

Date Filed with the Pinellas County Clerk's Office: _____

INTERGOVERNMENTAL AGREEMENT FOR THE CONSTRUCTION
AND DESIGN OF THE SHARED USE COMMUNITY LIBRARY
LOCATED ON THE ST. PETERSBURG COLLEGE CAMPUS AT 2465
DREW STREET, CLEARWATER, FLORIDA

Between

CITY OF CLEARWATER, for and on behalf of the Clearwater Public
Library System

and

ST. PETERSBURG COLLEGE BOARD OF TRUSTEES, for and on
behalf of St. Petersburg College – Clearwater Campus

Intergovernmental Construction and Design Agreement
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INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is originally made and entered into on the ____ day of _____, 2016 by and between the City of Clearwater, Florida ("City or Party"), a municipal corporation, and the Board of Trustees of St. Petersburg College ("College or Party"), a political subdivision of the State of Florida, (collectively, "Parties").

WITNESSETH:

WHEREAS, the City and College desire that library facilities ("Library") shall be jointly planned, designed, and constructed on the College's Clearwater Campus at 2465 Drew Street, Clearwater, FL, 33765, to provide library programs, services, materials and resources to benefit the citizens of the City and the students, staff and faculty of the College; and

WHEREAS, the Parties are authorized to enter into intergovernmental agreements, pursuant to section 163.01, Florida Statutes, to provide any function, service, or facility; and

WHEREAS, the City and College desire to enter into this Agreement in order to set forth their respective rights and obligations concerning the design, construction, maintenance, operation, management and use of the Library; and

WHEREAS, the land upon which the Library will be built is owned by the College; and

WHEREAS, the Library building will be owned by the College; and

WHEREAS, the College is required to provide library services and resources as part of its accreditation as an institution of higher education under the standards of the Southern Association of Colleges and Schools Commission on Colleges; and

WHEREAS, the College anticipates that the Library will serve that purpose; and

WHEREAS, the City desires to provide library service to citizens in the service area of the Library and all other citizens of the City; and

WHEREAS, the City anticipates that the Library will serve that purpose.

NOW, THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and College agree as follows:

Article 1. Definitions.

- A. "City Council" means the City Council of the City of Clearwater.
- B. "City Library Director" means the Director of the City's library system, or his or her

authorized designee.

- C. "Director of Learning Resources" means the Director of Learning Resources at College libraries, or his or her authorized designee.
- D. "City-dedicated Space" means space generally reserved for the City's exclusive use.
- E. "City Librarian" means the librarian who oversees the City-designated Space and Shared Space of the Library and delivery of services to community users. The City Librarian shall be a member of the City and Shared Operations Staff.
- F. "City and Shared Operations Staff" means a qualified and experienced library staff that will be assigned to work both City-designated and shared operations areas of the Library.
- G. "College-dedicated Space" means space generally reserved for the College's exclusive use.
- H. "College Use Staff" means a qualified and experienced library staff that will be assigned to work in the College-designated and shared operation areas of the Library and participate primarily in the delivery of programs and services to College users.
- I. "Days" or "days" means calendar days, exclusive of City and/or College holidays.
- J. "Educational Specifications" or "Ed. Specs." means a document developed by the Educational Specifications Team and approved by the City and College that sets forth the programmatic requirements of the City and College related to the design and construction of the Library, including furnishings, fixtures, and equipment.
- K. "Educational Specifications Team" or "Ed. Specs. Team" means the group of representatives designated by the City and College, under the direction of the College and in conjunction with the City, that shall meet to develop, review and approve the programming and design of the Library.
- L. "Effective Date" means the date this Agreement is executed by the last Party to this agreement. This Agreement is contingent upon the approval of the governing board or entity of each Party.
- M. "Laws" means all applicable present and future (i) federal, state, and local laws, statutes, ordinances, rules, regulations, and codes and the federal and state constitutions; (ii) decrees, orders, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedent in the State of Florida; (iii) decisions of federal courts applying the Laws of the State of Florida; and (iv) regulations and orders of quasi-official entities or bodies (e.g., boards, bureaus and public utilities), as the same may be amended or supplemented from time to time. "Laws" shall include, without limitation, the bonding requirements of Section 255.05, Florida Statutes, the public records requirements of Chapter 119, Florida Statutes, the Americans with

Disabilities Act, and employment laws.

N. "Library" means the library facilities, including the building, landscaping, relevant furniture, fixtures, equipment and related parking to be designed and constructed pursuant to this Agreement, as further described in the recitals set forth above.

O. "President" means the president of the College, or his or her authorized designee.

P. "Shared Space" means all space not designated College-dedicated space or City-dedicated space. Shared Space includes "program space" which generally means library/study space, nonvocational laboratory space, audio visual space, auditorium/exhibition space, student services space, office space, and support services space. Shared Space also includes "common areas" which generally means space for electrical, mechanical and HVAC equipment, general circulation include stairs and elevators, student sanitation, staff and public sanitation, custodial, interior and exterior walls, open malls and under roof overhangs.

Article 2. Ownership and Use.

A. Ownership. The land upon which the Library will be built and, upon completion of construction of the Library, the building, the capital improvements, and fixtures related to the Library shall be owned by the College.

B. 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 is a condition precedent for the City to provide the College the funding specified in this Agreement for the design and construction of the Library. The Operating Agreement will address the following, but is not limited to: library governance and management; staffing; hours of Library operation; circulation services; computer access; security; Library patron identification systems; city-specific parking; operating expenses; shared and separate Library uses; and a mission statement for the Library. The Parties will enter into an Operating Agreement for a minimum of thirty (30) years, with two optional ten-year (10) extensions.

C. Limitation of Use. The Parties agree that the Library and the land it will occupy shall be used solely as a joint academic and community library serving the campus of the College and the City's community for a minimum of thirty (30) years, with two optional ten-year (10) extensions. Neither party shall allow any use of the Library for any purpose or action that compromises the aforementioned Operating Agreement. This promise shall be enforceable by injunctive, declaratory, or other relief. If this Intergovernmental Agreement is terminated, the City is entitled to a full refund of any design and construction costs paid to the College up to the date of termination.

D. Amortization of City's Investment. If the College breaches the promise to utilize the Library and land as a joint academic and community library, or the Operating Agreement is

terminated by the College without cause, or by the City for-cause, the College agrees to pay the City an amount equal to the unamortized design and construction funds provided to the College by the City, calculated as detailed in Exhibit A, on the date of the breach, such unamortized design and construction costs to be determined by amortizing on a straight line basis over a thirty (30) year period commencing on the Operating Agreement commencement date. If the Operating Agreement is terminated during the span of an agreement year, then the amount of the City's refund will be prorated for that particular agreement year. If the City terminates the Operating Agreement without cause, the College may keep all funds paid toward the design and construction of the Library, without any reimbursement to the City.

Article 3. Name of Library.

A. Library Name. The College and the City shall, in good faith, mutually agree on the name of the Library. Any name of the Library shall be subject to the approval and guidelines of the City Council and the College's Board of Trustees. The College's Rule on Naming of College Facilities, located in the Board of Trustees Rules and College Procedures (<http://www.spcollege.edu/central/botrules/#>) and as amended during the span of this Intergovernmental Agreement and/or the Operating Agreement, is incorporated herein by reference.

B. Names of Allocated Space. The College and the City shall each retain the right to name spaces within the College-designated Space and the City-designated Space, respectively, subject to the reasonable approval of the other Party.

C. Names of Shared Space. Either Party shall have the right to propose to the other Party names for any Shared Space within the Library. Such proposed names shall be submitted by the Party proposing such name to the other Party, and the Parties, each using their respective guidelines and procedures, shall decide whether or not to approve of such names. In the event the Parties do not agree as to any such proposed name, such Shared Space shall not be named.

Article 4. Location, Design, and Construction.

A. Location. The Library will be located at a site within the SPC–Clearwater campus at 2465 Drew Street, Clearwater, Florida, and it shall be easily visible and accessible from Drew Street. The site plan, specifically describing the location, is attached hereto as Exhibit B. The square footage of the Library building shall total Forty-Three Thousand, Five Hundred and Fifteen (43,515) square feet. The City's anticipated square footage will include 16,442 square feet comprised of 9,457 square feet of City-designated program Space and the City's proportionate share (37.8 percent) of the Shared Space within the Library building which is calculated to be 6,985 square feet. The College's anticipated square footage will include 27,073 square feet, comprised of 15,572 square feet of program space and its proportionate share of Shared Space totaling 11,501 square feet.

The Library will include utility and technology infrastructure; curbs; sidewalks; landscaping; and other site improvements. At minimum, eighty (80) City-exclusive parking spaces will be

located near the immediate vicinity of the Library building, and such City-exclusive parking shall meet the City's and College's requirements. The parking constructed at the Library will be built to industry standards and consistent with the type of parking that is typically constructed at other college/university libraries. The City will bear the cost of this exclusive-use parking.

B. The Ed. Specs. Team shall meet not less than once per month during the design phase of the Library project. The Ed. Specs. Team shall cease meeting at the conclusion of design development.

C. College's Obligations. The College:

1. Shall complete the Library project in accordance with applicable Laws, including but not limited to the Americans with Disabilities Act ("ADA"), State Requirements for Educational Facilities ("SREF") and the Florida Building Code. All building requirements, permits and inspections shall be under the jurisdiction of the College and not subject to City building permitting or inspection ordinances. The College will submit to the City's site plan review process for the Library project.

2. Has selected Canerday, Belfsky and Arroyo Architects, Inc., as the architect ("Architect") and Creative Contractors, Inc., as the Construction Manager At-Risk ("Construction Manager") for the Library project.

3. Shall be solely responsible for developing and constructing the Library and other associated site improvements associated with the construction of the Library in accordance with the plans and specifications prepared by the Architect and after approval by the City. Both the College and the City will collaborate in the contractor selection and all project design decisions.

4. Shall procure goods and services for the Library in compliance with law of the state of Florida.

5. Shall, on behalf of itself and the City, pay any and all fees and charges associated with the construction of the Library project.

6. Shall provide the City with a copy of all payment invoices, requests, or applications at the time as submitted to the College at the address provided in this Agreement.

7. Shall serve as fiscal agent for the design and construction of the Library and management of the Project Construction Budget, as defined in this Agreement.

8. Shall serve as the designated project manager through the planning, design, and construction phases of the Library.

9. Pursuant to the City's public art policy, the College shall incorporate public art into the Library Project. The City shall contribute \$53,620.47 toward the cost of such

public art.

E. City's Obligation. The City, subject to the College's performance under this Agreement, shall make payments to the College in the manner detailed by this Agreement.

F. The College and the City's Joint Obligations. The Parties:

1. The Parties shall participate in the selection of the Construction Manager through the competitive selection process set forth in Section 287.055, Florida Statutes, and administered by the College. The City's participants in the selection process shall be designated by the City and may be members of the Ed. Specs. Team. The College shall not replace the Architect or Construction Manager selected by the Parties without the City's prior written consent.

2. The College and the City, through the Ed. Specs. Team, shall develop the Ed. Specs. The Ed. Specs. shall be used by the architect in the development of the design documents. Those documents shall be provided to the City, and the City shall have thirty (30) days from the date of receipt of such documents to review and comment on the documents and return such documents to the College, as the City could require approval from its City Council. The College shall not commence construction of the Library until the City has notified the College, in writing, of the City's approval of the fully developed construction documents ("100% Construction Documents"), which approval shall not be unreasonably withheld. Failure of the City to respond to the College within the above-referenced thirty (30) day timeframe shall constitute approval by the City for the College to proceed with construction of the Library in accordance with the 100% Construction Documents provided to the City. The College shall not modify the 100% Construction Documents without the City's prior written approval, which approval shall be subject to the above-referenced thirty (30) day time frame.

3. The Parties shall conduct one or more design charettes to seek community input on the design of the City-designated areas in the Library.

Article 5. Funding.

A. Library Construction Budget. The Library construction budget ("Library Construction Budget") shall consist of the projected design and construction costs, including site development and all furnishings, fixtures, and equipment costs for the Library that the College and the City will share.

B. Site Development Costs. It is understood and agreed by the Parties that the site development costs included in the Library Construction Budget are those necessary and directly related to the construction of the Library, or that are required to connect the Library site with infrastructure, such as existing utilities and roads.

C. Exceeding the Library Construction Budget. In the event that the guaranteed maximum price for the construction of the Library exceeds the dollar amounts provided for in the Library

Construction Budget, the Parties shall confer, consult, and unanimously agree on the appropriate action to take, including but not limited to, approval of modifications to the Architect's plans and specifications to reduce the cost of construction. The College understands that the City is under no obligation to provide more than its contribution to this project, as detailed in this Agreement, to cover cost overruns.

D. The College acknowledges that the City's Contribution will be funded by proceeds generated from the local government infrastructure surtax, that such proceeds are the City's sole source of funding for the City's Contribution, and that the City's Contribution shall be expended by the College in accordance with Section 212.055, Florida Statutes, other applicable Laws and current and future restrictions on the use of proceeds generated from the local government infrastructure surtax.

E. Library Costs and Payment Schedule.

1. The College shall establish and maintain a separate project account for the design and construction of the Library.

2. The Parties acknowledge that the Library Construction Budget is an estimate of the cost to build the Library and their actual financial responsibility includes all of the costs actually incurred in designing and constructing the Library ("Actual Project Costs"). Notwithstanding this, the Parties must unanimously agree to any Library costs in excess of the Library Construction Budget, or agree to joint or individual reductions in project scope to meet available funding from each Party. In the event that the Actual Project Costs are less than the Library Construction Budget at final completion, any remaining budgeted funds of the College, or as maybe contributed by the City, shall be moved into the Operational Fund, to be maintained and used pursuant to Section 5.4 of the Agreement for the Operation of the Shared use Community Library.

3. The College shall pay all Actual Project Costs to contractors, design consultants, consultants, vendors, or suppliers, so long as they do not exceed the Library Construction Budget. Except for the City's Contribution, the College shall be responsible for providing the necessary funding for the design and construction of the Library pursuant to this Agreement.

4. The City shall contribute Five Million, Nine Hundred and Sixty-Two Thousand, Eight Hundred and Thirty-Eight dollars (**\$5,962,838.00**) toward the Actual Project Costs ("City's Contribution"), not including the City's Contribution of Public Art as provided for in this Article.

5. The construction schedule shall be provided by the College and shall reflect dates for each significant phase of the Library project ("Milestone Dates"). The following Milestone Dates have been established by both the College and the City: (i) programming and design phase shall begin by the end of _____; (ii) final design approval shall occur by _____; (iii) construction of the Library shall commence by _____; and (iv) construction shall be completed and the Library opened to the public by _____ ("Opening Date"). The College shall notify the City of any modifications to the Milestone Dates. Each Milestone Date may be modified, subject to the College's notification of the City, up to sixty (60) days. However, the College shall not modify an individual

Milestone Date by sixty-one (61) days or more without the prior written approval of the City, which approval shall not be unreasonably withheld. Notifications and requests for approval shall be made in accordance with this Agreement.

6. Payment Schedule – Design Costs. Upon final design approval, the City shall make available to the College its portion of the design costs, to be calculated at \$25.00 per square foot. The City’s funding contribution to the design costs of Four Hundred and Eleven Thousand, and Fifty dollars (**\$411,050.00**) is based upon the City-dedicated program Space and the City’s proportionate share of the Shared Space, totaling 16,442 square feet within the real improvements comprising the Library.

7. Payment Schedule – Construction Costs. Upon commencement of construction of the Library, the City shall make available to the College Five Million, Nine Thousand, Two Hundred and Two dollars (**\$5,009,202.00**), which constitutes 100% of the City’s Construction Contribution of \$281.00 per square foot for City-dedicated Space and the City’s proportionate share of the Shared Space, and \$389,000.00 for the exclusive-use parking (80 spaces); and then at Substantial Completion the City shall make available to the College Five Hundred and Forty-Two Thousand, Five Hundred and Eighty-Six dollars (**\$542,586.00**), which constitutes the City’s share of furniture, fixtures and equipment at \$33.00 per square foot for City dedicated Space and the City’s proportionate share of the Shared Space.

8. Procedure for Payment of Project Costs. The Parties agree that the College shall provide copies of invoices or other requests for payment from the Architect and/or the Construction Manager to the City at the following address:

City of Clearwater Engineering
P.O. Box 4748
Clearwater, FL 33758-4748

The City’s Assistant Director of Engineering may also participate in the review of invoices or other requests for payment from the Architect and/or the Construction Manager. The City shall direct the funds detailed in the above payment schedules in paragraphs 6 and 7 above to St. Petersburg College, Facilities Planning & Institutional Services, Attention: Associate Vice President of Facilities Planning & Institutional Services, P.O. Box 13489, St. Petersburg, Florida 33733, on the dates herein stated.

9. Disposition of Project Claims. If the Architect and/or Construction Manager assert a claim under their contracts, the College shall be responsible for investigating and disposing of those claims, as specified in its contract terms, procurement procedures, and as state statutes dictate. To the extent that those claims may affect the Library Construction Budget or Actual Project Costs significantly, the College’s Project Manager shall confer with the City regarding the disposition of the claim.

10. City Contribution of Public Art
The City shall separately contribute an estimated \$53,620.47 for public art to be identified and incorporated into the Library plans developed in accordance with the applicable requirements of the City of Clearwater Library System, and mutually agreed upon by the City and the Provost of the College’s Clearwater Campus.

Article 6. Term.

The term of this Agreement shall commence upon the Effective Date and expire when the construction of the Library described in Article 4 is complete, all claims, payments and other external costs of construction and design have been paid or satisfied, and the City has provided the College all of the City's Contribution, pursuant to Article 5 of this Agreement.

Article 7. Furnishings, Fixtures, and Equipment.

A. The College shall provide and supervise the interior design, manufacturers, and vendors as necessary for the design, planning, purchase (or lease) and installation of furnishings, fixtures, and equipment for the Library. The College and the City understand that the cost of furnishings, fixtures, and equipment is included in the City's contribution for Construction Costs toward the Library, as set forth in Article 5 above.

B. Unless otherwise mutually agreed upon by the Parties, the College shall be responsible for purchasing or leasing all furnishings, fixtures and equipment for the Library, as set forth in an equipment list mutually agreed upon by the Parties ("Equipment List"—Exhibit C). The College and the City understand that the cost of technology is not included in the City's contribution for Construction Costs toward the Library. The City shall pay for its technology at the City's sole cost and expense independent of any amounts referenced under this Agreement.

C. All furnishings, fixtures and equipment purchased or leased by the College shall be owned by the College. All furnishings, fixtures and equipment supplied by the City shall remain the property of the City.

D. The College shall provide sufficient furnishings, fixtures and equipment in the Shared Space of the Library, as set forth in the Exhibit C. Nothing herein obligates nor prohibits the City, of its own accord, from making further contributions of furnishings, fixtures and equipment to the Library, as approved by the College. A list of such furnishings, fixtures, and equipment so supplied or affixed as of the date of Substantial Completion shall be delineated and set forth in an addendum mutually agreed upon by the Parties as Exhibit D, "Furnishings, Fixtures and Equipment Contributed by the City."

Article 8. City-Dedicated Library Capital Contribution; Shared Library Capital Contribution; Routine Maintenance and Cost-sharing

A. The College shall maintain, repair and keep in good working order and condition the Library building and land, capital improvements, furnishings, fixtures (e.g., lighting, plumbing, and heating and air conditioning equipment) and equipment, and parking lots designated for the Library.

B. The College will provide for all utilities and capital maintenance. It is understood by the Parties that the City shall be responsible for providing its share of funding necessary to fulfill operating expenses at the Library as provided in Article 5 of the Operating Agreement.

Article 9. Future Issues. The City and College shall work cooperatively to implement any future expansion of the Library that the Parties mutually agree is appropriate and necessary to meet the needs of College and community users.

Article 10. Appropriation.

A. The College is largely dependent upon annual appropriations from the State Legislature and, therefore, the College's financial obligations under this Agreement are contingent upon an adequate annual appropriation from the State Legislature. The reduction or elimination of services by the College due to insufficient annual legislative appropriations shall not be a default hereunder. The City may terminate this Agreement upon thirty (30) days prior written notice in the event that the College's inadequate funding adversely affects the community use areas of the Library or services provided to community users.

B. The obligations of the City as to any funding required pursuant to this Agreement (other than the City's Contribution which shall be funded only as provided in Article 5 of this Agreement) shall be limited to an obligation to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

C. Neither party shall be required to pay for or perform the duties or responsibilities of the other in the event of the other's inadequate funding. In the event of the College's failure to perform its duties and responsibilities under this Agreement due to inadequate funding, the City shall be refunded the full amount of funds contributed to the Library within thirty (30) days of the College's notice to the City of its inability to perform. In the event of the City's failure to perform its duties and responsibilities under this Agreement due to inadequate funding, the College may, at its sole option, retain any City-contributed funds toward the design and construction of the Library, without reimbursement to the City, and apply such toward completing the Library.

Article 11. Indemnification.

A. Each Party hereto shall indemnify and hold harmless and defend the other Party, their trustees, officers, agents, elected officials, or employees, from any and all liability, damages, cost, or expense any indemnified Party shall become obligated to pay by reason of any claim, lawsuit, or judgment on account of injury to property or injury received or death suffered to persons, which is caused by the act or omission of any duty that the indemnifying Party or their trustees, officers, agents, elected officials, or employees under this Agreement. This indemnification clause shall survive the expiration or earlier

termination of this Agreement until all claims against the Parties involving any indemnified matters are resolved or barred by the applicable statute of limitation.

B. All of the indemnification obligations of the College and City shall be limited to the extent permitted by law. Nothing in this Agreement shall alter the waiver of sovereign immunity or extend the College's or City's liability beyond the limits established in Section 768.28, Florida Statutes.

C. Nothing herein shall be construed as consent by the City or College to be sued by third parties in any matter arising out of this Agreement.

Article 12. Insurance.

A. It is understood that the City and the College shall, at each Party's own cost and expense, acquire and maintain (and cause any contractors, representatives, or agents to acquire and maintain) during the term of this Agreement, sufficient insurance, self-insurance, or a combination of self-insurance and excess insurance, to adequately protect the respective interests of the parties. Specifically both Parties shall carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

1. **Commercial General Liability Insurance** coverage in the minimum amount of \$200,000 (two hundred thousand dollars) per occurrence and \$300,000 (three hundred thousand dollars) general aggregate. Coverage should include but not be limited to, premises operations, products/completed operations, products liability, independent contractors, personal injury and advertising injury.

2. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$200,000 (two hundred thousand dollars) combined single limit.

3. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, Public Entities, sub Public Entities, and volunteers, if any.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies, and are subject to applicable changes, including changes in limits, by the Florida Legislature to the rules and provisions governing such coverage and to §768.28, Florida Statutes.

B. In addition to coverage required in Article 12, Section A, after the Certificate of Occupancy has been issued, the College shall acquire and maintain **Property Insurance** on the

Library to repair, rebuild, or replace the Library to its original, new condition. In particular, the College shall acquire and maintain an “all-risk” type of insurance, including coverage for flood and other catastrophes. The policy shall cover the Library, appurtenant structures and outbuildings, improvements and alterations, fixtures, furnishings, equipment, and College-owned contents. The City shall acquire and maintain such Property Insurance or self-insure to cover 100% of the full replacement value of City-owned contents within the Library.

C. The College shall purchase and maintain, or cause the Construction Manager to purchase and maintain, Builder’s Risk insurance, property insurance written on an “all risk” policy form including coverage as detailed in section 12.B. in an amount equal to 100% of the estimated completed value of the project plus any subsequent modifications to that sum, and shall include property in transit and property stored on or off premises that shall become part of the project. Such Builder’s Risk insurance shall be maintained until the final payment has been made and the Certificate of Occupancy is received. 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 fixtures and personal property of the Party whose insurance is providing the proceeds. The College shall begin such reconstruction, repair, or replacement promptly after such damage or destruction occurs and shall continue and properly complete such reconstruction, repair, or replacement so that same shall be completed expeditiously; the Library shall be free and clear of all claims and liens.

D. If the insurance proceeds are insufficient to complete reconstruction or repair of the Library during construction, the Parties agree to meet and confer with each other to determine funding of amount needed to complete the reconstruction or repair. The College understands that the City is not obligated to fund more than the City’s contribution.

E. **Other Insurance Provisions.**

1. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy’s renewal date(s) for as long as this Agreement remains in effect, each Party shall furnish the other Party with either a Letter of Self-Insurance (SIGNED by the Risk Manager) and/or Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements where required) evidencing all of the coverage set forth above.

2. Both Parties shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.

3. Each Party shall be responsible for their own self-insured retention or deductibles associated with any purchased program.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability, and failure to request evidence of this insurance shall not be construed as a waiver of the City’s or College’s obligation to provide the insurance coverage specified.

Article 13. Dispute Resolution. Except as otherwise provided in this Agreement, if any

dispute or controversy arises amongst the Parties regarding the interpretation or enforcement of this Agreement or because of an alleged controversy, breach, or default in connection with any provision of this Agreement, the Parties will first attempt to resolve such differences via nonbinding mediation, if they are unable to resolve such difference in good faith on their own. If mediation does not resolve the dispute, the other Party may exercise all legal and equitable remedies available to it.

Article 14. Fiscal Nonfunding. In the event that sufficient budgeted funds are not appropriated by the State of Florida to allow the College to design and construct the Library as contemplated herein, the College shall notify the City of such occurrence, the College shall not have any further obligations to construct the Library and this Agreement shall terminate. The City and the College shall have no further obligation or liability to each other under this Agreement, other than the College returning the City's Contribution, together with interest, income or revenue generated therefrom, to the City within thirty (30) days of the College's termination pursuant to this Article.

Article 15. Default, Breach, Termination and Enforcement of Agreement.

A. If any Party fails to cure a material breach of this Agreement within sixty (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 ninety (90) days following receipt of the written notice required in this section, the other Party may exercise all legal and equitable remedies available to it.

B. During the period when a Party is in breach of this Agreement, all rights and privileges of such Party shall be suspended.

C. Notice of any termination shall be given in accordance with Article 22 of this Agreement.

D. Should the College terminate this Agreement, the College shall not retain any furniture, fixtures, equipment, resources, materials or collections purchased or relocated to the Library that are owned by the City.

Article 16. Condemnation. If the Library, or a substantial portion of the City-designated use areas (as determined solely by the City), is taken by eminent domain prior to the end of the year of this contract Term, the College shall pay the City according to the amortization schedule in Exhibit A. The College's payment to the City required pursuant to this Paragraph 16 shall be made within ten (10) days of receipt of notice of the condemnation, by the College, from the condemning authority.

Article 17. Effective Date. The College shall file this Agreement with the Clerk of the Circuit Court of Pinellas County after execution by the Parties, and this Agreement shall be effective upon execution by the last Party to this Agreement. This Agreement is contingent upon the approval of the governing board or entity of each Party.

Article 18. Compliance with Laws. The College shall comply with all applicable Laws

in the design, construction, maintenance, operation, staffing and management of the Library.

Article 19. Representations and Warranties.

A. The City hereby represents and warrants to the College that: (i) the City is a duly authorized and validly existing Florida municipal corporation; (ii) the City has the full right and authority to enter into this Agreement; (iii) each of the persons executing this Agreement on behalf of the City is authorized to do so; and (iv) this Agreement constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms.

B. The College represents and warrants to the City that: (i) the College is a duly authorized and existing political subdivision of the State of Florida; (ii) the College has the full right and authority to enter into this Agreement; (iii) each of the persons executing this Agreement on behalf of the College is authorized to do so; and (iv) this Agreement constitutes a valid and legally binding obligation of the College, enforceable in accordance with its terms.

Article 20. Assignment. Neither the City nor College may assign any rights or delegate any duties under this Agreement without the written consent of the other party.

Article 21. Exhibits. Each exhibit to this Agreement is an essential part hereof and is hereby incorporated herein by reference. Any amendments or revisions to such exhibits, even if not physically attached hereto, shall be treated as if a part of this Agreement if such amendments or revisions specifically reference this Agreement and are executed by the Parties.

Article 22. Notices.

A. Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals or other communications which are required to be given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, or upon the date delivered by overnight courier (signature required) and addressed:

TO THE CITY:

City of Clearwater Library
ATTN: Barbara Pickell
P.O. Box 4748
Clearwater, Florida 33758-4748

TO THE COLLEGE:

St. Petersburg College
ATTN: General Counsel's Office
P.O. Box 13489
St. Petersburg, FL 33733

WITH COPY TO:

City Attorney's Office
ATTN: Library Designee
P.O. Box 4748
Clearwater, Florida 33758-4748

B. The City or College may change its authorized representative or address for receipt of notices by providing the other with written notice of such change. The change shall become effective ten (10) days after receipt by the non-changing party of the written notice of change.

Article 23. Waiver. No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a written modification to this Agreement.

Article 24. Governing Law. This Agreement shall be construed in accordance with the Laws of the State of Florida.

Article 25. Jurisdiction and Venue. Venue for any action brought in state court shall be in Pinellas County. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division is created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

Article 26. Survival. All obligations (including indemnity obligations) or rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement shall survive such expiration or earlier termination.

Article 27. Public Records/Student Records. The provisions of Chapter 119, Florida Statutes, the Family Educational Rights and Privacy Act, and Section 1002.225, Florida Statutes, shall apply to this Agreement.

Article 28. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the Parties and shall inure to the benefit of their respective successors and assigns.

Article 29. No Third Party Beneficiary. Persons not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.

Article 30. Headings. The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

Article 31. Understanding and Drafting of Agreement. The parties hereto, and each of them, further represent 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 full understanding of its terms. This Agreement has been drafted and negotiated by the City and College and the same shall not be construed against either party.

Article 32. Entire Agreement. This Agreement, along with all exhibits and other documents incorporated herein, constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by both Parties.

Article 33. Severability. Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any other part of any section of this Agreement provided that the Parties continue to enjoy the intended benefits for which they entered into this Agreement.

[This section is intentionally left blank; signature page follows.]

INTERGOVERNMENTAL AGREEMENT
CITY OF CLEARWATER, for and on behalf of the Clearwater Public Library
System and ST. PETERSBURG COLLEGE BOARD OF TRUSTEES, for an on
behalf of St. Petersburg College- Clearwater Campus

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

Countersigned:

CITY OF CLEARWATER, FLORIDA

George N. Cretekos
Mayor

By: _____
William B. Horne II
City Manager

Approved as to form:

Attest:

Camilo A. Soto
Assistant City Attorney

Rosemarie Call
City Clerk

WITNESSES: (as to College)

THE BOARD OF TRUSTEES OF
ST. PETERSBURG COLLEGE

By: _____
William D. Law, Jr.,

Approved as to
Form and Content

College President and Secretary of
Board of Trustees

Suzanne L. Gardner
General Counsel

Exhibit A – Amortization Table

Exhibit B – Site Plan

Exhibit C – Equipment List

Exhibit D - Furnishings, Fixtures and Equipment Contributed by the City