

FL-130 Bldg802,821,657(FresnoLibraries)
HenryMaddenLibrary/Library7511

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (hereinafter "AGREEMENT") is made and entered into this 13th day of September, 2016, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, 2220 Tulare Street, Suite 2100, Room 2101, Fresno, California, 93721-2106, (hereinafter "COUNTY"), and HENRY MADDEN LIBRARY, CALIFORNIA STATE UNIVERSITY, FRESNO, a public university library, with offices at 5200 N. Barton, Fresno, CA 93740 (hereinafter "HENRY MADDEN LIBRARY"). COUNTY and HENRY MADDEN LIBRARY may, hereinafter, be referred to collectively as "Parties" or individually as "Party".

WITNESSETH:

WHEREAS, COUNTY owns the building located at 944 E. Perrin, Fresno, CA 93720 (Building 802), and leases the buildings located at 5566 E. Kings Canyon, Fresno, CA 93727 (Building 821), and 188 E. California, Fresno, CA 93706 (Building 657) (collectively, hereinafter "Premises"); and

WHEREAS, HENRY MADDEN LIBRARY has agreed to provide a computer lab for its basic computer classes open to adult library users at the Premises; and

WHEREAS, the Board of Supervisors of COUNTY, finds that the foregoing use of COUNTY facilities to conduct the aforementioned programs will meet the social needs of the County's population, is in the best interest of the County and the general public, and will not interfere with the COUNTY's use of such facilities.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter contained, the Parties agree as follows:

1. PREMISES - COUNTY shall designate and make computer lab training sites available to HENRY MADDEN LIBRARY during COUNTY's regular operating hours at 944 E. Perrin, Fresno, CA 93720 (Building 802), 5566 E. Kings Canyon, Fresno, CA 93727 (Building 821), and 188 E. California, Fresno, CA 93706 (Building 657).

2. TERM AND TERMINATION - The initial term of this AGREEMENT shall be effective September 13, 2016 through June 30, 2017 (hereinafter "Initial Term"). After the

1 Initial Term, this AGREEMENT will renew automatically for a maximum of two (2) consecutive
2 twelve (12) month periods, upon the same terms and conditions herein, unless either Party
3 provides thirty (30) days written notice of non-renewal prior to the end of the Initial Term or the
4 then current renewal term. In no event shall the term of this AGREEMENT extend beyond
5 June 30, 2019.

6 Notwithstanding anything to the contrary in this AGREEMENT, COUNTY shall have
7 the right to terminate this AGREEMENT immediately in the event that HENRY MADDEN
8 LIBRARY ceases to perform any of its obligations to provide any of the services described in
9 its Scope of Work, attached hereto as Exhibit A and incorporated herein by reference. As to
10 COUNTY, the Director of Internal Services/Chief Information Officer or the County Librarian, or
11 a designee of one of them, may provide written notice of non-renewal or termination of this
12 AGREEMENT.

13 3. CONSIDERATION - There is no monetary consideration for this AGREEMENT.
14 COUNTY acknowledges as adequate consideration for HENRY MADDEN LIBRARY's use of
15 the Premises, the provision of services by HENRY MADDEN LIBRARY, as set forth and in
16 accordance with the Scope of Work (Exhibit A). Such consideration, in addition to the mutual
17 promises and covenants made herein by the Parties, is deemed by the Parties to be sufficient.

18 4. UTILITIES - COUNTY shall be responsible for electricity, natural gas, water, sewer,
19 garbage, and telephone costs.

20 5. USE - HENRY MADDEN LIBRARY shall use the Premises during COUNTY's
21 regular operating hours to provide the services described in Exhibit A. HENRY MADDEN
22 LIBRARY agrees that the use of the Premises shall, at all times, be consistent with providing
23 these services. HENRY MADDEN LIBRARY agrees to not commit, suffer or permit any waste
24 or nuisance on the Premises, and not to use or permit the use of the Premises for any illegal
25 or immoral purposes. HENRY MADDEN LIBRARY further agrees to comply with all state
26 laws, local ordinances and other governmental regulations which may be required by any
27 governmental authority.

28 6. MAINTENANCE AND REPAIRS OF PREMISES - COUNTY shall be responsible for

1 the structural condition of the Premises and for all exterior and interior maintenance, including
2 but not limited to, the air conditioning, heating, plumbing, electrical, roof, painting, landscaping
3 and parking lot. COUNTY covenants that, insofar as only the aforementioned items are
4 concerned, the Premises shall be maintained in substantially the same condition as that
5 existing at the commencement of this AGREEMENT.

6 HENRY MADDEN LIBRARY shall report damages to the Premises within twenty-four
7 (24) hours after they occur to the County Librarian or her designee at:
8 maintenance@fresnolibrary.org.

9 7. ENFORCEMENT OF AGREEMENT - If HENRY MADDEN LIBRARY shall default
10 on any of the covenants or agreements contained in this AGREEMENT, COUNTY shall give
11 written notice of such default to HENRY MADDEN LIBRARY, and HENRY MADDEN
12 LIBRARY shall have thirty (30) days from the date the written notice is sent to cure such
13 default. If HENRY MADDEN LIBRARY does not cure the default within thirty (30) days,
14 COUNTY may, at its option, at any time after such default or breach and without any demand
15 on or notice to HENRY MADDEN LIBRARY or to any other person, of any kind whatsoever,
16 re-enter and take possession of the Premises and remove all persons or property therefrom,
17 and HENRY MADDEN LIBRARY waives any legal remedy to defeat COUNTY'S rights and
18 possessions hereunder. However, nothing contained herein shall prevent COUNTY from
19 seeking any other legal or equitable remedies in a court of law which arise from such breach
20 or default.

21 8. NOTICES - All notices to be given under this AGREEMENT by either Party to the
22 other Party shall be in writing, and given by any one of the following methods:

- 23 (i) Personal delivery; or
24 (ii) Sent by certified United States mail, first class postage prepaid,
25 with return receipt requested, to the applicable addresses as set forth below, in which case
26 such notice shall be deemed given three (3) business days if COUNTY is the recipient, or
27 three (3) business days if HENRY MADDEN LIBRARY is the recipient, after such deposit and
28 postmark with the United States Postal Service; or

(iii) Sent by a reputable overnight commercial courier, in which case such notice shall be deemed given one (1) business day if COUNTY is the recipient, or one (1) business day if HENRY MADDEN LIBRARY is the recipient, after such deposit with that courier to the applicable addresses as set forth below.

The addresses and telephone numbers of the Parties for purposes of giving receiving notices under this AGREEMENT are as follows:

COUNTY OF FRESNO:
Robert W. Bash (FL-125)
Director of Internal Services
2220 Tulare Street, Suite 2100
Fresno, CA 93721-2116
(559) 600-1715

HENRY MADDEN LIBRARY
CALIFORNIA STATE UNIVERSITY, FRESNO
Raymond Pun,
First Year Student Success Librarian
5200 N. Barton, M/S ML 34
Fresno, CA 93740
(559) 278-2230

Provided however, such notices may be given to such person or at such other place as either of the Parties may from time to time designate by giving written notice to the other Party, and provided further however, in any event notices of changes of address or termination of this AGREEMENT shall not be effective until actual delivery of such notice. Notices given hereunder shall not be amendments or modifications to this AGREEMENT.

9. HOLD HARMLESS - HENRY MADDEN LIBRARY agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by HENRY MADDEN LIBRARY, its officers, agents, affiliates, or employees under this AGREEMENT, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform of HENRY MADDEN LIBRARY, its officers, agents, affiliates or employees under this AGREEMENT.

The parties acknowledge that as between COUNTY and HENRY MADDEN LIBRARY each is responsible for the negligence of its officers, agents, affiliates, volunteers or

employees under this AGREEMENT.

10. INSURANCE – Without limiting the COUNTY'S right to obtain indemnification from HENRY MADDEN LIBRARY or any third parties, HENRY MADDEN LIBRARY, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, throughout the term of this AGREEMENT:

a. Commercial General Liability - Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability, or any other liability insurance deemed necessary because of the nature of this contract.

b. Property Insurance – Against all risk of loss to COUNTY property, at full replacement cost with no coinsurance penalty provision, naming COUNTY as an additional loss payee.

c. Automobile Liability - Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five Hundred Thousand Dollars (\$500,000) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000). Coverage should include owned and non-owned vehicles used in connection with this AGREEMENT.

d. Worker's Compensation - A policy of Worker's Compensation insurance may be required by the California Labor Code.

e. Professional Liability Insurance - If HENRY MADDEN LIBRARY employs professional staff (e.g., PH.D., R.N., L.C.S.W., M.F.C.C.) in providing services, with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate.

1 HENRY MADDEN LIBRARY shall obtain endorsements to the Commercial General
2 Liability insurance naming the County of Fresno (hereinafter "County"), its officers, agents, and
3 employees, individually and collectively, as additional insured, but only insofar as the
4 operations under this AGREEMENT are concerned. Such coverage for additional insured
5 shall apply as primary insurance and any other insurance, or self-insurance, maintained by,
6 County, its officers, agents, and employees shall be excess only and not contributing with
7 insurance provided under HENRY MADDEN LIBRARY' policies herein. This insurance shall
8 not be cancelled or changed without a minimum of thirty (30) days advance written notice
9 given to County.

10 Within (30) days from date HENRY MADDEN LIBRARY executes this AGREEMENT,
11 HENRY MADDEN LIBRARY shall provide certificates of insurance and endorsement as stated
12 above for all of the foregoing policies, as required herein, to the County of Fresno, Attn: ISD
13 Lease Services (FL-125), 2220 Tulare Street, 21st Floor, Room 2101, Fresno, CA 93721-
14 2106, stating that such insurance coverages have been obtained and are in full force; that the
15 County, its officers, agents and employees will not be responsible for any premiums on the
16 policies; that such Commercial General Liability insurance names the County, its officers,
17 agents, and employees, individually and collectively, as additional insured, but only insofar as
18 the operations under this AGREEMENT are concerned; that such coverage for additional
19 insured shall apply as primary insurance and any other insurance, or self- insurance shall not
20 be cancelled or changed without a minimum of thirty (30) days advance, written notice given to
21 County.

22 In the event HENRY MADDEN LIBRARY fails to keep in effect at all times insurance
23 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
24 suspend or terminate this AGREEMENT upon the occurrence of such event.

25 All policies shall be with admitted insurers licensed to do business in the State of
26 California. Insurance purchased shall be purchased from companies possessing a current
27 A.M Best Company rating of A FSC VII or better.

28 COUNTY shall maintain during the term of this AGREEMENT the following policies of

insurance, which coverages may be provided in whole or in part through one or more programs of self-insurance:

a. Commercial General liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of not less than Two Million Dollars (\$2,000,000). This policy shall be issued on an occurrence basis.

b. All-Risk property insurance.

12. INDEPENDENT CONTRACTOR - In performance of the work, duties and obligations assumed by HENRY MADDEN LIBRARY under this AGREEMENT, it is mutually understood and agreed that HENRY MADDEN LIBRARY, including any and all of the HENRY MADDEN LIBRARY' officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which HENRY MADDEN LIBRARY shall perform its work and function. However, COUNTY shall retain the right to administer this AGREEMENT so as to verify that HENRY MADDEN LIBRARY is performing its obligations in accordance with the terms and conditions of the AGREEMENT.

COUNTY and HENRY MADDEN LIBRARY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, HENRY MADDEN LIBRARY shall have absolutely no right to employment rights and benefits available to COUNTY'S employees. HENRY MADDEN LIBRARY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, HENRY MADDEN LIBRARY shall be solely responsible and save/hold COUNTY harmless from all matters, except for COUNTY AND COUNTY'S employee's gross negligence and/or willful misconduct, relating to payment of HENRY MADDEN LIBRARY' employees, including

1 compliance with Social Security withholding and all other regulations governing such matters

2 13. AMENDMENT - This AGREEMENT may be amended in writing by the mutual
3 consent of the Parties without in any way affecting the remainder.

4 14. NON-ASSIGNMENT - Neither Party shall assign, transfer or sub-contract this
5 AGREEMENT, nor their rights or duties under this AGREEMENT, without the prior written
6 consent of the other Party.

7 15. GOVERNING LAW - Venue for any action arising out of or relating to this
8 AGREEMENT shall be in Fresno County, California. This AGREEMENT shall be governed by
9 the laws of the State of California.

10 16. AUTHORITY - Each individual executing this AGREEMENT on behalf of HENRY
11 MADDEN LIBRARY represents and warrants that that individual is duly authorized to execute
12 and deliver this AGREEMENT on behalf of HENRY MADDEN LIBRARY and that this
13 AGREEMENT is binding upon HENRY MADDEN LIBRARY in accordance with its terms. The
14 terms of this AGREEMENT are intended by the Parties as a final expression of their
15 agreement with respect to such terms as are included in this AGREEMENT and may not be
16 contradicted by evidence of any prior or contemporaneous agreement, arrangement,
17 understanding or negotiation (whether oral or written).

18 17. ENTIRE FACILITY USE AGREEMENT - This AGREEMENT constitutes the entire
19 AGREEMENT between the COUNTY and HENRY MADDEN LIBRARY with respect to the
20 subject matter hereof and supersedes all prior AGREEMENTS, negotiations, proposals,
21 commitments, writings, advertisements, publications, and understandings of any nature
22 whatsoever, unless expressly referenced in this AGREEMENT.

23 EXECUTED as of the date first herein written.

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HENRY MADDEN LIBRARY:
HENRY MADDEN LIBRARY,
CALIFORNIA STATE UNIVERSITY,
FRESNO

COUNTY:
COUNTY OF FRESNO

By Brian Cothran 8/18/16
Brian Cothran, CPSM, C.P.M.
Director of Procurement and Support
Services, and the SB/DVBE Advocate

By Ernest Buddy Mendes
Ernest Buddy Mendes, Chairman
Board of Supervisors

ATTEST: BERNICE E. SEIDEL, CLERK
BOARD OF SUPERVISORS

By Lisa Cuyf
Deputy

APPROVED AS TO LEGAL FORM:
DANIEL C. CEDERBORG, COUNTY COUNSEL

By Jan T. Smith
Deputy

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

By Robert W. Bash

RECOMMENDED FOR APPROVAL:

By Robert W. Bash
Robert W. Bash, Director of Internal
Services/Chief Information Officer

RECOMMENDED FOR APPROVAL:

By Laurel C. Prysiazny
Laurel C. Prysiazny, County Librarian

Fund: 0107
Subs: 10000
Org No.: 7511
Acct. No.: 5039

FL-130/Henry Madden Library/Library7511(FresnoLibraries)

Scope of Work

CONTRACTOR: Henry Madden Library, California State University, Fresno

ADDRESS: 5200 N. Barton, Fresno, CA 93740

SITE ADDRESSES: 944 E. Perrin, Fresno, CA 93720 (Building 802); 5566 E. Kings Canyon, Fresno, CA 93727 (Building 821); and 188 E. California, Fresno, CA 93706 (Building 657).

SERVICES: Computer Classes

PROJECT DIRECTOR: Raymond Pun, First Year Student Success Librarian
Phone Number: (559) 278-2230

CONTRACT PERIOD: September 1, 2016 – June 30, 2019 (Includes two (2) twelve (12) month renewal periods: July 1, 2017-June 30, 2018 and July 1, 2018 –June 30, 2019)

CONTRACTOR'S RESPONSIBILITIES:

CONTRACTOR shall:

1. Provide all necessary training, materials and instructional staff to conduct the workshops.
2. Consult with COUNTY staff to establish a schedule for the instructional experience at the Library.
3. Be responsible for student instructor's activities and conduct while at COUNTY facilities.
4. Require every student instructor to conform to all applicable Library policies, procedures and regulations, and all requirements and restrictions specified jointly by representatives of the CONTRACTOR and COUNTY.
5. Use the public computers in the designated room and branches only during the designated 2-hour block allotted for the computer instruction sessions.
6. Secure use of room by contacting the designated COUNTY staff to confirm availability and reservation.

COUNTY'S RESPONSIBILITIES:

COUNTY shall:

1. Make said training sites available for CONTRACTOR during regular operating hours.
2. Provide COUNTY staff member to CONTRACTOR for ongoing and imperative guidance of project success.
3. Work closely with CONTRACTOR staff to schedule the meeting room, orient them regarding audio-visual and facilities procedures and, if possible, to arrange storage for class materials between classes.