

LINDSAY HIGH SCHOOL LIBRARY JOINT USE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2010, by and between the COUNTY OF TULARE (hereinafter the "County"), and the LINDSAY UNIFIED SCHOOL DISTRICT (hereinafter the "District").

A. The County and District desire to construct, furnish, equip, operate and maintain a shared use Library (hereinafter "Library") on the grounds of the District's current Lindsay High School, anticipated to convert in to the District's middle school in August 2010, in order to conduct educational, public learning, civic and other related programs sponsored by the County and District during selected school and non-school hours to the residents of the City of Lindsay and County of Tulare, as well as the students of the District; and

B. The School District is authorized to enter a contract with the County to operate a joint use library located at the school site owned by District under California Education Code 17050 et. seq.

ACCORDINGLY, IT IS AGREED:

1. Term: This Agreement will become effective as of (Month) (day), 2010 and will expire on (Month) (day), 2030 unless otherwise terminated as provided in this Agreement.
2. Grounds and Facilities: The District hereby permits the County the use of the Library as specified in the plans and specifications for the new library, as provided in Exhibit "A", situated on the grounds of Lindsay High School, anticipated to be converted to the District's middle school in August 2010, and situated in the city of Lindsay, Tulare County, California for the purposes noted above and under the terms of this agreement.
3. Permitted Use: The County shall use the Library for public library direct services and related programs at such times, and in such manner as is more specifically designated in

Exhibit “B,” attached hereto and incorporated herein by reference. Said Exhibit “B” may be amended by mutual agreement from time to time by authorized representatives of the parties, but only when such amendments are specified in writing and initialed by the authorized representatives of both parties.

4. Conditions: The District shall make available the Library at the times and in the manner provided for in Exhibit “B,” hereto, subject to the following conditions and limitations:

A. The County shall have no right to use said Library when in use or necessary for use by the District in conducting or performing its educational program, other than as provided for in this Agreement.

B. The District shall have the final authority to make decisions regarding facility maintenance, security, and premises’ safety for the Library Facility.

C. All County staff and volunteers that supervise or have contact with students and/or children are required to submit to the same fingerprinting and subsequent background check as are District classified employees. The County shall select, supervise and follow up on the fingerprinting of its staff and will ensure that appropriate interviews and fingerprint checking on personnel are conducted in accordance with the requirements of Section 45125.1 of the Education Code. This Agreement is null and void if the County has not provided full and truthful disclosure to the District of fingerprinting and background check information.

5. Joint Responsibilities:

A. The County and District shall review the hours of operation, conditions of operation and other pertinent matters related to the operation of the Library each fiscal year as a part of their respective budget processes.

B. The County and District will review the staffing level as part of the County and District's annual budget processes to determine appropriate levels for the operation of the library. Staffing will be consistent with available budget resources as approved annually by the Board of Supervisors and the Lindsay Unified School District Board of Trustees.

C. The Parties shall consult on matters of mutual interest and concern. The County Library Director, or designee, shall meet at least annually to discuss any concerns with the operation of the Library Program. Joint training will be held at least annually with the County Library staff and the District staff.

6. District Responsibilities:

A. The District shall be responsible for maintaining the key schedule, and shall maintain the Master keys for the Library.

B. The District shall provide sewer and water utilities to the Library without charge to the County.

C. The District shall be responsible for the custodial services necessary to safely and efficiently operate the Library during the term of this Agreement. The District shall hire and maintain all custodial staff for the Library. The costs of necessary custodial materials and equipment shall also be the responsibility of the District.

D. The District shall maintain the Library, including but not limited to all roofing, gutters and downspouts; heating, ventilation and air conditioning equipment; plumbing and solid waste systems; electrical systems; carpeting (including cleaning and repair); interior and exterior paint; interior and exterior windows and parking lots.

E. The District shall maintain appropriate Internet connections. Equipment that will be connected to the District network must meet the minimum acceptable standards of the District.

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F. The District shall provide funding to supply materials for high school Library needs beyond those provided by the County for public library needs. The District shall provide an opening day collection that supports the District's High School curriculum.

7. County Responsibilities:

A. The County shall oversee all library related activities carried out using the Library during the hours the Library is in operation by the County, and shall provide supervision at all times when in use.

B. The County shall hire and maintain all professional staff for the Library when in use by the County. The County shall have full responsibility for the supervision and direction of any volunteers utilized in the Library when open for County use.

C. The County shall leave the facility clean and shall reimburse the District for any costs associated with additional cleaning required as a result of the County's use.

D. The County shall reimburse the District for custodial materials and equipment at a rate proportionate to the County's use of the facility.

E. The County will provide the Integrated Library System that has all of the books, publications, and databases, including the Library Information System through the San Joaquin Valley Library System, giving public library users access to all library materials available in the Tulare County Library system.

F. The County will offer its online Live Homework Help Program to Lindsay High School students.

G. The County will provide Early Literacy Training to District parents.

H. The County will provide trainers for computer classes offered after-school, evenings and on Saturday. These classes will include, but are not limited to, Introduction to Computers, Excel, Word, PowerPoint, and Internet Search.

8. Consideration: The District shall provide a total of not less than one million eight hundred thousand dollars (\$1,800,000) for the capital expenses of this project from the District's Capital Bond Fund. In addition, the District shall make application for funding for this Library to the State Allocation Board, under the auspices of the Joint Use Program. Additional consideration for this agreement is the mutual promises, benefits and burdens made herein by each party to the other party.

9. Design and Construction Standards: Because the Library will be used by District students as a part of their educational program, it will be designed and constructed in full conformance with the Field Act, Education Code sections 17280-17317 and 17365-17374, and its implementing regulations.

10. Ownership of Site, Improvements, Furnishings, Equipment and Materials: The District shall retain ownership of the Library site and of the Library building. The improvements to the site shall be the responsibility of the District. The parties purchasing or otherwise providing the same shall own the furnishings, equipment and materials of the Library. Donations of furnishings, equipment and materials from outside sources shall become the property of the District unless otherwise specified by the donor.

11. County/District Employees: The County shall be responsible for payment of all salaries, wages, compensation, or benefits, for its own employees. The District shall have no responsibility for the payment of any salaries, wages or other compensation or benefits to County's officers, agents or employees performing services to the County pursuant to this

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12. Employee Insurance: Both Parties shall at all times during this Agreement maintain, at its sole cost and expense, all necessary insurance for its officers, employees and agents performing services pursuant to this Agreement, including, but not limited to, workers' compensation, disability and unemployment insurance and to provide each other with verification of such coverage upon request.

13. Consistent Use: As required by Education Code Section 17052, the County's use of the Library shall at all times be consistent with the use of the Library by District for school purposes and shall not interfere with the regular conduct of schoolwork.

14. Termination: The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

A. Without Cause: District shall have the right to terminate this Agreement without cause by giving 60 days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. One year after the agreement is entered, the County shall have the right to terminate this Agreement without cause by giving 60 days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination.

B. With Cause:

- i. This Agreement may be terminated by either party should the other party:
 - (1) be adjudged bankrupt, or

- (2) become insolvent or have a receiver appointed, or
 - (3) make a general assignment for the benefit of creditors, or
 - (4) suffer any judgment which remains unsatisfied for 30 days, and
which would substantively impair the ability of the judgment debtor
to perform under this Agreement, or
 - (5) materially breach this Agreement.
- ii. For any of the occurrences except item (5), termination may be effected upon written notice by the terminating party specifying the date of the termination.
 - iii. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 30 days of written notice specifying the breach. If the breach is not remedied within that 30-day period, the non-defaulting party may terminate the Agreement on further written notice specifying the date of termination.
 - iv. If the nature of the breach is such that it cannot be cured within a 30-day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of termination.

C. Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of District may immediately suspend performance, in whole or in part, in response to health, safety or financial emergency, until the cause for suspension is resolved, or a notice of termination becomes effective.

15. Indemnification: District and County shall hold each other harmless, defend and indemnify their respective agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, arising from, or in connection with, the negligent performance or willful misconduct of District or County or their agents, officers and employees under this Agreement. This indemnification shall be provided by each party to the other party regarding its own activities undertaken pursuant to this Agreement, or as a result of the relationship thereby created, including any claims that may be made against either party by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, or any claims made against either party alleging civil rights violation by such party under Government Code section 12920 et seq. (California Fair Employment and Housing Act). This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement."

16. Liability Insurance: Prior to engaging in any activities pursuant to this agreement, the Parties acknowledge and agree that each maintains a policy of comprehensive general liability insurance in a combined single limit of not less than \$1,000,000 on account of any one occurrence, issued by a company duly licensed to transact business in the State of California, covering personal injuries, including death and property damage that may arise as a result of, or out of, any acts or omissions of the Party or its officers, employees or agents,

pursuant to this agreement. Upon request from one Party, the other Party must file insurance verification with the requesting Party. The Parties will maintain said insurance during the entire term of this Agreement, at its sole cost and expense.

A. Parties shall maintain said insurance during the entire term of this Agreement, at its sole cost and expense.

B. Said insurance policy shall name the other Party, its officers, employees and agents as an additional insured. Said insurance policy shall further provide for at least 30 days advance written notice to District prior to cancellation, material change or non-renewal.

17. Assignment: County shall not assign, mortgage, sublet or otherwise transfer any interest in this Agreement to any person, firm, corporation or private or public agency without the prior written consent to District.

18. Entire Agreement Represented: This Agreement represents the entire agreement between County and District as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both parties. This provision does not exclude the County or District from developing scheduling, joint use, or other related agreements relative to the premises in the future.

19. Damage: The County shall be solely responsible for and shall reimburse District for any and all necessary repairs and replacements resulting from damage to the Library arising from County's use and occupancy of the Library, or that of its officers, employees, agents, licensees or invitees, pursuant to this Agreement, excluding normal wear and tear.

20. Entry: The District, its officers, employees or agents, shall have the right to enter into and upon the Library at all times. The District shall provide the County with reasonable notice to enter, for any of the following purposes:

A. To determine whether County is complying with the obligations under this agreement;

B. To do any necessary maintenance and to make any restoration to the premises or the building and other improvements in which the premises are located that District has the right or obligation to perform. Notice is not required in the event of a maintenance emergency.

21. Destruction of the Facilities: If any of said facilities shall be wholly destroyed by fire or other casualty, the District will make a reasonable effort to rebuild the same using insurance proceeds. If the insurance proceeds are not enough to cover the entire cost, the district is under no obligation to replace the same facilities. If any of said facilities shall be partly destroyed or damaged by fire or other casualty, the District will make every reasonable effort to repair using only the insurance proceeds. If the insurance proceeds are not enough to cover the entire cost, the District is under no obligation to replace the same facilities.

22. Surrender: Upon the termination of this Agreement, County shall surrender possession of the Library to the District and, shall at the time of surrender, leave the Library in as good order and condition as said Library were at the inception of this Agreement, ordinary wear and tear, and damage by the elements, fire, earthquake, flood, act of God, or public calamity, excepted.

23. Regulations: Each party will, at all times during the term of this Agreement and its use of the premises, comply with all applicable ordinances, laws and regulations pertaining to the use of the premises.

24. No Third Party Beneficiaries Intended: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

25. Exhibits and Recitals: The recitals and exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

26. Conflict with Laws or Regulations/Severability: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect.

27. Notices: All notices required by this Agreement will be considered executed when received by each party at the following addresses:

For the County:

Board of Supervisors
County of Tulare
Administration Building
2800 W. Burrel
Visalia, CA 93291

Copy to:

County Librarian
200 W. Oak St.
Visalia, CA 93291

For the School District:

Office of the Superintendent
Lindsay Unified School District
371 E. Hermosa Street
Lindsay, CA 93247

28. Amendment: This Agreement may not be amended, modified or altered without the express written consent of both parties; except that each party may delegate authority to

negotiate and approve changes in methods of operation and funding allocations within approved budgets to the designees of each party.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

COUNTY OF TULARE

By: _____
Chair, Board of Supervisors

Attest:

County Clerk

LINDSAY UNIFIED SCHOOL DISTRICT

By: Mary Herrera
President, Board of Trustees
"District"

Board Approved

JUN 08 2009

Lindsay Unified S.D.

APPROVED AS TO FORM:
COUNTY COUNSEL
BY [Signature] 6/16/09
DEPUTY 208953

EXHIBIT A
SITE MAP

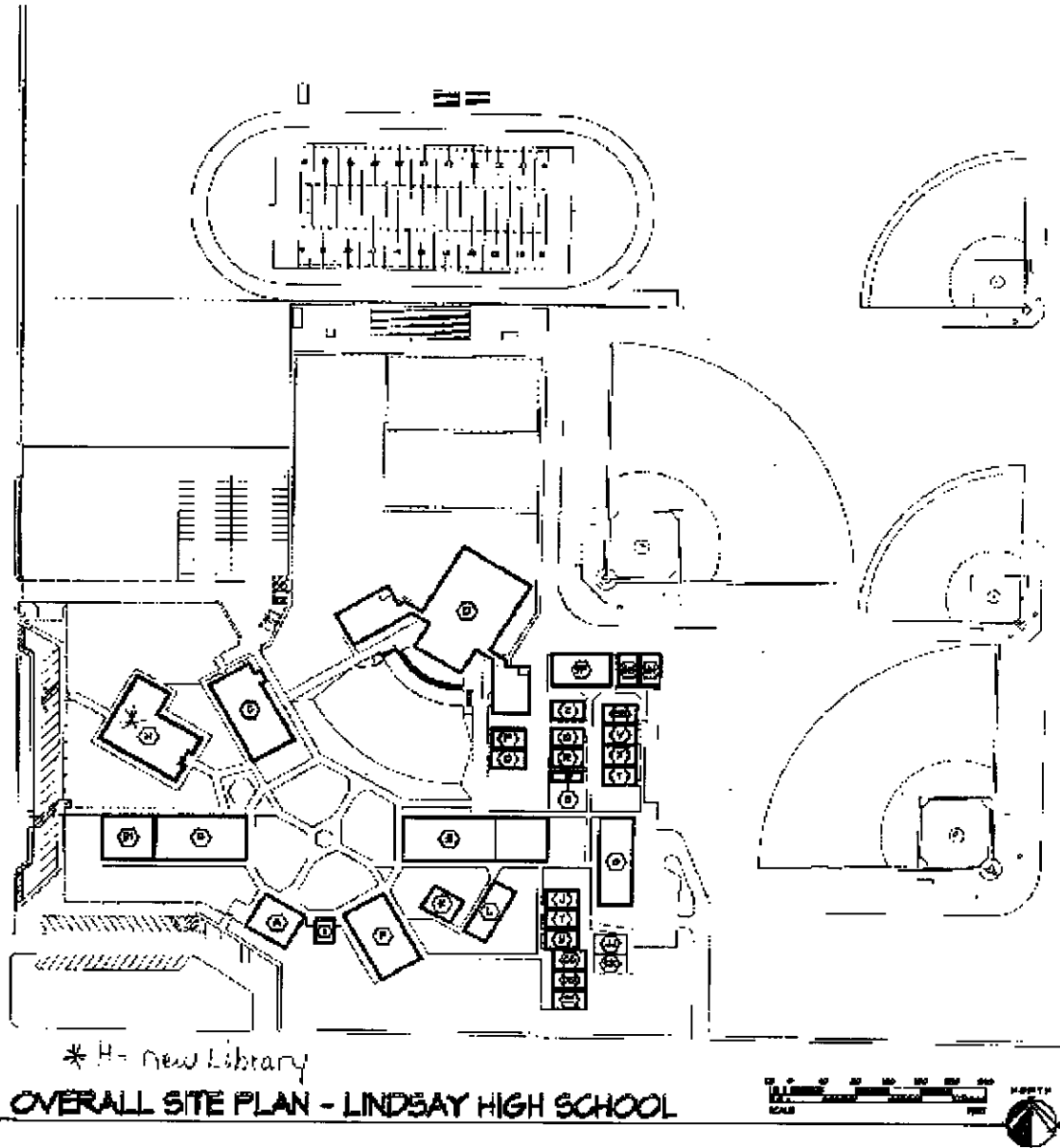


EXHIBIT B

PERMITTED USE OF LIBRARY

1. The County may schedule events for persons, organizations, associations, corporations or other groups of entities which otherwise by law may fully make use of the Library of the District or of the County as the case may be, and within the guidelines established by the District in its Civic Center Act policy.
2. The County shall use the Library only during the hours specified in this Agreement, but may use the Library at other times as agreed upon by the District, including but not limited to Saturdays, Sundays and holidays. County shall not put the Library to any other use without the prior written consent of the District.
3. The County shall have full access to the Library after regular school hours, and, on Saturdays and Holidays.
4. The hours of use of the Library are as follows:
 - A. Monday through Friday during the School Year:
 - i. 8:00 AM through 3:30 PM – Lindsay Unified School District has exclusive use of the entire Library.
 - ii. 3:30 PM through 8:00 PM – Public access to the entire Library.
 - B. Saturday:
 - i. 10:00 AM through 5:00 PM – Public access to the entire Library.
 - C. Monday through Friday during Holidays and School Summer Break;
 - i. 3:30 PM through 8:00 PM – Public access to the entire Library.
 - D. The Holiday schedule for the Library shall be that used by the County, unless otherwise agreed to in writing by both parties.