

**SECOND AMENDMENT
TO
LIBRARY COST SHARING/JOINT USE AGREEMENT
BETWEEN
HOUSTON COMMUNITY COLLEGE SYSTEM
AND
FORT BEND COUNTY**

This SECOND AMENDMENT to the Library Cost Sharing/Joint Use Agreement is made and entered into by and between the Houston Community College System, hereinafter referred to as "HCCS," and Fort Bend County, Texas, a body corporate and politic under the laws of the State of Texas, acting by and through the Fort Bend County Commissioners Court, hereinafter referred to as "County."

RECITALS

WHEREAS, on or about March 8, 2005, HCCS and County entered a Library Cost Sharing/Joint Use Agreement, hereinafter referred to as "Agreement," for cooperation in the design, construction and operation of a library located on the Sienna Campus at the intersection of McKeever Road and Trammel-Fresno Road in Fort Bend County, Texas, hereinafter referred to as the "Library;"

WHEREAS, on or about July 22, 2008, HCCS and County entered into a First Amendment to the Library Cost Sharing/Joint Use Agreement; and

WHEREAS, the Sienna Campus has closed, and students have been relocated awaiting completion of the Missouri City campus located on Texas Parkway, HCCS and County hereby desire to further amend said Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing, the Agreement between HCCS and County is hereby amended as follows:

AGREEMENT

Section 7 of the Agreement is hereby amended to include:

HCCS shall cease to jointly operate the Library effective September 30, 2016 to include releasing HCCS of any obligations related to the operation and maintenance of the Library. HCCS agrees to appropriate funds to the County for its Pro Rata Share of the budgeted annual operation and maintenance costs of the Library up to and including September 30, 2016. In the event of a surplus, the County agrees to refund HCCS all surplus amounts for HCCS's Pro Rata Share of the budgeted annual operation and maintenance costs of the Library up to and including September 30, 2016.

INCORPORATION OF AMENDMENT

Upon and after execution of this Second Amendment to the Agreement, all references to the Agreement shall mean the Agreement as modified by this Second Amendment. These documents shall constitute the entire agreement of the parties.


Except as provided in this Amendment, execution and delivery of this Amendment shall not amend, modify, or supplement any provision of, or constitute to, or waiver of, any noncompliance with the provisions of the original Agreement and except as provided in this Amendment, the Agreement shall remain in full force and effect.

This Second Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement.

EXECUTION

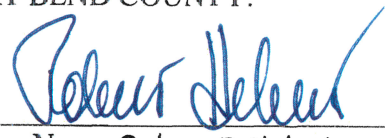
This Second Amendment shall not become effective until executed by all parties hereto.

HOUSTON COMMUNITY COLLEGE SYSTEM:

By: 
Cesar Maldonado, Ph.D., P.E. for
Chancellor
Houston Community College

Date: 09-29-16

FORT BEND COUNTY:

By: 
Name: Robert E. Hebert
Title: County Judge

Date: 10-25-16

Approved by Commissioners Court on
September 27, 2016



HOUSTON COMMUNITY COLLEGE

OFFICE OF GENERAL COUNSEL

CONTRACT REVIEW CERTIFICATION

DATE	9/21/16
CONTRACT NUMBER	
CONTRACT TYPE	Second Amendment Library Cost Sharing/Joint Use Agreement
CONTRACT ORIGINATOR/ SUBMITTING DEPT.	VC Finance
VENDOR NAME	Fort Bend County, Texas
ASSIGNED ATTORNEY	Sandra Garcia

OFFICE OF GENERAL COUNSEL CERTIFICATION:

The General Counsel's Office approves this contract only as to legal form and not substance. The Office of General Counsel's approval is not a substitute for administration review in accordance with the College's policies, procedures, or processes. All applicable departments and administrative authorities shall review and approve the provisions of the contract that are within their area of responsibility.

I have reviewed the aforementioned contract entirely and attest that it is in acceptable legal form and ready for final execution. The contract is not otherwise objectionable on legal, as opposed to administrative, grounds; except as noted in any attached memorandum.

Signature: _____

Date: _____

9/21/16

The CONTRACT ORIGINATOR/SUBMITTING DEPARTMENT understands and acknowledges:

- 1) If, applicable, the goods/services covered by the contract have been procured in accordance with all applicable provisions of Texas law, regulations, and HCC's policies and procedures;
- 2) All applicable HCC policies, procedures, and processes have been followed and all appropriate departments have approved the provisions in the contract that are within their area of responsibility;
- 3) Confirms that all business terms and provisions are clearly and accurately stated;
- 4) Confirms review and approval of the contract; and
- 5) Ensures the contract is in compliance with all applicable laws and regulations.

Please notify Sharon Flowers (x88228) if there are any concerns with the above.

ORIGINAL

STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

FIRST AMENDMENT LIBRARY COST SHARING/JOINT USE AGREEMENT

THIS FIRST AMENDMENT to the Library Cost Sharing/Joint Use Agreement is made and entered into by and between the Houston Community College System, hereinafter referred to as "HCCS," and Fort Bend County, Texas, a body corporate and politic under the laws of the State of Texas, acting by and through the Fort Bend County Commissioners Court, hereinafter referred to as "County."

RECITALS:

WHEREAS, on or about March 8, 2005, HCCS and County entered a Library Cost Sharing/Joint Use Agreement, hereinafter referred to as the "Agreement," for cooperation in the design, construction and operation of a library located on the Sienna Campus at the intersection of McKeever Road and Trammel-Fresno Road in Fort Bend County, Texas, hereinafter referred to as the "Library." HCCS and County hereby desire to further amend said Agreement as set forth below; and

WHEREAS, on or about January 24, 2008, the Board of Trustees of HCCS approved an increase in HCCS's not-to-exceed cost to construct the Library due to the escalation of construction materials and labor since project inception.

NOW, THEREFORE, in consideration of the foregoing, the Agreement between HCCS and County is hereby amended as follows:

AGREEMENT

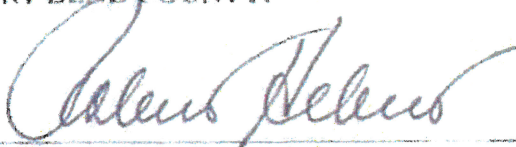
1. Section 4 of the Agreement is hereby amended to increase HCCS's pro rate share for the design and construction of the Library from \$1.2 million to an amount not-to-exceed \$2.3 million.
2. This Amendment is hereby attached to the Agreement as Exhibit A and incorporated by reference as if set forth therein verbatim for all purposes.
3. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
4. If there is a conflict between this Amendment and the Agreement, the provisions of this Amendment shall prevail.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXECUTION

This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:



Robert E. Hebert, County Judge

July 22, 2008
Date

Attest:



Dianne Wilson, County Clerk

HOUSTON COMMUNITY COLLEGE SYSTEM

By:



Signature

Printed Name: _____

7/16/08
Date

Title: _____

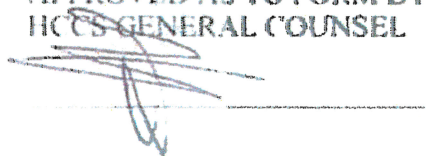
ATTEST:

MER:HCCS.Library Cost Sharing/Joint Use Agreement 1st Amendment(05212008)

Exhibit A: March 8, 2005 Fort Bend County/HCCS Library Cost Sharing/Joint Use Agreement

Exhibit B: January 24, 2008 HCCS Board of Trustee Board Meeting minutes

APPROVED AS TO FORM BY
HCCS GENERAL COUNSEL



28A

FORT BEND COUNTY/HOUSTON COMMUNITY COLLEGE SYSTEM
LIBRARY COST SHARING/JOINT USE AGREEMENT

WHEREAS, the Houston Community College System ("HCCS") has acquired approximately fifty acres from Sienna/Johnson North, L.P. for the development of a community college campus in Fort Bend County; and

WHEREAS, under its contract with Sienna Johnson North, L.P., HCCS has the right to convey a four and one-half acre tract to Fort Bend County (the "County") for the purpose of providing educational services including a library; and

WHEREAS, the County seeks to construct and operate a library within the rapidly growing area of Missouri City and Sienna Plantation; and

WHEREAS, HCCS seeks a library facility that can be utilized by its students in Fort Bend County; and

WHEREAS, the County and HCCS believe that the interest of the people of Fort Bend County and the Fort Bend students of HCCS can be best served by the joint construction and operation of a library facility (the "Library") that will serve the people of Fort Bend County generally and the Fort Bend students of HCCS specifically; and

WHEREAS, HCCS and the County have the authority to jointly construct and operate a library pursuant to Texas Government Code Chapter 791. NOW, THEREFORE,

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations and benefits in this Agreement, HCCS and the County contract and agree as follows:

Section 1. Conveyance of Library Site. As consideration for the County's agreement to construct the Library, HCCS agrees to convey the approximately four and one-half acre tract, more particularly described in Exhibit "A" hereto (the "Library Site") to the County for the exclusive purpose of constructing the Library. Further, HCCS will convey any and all necessary or required rights-of-way and easements, utility or otherwise, out of the tract from which this 4.5 acre tract is taken or from other land owned by HCCS. Fort Bend County will be responsible only to provide "tap/connection fees" necessary to



serve the 4.5-acre tract. HCCS shall prepare and execute all of the necessary documents for the conveyance. The Library Site shall be conveyed to the County and recorded within the real property records of Fort Bend County within thirty days of the execution of this Agreement.

The County agrees to compensate HCCS for the actual cost to acquire the Library Site (the "Land Cost Contribution"). For the purposes of this Agreement, the County and HCCS agree that the Land Cost Contribution is \$363,000.00. Instead of making a payment directly to HCCS, the County shall treat the Land Cost Contribution as a credit against the HCCS share of the cost to design and construct the Library as provided in Section 4 hereof.

Section 2. Pro Rata Share. The County and HCCS agree that the Library shall be designed to be an approximately 43,858 square foot structure, with approximately 8,860 square feet of the structure defined as incremental costs associated with the use by HCCS.

Except as specifically stated elsewhere herein it is the intention of the County and HCCS that the cost to construct and operate and maintain the Library shall be shared on a pro rata basis. Based on the total size of the Library building and the incremental use associated with HCCS's use, the initial determination of respective Pro Rata Shares is 79% for the County and 21% percent for HCCS. As used in this Agreement, and except as provided in Section 3, the term "Pro Rata Share" shall be determined after the final design of the Library is approved by the County and HCCS and the exact square footage is determined based on the approved final design.

Section 3. Design of the Library. Within thirty days of the execution of this Agreement, the County shall engage an architectural or design/build firm (the "Design Firm") to proceed with the design of the Library. The County and HCCS shall appoint a representative to attend any meetings with the Design Firm to discuss the design of the Library. A copy of the final design shall be presented to HCCS and the County for approval. Upon receipt of written approval of HCCS, the County shall proceed to construct the project based on the approved design, with the costs shared according to the Pro Rata Shares. When the County and HCCS agree on the final design, the cost for design shall be shared based on the Pro Rata Share as determined by the final design and the Land Cost Contribution shall be applied toward HCCS's design costs. Notwithstanding anything to the contrary contained herein, including Section 2 above, HCCS's pro rata share for the design and construction of the Library shall not exceed 1.2 million dollars, inclusive of the Land Cost Contribution.

Section 4. Construction of the Library. Within thirty days of the written approval of HCCS of the final design of the Library, the County shall initiate the bid process for the construction of the Library. The County agrees to comply with applicable law regarding construction of the Library and will select the method of awarding the construction contract for the Library.

The County shall send HCCS a detailed summary of the cost to construct the Library within five business days of receipt of the bid tab or cost estimate from the contractor. Such summary shall include all construction related costs including but not limited to estimated construction amount, engineering fees, testing, tap/connection fees and specify the Pro Rata Share of the County and HCCS and shall apply any remaining portion of the Land Cost Contribution as credit against the Pro Rata Share of HCCS. HCCS shall have ten business days to review and comment on the cost estimate and to provide any written comments to the County. After incorporating any reasonable comments from HCCS, the County shall provide a breakdown of the final cost estimate to HCCS and HCCS shall advance funds to cover the HCCS Pro Rata Share (after applying any remaining portion of the Land Cost Contribution) of the cost to construct the Library within ten business days of submission of the final cost estimate. The County shall hold the funds advanced by HCCS in a separate account dedicated exclusively to fund the construction of the Library.

Within ten days of receipt of funds from HCCS, the County shall execute the construction contract for the Library and shall issue a notice to proceed. The County shall provide HCCS with a copy of any pay estimates or other reports received regarding progress with construction of the Library. The County may approve any individual change order that does not exceed \$5,000 within its discretion. Any change order in excess of \$5,000 must be approved in writing by HCCS. Any change order that relates exclusively to the HCCS use of the Library shall be at the sole cost of HCCS.

Upon completion, the County shall perform an audit of the funds expended for construction of the Library. Based on said audit, the County shall return any cost savings to HCCS within thirty days of the submission of the audit. If the costs of construction exceed the amount allocated by HCCS and the County due to change orders, the County shall provide HCCS with a summary of such costs and HCCS shall pay such additional amounts within thirty days of completion of the audit and the submission of the additional amount payable.

Notwithstanding anything to the contrary contained herein, including Section 2 above, HCCS's pro rata share for the design and construction of the

Library shall not exceed 1.2 million dollars, inclusive of the Land Cost Contribution.

Section 5. Furniture, Fixtures & Equipment. The County shall be responsible for the selection of, cost to purchase and the replacement of all furniture, fixtures and equipment ("FF&E") necessary for the effective operation of the Library, including the cost to equip and maintain the County computer lab room, which will be designed for wireless access to the internet and contain outlets for the use of laptop computers. HCCS will have a separate computer lab that is only available to HCCS students and HCCS shall be solely responsible for the costs to equip its computer lab. HCCS shall coordinate its computer lab room furnishings with the other portions of the Library

The County and HCCS agree to consult on the acquisition of FF&E in order to realize any potential cost savings. Each party shall be responsible for the cost of their own computer network equipment, network telecommunications costs and internet service provider. The cost of all audio-visual equipment, video-conferencing equipment and satellite access equipment will be included in the FF&E. Before the acquisition, the parties shall agree on the design, make and model of such technology equipment.

Section 6. Collections; Circulation & Catalogs; Electronic Resources, Security. The County shall be responsible for selecting and costs for all materials and designating quantities that will make up the public library "Opening Day Collection." HCCS shall be responsible for selecting and costs for all materials and designating quantities that will make up the specific titles for the college library "Opening Day Collection." The County shall be responsible for the acquisition (ordering) of the Library collections for both entities, including books, materials, prints, catalogs, periodicals and audio visual materials (collectively, the "Collection Materials"). The "Opening Day Collection" in its entirety shall include any items that would be considered as required to open and operate a public library and a community college library, and will include, but not be limited to, books, materials, prints, catalogs, periodicals and audiovisual materials. All Collection Materials shall be the property of the County and will be catalogued and classified according to the County's catalogue and classification system (which is currently the Dewey Decimal System). The County will purchase, catalog, and process all titles according to profiles established by the County and accepted by HCCS. Materials specifically purchased for the reserve or special collections of HCCS that will be shelved in a HCCS workroom will remain property of HCCS and be purchased, cataloged and processed by HCCS.

The County will install a Radio-Frequency ID materials theft-detection, or other, system for Collection Materials.

The Library will use the County's integrated library system (which is currently Horizon) for basic circulation procedures such as placing requests and check in and out of library materials. The County and HCCS will maintain and pay for their own catalog system, with access to both catalogs available from all computers in the Library. If requested by HCCS, the County will export records for the Library collection to HCCS for addition to the HCCS catalog.

Each party will maintain its own network and database. The County shall utilize a "Voice-Over-IP" phone system. HCCS shall notify the County of its preferred phone system before the design of the Library is finalized.

Security for the Library will be include a keyed and computer-card access. The County shall maintain master custody of the keys and operation of the computer-card access. The County shall provide keys and computer-card access to on-site HCCS employees and appropriate off-site HCCS employees.

Section 7. Joint Operation of Library. The Library shall be operated for the use of the citizens of Fort Bend County and the students, faculty and administration of HCCS. The parties agree that the cost to operate and maintain the Library shall be shared based on the parties' Pro Rata Share.

In order to consult regarding the sharing of joint operation and maintenance costs, the County and HCCS shall establish a Library Operations Committee consisting of four (4) representatives of each party (four from HCCS and four from FBCL). The Library Operations Committee shall meet on a monthly basis or as needed to review issues affecting the operation and maintenance of the Library. All matters of the Library Operations Committee shall be approved on a majority vote. The Library Operations Committee shall annually prepare within ninety days of the beginning of the County's fiscal year for approval by the County a budget for the common costs of the operation and maintenance of the Library and any additions or replacements to the Collection materials. Based on such budget, the County Commissioner's Court shall adopt the budget. Based on the approved budget, HCCS and the County shall appropriate funds sufficient for the joint operation of the Library and HCCS agrees to advance the funds to the County for its Pro Rata Share of the budgeted annual operation and maintenance cost for the Library. The County agrees to use such funds exclusively for the operation and maintenance of the Library. The County shall be responsible for payment of all bills received for the operation and maintenance of the Library.

The County Auditor shall allocate the advanced prorata share operating funds from HCCS as a supplement to the library operations budget. After the close of each County fiscal quarter, a quarterly expenditure analysis will be prepared by the County Auditor to compare actual quarterly expenditures to the contribution from HCCS. The County Auditor will submit either a request for additional funds or a refund of any surplus along with a copy of the analysis if a material difference is identified. After the close of the County fiscal year, a final expenditure analysis will be prepared by the County Auditor to compare actual annual expenditures to the contribution from HCCS. The County Auditor will submit either a request for additional funds or a refund of any surplus along with a copy of the analysis. Any additional payment shall be due within 30 days of the date of the request for additional funds.

The County shall provide staff and operate the Library in accordance with the standard rules and procedures that the County uses for other county libraries, including hours of operation, circulation policies and procedures and rules and regulations regarding use of meeting space. The priority for use of the meeting room spaces shall be first for County programmed events, second for HCCS events and third for community events. Notwithstanding this priority ranking, once a meeting room has been appropriately reserved, the reserving party cannot be displaced solely upon the basis of a higher priority ranking by another entity. HCCS shall provide personnel who will serve on-site as liaison between the HCCS college students and faculty and will recommend any restrictions on usage and circulation of reserve materials. The Library Operations Committee shall from time to time consult regarding procedures and rules for use of meeting space and operational issues in general. HCCS may request that the Library be kept open beyond its regular hours of operation; provided, however, that HCCS shall reimburse the County for the cost for the operation of the Library in the extend hour periods. However, the Library will be closed on official County library holidays.

Section 8. Representations. The County and HCCS each represents that it has the legal authority to enter into and execute the terms of this Agreement and that it has funds available to provide for the construction and operation of the Library.

Section 9. Assignability. This Agreement shall not be assignable, in whole or in part, without first obtaining the written consent of the other party, which consent shall not be unreasonably withheld.

Section 10. No Additional Waiver Implied. The failure of any party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant,

or condition by any other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

Section 11. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected.

Section 12. Merger. This Agreement embodies the entire understanding between the parties with respect to the Library, and there are no prior effective representations, warranties or agreements between the parties with respect to the Library. This Agreement shall supersede and replace all previous agreements pertaining to the Library between any of the parties hereto.

Section 13. Notices. Notices required or permitted to be given by any party to the other hereunder, including bills, shall be deemed to have been received by the party or entity to whom they are sent, within five (5) days after their deposit in the United States Mail, properly stamped and addressed. The parties shall have the right from time to time to change their respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party. Notices shall be in writing and shall be mailed to the parties at the following address:

If to the County, to:

Fort Bend County
Library Services
George Memorial Library
1001 Golfview
Richmond, Texas 77469
Attn: County Librarian

With a copy to:

Fort Bend County Commissioner Precinct 2
303 Texas Parkway
Missouri City, Texas 77459

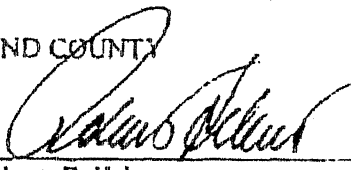
If to HCCS, to:

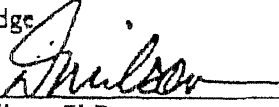
Houston Community College System

3100 Main Street
Houston, Texas 77002
Attention: Vice Chancellor

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in duplicate originals, each of equal dignity, as of the date and year of the second party to sign.

FORT BEND COUNTY

By: 
Robert E. Hebert
County Judge

Attest: 
Dianne Wilson, PhD
County Clerk

HOUSTON COMMUNITY COLLEGE SYSTEM

By: 
Printed Name: Bruce Leslie

Title: Chancellor

Attest: _____

Name _____

Title: _____

discussed in Executive Session would be taken up in Open Session or in a subsequent Public Meeting

Mrs. Flores reconvened the meeting in Open Session at 6:29 p.m. and entertained motions on pending matters

(Present: Trustees Austin, Flores, Guzman, Sane, Schechter, Oliver, Williams, and Worsham)

Dr. Spangler apologized to the Gloria Walker, Vice Chancellor of Finance and Administration and the Bursar office for not including them in the recognition for implementation of Cashnet



APPROVE ADMINISTRATION AUTHORITY TO NEGOTIATE AN AMENDMENT TO HCC AND FT. BEND COUNTY LIBRARY COST SHARING/JOINT USE AGREEMENT

Motion - Mr. Schechter motioned approve and Mr. Worsham seconded

Mr. Schechter noted that the item was different than what was approved in the Committee of the Whole. He noted that the item authorized the Chancellor to negotiate an amendment to the contract not to exceed \$1.2 million and apprised that the cost increase was not due to any fault of HCC.

Mrs. Sane asked if the negotiations will include controls to make certain that the project proceed on schedule. Dr. Spangler apprised that this could be included in the negotiation of the contract.

Mr. Schechter noted that the project is extremely important for the Missouri City campus, however, if they are not going to move forward in a reasonable time frame then there should be a review of alternatives to provide library services to HCC students in the Missouri City area

Vote - The motion passed with a vote 8-0

APPROVE EXTENSION OF CONSTRUCTION PROGRAM MANAGEMENT SERVICES WITH PGAL

Motion - Dr. Williams moved to approve and Mr. Oliver seconded the motion

Mrs. Guzman applauded the response from the PGAL sub-consultants for the information technology providing the requested information. She noted that this effort should be duplicated throughout the services, however, the only missing component is the deliverables. She noted that she would like to see the activity tied to the scope of work and deliverables. She stated that she would like to see more activity in Districts III and VIII

Mrs. Flores informed that the item has been green-sheeted to note that the extended services does not included the cost of inspection and the actual amount increased not to exceed \$6.9 million. Mr. Schechter asked how was there a ten percent increase in the contract in seven days. Dr. Tyler apprised that the numbers presented at the COTW were not correct and the additional services for inspection for that period of time needed to be included

Vote - 7-0-1 with trustee Schechter abstaining.

