

## Memorandum of Agreement

### Fayetteville Technical Community College (College) and the Cumberland County Public Library & Information Center (Library)

Hereby agree as follows:

1. Scope of Agreement. College and Library agree to perform certain functions and provide certain services in connection with the Spring Lake Branch Library, upon the terms and conditions hereinafter set forth. The purpose of the Spring Lake Branch Library is to operate a free public library for use by the College, the students enrolled at the College, and patrons of the Cumberland County Public Library System, by and through such offices and administration, general lending, reference, research and other uses that are generally appurtenant to the operating of a free public library.
2. Cooperation. College and Library agree to cooperate and to do all things reasonably necessary or desirable for the mutual benefit of the parties in operating the Spring Lake Branch Library. To further effectuate these procedures, the parties shall not unreasonably withhold consent or agreement to any new or different terms, agreements, or positions not otherwise included in this Agreement, but deemed desirable or necessary by both parties to the proper and most beneficial operation of the Spring Lake Branch Library.
3. Responsibilities. In order to operate the Spring Lake Branch Library consistent with regulations and standards the College and the Library agree to the following:
  - a. College's Duties
    - i. The College shall provide the annual funding to the Library to hire an additional full-time Librarian with a masters degree in Library and Information Science to augment the staff of the Spring Lake Branch. Such funding shall cover both salary and Cumberland County benefits as provided by the County's Pay and Position Classification Plan. Such funding shall be increased in any fiscal year to reflect reimbursement of actual salary appropriated by the County's Board of Commissioners. The College shall transfer one quarter of the total annual cost of the position to the Library every three months, beginning with the quarter immediately following the start of the librarian's employment, that this position is filled, to reimburse it for this cost. The Library shall invoice the College quarterly for such reimbursement. This additional position will be an integral part of the Library staff and will be supervised and evaluated by the Spring Lake Branch Manager. The scheduled

working hours and work functions of the new full-time Librarian will be coordinated between the Spring Lake Branch Library Manager and the FTCC Vice President for Learning Technologies.

- ii. The College shall fund a compatible workstation, computer and printer for the funded full-time Librarian in the workroom of the Spring Lake Branch Library.
  - iii. The College shall annually fund the augmentation of the Spring Lake Branch Library collection with books, periodicals, and other materials necessary to support the educational needs of the FTCC students.
  - iv. The College shall reimburse the Library on a mutually agreed schedule for annual out-of-county resident fees for FTCC students who obtain library cards at the Spring Lake Branch Library.
  - v. The students, faculty and staff of the College will follow the standard policies, procedures, rules and regulations in the use of the Library.
  - vi. College faculty will coordinate any class visit to the Library for the purpose of orientation or conducting research with the Spring Lake Branch Library Manager.
  - vii. College will include the Spring Lake Branch Library, including the parking lot, in the routine patrols of the College's security personnel.
- b. **Cumberland County Public Library Duties**
- i. Library shall manage the day-to-day operation of the Spring Lake Branch Library in a manner consistent with standard library operations.
  - ii. Library shall equip and stock the Spring Lake Branch Library with those materials required for providing the Library Services, including, but not limited to, books, periodicals, audio and visual items, other reading and instructional materials, computers, furniture, shelving, decorating, and other equipment commonly found in public libraries, and those materials required by regulations and standards.
  - iii. Library shall secure needed College materials based on funding received from the College and designated for that purpose, at such intervals as the College President and Library's Director may from time to time agree in writing, and shall order, process, catalog and add these materials to the Library's online catalog for easy accessibility. These added materials will be integrated into the Spring Lake Branch Library collection based on the Dewey Classification and regular shelving scheme of the Spring Lake Branch Library.
  - iv. Library, in cooperation with the College, shall clearly mark any

books or other materials used by Library in the Spring Lake Branch Library that ~~is~~<sup>are</sup> owned by the College with a legend substantially similar to the following: "Property of Fayetteville Technical Community College."

- v. Any FTCC library items that are lost, stolen or damaged due to FTCC patrons will be replaced in accordance with established Library policies with FTCC funds.
4. Hours of Operation. The Spring Lake Branch Library shall be open by mutual agreement of the parties hereto for use by the College, College students, and other patrons on the days and hours necessary to meet the reasonable needs of the College and Library.
5. Non-Discrimination. Library and College shall not discriminate against any of the Spring Lake Branch Library's patrons on the basis of color, race, age, sex, national origin, religion, disability, status as a disabled veteran, or any other legally protected status.
6. Term and termination. This shall become effective upon execution by both parties and shall be in effect through June 30, 2010. This agreement may be terminated by either party with or without cause upon ninety (90) days' prior written notice provided that, in order to accommodate the parties' annual budget processes, the effective date of any termination shall be June 30. In order to facilitate the termination of the parties' duties under this Agreement without unnecessary disruption of the patrons' use of the Spring Lake Branch Library, the College and Library shall cooperate in separating all property to the appropriate owner.
7. Independent Entities. College and Library agree that this Agreement shall create an independent contractor relationship between them. Neither Library nor any agent, employee, or servant of the Library shall be deemed to be an employee, agent, or servant of the College. Neither College nor any agent, employee, or servant of the College shall be deemed to be an employee, agent, or servant of the Library. Nothing contained in this Agreement is intended to or shall be construed to create between the College and Library a relationship of principal and agent, employer, and employee, a business partnership, or franchise of any kind. No party has authority to bind the other party except to the extent authorized by this Agreement or a separate authorization executed by the authorizing party.
8. Successors and Assigns. This Agreement shall insure to the benefit of and be binding upon any corporate or other successors to the College and Library which shall acquire, directly or indirectly, by conversion, merger,

consolidation, reorganization or otherwise, all or substantially all control of the College or Library.

9. Modification: Waiver: Amendments. Any term or condition of this Agreement may be waived either in whole or in part, at any time by the party which is entitled to the benefits thereof: provided, however, that no waiver of any term or condition of this Agreement by any party shall be effective unless such waiver is in writing and signed by the waiving party. No waiver by either party hereto, at any time, of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No failure or delay of any party to exercise any power, or to insist upon a strict compliance by any other party of any obligation, and no custom or practice at variance with any terms hereof, shall constitute a waiver of the right of any party to demand full and complete compliance with such terms. This Agreement may be amended, modified or supplemented only by an agreement in writing executed in the same manner of this Agreement.
  
10. Applicable Law. The parties hereto agree that without regard to principles of conflicts of laws, the internal laws of the State of North Carolina shall govern and control the validity, interpretation, performance and enforcement of this Agreement, except to the extent that federal law shall be deemed to apply, and that any suit or action relating to this Agreement shall be instituted and prosecuted exclusively in state or federal courts situated in the State of North Carolina and having a venue in Cumberland County.
  
11. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.
  
12. Notices. Except as otherwise may be provided herein, all notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to have duly given when hand delivered or sent by facsimile transmission (with receipt confirmed) by one party or the other, or when deposited by one party with the United States Postal Service or other national overnight delivery service with a return receipt controlled/confirmed form of delivery, postage prepaid, and addressed to the other party as follows:

If to College, to:  
Dr. Larry Norris, President  
P.O. Box 35236

If to Library, to:  
Mr. Jerry Thrasher, Library Director  
300 Maiden Lane

13. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the transactions described herein and supersedes any and all other oral or written agreement(s) heretofore made, and there are no representations or inducements by or to, or any agreements, promises, warranties, covenants, or undertakings among, any of the parties hereto that are not expressly set forth in this Agreement.

14. The following parties execute this Agreement the day and year dated below:

Dr. Larry Norris, President  
Fayetteville Technical Community College

Larry B. Norris Date: 2/28/05

Jerry A. Thrasher, Director  
Cumberland County Public Library & Information Center

Jerry A. Thrasher Date: 3/1/05  
James A. Martin, County Manager  
Cumberland County

James A. Martin Date: 3-1-05

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APPROVED FOR LEGAL SUFFICIENCY.

BY: Lauren Johnson 3/1/05  
County Attorney's Office

**THIS INSTRUMENT HAS BEEN PRE-AUDITED  
IN THE MANNER REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET AND FISCAL CON-  
TROL ACT.**

Amy H. Cannon  
County Finance Director