

INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF PHOENIX, ARIZONA AND  
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT  
FOR THE CONSTRUCTION OF A LIBRARY ON THE  
SOUTH MOUNTAIN COMMUNITY COLLEGE CAMPUS

Contract No. - **123286**

THIS AGREEMENT is made and entered into, by and between the City of Phoenix, a municipal corporation ("City") on behalf of the Library Department, and the Maricopa County Community College District ("MCCCD") for and on behalf of South Mountain Community College ("SMCC").

RECITALS

WHEREAS the City is authorized to enter into this agreement pursuant to Phoenix City Charter Article II §2(i) and A.R.S. §§11-951 – 11-954;

WHEREAS MCCCD is authorized to enter into this agreement pursuant to A.R.S. §§11-95-11-954 and 15-1444B-4;

WHEREAS, the City of Phoenix 2006 Libraries, Youth, Senior and Cultural Facilities Bond Program provides for monies for the improvement and construction of community use libraries within the City;

WHEREAS, MCCCD owns or controls certain real property on the SMCC campus located at 7050 South 24<sup>th</sup> Street in the City of Phoenix ("Site");

WHEREAS, the City and MCCCD desire to jointly plan, design, construct, furnish, equip and operate a joint-use library to be located on the SMCC campus at 7050 South 24<sup>th</sup> Street, Phoenix, Arizona ("Library Project") which will provide cost-effective, enhanced services for both the general public and community college faculty and students;

WHEREAS, the City of Phoenix preliminary budget provides for bond funds to be available for the Library Project in the amount of \$1,788,930 in the fiscal year 2009-2010 for construction costs and \$5,030,190 for construction costs (excluding furniture, fixtures, equipment and other non-construction costs) for the fiscal year 2010 – 2011 for use to construct and equip an estimated 15,000 square foot City of Phoenix branch library.

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within the construction of an estimated 49,000 square foot library and instructional facility ("Library") on the campus of SMCC;

WHEREAS, the City's Library Department has money available in the fiscal year 2007-2008 in the amount of \$680,860.00 for contribution to the design of such a Library,

WHEREAS, the MCCCCD has general obligation bond funds available in the amount of approximately \$2 million for the design and approximately \$12 million for the construction of the Library Project (excluding furniture, fixtures, equipment and other non-construction costs);

WHEREAS, the Parties (City and MCCCCD) desire that their respective services be performed subject to the terms and conditions hereinafter, as described herein;

Now, THEREFORE, the Parties agree as follows:

### **ARTICLE 1 - GENERAL PROVISIONS**

- 1.1 Effective Date. This Agreement is contingent upon approval of the governing board of each Party. This Agreement will become effective on the date when the last party authorizes its designated representative to execute this Agreement on behalf of that party ("Effective Date"). The Recitals portion of this Agreement is incorporated into this Agreement by this reference.
- 1.2 Effect of Headings. The headings or titles of the several articles and sections in this Agreement are solely for the convenience of reference. They shall not control, affect, modify, amend or change the meaning or construction of any term or provision contained in this Agreement.

### **ARTICLE 2 –Term and Special Conditions**

- 2.1 Term. The term of this Agreement shall commence upon the Effective Date and expire when construction of the Library described in Article 5 is complete, all claims, payments and other external costs of construction have been paid, and the City has provided all City Funding, as described in Section 2.3, to MCCCCD.
- 2.2 Construction Responsibility; Estimated Construction Timeline. MCCCCD will conduct the selection of the design consultant and the construction manager at risk through its competitive procurement procedures, which are consistent with statutes applicable to the construction of public buildings. It will also manage the construction project, in consultation with the City. An estimated timeline is below, and it is contingent, among other things, on each Party's funding being available in a timely manner to support the costs of construction:

Selection of a Design Consultant and Contractor	June 1, 2008 – September 1, 2008
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Design through Construction Documents Completed	October 1, 2008 – October 1, 2009
GMP and Award of Construction Contract	October 1, 2009 - December 2009
Construction	January 2010 - June 2011
Move-in	July 2011
Opening Date (“Opening Date”)	August 1, 2011

- 2.3 City Contribution. At the signing of this Agreement, the City has funding available in FY 2007-2008 of \$680,860.00 to contribute to the design of the Library. For contribution to construct the Library that it will share with MCCCCD, the City expects to receive bond funds in FY 2009-2010 of \$1,788,930 and in FY 2010-2011 of \$5,030,190.
- 2.4 Payment Schedule-Design Costs. Upon execution of a signed contract with the Designer, City shall make available its portion of the design costs as they become due but in no event shall contribute more than the aggregate amount of \$680,860.00. The City’s funding contribution to the design costs shall be approximately 31% of the over-all design costs which is based upon the proportionate square footage of the City’s estimated use of 15,000 square feet within the real improvements comprising the estimated 49,000 square foot shared use Library. The parties shall determine their final percentage share of the financial contributions for both design and construction based on the final design of the Library, including the size of the Library and the portions of it that each of the parties will occupy.
- 2.5 Payment Schedule – Construction Costs. On July 1, 2009, the City will make available bond funds designated for construction costs in the amount of \$1,788,930. On July 1, 2010, the City will make available the remaining bond funds designated for construction costs (\$5,030,190) for the City’s funding contribution of its proportionate share of construction costs as determined in Section 2.4 as well as on-going construction costs. The City’s actual payment of these funds will be according to the procedures specified in Section 6.4 of this Agreement.
- 2.6 Separate Operating Agreement. The Parties shall negotiate and sign a separate agreement specifying each party’s rights and obligations concerning the use and operation of the Library (“Operating Agreement”). The signing of the Operating Agreement described in Section 3.2 of this Agreement is a condition precedent for the City to provide the City funding specified in Sections 2.4 and 2.5 of this Agreement to MCCCCD under this Agreement for design and construction of the Library. Among other things, the Operating Agreement shall address the following but it is not limited to: ownership of the library furnishings; equipment and library materials and collection, and disposition of those items on termination or expiration of the Operating Agreement; hours of operation and staffing; shared and separate uses of the Library; governance and management of the Library; parking and security; operating expenses; maintenance and repairs; and a mission statement for the Library.

### **ARTICLE 3 - OWNERSHIP; RIGHT TO USE**

- 3.1 Ownership. On completion of construction of the Library, MCCCDC will own it and all fixtures, excluding equipment and other personal property of the City that the City purchased with its own funds.
- 3.2 Operating Agreement. The Parties will enter into an Operating Agreement or other mutually agreed upon document outlining the Parties respective rights and responsibilities including the City's shared use of the Library as a community library for a minimum of 40 years, with two five-year extensions.
- 3.3 Limitations of Use. The Parties agree and promise that the Library and the land that it will occupy, will be used only as a community and academic library and learning center for as long as indebtedness remains outstanding on any of the bonds sold pursuant to the citywide bond election for library capital improvements or the MCCCDC general obligation bond funds. Neither party shall allow any use of the Library for any purpose or action which compromises the tax-exempt status of those bonds. This promise shall be enforceable by injunctive, declaratory or other relief. In any event, if either party breaches this promise, it shall indemnify the other party and all bondholders from any resulting tax or financial impact.

### **ARTICLE 4 - GENERAL DESCRIPTION OF IMPROVEMENTS**

- 4.1 Location. The Library will be located at a site within the SMCC campus at 7050 S 24<sup>th</sup> Street, Phoenix Arizona that fronts on and is visible from 24th Street. The anticipated square footage will include 15,000 square feet for City of Phoenix use within the Library currently estimated to total 49,000 square feet. MCCCDC may use its allocation of space in the Library for SMCC and other of its colleges. It will include utility and technology infrastructure, an appropriate number of parking places situated in the immediate vicinity to the Library; curbs, gutters, sidewalks, landscaping, roadway and other site improvements. The parking will meet the City's requirements.
- 4.2 Library Name. Subject to approval of the Parties' governing boards, and the City's Library Advisory Board, the name of the Library shall be "South Mountain Community Library."

### **ARTICLE 5 - CONSTRUCTION OF LIBRARY**

- 5.1 MCCCDC's Obligations. MCCCDC shall:
- 5.1.1 Be responsible for developing and constructing the Library and other improvements associated with the construction of the Library in accordance with the plans and specifications prepared by the designated architects and approved after consultation with the City. Both MCCCDC and the City will participate in the

architect selection as well as the contractor selection and all project design and construction decisions.

5.1.2 Publicly compete contracts for the design and construction of the Library in compliance with its procurement procedures, which are consistent with those specified in Arizona Revised Statutes §§41-2501 et seq.

5.1.3 Comply with all applicable federal, state and local laws and regulations and all governmental permits applicable to the construction of the Library and Improvements. On behalf of itself and the City, MCCCCD shall pay out of the project construction budget as defined in Section 6.1 any and all fees and charges levied in connection with obtaining the required plan approval. The Library Project will be developed and constructed in compliance with the Americans with Disabilities Act (“ADA”) as well as all other applicable laws and regulations.

5.1.4 Obtain all necessary permits, approvals and licenses to design and construct the Library Project, including any and all environmental permits.

5.1.5 Cause the following provisions to be included in the Project design and construction contract whereby the designer and contractor, as applicable, expressly agree: to name the City as an additional insured or loss payee on such insurance policies required by the design and construction agreements and MCCCCD; to indemnify and hold the City harmless under the same terms and conditions as MCCCCD; to name the City as an express third party beneficiary of the design and construction agreements and that the City shall be entitled to assert against the designer and contractor all of MCCCCD’s claims, rights, warranties, interests and privileges under such agreements; to provide the City with a copy of all payment invoices, requests or applications at the same time as submitted to MCCCCD at the address provided in Section 6.5 and to name the City as an “obligee” on the construction performance and payment bonds.

5.1.6 Serve as fiscal agent for the design and construction of the Library and management of the Project Construction Budget as defined in Section 6.1.

5.1.7 Serve as the designated project manager by and through the MCCCCD Facilities Planning and Development Office; through the planning, design and construction phases of the Library to make recommendations to the governing boards of the respective Parties as well as to the contractors and professional service providers.

5.1.8 Establish a policy of working diligently with the City’s fire and police departments (collectively “Public Safety Departments”) to ensure that those departments possess all information needed to provide police and fire services within the Library. MCCCCD shall allow the Public Safety Departments access to the Library for the purpose of training, testing, and evaluating the following: Public Safety Department access including current keys, operational readiness of fire protection equipment and systems as verified by the City Fire Marshall or

designee; Public Safety Department Communications systems; and Field Testing Public Safety Department command room equipment.

5.1.9 Inspect and approve construction of the Library jointly with the City for compliance with applicable codes through the services of a third-party inspector agreeable to both Parties. The records of all such inspections and certificates of occupancy shall be preserved by MCCCCD during the existence of the building in MCCCCD possession, regardless of the duration of this Agreement.

5.1.10 Comply with the City's Fire Code to the extent that the City has assumed this jurisdiction from the State Fire Marshall.

5.1.11 Ensure that the inspection and approval of all elevators installed in the Library during construction comply with state requirements. All Library elevators will be inspected in accordance with state requirements.

5.2 City's Obligations. The City shall:

5.2.1 Subject to MCCCCD's performance under this Agreement, make payments as agreed and in accordance with an agreed upon payment schedule not to exceed the remaining balance of the Bond funds.

5.2.2 Designate a representative to coordinate and facilitate the design and construction of the Library Project with MCCCCD. The City Project Coordinator is: Tauny Woo, P.E., Assistant EAS Director, 200 W. Washington St, 7<sup>th</sup> Floor, Phoenix, AZ 85003-1611, phone number 602-256-3545. The MCCCCD Project Coordinator is: Arlen Solocheck, Architect/AIA, Director, Facilities Planning and Development, 2411 W. 14th Street, Tempe, Arizona 85281, phone number 480-731-8232.

5.3 MCCCCD and City's Joint Obligations. The Parties shall:

5.3.1 Appoint an Architect Selection Committee to select a design consultant for the Library ("Architect Selection Committee"). It will consist of eight members which will include the following from the City of Phoenix - Director, City of Phoenix Library; Assistant Director, City of Phoenix Library, a representative of the City of Phoenix Engineering and Architectural Services Department chosen by its Director; and a City of Phoenix library patron; and will include the following from MCCCCD - the Chair of the SMCC Library; a Vice President of SMCC Academic Affairs; a Vice President of SMCC Administrative Affairs and the Project Manager from the MCCCCD Facilities and Planning Department, who will also serve as the statutorily-required design professional for the Selection Committee. The parties may add up to four non-voting members to provide the Architect Selection Committee with assistance and technical input.

The term of the members will begin when the selection process begins and will end upon the award by the MCCCCD Governing Board of a contract to the architect.

5.3.2 Shall appoint a Contractor Selection Committee to select a contractor to construct the Library. The Contractor Selection Committee will consist of eight members including the Director, City of Phoenix Library; the Assistant Director, City of Phoenix Library; a representative of the City of Phoenix Engineering and Architectural Services (“EAS”) Department chosen by its Director; a member of the contracting community jointly chosen by the EAS Department Director and the MCCCCD Project Manager; and will include the following from MCCCCD: the SMCC Library Chair; a SMCC Vice President of Academic Affairs, a SMCC Vice President of Administrative Services and the Project Manager from the MCCCCD Facilities and Planning Department. The terms of the members of the Contractor Selection Committee will begin when the selection process begins and end upon the award by the MCCCCD Governing Board of a contract.

5.3.3 Shall coordinate and obtain reviews and approvals from all of City user groups, boards, advisory committees or the City Council, as applicable, as expeditiously as possible to assure that the Library remains on schedule and within budget.

## **ARTICLE 6 - SOURCES AND USES OF CAPITAL FUNDING**

- 6.1 Library Construction Budget. The project construction budget (“Project Construction Budget”) shall consist of the projected design and construction costs, including site development costs that MCCCCD and the City will share.
- 6.2 Site Development Costs. It is understood and agreed by the Parties that the site development costs included in the Library Project Budget are those necessary and directly related to the construction of the Library, or that are required to tie-in the Library site with existing utilities and roads.
- 6.3 Construction that Exceeds Project Budget. In the event that the guaranteed maximum price for the construction of the Library exceeds the dollar amounts provided for in the Project Construction Budget, the Parties shall confer, consult and unanimously agree to the appropriate action to take, including but not limited to providing additional funds or approval of modifications to the architect’s plans and specifications to reduce the cost of construction.
- 6.4 Project Costs and Payment Schedule
- 6.4.1 MCCCCD shall establish and maintain a separate project account for the design and construction of the Library.
- 6.4.2 The Parties acknowledge that the Project Construction Budget is an estimate of the cost to build the Library and that their actual financial

responsibility includes all of the costs actually incurred in designing and constructing the Library ("Actual Library Project Costs"). Notwithstanding the above, the Parties must unanimously agree to any Library costs in excess of the total Project Construction Budget, or agree to joint or individual reductions in project scope so as to meet available funding from each Party.

6.4.3 MCCCCD will pay all Actual Library Project Costs to contractors, consultants, or other vendors or suppliers, so long as they do not exceed the Project Construction Budget.

- 6.5 Procedure for Payment of Project Costs. The parties agree that MCCCCD shall provide copies of invoices or other requests for payment from the selected project architect and contractor to the City at the following address:

Tauny Woo, P.E., Assistant EAS Director  
Engineering and Architectural Services Department  
200 W. Washington Street, 7<sup>th</sup> Floor  
Phoenix, Arizona 85003

The City's project manager may participate in the review of monthly invoices at his request. The City will provide MCCCCD with all bond funds in a lump sum as they become available beginning in July 2009 with the next payment in July 2010 until the designated bond funds are exhausted. The City shall forward the funds to MCCCCD by August 1 of each year that they become available.

- 6.6 Disposition of Project Claims. If the Library Project architect or contractor asserts a claim under their contracts, MCCCCD shall be responsible for investigating and disposing of those claims, as specified in its contract terms and procurement procedures. To the extent that those claims may affect the Project Construction Budget or the Actual Library Project Costs significantly, the MCCCCD Project Manager shall confer with the City regarding disposition of the claim.

#### **ARTICLE 7 - BREACH**

- 7.1 If any Party fails to cure a material breach of this Agreement within 60 days following receipt of written notice from the other Party, that Party shall be considered in default. The Parties shall engage in non-binding mediation to resolve the matter. If mediation does not resolve the dispute within 90 days following receipt of the written notice required in this Section, the other Party may exercise all of its legal and equitable remedies.
- 7.2 During any period when a Party is in breach of this Agreement, all rights and privileges of such Party shall be suspended.



## ARTICLE 8 - INDEMNIFICATION

- 8.1 General Indemnification. Each party hereto shall indemnify and hold harmless and defend the other parties, their trustees, officers, agents or employees, from any and all liability, damages, costs, or expense which any indemnified party shall become obligated to pay by reason of any claim, lawsuit or judgment on account of injury to property or injury or death to persons received or suffered which is caused by the act or omission of any duty of that Party or that Party's officials, officers, agents or employees under this Agreement. This clause shall survive the expiration or earlier termination of this Agreement until all claims against the Parties involving any of the indemnified matters are resolved or fully, finally and absolutely barred by the applicable statutes of limitation.

## ARTICLE 9 - INSURANCE

- 9.1 Commercial General Liability Insurance. MCCCCD and City will procure and maintain commercial general liability insurance for bodily injury, personal injury and property damage providing for minimum limits of \$1,000,000 arising from one occurrence and a \$2,000,000 general aggregate limit.
- 9.2 Self-Insurance and Pooled Risk. Any insurance required to be maintained pursuant to this Article may be maintained under a self-insurance or pooled risk program so long as such self-insurance or pooled risk program is maintained in the amounts and manner usually maintained in connection with facilities similar to the Library.
- 9.3 Certificates of Insurance. Upon request, each party shall provide the other Party with written evidence of the insurance required in this Article in the form of appropriate insurance certificates specifying amounts of coverage and expiration dates of all policies in effect. Each party shall be named as an additional insured or loss payee, as applicable, on the certificates.
- 9.4 Property Insurance. MCCCCD will procure and maintain or cause to be procured and maintained insurance on the Library with responsible insurers in the amount equal to the full replacement cost. Such insurance shall name the City of Phoenix as loss payee. In particular, MCCCCD will procure and maintain "all risk" type of insurance, including coverage for flood and earth movement. This policy shall cover or be endorsed to cover vandalism and malicious mischief. The policy shall cover the Library, appurtenant structures and outbuildings, improvements and alterations, fixtures, and MCCCCD's contents, at 100% of the full replacement value thereof.

The City shall procure property insurance that covers at 100% replacement value all of its contents within the Library.

- 9.5 Insurance Proceeds. In the event of damage to or destruction of the Library during construction caused by the perils covered by insurance, the proceeds

thereof shall be applied to the reconstruction, repair, or replacement of the damaged or destroyed portion of the Library and/or the fixtures and personal property of the Party whose insurance is providing the proceeds. MCCCCD shall begin such reconstruction, repair or replacement promptly after such damage or destruction shall occur; shall continue and properly complete such reconstruction, repair, or replacement so that the same shall be completed and the Library shall be free and clear of all claims and liens.

- 9.6 Additional Replacement Costs. In the event the insurance proceeds are not sufficient to complete reconstruction or repair of the Library during construction, each Party agrees to meet and confer with representatives of the other Party to determine funding of the amount needed to complete the reconstruction or repair or of the Library.

#### **ARTICLE 10 - STANDARD TERMS AND CONDITIONS**

- 10.1 Successors, Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No party may assign any right or obligation under this Agreement without the consent of the other party, which consent shall not be unreasonably withheld.
- 10.2 Integration. This Agreement sets forth the entire agreement between the parties to the agreement with regard to the subject matter hereof and supersedes all prior written or oral agreements, covenants, arrangements, communications, representations or understanding by any party that are not fully expressed in this agreement. This agreement may not be modified, changed, supplemented or terminated, nor may any obligation under this agreement be waived, except by written instrument signed by the party to be charged or its agent, duly authorized in writing, or as otherwise expressly permitted in this agreement.
- 10.3 Voluntary Agreement. The parties hereto, and each of them, further represent and declare that they have carefully read this Agreement, have consulted with their own legal counsel, know and understand the contents of this Agreement, and that each party hereto signs this Agreement freely, voluntarily, and with a complete and full understanding of its terms.

All parties have cooperated in the drafting and preparation of this Agreement; accordingly, if there is any construction to be made of this document, the same shall not be construed against any party hereto.

- 10.4 Public Agency Authority. Each governmental entity signing this Agreement represents and warrants that said Agreement is executed in compliance with a resolution of the governing entity of said Party, duly adopted by said governing entity, which action shall be reflected in the minutes of the governing entity specifically to the resolution number in this Agreement and affirms and said public Party deems this agreement to be in furtherance of the general welfare of the constituents of said public entity. Any individual signing this agreement on

behalf of the public entity represents and warrants that he/she has full authority to do so.

- 10.5 Notices. Notices hereunder shall be in writing and shall be given by hand, first class mail, or by certified mail, return receipt requested, to the following address, provided that any party may change its address for such notices upon written notice to the other party.

City of Phoenix: Tauny Woo, P.E., Assistant EAS Director, 200 W Washington St, 7<sup>th</sup> Floor, Phoenix, AZ 85003-1611, phone number 602-256-3545

MCCCD

Arlen Solochek  
Facilities Planning and Development  
Maricopa County Community College District  
2411 W. 14th Street  
Tempe, Arizona 85281  
480-731-8232

SMCC

Dr. Joyce Elsner  
Vice President for Administrative Services  
South Mountain Community College  
7050 South 24th Street  
Phoenix, Arizona 85042

- 10.6 Applicable Law. The validity, effect, intendment and construction of this Agreement shall be governed by the laws of the State of Arizona.
- 10.7 Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the parties pursuant to the provisions of section 38-511, Arizona Revised Statutes.
- 10.8 Resolution of Disputes. Except as otherwise provided in this Agreement, if any controversy or differences arise among the Parties regarding the interpretation or enforcement of this Agreement, of because of an alleged dispute, breach or default in connection with any provision of this agreement, the parties will first attempt to resolve such differences through nonbinding mediation, if they are unable to resolve such difference in good faith on their own.

[Signature Page Follows]

MCCCD

By: Margaret E. McConnell  
Margaret E. McConnell  
Assistant General Counsel

3-6-08

APPROVED AS TO FORM

By: Peter D. Kushibab  
Peter D. Kushibab  
General Counsel  
MCCCD



City of Phoenix, a municipal corporation  
FRANK FAIRBANKS, City Manager

By: Frank Fairbanks

Maio Paniagua  
City Clerk

APPROVED AS TO FORM: mDt

Michael L. Pimm  
Acting City Attorney

Maio Paniagua  
CITY CLERK DEPT.  
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