

**INTERLOCAL AGREEMENT
BETWEEN
WHATCOM COUNTY RURAL LIBRARY DISTRICT
AND CITY OF LYNDEN
FOR LIBRARY SERVICES, LEASE AGREEMENT
AND LIBRARY CONSTRUCTION**

THIS INTERLOCAL COOPERATIVE AGREEMENT (hereinafter called "Agreement") is entered into by and between the WHATCOM COUNTY RURAL LIBRARY DISTRICT (hereinafter called "District") and the CITY OF LYNDEN, WASHINGTON (hereinafter called "City") as of March 29, 2002, as authorized by RCW 39.34. The District and the City are hereinafter sometimes collectively referred to as the "Parties."

BACKGROUND and PURPOSE

The Whatcom County Rural Library District is authorized by Washington law to provide library services to unincorporated areas of Whatcom County, and to incorporated areas of the county that annex to or contract with it for such services. Through 1998, the City of Lynden contracted with the District for library services. Effective January 1, 1999, the citizens of Lynden voted to annex to the District for library services.

The District currently provides branch library services in Lynden using a City-owned facility. The City has determined that its current facility is inadequate, and has decided to construct a new facility within the City limits in order to meet the needs of its population. The District desires to relocate its System Reference Center (Reference Center), which supports services in all communities served by the District. The District believes that the new library would be a good, central and adequately sized location for the Reference Center and desires to work with the City to build the new facility to accommodate the needs of the City and the District. The City owns the property on which the new facility will be constructed. The District is willing to share in the cost of constructing the new facility, and will provide continuing library services under the terms described herein.

The parties wish to closely collaborate in designing and constructing the new facility so that it meets their joint requirements. The parties acknowledge that the design and the specifications in the building plans on which the City solicited bids meet their joint requirements. To facilitate cooperation and close collaboration between the City and the District, there shall be established two advisory committees, including the Lynden Library Project Management Team, and the Lynden Library Advisory Committee. The duties, responsibilities and membership of these bodies shall be provided herein.

The purpose of this Agreement is:

- 1) To establish the terms and conditions under which the District will provide library services for residents of the City; and
- 2) To describe the conditions of the lease under which the District will occupy the City's library facilities; and
- 3) To describe the process, procedures and conditions by which the City and the District will cooperate in the construction of the new facility to assure that it meets their joint requirements.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. IDENTIFICATION OF PARTIES TO THIS AGREEMENT

- (A) The Whatcom County Rural Library District is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington and is authorized to provide library services.
- (B) The City is a municipal corporation duly organized under and by virtue of the laws of the State of Washington and is authorized to provide library services pursuant to RCW 27.12.025

2. TERM OF LEASE AND LIBRARY SERVICES

2.1 Term of Lease. The City, as owner of the new building, agrees to lease said building to the District under the terms and conditions set forth herein. The term of the *lease* in the following facilities will be a period of approximately twenty-one (21) years, calculated as follows:

a. The District shall have exclusive use of the current Lynden branch library building until the District occupies the new Library facility; however, should the District not occupy the new facility for any reason within one hundred eighty (180) days of the date it is ready for occupancy, the terms of the lease for the current facility, the new facility, and this Agreement, must be renegotiated. The anticipated date of the District's initial occupancy of the new library is approximately March 1, 2003. Subject to the City's receipt of payment of two hundred and fifty thousand dollars (\$250,000) as required in section 4.5, the District shall have exclusive use of the new library until the end of the month in which the 20th anniversary of its initial occupancy falls.

b. The City and the District agree that this Agreement may be extended for an additional ten (10) year period upon expiration of the initial 20 year term of the District's occupancy of the new library on terms and conditions mutually acceptable to the parties hereto, and the City and the District agree to cooperate in good faith in negotiating the terms and conditions of such extension, keeping in mind that it is in the best interest of the citizens of the City to be provided quality library services.

2.2 Library Services The District shall make use of the current Lynden branch library building and the new library, including all public meeting rooms, in accordance with District-wide policies and procedures established by the Library District Director, and the District Board of Trustees, with the intent of providing the highest level of modern library services possible with available resources.

The City may utilize meeting space in the new facility, and City meeting uses will have priority over non-District users with scheduling to be coordinated with designated District staff.

The District will provide library service within Lynden as deemed appropriate by the Library District Director with due regard to Lynden’s needs and the capacity of the facilities provided by Lynden. The residents of Lynden are entitled to the same library privileges as are provided for residents of the unincorporated territory of the District and its other annexed cities. The District reserves the right to rotate material throughout the system.

The day-to-day management and operation of Library Services within Lynden shall be under the supervision of and conducted by the Library District Director or his or her designee, all of whom shall be employees of the District, and subject to all of the personnel policies and procedures of the District. The District shall provide all management, supervision, personnel, furniture, materials, equipment and supplies necessary for the library operation and shall take all reasonable precautions to prevent damage, injury or loss, by reason of or related to the operation and maintenance of the facility.

3 LEASE OF CITY FACILITIES

3.1 Definitions. Throughout this Agreement, references to facilities are defined as:

a. Current or Existing Facility refers to the City owned building located at 205 Fourth Street, Lynden, Washington 98264. The Legal Description is as follows:

Lots 3, 4, and 5, Block 16 “Supplemental and Corrected Plat of Lynden,” Whatcom County, Washington as per the map thereof, recorded in Book 3 of Plats, Page 48.

b. New Facility or New Building refers to the building that will be constructed at 216 Fourth Street, Lynden, Washington 98264.

Lot 1 and half of Lot 2, together with Lots 6, 7, 8, 9, and 10, Block 15, "Supplemental and corrected Plat of Lynden," as per the map thereof, recorded in Book 3 of Plats, page 48 in the Auditor's Office of Whatcom county, Washington, Situate within Section 20, Township 40N, Range 3E, of W. M.,

COMMONLY DESCRIBED AS: That block between 3rd and 4th Street north of Grover Street and south of Liberty Street, in Lynden, Washington.

Unless otherwise specified, the lease provisions are applicable to both facilities.

3.2 Facility Use. The District hereby agrees to use the existing library facility and the new facility only for the operation of a public library and for no other purpose.

a. The District shall have full use of the current library facility until such time as it occupies the new library facility, subject to section 2.1(a). The term of this lease agreement runs for twenty years from the date the new facility is occupied.

b. Upon the District's occupancy of the new library, the District shall surrender the current Lynden branch library building and shall turn over all keys to the City upon termination. Upon termination of the District's occupancy of the new building, the District shall surrender the new library in as clean and neat condition as when possession was tendered, normal wear and tear excepted, and the District shall turn over all keys to the City upon termination.

3.3 District Maintenance and Repair. The District will provide for general janitorial services to keep current Lynden branch library building and the new library facility in neat and clean condition, including lightbulb replacement; mat cleaning and replacement; floor covering cleaning, -including one half of the cost of floor covering replacement due to wear and tear; rest room cleaning, providing restroom and cleaning supplies and one half of the cost of interior painting.

3.4 City Maintenance and Repair. The City will, at its sole cost and expense, reasonably maintain the building in good condition and repair, including but not limited to all designated parking areas, sidewalks, driveways, fences, storm drains, utility lines and meters, exterior and one half of the cost of interior painting (excluding interior touchup painting), landscaping (including lawn care and snow removal), repairs and maintenance to the roof and the exterior of the building, one half of the cost of carpet replacement, wiring, lighting fixtures, windows, plumbing and any repairs and maintenance to the mechanical integrity of the heating and cooling equipment, excluding modifications or changes to doors, door locks, and security systems. This provision does not apply to damage to the premises caused intentionally, recklessly or from misuse by the District employees.

The determination of the timing and scope of the interior painting and carpet replacement will be mutually agreed by the parties considering available funds.

3.5 Utilities. The District will pay for the basic utilities including telephone, gas, electricity, water, sewer, solid waste and recycling.

3.6 Taxes. The City agrees to pay any real estate taxes or special assessments which are due and payable during the term of this Lease.

3.7 Alterations and Additions.

a. The District shall not make any alterations, additions, improvements, utility installations (including power panels) in, on or about the premises without written consent of the City, which consent will not be unreasonably withheld. It is also understood that the District may seek consent to expand the new facility at a future date, such as by utilizing adjacent City-owned property as specified in Section 4.2 of this Agreement, and the District will exercise a good faith effort to bring about the District's desire to expand the new facility.

b. On termination, all alterations, improvements, additions or fixtures made by the District, other than the District's property, shall become the property of the City and be surrendered with the premises.

3.8 Insurance.

a. Liability Insurance. The District, at its sole expense, shall maintain bodily injury liability and property damage liability insurance naming the City as an additional insured in connection with the use and condition of the current library building in the amounts of at least \$1,000,000 for bodily injury to or death of one person and/or property damage, and \$2,000,000 aggregate for one policy term. The City, at the City's sole expense, shall maintain bodily injury liability and property damage liability insurance naming the District as an additional insured in connection with the use and condition of the current library building in the amounts of at least \$1,000,000 for bodily injury to or death of one person and/or property damage, and \$2,000,000 aggregate for one policy term. The District and the City shall timely provide each other with proofs of such coverage.

b. Waiver. The City shall not be liable for loss or damage to the District's property. The District assumes all risk of damage to property or injury to persons on, upon or about the library premises under the control of the District except damage to property or injury to persons resulting from any act of negligence, wrongdoing or fault of the City and except for damage to property or injury to persons on or about the portion of the premises used by the City or its licensees.

c. Fire and Extended Coverage - Current Lynden Branch Library Building. Effective upon the City's annexation to the District on January 1, 1999, and terminating on the date of the District's occupancy of the new library, the City, at City's sole expense, shall furnish and maintain for the benefit of the City (i) fire and extended coverage insurance on the current Lynden branch library building for the full, insurable replacement value of the premises, together with insurance against vandalism and malicious mischief, and (ii) insurance against damage for heating, air conditioning and other such apparatus of at least \$ 200,000. The City shall timely provide the District with proof of such coverage.

d. Fire and Extended Coverage - New Library. Effective upon the date of the District's initial occupancy of the new library, the City, at City's sole expense, shall furnish and maintain for the benefit of the City (i) fire and extended coverage insurance on the new library for the full, insurable replacement value of the premises, together with insurance against vandalism and malicious mischief, and (ii) insurance against damage for heating, air conditioning and other such apparatus of at least \$ 300,000. The City shall timely provide the District with proof of such coverage.

e. The District shall coordinate coverage of all insurance policies so that any use of either facility will be covered by insurance as herein described, including providing overlapping coverage for any time the District occupies both buildings.

3.9 Access. The City shall have the right to enter the facilities at all reasonable times for the purpose of inspection or maintenance. The City shall retain a key for such purposes.

3.10 Hold Over. If the District, with or without the express consent of the City, shall hold over after the expiration of the term of this Agreement, the District and the City shall remain bound by all the covenants and provisions herein. Nothing herein shall be construed to authorize the District to hold over beyond the expiration of this Agreement or lease.

4 FACILITY CONSTRUCTION

4.1 Scope. The City and the District agree to work together closely to design and build a new library facility suitable for the purposes of the Lynden Branch of the Whatcom County Rural Library District. It is the intention of the parties that the new library will be built on property owned by the City. The design and construction of the new library facility will be financed in part by bonds issued by the City of Lynden and to be paid for by the City.

a. In consideration for the City providing adequate space for the District's System Reference Center and the City allowing the close collaboration of the District in the design and construction process, the District will make payment to the City for design and construction costs as hereinafter described. The District desires to contribute funds to augment the size of the new library by approximately 2,000 square feet to approximately 15,000 square feet, to accommodate the District's Public Reference Center.

b. The Library shall be identified by exterior lettering similar to this:

LYNDEN LIBRARY
Lynden Branch Whatcom County Library System

c. The building shall be completed, with carpet, paint, electrical, fire/security alarm, heating and air conditioning, window treatments, plumbing and electrical fixtures, and ducts for telephones and computers, but the completed building will not include books or furniture and library equipment or telephone and computers used and provided by the District and shall meet all code requirements including all applicable requirements of the Americans with Disabilities Act, and.

4.2 Design and Construction. The size of new library shall be approximately 15,000 square feet upon completion in order for it to be adequately sized to house the System Reference Center. The building will be sited on the west side of the property to accommodate potential expansion using adjacent City-owned property. In addition to allocating approximately 2,000 square feet of space for the Reference Center the new library will include space for, but not limited to: public seating; electronic information resources; the circulating book collection and circulation desk; meeting and study rooms, offices for library staff and administration; staff workroom; staff lounge and restroom; storage space for staff and Friends of the Library, and a delivery/staging area.

The target date for completion of construction is February 28, 2003.

4.3 Final Plan Approval. The City and the District both have a significant interest and financial involvement in the construction of the new library and both parties agree to cooperate in the planning and design of the proposed facility. The City and the District will closely collaborate on all of the planning, design and construction phases of the new library. The City shall have final authority over all decisions related to the construction of the new building.

a. The City and the District have formed the Lynden Library Project Management Team, which shall make recommendations on matters to be decided by the City Council and which shall be constituted as follows:

(1) Mayor of Lynden

- (2) Three City Council members (Public Works Committee)
- (3) City Administrator or designee
- (4) Library District Director or designee
- (5) Public Works Director (who serves as Project Manager)
- (6) Lynden Library Branch Manager.
- (7) Project Inspector.

b. The City and the District have formed the Lynden Library Advisory Committee, which shall provide advice and recommendations to the Project Management Team on matters pertinent to local library users and to the District, and which shall be constituted as follows:

- (1) One member of the Friends of the Library
- (2) Two community members such as school district representatives
- (3) Library District Assistant Director for Public Services or designee
- (4) Lynden Library Branch Manager
- (5) Approximately 3-4 District employees with expertise in areas such as reference and youth services, technology, facilities, circulation, etc.

c. The Project Manager shall oversee the design and construction of the new library on behalf of the City and the District. The District shall pay for the cost of a Project Inspector as specified in Section 4.5.c. to help the Project Manager throughout construction to insure that the new library, as finally completed, will fully accommodate the needs of both the District and the City. Toward this goal, the City and the District shall meet with the Project Manager and Project Inspector on a regular basis to review construction progress and compliance. The City and District shall work together in coordination with the Project Manager to insure that the building is constructed according to the plans and specifications. Any items not covered in the plans and specifications will be discussed by both the City and District in consultation with the Project Manager and project architect. The City will make a good faith effort that only changes that accommodate and fully satisfy the needs of the City and the District are approved.

4.4 Construction of the terms of Section 4 of this Agreement will be administered by the Mayor or his or her designee.

4.5 Payments by the District.

a. The District agrees to contribute to the cost of the design and construction of the new building by payment to the City of two hundred and fifty thousand dollars (\$250,000), so long as the new building, as completed, is approximately 15,000

square feet, and is constructed substantially in accordance with the building plans and specifications as approved and bid without any material change or deviation therefrom, unless otherwise agreed to by the District. This payment of two hundred and fifty thousand dollars (\$250,000) is due and payable to the City prior to or upon occupancy of the new facility. Notwithstanding any other provision in this Agreement, the District's right to use and occupy the new building in accordance with the terms herein shall not exist unless and until the District makes said payment to the City of two hundred and fifty thousand dollars (\$250,000).

b. In the event that the District must cease occupying the new facility, the City shall reimburse the District twelve thousand five hundred dollars (\$12,500) for each remaining full calendar year of the original term of this Agreement.

c. In addition to the above payment by the District, the District agrees to reimburse the City for the costs of hiring a Project Inspector, up to a maximum of \$25,000, to help the Project Manager insure: (1) that the new library, when finally completed, substantially accommodates the needs of both the District and the City; and (2) that priority is given to the operational needs of the branch library and reference center when reviewing construction progress and compliance.

4.6 New Library: Damage or Destruction—Repairs and Restoration

a. If the new library is damaged as a result of fire, casualty or act of God and such damage and destruction is covered by casualty insurance, the City agrees to construct and restore the premises in compliance with applicable building codes and other governmental regulations substantially in accordance with the size and configuration of the library facility prior to destruction.

b. If the City and the District mutually elect not to restore and construct the premises so that the District is without a suitable library branch in Lynden and the District is without the System Reference Center consisting of approximately 2,000 square feet, then the City agrees to reimburse the District from insurance proceeds a pro rata portion of the insurance proceeds, meaning a percentage of the insurance proceeds that equals the same percentage that the remaining balance of the amount paid by the District to the City represents as to the total cost of construction of the facility times the insurance proceeds.

5. GENERAL TERMS AND CONDITIONS

5.1 Assignment. Neither party shall voluntarily or by operation of law assign, sublet or otherwise transfer or encumber any part of this Agreement or their interest therein

or in the premises without the prior, written consent of the other party. Any attempted assignment, transfer, encumbrance or subletting without such consent shall be void.

5.2 Relationship of the Parties. The parties agree that they are each an independent entity operating pursuant to the terms and conditions of this agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this agreement.

5.3 Indemnification. The District agrees to indemnify, defend and hold the City, its agents, officers and employees harmless from, and shall process and defend at its own expense (including attorney's fees), all claims, demands or suits at law or reasonable equity arising out of the District's, its agent's, officer's or employee's performance or failure to perform any and all duties or may arise as a result of the District's use of the library building to the extent same are caused by negligence, misconduct or other fault of the District, its agents or employees; and the City agrees to indemnify, defend and hold the District, its agents, officers or employees, harmless from and shall process and defend at its own expense all claims, demands or suits at law or reasonable equity arising out of the City's, its agent's, officer's or employee's performance or failure to perform any of the duties prescribed by this agreement or arising out of the use of the facilities by the City to the extent the same are caused by the negligence, misconduct or fault of the City, its agents or employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of the City and the District, this indemnity provision with respect to such claims or suits shall be valid and enforceable only to the extent of the City's or the District's negligence.

This indemnification provision shall apply to all services, facilities, matters and incidents that arise from any part of this Agreement, including but not limited to provision of services, facilities leases, and construction provisions.

5.4 Withdrawal.

a. If at any time under the current or present laws of the State of Washington that as a result of an adjustment or increase of the levy rate within the City that is the direct cause of a reduction of the District's levy rate under applicable provisions of Chapter 84.52 RCW causing the District to suffer financial difficulties or substantial reduction in the District's revenue, then in such event the City agrees to adopt a sufficient resolution or take sufficient action pursuant to Chapter 27.12 RCW to authorize and approve the withdrawal of the City from the District.

b. Upon withdrawal of the City from the District as provided herein, the District agrees to contract with the City for the uninterrupted library services at a rate

of compensation approximately equivalent to the revenue the District would receive if the City remained in the District. The City shall remain free to enter or not enter into such a contract, in its sole discretion.

c. If after withdrawal of the City from the District as provided herein there is no longer a reduction of the District's levy rate under the applicable provisions of Chapter 84.52 RCW, the District agrees in such event to adopt a resolution authorizing and approving, to the extent the same is required by the District pursuant to Chapter 27.12 RCW, the re-annexation of the City to the District, all subject to a possible referendum as provided in said statute.

5.5 Non-Discrimination. The parties shall perform their responsibilities under this agreement in a manner which assures fair, equal and non-discriminatory treatment of all persons, with respect to race, creed, sex, Viet Nam era veteran status, disabled veteran condition, physical or mental handicap, or national origin and, in particular:

a. The parties will maintain open hiring and employment practices and will welcome application for employment in all positions from qualified individuals who are members of such minorities; and

b. The parties will comply with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto, relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all persons without discrimination as to such minority status.

5.6 Notice. Any notice required to be given by either party to the other shall be deposited in U.S. mail, postage prepaid, addressed as follows or at such other address as either party may designate to the other in writing:

District: Whatcom County Library System
5205 Northwest Road
Bellingham, WA 98226

City: City of Lynden
323 Front Street
Lynden, WA 98264

With copy to: Visser, Zender & Thurston
1700 D Street /P.O. Box 5226
Bellingham, Washington 98227
Attn: Mr. Robert Carmichael

