the Party in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement:

FOR NPC:

Date: _____________

By: Jeanne Swarthout, Ph. D.
Its: President

FOR Triumph:

Date: 7/8/08

By: Mary Koury
Its: Superintendent
taxes and social security), workers' compensation and disability benefits for NPC and any of its employees or other personnel.

2. The Parties agree that neither Triumph nor any employees or other personnel of Triumph will for any purpose be considered employees of NPC, and with respect to Triumph and any employees or other personnel of Triumph, NPC shall not be responsible in any manner for the supervision, daily direction and control of Triumph and any of its employees or other personnel or the payment of salary (including withholding income taxes and social security), workers' compensation and disability benefits for Triumph and any of its employees or other personnel.

P. AUTHORITY

Each Party represents and warrants that the individual signing below on behalf of the Party is duly authorized to execute and deliver this Agreement on behalf of the Party and that this Agreement is binding upon the Party in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement:

FOR NPC:

Date: 7/11/08

By: Jeanne Swarthout, Ph. D.
Its: President

FOR Triumph:

Date: 7/8/08

By: Mary Koury
Its: Superintendant