

AGREEMENT

This Agreement ("Agreement") is made and entered into this 17th day of April, 2018, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and the Central Unified School District, whose address is 4605 N. Polk Avenue, Fresno, CA 93722, hereinafter referred to as "CUSD." COUNTY and CUSD may herein be referred to individually as "Party" or collectively as "Parties."

WITNESSETH:

WHEREAS, CUSD and COUNTY entered into a Memorandum of Understanding dated January 1, 2013, allowing COUNTY to provide public library services at CUSD's Biola-Pershing Elementary School library facility (hereinafter "Biola") during non-school hours (AGT.#13-104), which expired on June 30, 2017; and

WHEREAS, CUSD and COUNTY have continued to perform under the foregoing Memorandum of Understanding ("MOU"), as if such MOU was still in effect; and

WHEREAS, CUSD and COUNTY entered into a Memorandum of Understanding dated June 1, 2014, allowing COUNTY to provide public library services at CUSD's Teague Elementary School library facility (hereinafter "Teague") during non-school hours (AGT#14-291); and

WHEREAS, the Parties continue to recognize and agree that if structured and implemented properly, partnering jurisdictions and school districts can make efficient use of existing school facilities and grounds; reduce the need for public acquisition of expensive property in order to provide public library services; and increase public access to local resources and improve community cohesion; and

WHEREAS, the Parties now desire to enter into this Agreement to consolidate the aforementioned Memorandums of Understanding into one global agreement to provide public library services at both the Biola and Teague elementary school facilities, as well as to allow the Parties the option to add other CUSD school library facilities during the term of this Agreement to operate as COUNTY public library facilities during non-school hours.

1 NOW, THEREFORE, in consideration of the mutual covenants and conditions
2 herein set forth, COUNTY and CUSD agree that the aforementioned existing Memorandums of
3 Understanding are hereby superceded and replaced in their entirety by this Agreement, and
4 further agree as follows:

5 1. RESPONSIBILITIES OF CUSD

6 CUSD shall fulfill all responsibilities specified in Exhibit A, attached hereto and
7 incorporated herein by reference.

8 2. RESPONSIBILITIES OF COUNTY

9 COUNTY shall fulfill all responsibilities specified in Exhibit A.

10 3. TERM

11 The term of this Agreement shall be for a period of five (5) years, with a
12 commencement date retroactive to July 1, 2017.

13 4. TERMINATION

14 This Agreement may be terminated by either Party by providing sixty (60) days
15 advance written notice of termination to the other party. Upon termination or expiration of this
16 Agreement, COUNTY shall cease delivery of library services and vacate all Schools (as that
17 term is defined in Exhibit A). In such event, all fixtures purchased by the COUNTY shall remain
18 the property of the COUNTY and the COUNTY shall be allowed a reasonable period of time to
19 enter Schools at all reasonable times and upon prior notice to remove such fixtures and any
20 other COUNTY property. If requested to do so by CUSD, COUNTY shall also restore each
21 school library to its pre-Agreement condition with reasonable wear and tear excepted.

22 5. CONSIDERATION

23 There is no monetary consideration for this Agreement. The Parties agree that their
24 mutual promises hereunder shall suffice as consideration.

25 6. INDEPENDENT CONTRACTOR

26 In performance of the work, duties and obligations assumed by each Party under this
27 Agreement, it is mutually understood and agreed that each Party, including any and all of the
28 Parties' officers, agents, and employees will at all times be acting and performing as an

1 independent contractor, and shall act in an independent capacity and not as an officer, agent,
2 servant, employee, joint venturer, partner, or associate of the other Party. Furthermore, each
3 Party shall have no right to control or supervise or direct the manner or method by which the other
4 Party shall perform its work and function. However, each Party shall retain the right to administer
5 this Agreement so as to verify that the other party is performing its obligations in accordance with
6 the terms and conditions thereof.

7 CUSD and COUNTY shall comply with all applicable provisions of law and the rules
8 and regulations, if any, of governmental authorities having jurisdiction over matters the subject
9 thereof.

10 Because of its status as an independent contractor, each Party shall have absolutely
11 no right to employment rights and benefits available to the other Party's employees. Each Party
12 shall be solely liable and responsible for providing to, or on behalf of, its employees all
13 legally-required employee benefits. In addition, each Party shall be solely responsible and save
14 the other Party harmless from all matters relating to payment of each Party's employees, including
15 compliance with Social Security withholding and all other regulations governing such matters.

16 7. MODIFICATION

17 Any matters of this Agreement may be modified from time to time by the written
18 consent of both Parties without, in any way, affecting the remainder.

19 8. NON-ASSIGNMENT

20 Neither Party shall assign, transfer or sub-contract this Agreement nor their rights or
21 duties under this Agreement without the prior written consent of the other party.

22 9. HOLD HARMLESS

23 CUSD agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend
24 the COUNTY, its officers, agents, and employees from any and all costs and expenses, damages,
25 liabilities, claims, and losses occurring or resulting to COUNTY in connection with the
26 performance, or failure to perform, by CUSD, its officers, agents, or employees under this
27 Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses
28 occurring or resulting to any person, firm, or corporation who may be injured or damaged by the

1 performance, or failure to perform, of CUSD, its officers, agents, or employees under this
2 Agreement.

3 COUNTY agrees to indemnify, save, hold harmless, and at CUSD's request, defend
4 the CUSD, its officers, agents, and employees from any and all costs and expenses, damages,
5 liabilities, claims, and losses occurring or resulting to CUSD in connection with the performance,
6 or failure to perform, by COUNTY, its officers, agents, or employees under this Agreement, and
7 from any and all costs and expenses, damages, liabilities, claims, and losses occurring or
8 resulting to any person, firm, or corporation who may be injured or damaged by the performance,
9 or failure to perform, of COUNTY, its officer, agents, or employees under this Agreement.

10 **10. INSURANCE**

11 Without limiting the indemnification of each party as stated in Section 9, hereinabove,
12 it is understood and agreed that CUSD and COUNTY shall each maintain, at their sole expense,
13 insurance policies or self-insurance programs, including but not limited to, an insurance pooling
14 arrangement or Joint Powers Agreement (JPA) throughout the term of this Agreement:

15 **A. Commercial General Liability**

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

22 **B. Automobile Liability**

23 Comprehensive Automobile Liability Insurance with limits for bodily injury of not
24 less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand
25 Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand
26 Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand
27 Dollars (\$500,000.00). Coverage should include owned, non-owned and hired vehicles used in
28 connection with this Agreement.

1 C. Professional Liability

2 If either Party employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
3 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One
4 Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual
5 aggregate.

6 D. Worker's Compensation

7 A policy of Worker's Compensation insurance as may be required by the California
8 Labor Code.

9 Evidence of insurance, Certificates of Insurance or other similar documentation
10 shall not be required of either Party under this Agreement.

11 In the event either Party fails to keep in effect at all times insurance coverage as
12 herein provided, the other Party may, in addition to other remedies it may have, suspend or
13 terminate this Agreement upon the occurrence of such event.

14 All policies shall be issued by admitted insurers licensed to do business in the
15 State of California, and such insurance shall be purchased from companies possessing a current
16 A.M. Best, Inc. rating of A FSC VII or better.

17 11. NOTICES

18 The persons and their addresses having authority to give and receive notices under
19 this Agreement include the following:

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21 COUNTY

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23 Fresno County Public Library
24 Attn: County Librarian
25 2420 Mariposa St.
26 Fresno, CA 93721

CUSD

Central Unified School District
Attn: Assistant Superintendent
4605 N. Polk Ave.
Fresno, CA 93722

27 All notices between the COUNTY and CUSD provided for or permitted under this
28

1 Agreement must be in writing and delivered either by personal service, by first-class United States
2 mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice
3 delivered by personal service is effective upon service to the recipient.

4 A notice delivered by first-class United States mail is effective three COUNTY
5 business days after deposit in the United States mail, postage prepaid, addressed to the recipient.
6

7 A notice delivered by an overnight commercial courier service is effective one
8 COUNTY business day after deposit with the overnight commercial courier service, delivery fees
9 prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

10 A notice delivered by telephonic facsimile is effective when transmission to the
11 recipient is completed (but, if such transmission is completed outside of COUNTY business hours,
12 then such delivery shall be deemed to be effective at the next beginning of a COUNTY business
13 day), provided that the sender maintains a machine record of the completed transmission.
14

15 For all claims arising out of or related to this Agreement, nothing in this section
16 establishes, waives, or modifies any claims presentation requirements or procedures provided by
17 law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the
18 Government Code, beginning with section 810).

19 12. GOVERNING LAW

20 Venue for any action arising out of or related to this Agreement shall only be in Fresno
21 County, California.

22 The rights and obligations of the Parties and all interpretation and performance of this
23 Agreement shall be governed in all respects by the laws of the State of California.

24 13. ENTIRE AGREEMENT

25 This Agreement constitutes the entire agreement between the CUSD and COUNTY
26 with respect to the subject matter hereof and supersedes all previous Agreement negotiations,
27 proposals, commitments, writings, advertisements, publications, and understanding of any nature
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1 whatsoever unless expressly included in this Agreement.

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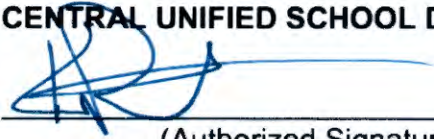
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1 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day
2 and year first hereinabove written.

3
4 **CENTRAL UNIFIED SCHOOL DISTRICT**

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6 _____

7 (Authorized Signature)

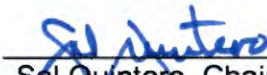
8
9 Kelly Porterfield, Assistant Superintendent
10 Print Name & Title

11 4605 N. POLK AVENUE

12 FRESNO, CA 93722

13 Mailing Address
14

COUNTY OF FRESNO

15 
16 Sal Quintero, Chairman of the Board
17 of Supervisors of the County of
18 Fresno

ATTEST:

19 Bernice E. Seidel
20 Clerk to the Board of Supervisors
21 County of Fresno, State of California

22 By: Susan Bishop
23 Deputy

24 **FOR ACCOUNTING USE ONLY:**

25 **ORG No.:** 75110101
26 **Account No.:** 7340
27 **Requisition No.:** N/A
28

EXHIBIT A

RESPONSIBILITIES OF PARTIES

A. OVERVIEW

Central Unified School District (CUSD) and the COUNTY agree to operate public library branches (each a “Library”) during non-school hours at Teague Elementary School located at 4725 N. Polk Ave., Fresno, CA 93722 and Biola-Pershing Elementary School located at 4885 N. Biola Ave., Fresno, CA 93723 (each a “School” or collectively, “Schools”). Additional Schools within CUSD may be added to this Agreement upon mutual agreement of the Parties.

B. RESPONSIBILITIES

1. RESPONSIBILITIES OF CUSD:

A. CUSD shall make Schools available to the general public during non-teaching hours at the school site and during Library hours of operation as noted hereinbelow.

B. CUSD shall allow access to the Schools for Library delivery staff during school or non-school hours for the purpose of the delivery of materials.

C. CUSD shall allow access to Library staff during non-school hours.

D. CUSD shall comply with County of Fresno and Library rules, regulations, codes and guidelines during hours of public library operation.

E. CUSD shall make student PCs and laptops available for public use during public hours.

F. CUSD shall allow access to each School’s Library catalog and library management system for the purpose of circulating school library materials.

G. CUSD shall cross train Library staff on the school circulation system.

H. CUSD shall allow use of an on-site CUSD computer by Library staff to remotely access the Library’s integrated library system (“ILS”) for circulation of Library materials.

I. CUSD shall maintain sections of metal shelving provided by the Library. CUSD shall consult with the Library before any changes are made to the location or availability of the shelving.

J. CUSD shall provide a background check and fingerprinting for Library staff assigned to each School.

K. CUSD shall provide space at each School, mutually agreed upon by the Library and CUSD staff, for a floor-anchored safe and cash register for the collection of Library fines and fees.

L. CUSD shall be responsible for maintaining the lighting at CUSD school library locations.

M. CUSD shall be responsible for maintaining proper security at CUSD school locations. CUSD shall be responsible for maintaining security policies and procedures at school library locations and provide a copy of these policies and procedures to Library upon request.

N. CUSD shall provide a public awareness campaign to each School community promoting the acquisition of Library cards and the use of Library resources.

O. CUSD shall provide four (4) keys to the Schools to the Library staff : (2) for the Library Facilities Manager, (1) for Library staff assigned to the CUSD site, and (1) to the Library's delivery staff.

P. CUSD shall provide a key to be kept on-site, for Library staff access to school restrooms.

2. RESPONSIBILITIES OF COUNTY:

A. COUNTY shall provide twelve (12) hours of public library service at the Schools during non-school hours as follows:

- 1) Monday, Tuesday, Wednesday and Thursdays, 3:00 pm to 7:00 pm
- 2) Saturdays, 10:00 am to 2:00 pm

Non-school operating hours may be modified by COUNTY as needed in consultation with CUSD and upon mutual agreement of the parties.

B. COUNTY shall provide ONE (1) assigned staff person and ONE (1) substitute staff person to each School.

C. COUNTY shall provide TB tests for staff assigned to the Schools.

D. COUNTY shall provide Library materials for public circulation, to include Adult Fiction, Non-fiction, DVDs and CDs, Teen materials and Pre-school materials.

E. COUNTY shall provide additional shelving to house the County Library's collection as

needed.

F. COUNTY shall provide access to CUSD library materials for the public, utilizing the CUSD circulation system according to CUSD library policies and guidelines.

G. COUNTY shall provide services to the public, including access to computers, resources, programs, and services.

H. COUNTY shall provide programming for all ages.

I. COUNTY shall work with community volunteers to assist with technology troubleshooting, program assistance, handling of Library materials and interpreters when required.

J. COUNTY shall provide assistance with public awareness campaigns through the provision of print materials and the Library's web page.

K. COUNTY shall only allow Library staff access to the Schools during school hours for the purpose of delivery of materials.