

CITY OF FRESNO
City Clerk's Office (Original)

COOPERATION AGREEMENT
Regarding Fresno County Public Library and
Computer Labs Services at City Community Centers

This Agreement is entered into by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its Parks, Recreation and Community Service Department ("CITY"), and the COUNTY OF FRESNO, a political subdivision of the State of California, through its Public Library, ("COUNTY").

WITNESSETH

WHEREAS, COUNTY has since 1973 operated library services at four (4) CITY Neighborhood Community Centers: Mary Ella Brown, Mosqueda, Pinedale and Ted C Wills Center, ("Sites"); and

WHEREAS, the parties desire that COUNTY continue to operate and to supplement such services with computer lab services and additional library services at the Sites, upon the terms and conditions herein.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

CITY: Parks Recreation & Community Services
Jerry Haynes, Assistant Director
2326 Fresno Street, Room 101
Fresno CA 93721
Phone: 559-621-2900
Fax: 559-498-1588

COUNTY: Public Library
John A. Navarrette.
Director of General Services
2220 Tulare Street, 16th Floor
Fresno CA 93721-2129

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES

A. CITY agrees:

I. To provide and make available the space as is currently occupied by COUNTY for library services at the Sites. The approximate square footage of said space at the Sites is depicted in Exhibit "A" – Depiction of Sites/Lease Analysis for Fresno County Library Sites attached hereto and incorporated hereof.

II. To maintain the grounds around the Sites, and to maintain the walls, ceiling, roof, heating/cooling system and the light fixtures thereof, except that COUNTY is responsible for minor maintenance of any light fixtures such as changing bulbs in the library services areas.

III. To indemnify COUNTY and provide insurance pursuant to the terms set forth in Paragraph eight (8) of this Agreement.

B. COUNTY agrees:

I. To supply general library and computer lab services to the people living in the area surrounding the Sites, including, but not limited to: reference assistance, issuance of library books, story-telling services, tutorial assistance, and training programs.

II. To provide furnishings, equipment, computer labs as necessary, structures or facilities necessary to conduct the library services in an efficient manner, and carry insurance thereon against loss or damage to said furnishings, equipment, structures and facilities. Such furnishings, equipment, computer labs, structures, or facilities shall not become fixtures to CITY property and may be removed by COUNTY at any time. However, any damage to CITY'S property occasioned by COUNTY'S removal thereof shall be the responsibility of the COUNTY.

III. To provide custodial and janitorial services for said space at the Sites occupied by COUNTY.

IV. To pay the cost of utilities, consisting of PG&E and City water and Pinedale Co. water servicing the Pinedale Community Center. Such utility costs shall be calculated on the percentage of total square feet occupied by COUNTY and the number of hours of operation. The approximate square footage of said space at the Sites is depicted in Exhibit "A" – Depiction of Sites/Lease Analysis for Fresno County Library Sites attached hereto and incorporated hereof. COUNTY shall pay cost of utilities within forty-five (45) days of receipt of invoice from the CITY. CITY shall submit invoice to: Public Library, Attn: Business Office, 2420 Mariposa Street, Fresno, CA 93721.

V. To maintain said designated areas at each of the Sites in good condition, excluding normal wear and tear.

VI. COUNTY may, with the express approval of CITY, furnish and install, on CITY'S property, used by COUNTY, surveillance/motion detecting equipment as deemed necessary at all or some of the Sites.

VII. To indemnify CITY and provide insurance pursuant to the terms set forth in Paragraph nine (9) of this Agreement.

3. **REIMBURSEMENT TO PARTIES**

Each party shall bear any and all costs incurred by it in pursuit of this Agreement. Without limiting the foregoing, nothing in this Agreement shall commit the taxing authority or general fund of either party.

4. **EFFECTIVENESS, DURATION AND TERMINATION**

This Agreement shall be effective upon its complete execution by the parties' authorized agents from June 30, 2007 and shall remain in effect for an initial term running through June 30, 2008. This Agreement shall renew automatically from year to year, provided that either party may at any time terminate this Agreement (i) without cause at the party's convenience by giving not less than 2 months (sixty (60) days) prior written notice to the other party, (ii) with cause upon written notice to the other party following the other party's failure to reasonably cure an event of non-performance hereunder following thirty (30) days written notice thereof.

5. **RECORDKEEPING AND PERFORMANCE DATA**

Each party shall keep and maintain proper records and documentation sufficient to substantiate its contributions hereunder, and shall make such available for review and audit upon the reasonable request of the other party for a period of three (3) years following expiration or earlier termination of this Agreement.

6. **COMPLIANCE WITH GOVERNING LAW**

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this Agreement shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

7. **CAPACITY OF PARTIES**

Each party is acting in an independent capacity. Nothing in this Agreement, and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly or severally.

In addition and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding and all other regulations governing such matters.

8. **INDEMNITY AND INSURANCE**

COUNTY shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, COUNTY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen from the negligent or intentional acts or omissions of COUNTY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by COUNTY of governmental immunities including California Government Code Section 810 et seq.

CITY shall indemnify, hold harmless and defend COUNTY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, COUNTY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code Section 810 et seq.

In the event of concurrent negligence on the part of COUNTY or any of its officers, officials, employees, agents or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This preceding paragraphs shall survive termination or expiration of this Agreement.

It is understood and agreed that COUNTY and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

9. **ATTORNEY'S FEES**

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such

proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

10. **PRECEDENCE OF DOCUMENTS**

In the event of any conflict between the body of this Agreement and any exhibit/attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit/attachment. Furthermore, any terms or conditions contained within any exhibit/attachment hereto which purport to modify the allocation of responsibility or liability between the parties, provided for within the body of this Agreement, shall be null and void.

11. **NOTICES**

Any notice required or intended to be given to a party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, return receipt requested, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth in Section 1 of this Agreement or at such other address as the parties may from time to time designate by written notice.

12. **BINDING**

Upon execution by all of the parties, this Agreement shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

13. **ASSIGNMENT**

There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

14. **WAIVER**

The waiver by any party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

15. **GOVERNING LAW AND VENUE**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

16. **HEADINGS**

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

17. **SEVERABILITY**

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

18. **INTERPRETATION**

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

19. **ENTIRE AGREEMENT**

It is mutually understood and agreed that the foregoing constitutes the entire Agreement between the parties and supersedes all prior agreements and understandings between the parties on the subject matter hereof. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this Agreement:

CITY OF FRESNO, CALIFORNIA
a municipal corporation

COUNTY OF FRESNO, CALIFORNIA
A political subdivision of the State of California

By: 
Randall L. Cooper, Director

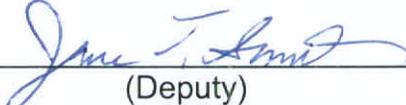
By: 
Bob Waterston, Chairman
Board of Directors

OCT 09 2007

ATTEST:
Rebecca E. Klisch
City Clerk, City of Fresno

APPROVED AS TO LEGAL FORM:
Dennis A. Marshall, County Counsel

By: 
(Deputy) (11/2/07)

By: 
(Deputy)

APPROVED AS TO FORM:
James C. Sanchez

APPROVED AS TO ACCOUNTING FORM
VICKI CROW, C.P.A.
AUDITOR-CONTROLLER/TREASURER-
TAX COLLECTOR

By:  11-01-07
(Deputy) *Coyle*

By: 

RECOMMENDED FOR APPROVAL

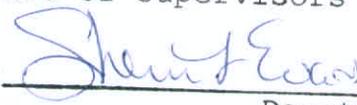
By: 
John A. Navarrette
Director of General Services

By: 
Karen Bosch Cobb, County Librarian

EXHIBIT "A" - Depiction of Sites and Lease Analysis

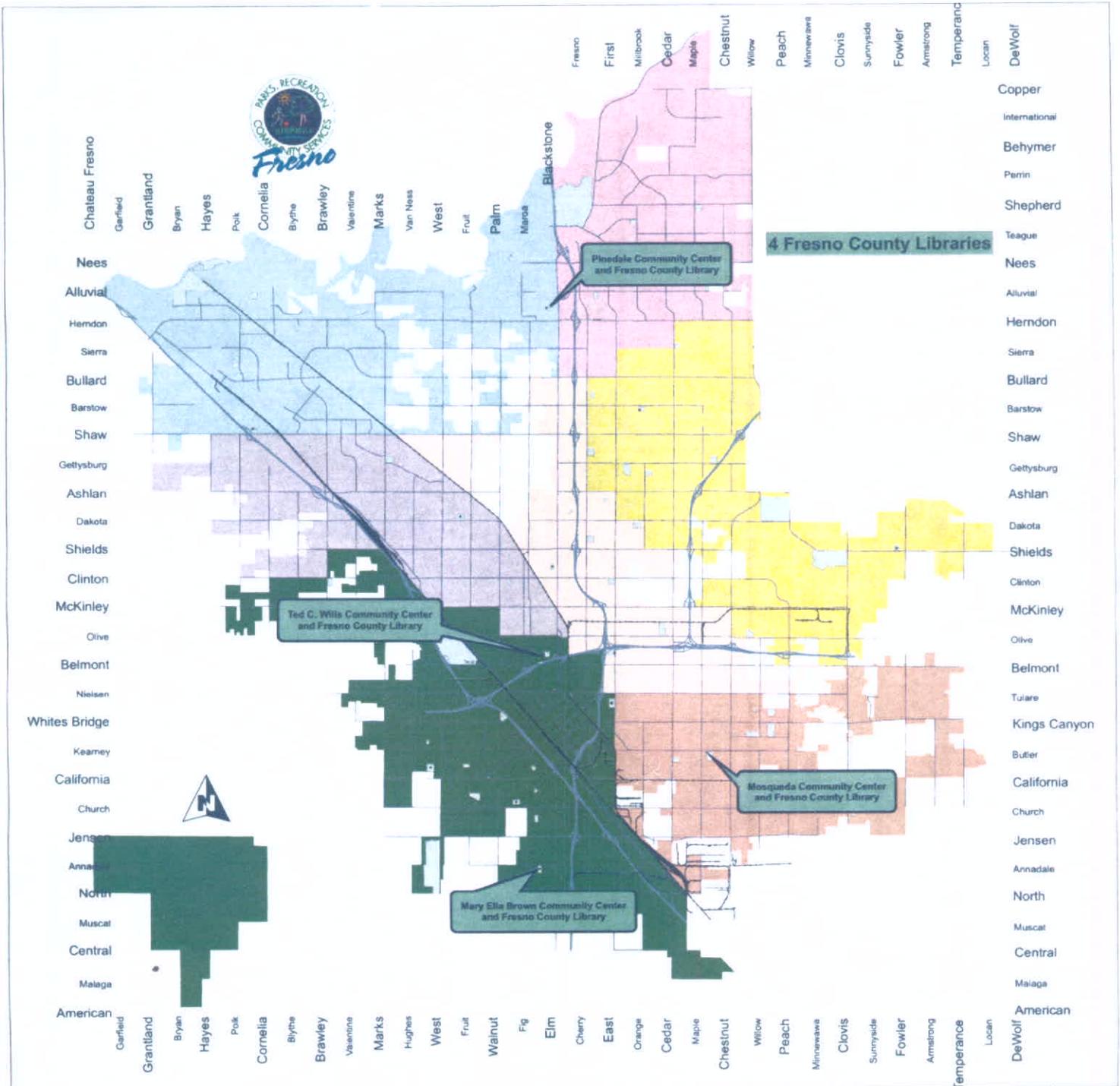
ATTEST:

BERNICE E. SEIDEL, Clerk
Board of Supervisors

By: 
Deputy

Friend 107
Subcoms 10000
Org 75410100
Account 7340

Exhibit "A" – Depiction of Sites and Lease Analysis



Lease Analysis for Fresno County Library Sites

Location	Library sq ft	Total Facility sq ft	% of Space Used
Ivy	2,397	19,382	12.4%
Mosqueda	2,150	22,009	9.8%
Ted C. Wills	2,600	41,528	6.3%
Pinedale	1,080	8,366	12.9%
Total	8,227	91,285	