

**LEASE AGREEMENT BETWEEN
WEST HILLS COMMUNITY COLLEGE DISTRICT AND
THE COUNTY OF FRESNO**

WEST HILLS NORTH DISTRICT CENTER BUILDING

This Lease Agreement ("Agreement") is entered into on January 8, 2019 ("Effective Date") by and between the West Hills Community College District ("WHCCD"), a community college district of the State of California, and the County of Fresno ("COUNTY"), a political subdivision of the State of California, with respect to the lease of real property by WHCCD to COUNTY. WHCCD and COUNTY may each be referred to as a "Party" or collectively as "Parties" to this Lease Agreement.

WHEREAS, WHCCD owns, operates, and maintains certain real property, including facilities and improvements, located at 1511 Ninth Street, Firebaugh, California, commonly known as the North District Center ("NDC");

WHEREAS, COUNTY is responsible for numerous programs related to food and agriculture through its Agricultural Commissioner ("Ag Commissioner") and desires to utilize certain property and related facilities for the Ag Commissioner; and

WHEREAS, WHCCD is willing to lease a portion of the NDC to COUNTY for purposes relating to the operation of the Ag Commissioner for the benefit of the Firebaugh community.

NOW, THEREFORE, WHCCD AND COUNTY AGREE as follows:

1. **Premises**. WHCCD hereby leases to COUNTY, and COUNTY hereby leases from WHCCD, on the terms and conditions set forth in this Agreement, five hundred fifty (550) square feet of office space, including a private restroom ("Premises"), at the NDC at a location mutually agreed upon by the Parties, and as described in Exhibit A, attached and incorporated by reference.

2. **Term**. The term of this Lease Agreement shall commence on the Effective Date and shall terminate ten (10) years later, unless earlier terminated ("Initial Term"). This Agreement is contingent upon approval of the governing board of each Party. This Agreement will become effective when the governing board of the last Party authorizes its designated representative to execute this Agreement on behalf of that Party or otherwise ratifies the Agreement ("Effective Date").

Upon the mutual written agreement of the Parties, at least one hundred twenty (120) days prior to the termination date, this Lease Agreement may be extended for optional, additional consecutive ten (10) year terms ("Renewal Terms"), not to extend beyond June 30, 2117, through a written amendment signed by authorized representatives of both Parties. The COUNTY'S Director of Internal Services/Chief Information Officer or his or her designee is authorized to execute such agreement on behalf of the COUNTY.

3. **Termination.**

- A. Breach of Contract – Either Party may immediately suspend or terminate this Agreement in whole or in part, where in the determination of either party there is:
- 1) An illegal or improper use of funds;
 - 2) An illegal or improper use of Premises; or
 - 3) A failure to comply with a material term of this Agreement.

The aggrieved Party shall give written notice of such termination to the breaching Party.

- B. Non-Allocation of Funds - The terms of this Agreement and any extensions, and the services to be provided, are contingent on the approval of funds by the appropriating government agency. If sufficient funds are not allocated, the services provided may be modified, or this Agreement terminated at any time by giving thirty (30) days advance written notice.
- C. COUNTY Ag Commissioner has vacated an existing office space in reliance on WHCCD's assurances of a long-term lease. Therefore, if WHCCD terminates this Lease Agreement within the first thirty-six (36) months of the Initial Term, WHCCD must find and pay for a similar office space for the Ag Commissioner that is acceptable to COUNTY for a period of the Initial Term equivalent to thirty-six (36) months from the Effective Date. No assurances or reliance shall be implied for any Renewal Terms.
- D. If, pursuant to the terms provided herein, either COUNTY or WHCCD has an election or otherwise chooses to terminate the Agreement and so elects, then notice of such termination shall be made in writing to the non-terminating party. The notice of termination shall specify a date of termination not less than one hundred twenty (120) days from the date of said notice. In the case of COUNTY, the COUNTY Administrative Officer or the Director of Internal Services/Chief Information Officer or their designee shall have the power to provide such notice and terminate the Agreement.
- E. If, by July 1, 2022, the construction of the NDC and the Premises is not complete, the Parties shall meet and confer to determine methods for WHCCD to expedite WHCCD's completion of the NDC and the Premises construction.
- F. Force Majeure - If the Parties determine that the Premises cannot be constructed or occupied due to emergencies, or natural disasters, such as fire, flood, strike, accident, consequences of foreign or domestic wars, or any other cause beyond the control of the Parties to the Agreement, either Party agrees to give a minimum of thirty (30) days prior written notice to the other Party of withdrawal from this Agreement at no cost, penalty, or other consequences. In the event of such withdrawal, the Parties shall have no further obligation to each other.

4. **Rent and Utilities Expenses.**

- A. As rent for use of the Premises, COUNTY shall pay WHCCD zero dollars (\$0) per year during the term of this Agreement.
- B. COUNTY agrees to pay its proportional share of the security and utilities expenses ("Utilities Expenses") attributable to the Premises. The Utility Expenses shall include water, gas, garbage, sewer, telecommunications, and electricity charges and shall be calculated at the same rate as WHCCD's proportional share. However, COUNTY'S share of Utilities Expenses expressly excludes janitorial expenses, as COUNTY will provide its own janitorial services to this portion of the Premises. County's proportional share of the Utilities Expenses shall be based on the square footage of the Premises, 550 square feet, in proportion to the entire NDC. WHCCD shall invoice COUNTY for the Utilities Expenses on a monthly basis, and COUNTY agrees to remit payment for the Utilities Expenses within forty-five (45) days of that request.
- C. Unless the Parties determine otherwise, WHCCD shall be responsible to provide or secure services as needed to maintain and service the Premises including, but not limited to, telecommunications, janitorial, utilities, trash removal, landscape, electrical and heating and air conditioning services ("Routine Maintenance Services").
- D. COUNTY agrees to pay its share of the routine maintenance expenses ("Routine Maintenance Services") attributable to its portion of the Premises, as described on Exhibit B, attached and incorporated by this reference. The cost of these Routine Maintenance Services shall be calculated at the same rate as WHCCD's proportional share, including planned increases in personnel costs associated with WHCCD collective bargaining agreements, planned step- and column-increases, and cost of living adjustments ("COLA"). WHCCD must provide notice to COUNTY by July 1 each year for any increases associated with the actual costs related to Routine Maintenance, including those resulting from personnel costs, step and column increases as well as COLA adjustments. Such actual cost increases may not exceed 4 percent per annum.

5. **Use.** The Premises are leased to COUNTY for the purpose of operating an Ag Commissioner's Office to serve the Firebaugh agricultural community. COUNTY agrees that its use of the Premises shall not unreasonably interfere with the use of the College Campus by WHCCD or other District-approved lessees, permittees, or invitees.

6. **Parking.** There shall be five (5) non-exclusive parking stalls located in the turnout on the street directly in front of the Premises, as marked on Exhibit A. Two of the five parking stalls located closest to the Premises shall be marked as thirty (30) minute parking stalls, to facilitate more frequent turnover of these parking stalls for customers of the Ag Commissioner's Office.

7. **Surrender at the End of Term.** COUNTY agrees that, upon termination of this Agreement, it will surrender possession of the Premises, including any fixtures, to WHCCD in a neat and clean condition, and in a good state of repair, excepting only for reasonable use and

wear thereof, or damage by non-negligent unintentional acts, including fire, acts of nature, or exposure to the elements.

8. **Alterations and Mechanics' Liens.** COUNTY shall not make any alterations or additions to the Premises without the prior written consent of WHCCD, and any permanent alterations or additions made to the Premises or fixtures shall become at once a part of the realty and belong to WHCCD. COUNTY shall keep the Premises free from any liens or encumbrances arising out of any work performed, materials furnished, or obligations incurred by COUNTY.

9. **Maintenance and Repairs.** During the Lease term, WHCCD shall make, at WHCCD's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, paint, carpeting, and other parts of the Leased Premises damaged or worn through normal occupancy. Repairs shall also include repairs to major mechanical systems, plumbing systems heating and air conditioning systems, or the roof, subject to the obligations of the Parties otherwise set forth in this Lease. COUNTY shall provide janitorial service for the Premises, which includes the Ag Commissioner's Office and private restroom only, as defined in Section 1.

10. **Entry by Landlord.** WHCCD shall have the right to enter upon the Premises at reasonable hours to inspect the Premises, provided WHCCD does not unreasonably interfere with COUNTY's business on the Premises.

11. **COUNTY's Property.** WHCCD shall have no duty or responsibility for the protection, safeguarding, care or storage of any personal property, nor shall WHCCD be liable for any damage to personal property, used by or left on the Premises or any surrounding WHCCD property by COUNTY, or the COUNTY's employees, agents, contractors, customers, guests or invitees, including but not limited to, damage caused by fire, earthquake, acts of nature, vandalism or burglary.

12. **Indemnity.** WHCCD 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 (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by WHCCD, its officers, agents, or employees under this Agreement, and from any and all costs and expenses (including attorney's fees and costs), 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 WHCCD, its officers, agents, or employees under this Agreement.

COUNTY agrees to indemnify, save, hold harmless, and at WHCCD's request, defend WHCCD, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to WHCCD in connection with the performance, or failure to perform, by COUNTY, its officers, agents, or employees under this Agreement, and from any and all costs and expenses (including attorney's fees and costs), 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 COUNTY, its officers, agents, or employees under this Agreement.

In the event of concurrent negligence on the part of COUNTY or any of its officers, agents or employees, and WHCCD or any of its officers, agents, or employees, 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 Section 12 shall survive termination or expiration of this Agreement.

13. **Insurance.** Without limiting the COUNTY's right to obtain indemnification from WHCCD or any third parties, WHCCD, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

1. Commercial General Liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). 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.
2. Fire insurance and extended coverage. WHCCD shall add COUNTY as an additional loss payee thereon.
3. Comprehensive Automobile Liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.
4. Professional Liability – If WHCCD employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.
5. Worker's Compensation – A policy of Worker's Compensation insurance as may be required by the California Labor Code.
6. Molestation – Sexual abuse/molestation liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate. This policy shall be issued on a per occurrence basis.

Additional Requirements Relating to Insurance

WHCCD shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance provided under WHCCD's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

WHCCD hereby waives its right to recover from COUNTY, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. WHCCD is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but WHCCD's waiver of subrogation under this paragraph is effective whether or not WHCCD obtains such an endorsement.

Within Thirty (30) days from the date WHCCD signs and executes this Agreement, WHCCD shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Les Wright, County of Fresno Agricultural Commissioner, 1730 S. Maple Avenue, Fresno, CA 93702, stating that such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under WHCCD's policies herein; that for such worker's compensation insurance WHCCD has waived its right to recover from the COUNTY, its officers, agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

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

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

14. **Assignment or Subletting.** COUNTY shall not assign this Agreement, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of COUNTY and its employees and students excepted) to occupy or use the Premises, or any portion thereof, nor delegate its duties hereunder, without the prior written consent of WHCCD.

15. **Holding Over.** Any holding over after the expiration of the terms of this Agreement, with the consent of WHCCD, shall be construed to be a tenancy from month to month on the same terms and conditions herein specified, including the same rental amount and pro-rata share of costs stated above, unless otherwise agreed by the Parties in writing.

16. **Notices.** The persons and their addresses having authority to give and receive notices under this Agreement including the following:

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For WHCCD: West Hills Community College District
Attn: Ken Stoppenbrink
9800 Cody St.
Coalinga, California 93210

For COUNTY: County of Fresno
Director of Internal Services/Chief Information Officer
333 W. Pontiac Way
Clovis, CA 93612

All notices between the COUNTY and WHCCD provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, by telephonic facsimile transmission, or by other means of delivering written communications as is customarily used by the Parties. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. A notice delivered by electronic transmission is effective immediately, provided that the sender retains a record of the transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

17. **Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed severed from this Agreement, and the remaining parts shall remain in full force as though such invalid or unenforceable provision had not been a part of this Agreement.

18. **Entire Agreement.** The Agreement constitutes the entire agreement between the parties respecting the Premises. Any agreements or representations respecting the Premises not expressly set forth in this Agreement are null and void.

19. **Amendment.** No amendment or modification of this Agreement shall be effective unless in writing and signed by both WHCCD and COUNTY.

20. **Further Action.** WHCCD and COUNTY shall, whether before or after COUNTY obtains possession of the Premises hereunder, execute and deliver such documents, cooperate with each other in good faith, and do such further acts and things as such Party may reasonably request in order to fully effectuate the purposes and intent of this Agreement.

21. **Execution by Facsimile or in Counterparts.** This Agreement may be executed in counterparts, such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement. A facsimile or electronic version of any Party's signature shall be deemed an original signature.

Signature Page to Follow

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

**WEST HILLS COMMUNITY
COLLEGE DISTRICT**


(Authorized Signature)

Ken Stoppenbrink
Print Name & Title

9800 Cody Street

Coalinga, CA 93210
Mailing Address

COUNTY OF FRESNO


Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

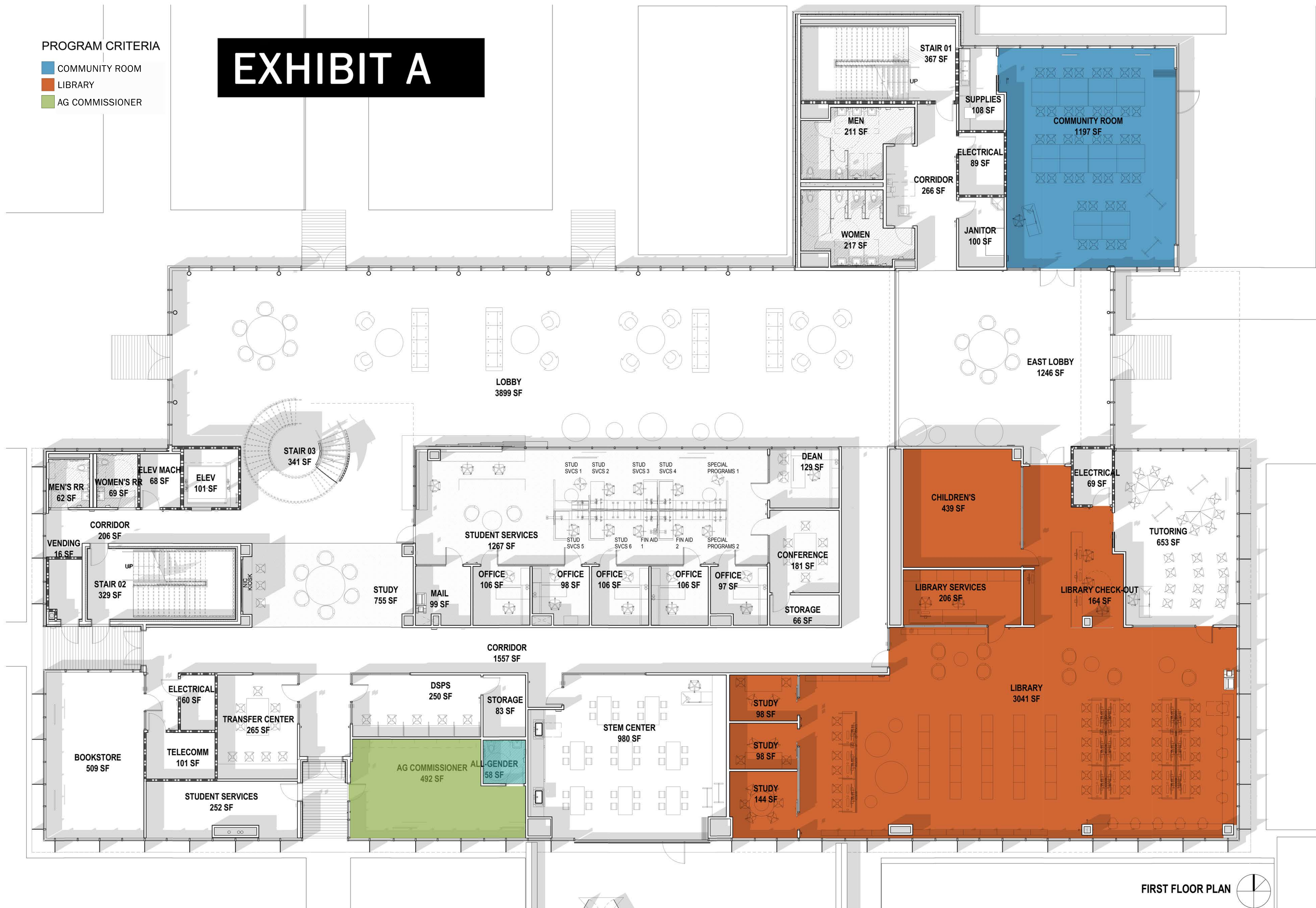
FOR ACCOUNTING USE ONLY:

ORG No.: 4010
Account No.: 7345
Requisition No.:

PROGRAM CRITERIA

- COMMUNITY ROOM
- LIBRARY
- AG COMMISSIONER

EXHIBIT A



FIRST FLOOR PLAN

EXHIBIT B

WHCCD North District Center -Ag Facility Operating Costs

<u>Building</u>	Cost/sq. ft.	Total Building sq. ft.	Total/yr	Total/mo.	Total/sq. ft./yr
<u>Energy/Utilities</u>	1.60	41,633	66,613	5,551	1.60
Water					
Gas					
Electricity					
I.T.					
<u>Maintenance/Security</u>	No. of FTE	Total employer cost/FTE	Total/yr	Total/mo.	Total/sq. ft./yr
Skilled Maintenance II	1.0	90,000	90,000	7,500	2.16
Maintenance Supplies/Equipment			3,000	250	0.07
Security Staff	0.625	38,480	24,050	2,004	0.58
<u>Site</u>	Approx 3X	Current Cost/year	Total/yr	Total/mo.	Total/sq. ft./yr
<u>Landscape and site maintenance</u>	3	16,380	49,140	4,095	1.18
(Three times current expense to accommodate additional plant/tree maintenance, trash, and parking lot maintenance)					
Totals - Building & Site			232,803	19,400	5.59
<u>Shared & Exclusive Space*</u>	Cost/sq. ft./yr	Shared & Exclusive sq. ft.	Total/yr	Total/mo	
Totals	5.59	550.00	3,075.48	256.29	
*Shared & Exclusive Space includes:					
Fresno County Agricultural Commissioner's Office					
Rest Room					