

Board of Trustees Agenda Item

Board Meeting Date: June 21, 2010

Title of Item: **Five-year maintenance agreement for library system software**
(amendment to 1996 Software Services Agreement between Sirsi Corporation and Foothill College)

Background and Analysis:

In January 1996, both the Foothill and De Anza College libraries entered into a software license agreement with Sirsi Corporation for use of their proprietary integrated library system software. This software provides the database infrastructure for the full spectrum of academic library operations: circulation, reserves, acquisitions, cataloging, and serials management, along with the staff work clients and the web-based public catalog front end.

Each year there is a software service maintenance renewal, which routinely entails a small percentage increase in the overall cost. What used to be a standard 3% increase, however, has jumped in recent years to 6%, and now to 6.8% for 2010-2011, at \$27,344 for the year.

As an alternative to these year-to-year renewals that have been subject to higher percentage increases, Sirsi Corporation (now called SirsiDynix) has agreed to cap the increases for Foothill College at 4% in return for a commitment of five years. In addition, one of the software components, which currently costs about \$1,500 to renew annually, will be provided at no cost for each of the five years.

This five-year agreement will result in a total cost of \$136,072, as opposed to the cost of five year-to-year renewals at \$156,625. **The overall savings from this five-year agreement between Foothill College and SirsiDynix, in place of year-to-year renewals, is 13%, or \$20,553.**

Recommendation: (specify if information only)

Recommended for approval.

Submitted by:	Shirley Treanor Barker, Vice President of Educational Resources and Instruction
Additional contact names:	Paul Starer, Dean, Language Arts and Learning Resource Center; Pam Wilkes, Librarian
Is backup provided?	Yes

**AMENDMENT TO
1996 SOFTWARE SERVICE AGREEMENT
with
FOOTHILL COLLEGE**

This amendment ("**Amendment**") is made by and between **Foothill College**, with address at 12345 El Monte Road, Los Altos Hills, CA 94022 ("**Customer**"), and **Sirsi Corporation dba SirsiDynix** ("**SirsiDynix**"), with offices at 400 W. Dynix Drive, Provo, Utah 84604.

Whereas the parties have entered a Software Service Agreement with an effective date of 3 January 1996 (hereinafter collectively the "**Agreement**");

Whereas the parties hereto wish to amend certain terms of the Agreement, now therefore, for good and valuable consideration the receipt of which is hereby acknowledged, SirsiDynix and Customer agree as follows:

1. Definitions.

For purposes of this Amendment and attached Quote, the following terms shall have the meaning set forth herein:

"**Content**" means any information, data, text, software, music, sound, photographs, graphics, video messages or other material to which Customer is provided on-line access to through SirsiDynix on a subscription basis.

"**License Metrics**" means the limitation on the usage of each of the Software or SaaS Services as designated and/or defined in the applicable Quote by a term such as the number of titles, circulation, users, students, seats, reports, and the like.

"**Maintenance**" means the technical support and provision of Updates for the level of support services ordered, all of which are provided under SirsiDynix's Support Policies in effect at the time the Services are provided. A current version of such Support Policies can be found at:

http://clientcare.sirsidynix.com/index.php?goto=Knowledge&pid=1&docs&kcat_id=58.

"**Quote**" means the document executed by the parties specifically referencing this Schedule, which contains Customer's order specific information, including description of Software and Maintenance ordered, License Metrics and associated fees and payment terms.

"**SaaS Services**" means the provision of (i) Software as a service (SaaS) hosted by SirsiDynix from a server farm that is comprised of application, data and remote access servers used to store and run the Software and Customer Data, and/or (ii) web access to Content and (iii) associated Maintenance.

"**Software**" means the SirsiDynix Software and Third Party Software.

"**System**" means the total complement of hardware and Software furnished and maintained by SirsiDynix.

"**Third Party Software and Products**" means content and software including Documentation and Updates, owned by an entity other than SirsiDynix which are to be provided to Customer by SirsiDynix on a pass-through or OEM basis pursuant to the terms of the EULA.

All other capitalized terms used herein have the meaning set forth in the Agreement, unless expressly stated otherwise in this Amendment.

2. Amendments.

The parties agree to amend the Agreement as follows:

All Clauses in the Agreement referencing a set Term and/or Termination date are hereby superseded by the following:

Term and Renewal. Maintenance and/or SaaS services (collectively "Services") starts on 1 July 2010 and continues, subject to State Statutes, through the expiration of the initial term set forth in the attached Quote ("**Initial Term**"). Following the end of the Initial Term, Services shall automatically renew for the same length as the Initial Term ("**Renewal Term**"), unless Customer gives written notice 60 days prior to the end of the Initial Term or any Renewal Term, of its intention to terminate Services. Written notice shall be given to legal@sirsidynix.com or by registered mail to SirsiDynix Legal, 400 W. Dynix Drive, Provo, Utah 84604. The pricing for the first twelve months of any Renewal Term shall be provided in writing by SirsiDynix no less than 90 days prior to the end of the Initial Term or any Renewal Term. Renewal pricing may increase.

Subject to timely payment of the applicable fees, Maintenance is provided for all Software, unless otherwise noted in the Quote, provided however that with respect to Third Party Software, SirsiDynix's obligation is limited to using commercially reasonable efforts to obtain Maintenance from the third party owner of such software.

Third Party Software and Products. SirsiDynix may add and/or substitute functionally equivalent products for any Third Party Products in the event of product unavailability, end-of-life, or changes to software requirements. Use of the Third Party Software and Products subject to all terms and conditions of the applicable Third Party EULA and SirsiDynix makes no warranty with respect to such. Customer's sole remedy with respect to such shall be pursuant to the original licensor's warranty, if any, to SirsiDynix, to the extent permitted by the original licensor. Third Party Software and Products are made available by SirsiDynix on an "AS IS, AS AVAILABLE" BASIS.

Use. Software and/or Services purchased may be accessed by or used to manage no more than the number of License Metrics specified in the Quote. Additional License Metrics may be purchased under an additional Quote at the pricing as defined in the Quote in effect at the time the additional License Metrics are added, prorated for the remainder of the then-current Term. The Services for added License Metrics shall terminate on the same date as the pre-existing Services. Fees are based on Software and/or Services and License Metrics purchased and not actual usage.

Early Termination. Customer acknowledges that, based on Customer's willingness to enter into this Amendment for a five (5) year Service term, SirsiDynix has provided Customer with Services at rates that represent a substantial discount from the rates that SirsiDynix would otherwise charge, along with certain other free or substantially discounted products or services, as identified in the Quote for the Initial Term or Renewal Term(s) of the Services (each referred to individually as a "**Term**"), based on the assumption that Customer will remain a client for the whole of such Term. Customer therefore agrees that it is reasonable for Customer to pay a fee to SirsiDynix in the event of

termination of a Service ("Terminated Service") by Customer, other than due to breach by SirsiDynix, prior to the expiration the then-current Term. Such fee shall be equal to (i) the difference of 8% of the total Terminated Service fees related to the prorated Term which is terminated early and actual Maintenance fees paid plus (ii) the amount discounts on Software, Content or professional services (excluding the Terminated Service) extended to Customer during the Term which is terminated early. Customer agrees that damages suffered by

SirsiDynix in the event of early termination are difficult or impossible to determine and that the above amount is intended to be a reasonable approximation of such damages and not a penalty. Customer agrees that it will pay such amounts within thirty (30) days of any early termination of the Services. Customer shall notify SirsiDynix in writing of its intent to terminate such Services not less than ninety (90) days prior to the date of termination and Customer is not eligible for any pro-rata credit or refund for unused partial year Services fees paid.

Unless expressly amended in this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

If the foregoing correctly sets forth your understanding of your agreement with respect to the matters treated above, please indicate your acceptance and approval below and return either a PDF or a fax of the signed document to legal@sirsidynix.com or 801-223-5561; with original to follow to 400 West Dynix Drive, Provo UT 84604 USA.

This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of such counterparts shall constitute one and the same instrument. PDF documents and facsimile transactions shall be considered and have the same effect as originals.


The Effective Date of this Amendment shall be _____.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as identified below.

Foothill College

Authorizing Signature	
Name	
Address	
Title	
Date	

SirsiDynix

Authorizing Signature	
Name	Matthew Hawkins
Address	400 West Dynix Drive Provo UT 84604-5939
Title	COO
Date	June 3, 2010

LONG TERM MAINTENANCE OR SAAS SERVICES
QUOTE for
FOOTHILL COLLEGE

Dated: 21 May 2010

Initial Term of Maintenance or SaaS Services: Five (5) years
Initial Term Pricing for SirsiDynix Products/Services: 4% increase cap until Term renewal

Customer will receive Serials maintenance free for the 5 years of this Amendment

Fees for the Initial Term are due annually in advance on 1 July.

The above quoted Initial Term price is for SirsiDynix products or services only. Third Party/integrated product/service fees may, at the discretion of the Third Party, increase more than the above noted Initial Term pricing and shall be increased accordingly by SirsiDynix. SirsiDynix reserves the right to adjust Initial Term pricing in regards to Third Party/integrated products/services.

Customer's System shall remain within two (2) previously released software versions of the most recent version of the software at all times.

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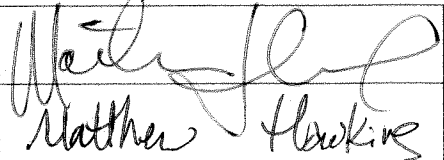
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SirsiDynix

Authorizing Signature	
Name	Matthew Fleck
Address	400 West Dynix Drive Provo UT 84604-5650
Title	COO
Date	June 3, 2010

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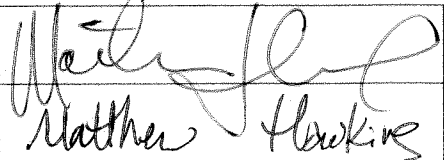
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